

Detailed Comparison: BOT Law (R.A. No. 6957 as amended by R.A. 7718) and its Implementing Rules and Regulations  
Alberto C. Agra

Reference	BOT Law	BOT IRR (2012)	
Declaration of Policy	SECTION 1. <i>Declaration of Policy.</i> - It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector.	<p>RULE 1 - PRELIMINARY PROVISIONS</p> <p>Section 1.1 - Policy</p> <p>It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate incentives to mobilize private resources for the purpose of financing the Construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government.</p> <p>In line with the foregoing, these Revised IRR seek to identify specific incentives, support and undertakings, financial or otherwise, that may be granted to Project Proponents, provide a climate of minimum Government regulations, allow reasonable returns on investments made by Project Proponents, provide procedures that will assure transparency and competitiveness in the bidding and award of projects, ensure that Contractual Arrangements reflect appropriate sharing of risks between the Government and the Project Proponent, assure close coordination between national government and Local Government Units (LGUs), and ensure strict compliance by the Government and the Project Proponent of their respective obligations and undertakings and the monitoring thereof, in connection with or relative to Private Sector Infrastructure or Development Projects to be undertaken under this Act and these Revised IRR.</p>	
		<p>Section 1.2 - Coverage</p> <p>These Implementing Rules and Regulations (IRR) shall cover all Private Sector Infrastructure or Development Projects, as hereunder defined, undertaken by Agencies/LGUs in accordance with such contractual arrangement or scheme authorized under and pursuant to R.A. No. 6957, as amended by R.A. No. 7718.</p> <p>For LGU projects, concerned LGUs may formulate additional guidelines/procedures not in conflict with this Act and these Implementing Rules and Regulations and</p>	

		pertinent provisions of R.A. No. 7160 (Local Government Code of 1991) and its implementing rules and regulations.	
Definition of Terms	<p>SEC. 2. <i>Definition of Terms.</i> - The following terms used in this Act shall have the meanings stated below:</p> <p>(a) Private sector infrastructure or development projects - The general description of infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate agency/LGU pursuant to this Act. Such projects shall be undertaken through contractual arrangements as defined hereunder and such other variations as may be approved by the President of the Philippines.</p> <p>For the construction stage of these infrastructure projects, the project proponent may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: Provided, That, in case an infrastructure or a development facility's operation requires a public utility franchise, the facility operator must be a Filipino or if a corporation, it must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos: Provided, further, That in the case of foreign contractors, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available: Provided, finally, That projects which would have difficulty in sourcing funds may be financed partly from direct government</p>		

	appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent.		
	<p>(b) Build-operate-and-transfer - A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years: Provided, That in case of an infrastructure or development facility whose operation requires a public utility franchise, the proponent must be Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos.</p> <p>The build-operate-and-transfer shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.</p>		
	(c) Build-and-transfer - A contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the government agency or local government unit concerned, which shall pay the proponent on an agreed schedule its total investments expended on the project, plus a		

	<p>reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure or development project, including critical facilities which, for security or strategic reasons, must be operated directly by the Government.</p>		
	<p>(d) Build-own-and-operate - A contractual arrangement whereby a project proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users: Provided, That all such projects, upon recommendation of the Investment Coordination Committee (ICC) of the National Economic and Development Authority (NEDA), shall be approved by the President of the Philippines. Under this project, the proponent which owns the assets of the facility may assign its operation and maintenance to a facility operator.</p>		
	<p>(e) Build-lease-and-transfer - A contractual arrangement whereby a project proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the government agency or local government unit concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the government agency or local government unit concerned.</p>		
	<p>(f) Build-transfer-and-operate - A contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private entity such that the contractor builds the facility on a turn-key basis, assuming cost overrun, delay and specified performance risks.</p> <p>Once the facility is commissioned satisfactorily, title is transferred to the implementing agency/LGU. The private entity, however, operates the facility on</p>		

	<p>behalf of the implementing agency/LGU under an agreement.</p>		
	<p>(g) Contract-add-and-operate - A contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the government. It operates the expanded project over an agreed franchise period. There may, or may not be, a transfer arrangement in regard to the facility.</p>		
	<p>(h) Develop-operate-and-transfer - A contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a private project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.</p>		
	<p>(i) Rehabilitate-operate-and-transfer - A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.</p>		
	<p>(j) Rehabilitate-own-and-operate - A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.</p>		
	<p>(k) Project proponent - The private sector entity which shall have contractual responsibility for the project and which shall have an adequate financial base to implement said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project.</p>		

	(l) Contractor - Any entity accredited under the Philippine laws which may or may not be the project proponent and which shall undertake the actual construction and/or supply of equipment for the project.		
	(m) Facility operator - A company registered with the Securities and Exchange Commission, which may or may not be the project proponent, and which is responsible for all aspects of operation and maintenance of the infrastructure or development facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users: Provided, That in case the facility requires a public utility franchise, the facility operator shall be Filipino or at least sixty per centum (60%) owned by Filipino.	k. Facility Operator - Refers to the entity which may or may not be the Project Proponent, and which is responsible for all aspects of operation and maintenance of the infrastructure or development facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users; provided, that the facility operator must be registered with the Securities and Exchange Commission (SEC) before commencement of operation and maintenance of the infrastructure or development facility; provided further, that in case the facility requires a public utility franchise, the Facility Operator shall, no later than the commencement of operation of the facility, comply with the nationality and ownership requirements under the Constitution and other applicable laws and jurisprudence.	j. Facility Operator - Refers to the entity which may or may not be the Project Proponent, and which is responsible for all aspects of operation and maintenance of the infrastructure or development facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users; provided, that the facility operator must be registered with the Securities and Exchange Commission (SEC) before commencement of operation and maintenance of the infrastructure or development facility; provided further, that in case the facility requires a public utility franchise, the Facility Operator shall, no later than the commencement of operation of the facility, comply with the nationality and ownership requirements under the Constitution and other applicable laws and jurisprudence.
	(n) Direct government guarantee - An agreement whereby the government or any of its agencies or local government units assume responsibility for the repayment of debt directly incurred by the project proponent in implementing the project in case of a loan default.		
		v. Private Sector Infrastructure or Development Projects - The general description of Infrastructure or Development Projects normally financed, and operated by the public sector but which will now be wholly or partly financed, constructed and operated by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information	z. Private Sector Infrastructure or Development Projects - The general description of Infrastructure or Development Projects normally financed, and operated by the public sector but which will now be wholly or partly financed, constructed and operated by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information

		<p>technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may otherwise be authorized by the appropriate Agency/LGU pursuant to the Act or these Revised IRR. Such projects shall be undertaken through Contractual Arrangements as defined herein, including such other variations as may be approved by the President of the Philippines.</p> <p>For the construction stage of these infrastructure projects, the project proponent may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: provided, that, in case an infrastructure or a development facility's operation requires a public utility franchise, the facility operator must be a Filipino or if a corporation, it must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos: provided, further, that in the case of foreign contractors, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available: provided, finally, that projects which would have difficulty in sourcing funds may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent.</p>	<p>information to the Project Proponent, and the Project Proponent shall be responsible for the infrastructure, drainage, dredging, and other infrastructure and development projects as may otherwise be authorized by the appropriate Agency/LGU pursuant to the Act or these Revised IRR. Such projects shall be undertaken through Contractual Arrangements as defined herein, including such other variations as may be approved by the President of the Philippines.</p> <p>For the construction stage of these infrastructure projects, the Project Proponent may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: provided, that, in case an infrastructure or a development facility's operation requires a public utility franchise, the facility operator must be a Filipino or if a corporation, it must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos, or if a corporation, it must be duly registered with the SEC and owned up to at least sixty percent (60%) by Filipinos, or if a corporation, it must be duly registered with the SEC and owned up to at least sixty percent (60%) by Filipinos; provided, further, that in the case of foreign contractors, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available: provided, finally, that projects which would have difficulty in sourcing funds may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent.</p>
	(o) Reasonable rate of return on investments and operating and maintenance cost - The rate of return that reflects the prevailing cost of capital in the domestic and international markets: Provided, That in case of negotiated contracts, such rate of return shall be determined by ICC of NEDA prior to the negotiation and/or call for proposals: Provided, further, That for negotiated contracts for public utility projects which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve per centum (12%).	a.a. Reasonable Rate of Return - Refers to the rate of return that a Project Proponent shall be entitled to, as determined by the ICC taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the Project Proponent and the level of Government Undertakings extended for the project; provided, further, that in the case of Negotiated Contracts, such rate of return shall be determined by the ICC prior to negotiation and/or call for proposals; provided further, that for Negotiated Contracts for public utilities projects which are monopolies, the rate of return on rate	ee. Reasonable Rate of Return - Refers to the rate of return accruing to the Project Proponent, as determined by the ICC taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets and risks being assumed by the Project Proponent, provided, further, that in the case of Negotiated Contracts, such rate of return shall be determined by the ICC prior to negotiation and/or call for proposals; provided further, that for Negotiated Contracts for public utilities projects which are monopolies, the rate of return on rate

		<p>base shall be determined by existing laws, which in no case shall exceed twelve per centum (12%), as provided by the Act.</p>	<p>shall exceed two per centum (2%) as provided by the Act.</p> <p>In addition to the rate of return determined. The project internal to equity share cash flows to Undertakings a including but combination the</p> <p>a.</p> <p>b.</p> <p>c.</p> <p>d.</p> <p>e.</p> <p>f.</p> <p>g.</p> <p>h.</p> <p>i.</p> <p>The recommendation estimates prepared or a national g Sections 10.4 are</p> <p>Such adjusted rate RROR for the project is viable,</p>
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			<p>the project and if any, are reasonable.</p> <p>The valuation of the project has been verified and approved by the relevant authorities.</p>
	(p) Construction - Refers to new construction, rehabilitation, improvement, expansion, alteration and related works and activities including the necessary supply of equipment, materials, labor and services and related items.		
Private Initiative in Infrastructure	SEC. 3. Private Initiative in Infrastructure. - All government infrastructure agencies, including government-owned and -controlled corporations and local government units are hereby authorized to enter into contract with any duly prequalified project proponent for the financing, construction, operation and maintenance of any financially viable infrastructure or development facility through any of the projects authorized in this Act. Said agencies, when entering into such contracts, are enjoined to solicit the expertise of individuals, groups, or corporations in the private sector who have extensive experience in undertaking infrastructure or development projects.		
			<p>Section 2.2 - Eligible Types of Projects</p> <p>Infrastructure or Development Projects. In order to secure the financing, construction, operation, maintenance, expansion, modernization, or improvement of any infrastructure or development project, the project proponent shall submit a project proposal to the PPP Center, in which the project proponent shall develop and implement the project. The project proponent will build and operate the project. The project proponent shall be a private entity or a partnership of private entities and government-owned and -controlled corporations. The project proponent shall be a duly organized and existing legal entity, duly registered with the Department of Trade and Industry, and shall have the necessary qualifications, experience, and resources to undertake the project. The project proponent shall be a resident of the Philippines or a citizen of a foreign country with which the Philippines has a bilateral investment treaty. The project proponent shall be a duly qualified project proponent for the financing, construction, operation and maintenance of any financially viable infrastructure or development facility through any of the projects authorized in this Act. Said agencies, when entering into such contracts, are enjoined to solicit the expertise of individuals, groups, or corporations in the private sector who have extensive experience in undertaking infrastructure or development projects.</p>
		<p>SECTION 2.2 - ELIGIBLE TYPES OF PROJECTS</p> <p>The Construction, rehabilitation, improvement, betterment, expansion, modernization, operation, financing and maintenance of the following types of projects which are normally financed and operated by the public sector which will now be wholly or partly financed, constructed and operated by the private sector, including other infrastructure and development projects as may be determined by the Department of Trade and Industry:</p>	<p>Section 2.3 - Eligible Types of Projects</p> <p>The construction, rehabilitation, improvement, betterment, expansion, modernization, operation, financing and maintenance of the following types of projects which are normally financed and operated by the public sector which will now be wholly or partly financed, constructed and operated by the private sector, including other Infrastructure and Development Projects:</p>

		<p>authorized by the appropriate agencies, may be proposed under the provisions of the Act and these Revised IRR:</p> <ul style="list-style-type: none"><li>a. Highways, including expressway, roads, bridges, interchanges, tunnels, and related facilities;</li><li>b. Railways or rail-based projects that may or may not be packaged with commercial development opportunities;</li><li>c. Non-rail based mass transit facilities, navigable inland waterways and related facilities;</li><li>d. Port infrastructures like piers, wharves, quays, storage, handling, ferry services and related facilities;</li><li>e. Airports, air navigation, and related facilities;</li><li>f. Power generation, transmission, sub-transmission, distribution, and related facilities;</li><li>g. Telecommunications, backbone network, terrestrial and satellite facilities and related service facilities;</li><li>h. Information technology (IT) and data base infrastructure, including modernization of IT, geo-spatial resource mapping and cadastral survey for resource accounting and planning;</li><li>i. Irrigation and related facilities;</li><li>j. Water supply, sewerage, drainage, and related facilities;</li><li>k. Education and health infrastructure;</li><li>l. Land reclamation, dredging and other related development facilities;</li><li>m. Industrial and tourism estates or townships, including ecotourism projects such as terrestrial and coastal/marine nature parks, among others and related infrastructure facilities and utilities;</li><li>n. Government buildings, housing projects;</li><li>o. Markets, slaughterhouses, and related facilities;</li><li>p. Warehouses and post-harvest facilities;</li><li>q. Public fish ports and fishponds, including storage and processing facilities;</li><li>r. Environmental and solid waste management related facilities such as but not limited to collection equipment, composting plants, landfill and tidal barriers, among others; and</li><li>s. Climate change mitigation and adaptation infrastructure projects and related facilities.</li></ul>	<p>authorized by the appropriate agencies, may be proposed under the provisions of the Act and these Revised IRR:</p> <ul style="list-style-type: none"><li>a. Highways, including expressway, roads, bridges, interchanges, tunnels, and related facilities;</li><li>b. Railways or rail-based projects that may or may not be packaged with commercial development opportunities;</li><li>c. Non-rail based mass transit facilities, navigable inland waterways and related facilities;</li><li>d. Port infrastructures like piers, wharves, quays, storage, handling, ferry services and related facilities;</li><li>e. Airports, air navigation, and related facilities;</li><li>f. Power generation, transmission, sub-transmission, distribution, and related facilities;</li><li>g. Telecommunications, backbone network, terrestrial, aerial and satellite facilities and related service facilities;</li><li>h. Information technology (IT) and data base infrastructure, including modernization of IT, geo-spatial resource mapping and cadastral survey for resource accounting and planning;</li><li>i. Irrigation and related facilities;</li><li>j. Water supply, sewerage, drainage, and related facilities;</li><li>k. Education and health infrastructure;</li><li>l. Land reclamation, dredging and other related development facilities;</li><li>m. Industrial and tourism estates or townships, including ecotourism projects such as terrestrial and coastal/marine nature parks, among others and related infrastructure facilities and utilities;</li><li>n. Government buildings, housing projects;</li><li>o. Markets, slaughterhouses, and related facilities;</li><li>p. Warehouses and post-harvest facilities;</li><li>q. Public fish ports and fishponds, including storage and processing facilities;</li><li>r. Environmental and solid waste management related facilities, agricultural estates, agro-industrial related facilities;</li><li>s. Climate change mitigation and adaptation infrastructure projects and related facilities.</li></ul>
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Priority Projects	<p>SEC. 4. Priority projects. - All concerned government agencies, including government-owned and -controlled corporations and local government units, shall include in their development programs those priority projects that may be financed, constructed, operated and maintained by the private sector under the provisions of this Act. It shall be the duty of all concerned government agencies to give wide publicity to all projects eligible for financing under this Act, including publication in national and, where applicable, international newspapers of general circulation once every six (6) months and official notification of project proponents registered with them.</p> <p>The lists of all such national projects must be part of the development programs of the agencies concerned. The list of projects costing up to Three hundred million pesos [300,000,000] shall be submitted to the ICC of the NEDA for its approval and to the NEDA Board for projects costing more than Three hundred million pesos [300,000,000]. The list of projects submitted to the ICC of the NEDA Board shall be acted upon within thirty [30] working days.</p> <p>The list of local projects to be implemented by the local government units concerned shall be submitted for confirmation to the municipal development council for projects costing up to Twenty million pesos; those costing above Twenty up to Fifty million pesos to the provincial development council; those costing up to Fifty million to the city development council; above Fifty million up to Two hundred million pesos to the regional development councils; and those above Two hundred million pesos to the ICC of the NEDA.</p>	<p>SECTION 2.3 - LIST OF PRIORITY PROJECTS</p> <p>Concerned Agencies/LGUs are tasked to prepare their infrastructure or development programs and to identify specific priority projects that may be financed, constructed, operated and maintained by the private sector through the Contractual Arrangements or schemes authorized under these Revised IRR and to submit for the approval by the Approving Body, as specified in Section 2.6. The List of Priority Projects shall be consistent with the Philippine Development Plan (PDP), and Provincial Development and Physical Framework Plan (PDPFP).</p> <p>The Public Investment Program (PIP) and the Comprehensive and Integrated Infrastructure Program (CIIP) shall be deemed as the list of National Priority Projects. The Provincial Development Investment Programs (PDIPs)/Local Development Investment Programs (LDIPs) shall be deemed as the List of Local Priority Projects. The PIP, CIIP and PDIP/LDIP shall be updated periodically.</p> <p>Any updates to the lists of Priority Projects, local and national, shall be submitted to the PPP Center within five (5) days from approval of the Approving Body for information and for posting in the PPP Center website.</p>	<p>Section 2.4 - List of Priority Projects</p> <p>Concerned Agencies/LGUs are tasked to prepare their infrastructure or development programs and to identify specific priority projects that may be financed, constructed, operated and maintained by the private sector through the Contractual Arrangements or schemes authorized under these Revised IRR and to submit for the approval by the Approving Body, as specified in Section 2.9. The List of Priority Projects shall be consistent with the Agency's/LGU's Development and Physical Framework Plan (PDP), Regional Development and Physical Framework Plan (PDPFP), Comprehensive and Integrated Infrastructure Program (CIIP), Provincial Development Investment Programs (PDIPs), and Local Development Investment Programs (LDIPs).</p> <p>The Public Investment Program (PIP) and the Comprehensive and Integrated Infrastructure Program (CIIP) shall be deemed as the list of National Priority Projects. The Provincial Development Investment Programs (PDIPs)/Local Development Investment Programs (LDIPs) shall be deemed as the List of Local Priority Projects. The PIP, CIIP and PDIP/LDIP shall be updated periodically.</p> <p>Any updates to the lists of Priority Projects, local and national, shall be submitted to the PPP Center within five (5) days from approval of the Approving Body for information and for posting in the PPP Center website.</p>
		<p>SECTION 2.4 - PUBLICATION AND NOTICE</p> <p>All Agencies/LGUs shall provide wide publicity of the List of Priority Projects proposed for implementation under the Contractual Arrangements or schemes as authorized under the Act and these Revised IRR to keep interested/concerned parties informed thereof. For this purpose, all Agencies/LGUs shall cause their respective List of Priority Projects to be published at least once every</p>	<p>Section 2.5 - Publication and Notice</p> <p>All Agencies/LGUs shall provide wide publicity of the List of Priority Projects proposed for implementation under the Contractual Arrangements or schemes as authorized under the Act and these Revised IRR to keep interested/concerned parties informed thereof. For this purpose, all Agencies/LGUs shall cause their respective List of Priority Projects to be published at least once every</p>

		six (6) months in a national newspaper of general circulation, and where applicable, international newspapers of general circulation. Said List should also be posted continuously in the websites of the PPP Center and the concerned Agency/LGU, if available.	six (6) months circulation, in pr international ne online media. Sa on the websit Agency/LGU, an purpose, if avail
			Section 2.6 - All Projects may be direct negotiatio to conditions sp
			<p>Section 2.7 - C Projects Submit A project shall evaluation by th a complete set by the ICC of the not limited to, a financial models not older than parameters, ter 2.8 of this Revis a complete requirements de</p> <p>Once the compl Approving Body Section 2.10.</p> <p>For projects no approval, the se ICC shall serve proposed projec</p> <p>The ICC and/or shall prescribe o support of the p timelines, provi act and this Rev</p>
			<p>Section 2.8 - Par</p> <p>a. The A, Body as part of following minim</p>

			<div><div><div>i. Scope</div><div>ii. Contr</div><div>iii. Contr</div><div>iv. Obliga</div><div>liquidated dama</div><div>v. Requir</div><div>the Project Prop</div><div>Center;</div><div>vi. Key</div><div>measurement;</div><div>vii. Gover</div><div>viii. Bid pa</div><div>ix. Requir</div><div>the appropriate</div><div>of its loan agree</div><div>x. Ceiling</div><div>xi. Reven</div><div>xii. RROR</div><div>xiii. Propo</div><div>tolls/fees/renta</div><div>xiv. Groun</div><div>12.21.a of this R</div><div>xv. Firm a</div><div>materiality thre</div><div>pursuant to Rule</div><div>xvi. Accep</div><div>xvii. Condi</div><div>interest;</div><div>xviii. A con</div><div>onerous and o</div><div>contract is onere</div><div>advantages the</div><div>from the project</div></div><div>For this purpos</div><div>requirements se</div><div>the ICC.</div><div>The ICC and/or</div><div>shall set forth th</div><div>for the drafting</div><div>contract, provid</div><div>Act and this Rev</div></div>
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			<p>b. In no case shall the project be approved without additional PTC negotiations that are satisfactory to the following:</p> <ul style="list-style-type: none"> <li>i. Altering the project's location;</li> <li>ii. Conflicting with the project's environmental impact statement;</li> <li>iii. The project's location is in a disadvantaged area;</li> <li>iv. Altering the project's location to expand the project's Revised IRR; or</li> <li>v. Worsening the project's location, indicating a negative impact on the government.</li> </ul> <p>If the executed contract is not approved in any of the items listed above, the Approving Body shall not approve the project.</p>
			<p>Section 2.9 - Approval of the project</p> <p>The approval of the project shall be in accordance with the following:</p> <ul style="list-style-type: none"> <li>a. National level <ul style="list-style-type: none"> <li>i. The project shall be approved as follows: <ul style="list-style-type: none"> <li>i. The project shall be submitted to ICJ for approval.</li> <li>ii. The project shall be submitted to the National Commission for recommendation.</li> <li>iii. The project shall be submitted to the National Commission for recommendation.</li> </ul> </li> </ul> </li> <li>b. Local level <ul style="list-style-type: none"> <li>i. The project shall be implemented by the concerned LGU.</li> <li>ii. The project shall be implemented by the concerned LGU.</li> <li>iii. The project shall be implemented by the concerned LGU.</li> <li>iv. The project shall be implemented by the concerned LGU.</li> </ul> </li> </ul>

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			<p>e. the Agency and environmental impact of the project to community.</p> <p>f. the Project's technical requirements, indicators and standards;</p> <p>g. the operational requirements;</p> <p>h. the project level of detail to make the project submission;</p> <p>i. the project's financial resources sufficient to serve the guidelines set forth in the guidelines;</p> <p>j. the risk management plan Preferred Risk Assessment. Any deviation from the Preferred Risk Assessment shall be up for approval by the Agency/LGU, if applicable.</p> <p>l. the project's value-for-money analysis and competition;</p> <p>m. the Agency's assumed obligations;</p> <p>n. the project's and this Revised Guidelines.</p> <p>For projects requiring approval by the Board, such shall be a working group composed of representatives to their elevation to the Board. The Center shall serve as a working group.</p> <p>The Approving Agency shall provide guidelines on the implementation of projects provided in the Act and this Revised Guidelines.</p>
		SECTION 2.8 - APPROVAL OF CONTRACTS	Section 2.12 - Approval of Contracts



		<p>The Head of the Agency/LGU shall review and approve the Draft Contract which shall be based on the parameters, terms and conditions set forth by the Approving Body.</p> <p>Prior to approval of the Head of Agency/LGU, the draft contract shall undergo review by the Office of the Government Corporate Counsel (OGCC), the Office of the Solicitor-General (OSG) or any other entity prescribed by law/issuances as the statutory counsel of GOCCs and LGUs as provided in Section 4.4 of these Revised IRR. For projects of national government agencies, local projects which will involve funds of the national government, and local projects requiring ICC review/approval, the draft contract must also be reviewed by the Department of Finance (DOF) before the Head of Agency/LGU approves the same.</p> <p>The prescribed statutory counsel, and if necessary, the DOF, shall issue an opinion on the draft contract within ten (10) days upon receipt thereof.</p> <p>For solicited projects, changes in the terms and conditions of the draft contract after its approval by the Head of Agency/LGU may be allowed prior to submission of bids provided that the Head of Agency/LGU shall secure approval of the appropriate Approving Body for any of the following changes:</p> <ol style="list-style-type: none"><li>Changes which reduce the service levels to the public;</li><li>Changes which reduce the economic internal rate of return below the hurdle rate used in the original analysis of the project;</li><li>Changes which increase the total government subsidy to a project by at least five percent (5%) of the total project cost; and</li><li>Changes in the risk profile which are detrimental to the best interest of the government.</li></ol> <p>The concerned Agency/LGU shall inform in writing the concerned statutory counsel as provided in this section of such changes.</p> <p>Changes to the terms and conditions of the draft contract after bid submission and prior to contract execution shall</p>	<p>The Head of the draft contract, v by the Approvi Revised IRR.</p> <p>Prior to approv contract shall Finance (DOF) Corporate Coun General (OSG), law/issuances as in accordance w expertise.</p> <p>The OSG, OGCC, case may be, sh within twenty (2 DOF shall issue projects of nati which will invol local projects r twenty (20) wor opinion on the approval of the</p> <p>Any Government not approved by in the DOF op Republic.</p> <p>Changes in the prior to submiss to submission o projects, provi appropriate App shall be secured</p> <p>The concerned writing the DOF such changes as</p> <p>Changes to the submission and</p>
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		<p>not be allowed except for changes to contract terms affected or decided by the winning bidder's bid.</p> <p>For unsolicited projects, in accordance with Section 10.9 of these Revised IRR, changes to the draft contract as agreed upon by Agency/LGU and the original proponent and as approved by the Head of Agency/LGU shall not be allowed, except for changes to contract terms affected or decided by the winning bidder's bid during the solicitation of comparative proposals and matching by the original proponent.</p> <p>The Head of the Agency/LGU shall be responsible for compliance with this policy.</p>	<p>allowed except decided by the v</p>
		<p>SECTION 2.10 - DEADLINE FOR APPROVAL OF SOLICITED PROJECTS</p> <p>The Approving Body shall act on the project within thirty (30) working days upon satisfactory compliance by the concerned Agency/LGU with the requirements of the Approving Body. Failure of the Approving Body to act on the project within the specified period shall be deemed an approval thereof and the concerned Agency/LGU may proceed with the solicitation of proposals. Upon approval, the Agency/LGU must publish the invitation to pre-qualify and to bid within six (6) months unless otherwise provided or extended by the Approving Body.</p>	<p>Section 2.11 - D</p> <p>The Approving project within th the Approving B evaluation.</p> <p>In the event of a invitation to pre unless otherwise Body.</p> <p>In the event o inform, in writ disapproval. Th submit the dis provided that tl are addressed Approving Body the project purs</p>
RULE 3 - THE BOT PRE-QUALIFICATION, BIDS, AND AWARDS COMMITTEE	<p>SEC. 5. Public Bidding of Projects. - Upon approval of the projects mentioned in Section 4 of this Act, the head of the infrastructure agency or local government unit concerned shall forthwith cause to be published, once every week for three [3] consecutive weeks, in at least two [2] newspapers of general circulation and in at least one [1] local newspaper which is circulated in the region, province, city or municipality in which the project is to be constructed, a notice inviting all prospective infrastructure or development project proponents to participate in a competitive public bidding for the projects so approved.</p>		

	<p>In the case of a build-operate-and-transfer arrangement, the contract shall be awarded to the bidder who, having satisfied the minimum financial, technical, organizational and legal standards required by this Act, has submitted the lowest bid and most favorable terms for the project, based on the present value of its proposed tolls, fees, rentals and charges over a fixed term for the facility to be constructed, rehabilitated, operated and maintained according to the prescribed minimum design and performance standards, plans and specifications. For this purpose, the winning project proponent shall be automatically granted by the appropriate agency the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals, and charges in accordance with Section 5 hereof.</p> <p>In the case of a build-and-transfer or build-lease-and-transfer arrangement, the contract shall be awarded to the lowest complying bidder based on the present value of its proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans and specifications: Provided, however, That a Filipino contractor who submits an equally advantageous bid with exactly the same price and technical specifications as those of a foreign contractor shall be given preference.</p> <p>In all cases, a consortium that participates in a bid must present proof that the members of the consortium have bound themselves jointly and severally to assume responsibility for any project. The withdrawal of any member of the consortium prior to the implementation of the project could be a ground for the cancellation of the contract.</p> <p>The public bidding must be conducted under a two-envelope/two-stage system: the first envelope to contain the technical proposal and the second envelope to contain the financial proposal. The procedures for this system shall be outlined in the implementing rules and regulations of this Act.</p> <p>A copy of each contract involving a project entered into under this Act shall forthwith be submitted to Congress for its information.</p>		
RULE 4 - BID/TENDER DOCUMENTS		SECTION 4.1 - BID/TENDER DOCUMENTS The Agency/LGU concerned shall prepare the bid/tender documents, which shall include the following:	Section 4.1 - Bid The Agency/LGU documents, whi

		<div><div>a. "Instructions to Bidders";</div><div>b. "Minimum Design, Performance Standards/Specifications, and Economic Parameters" such as discount rate, inflation factor and foreign exchange rate, where applicable, among others;</div><div>c. "Draft Contract" (as approved in accordance with Section 2.8) reflecting the contractual arrangement under which the project shall be undertaken, and the respective undertakings of the contracting parties, among others, and using the model contracts provided by NEDA/PPP Center as reference;</div><div>d. "Bid Form" reflecting the required information to properly evaluate the bid proposal;</div><div>e. forms of bid and performance securities;</div><div>f. requirements and timelines/milestones of concerned Agencies in granting of franchise, if applicable; and</div><div>g. other documents as may be deemed necessary by the Agency/LGU concerned.</div></div>	<div><div>a. "Inst</div><div>b. "Dra</div><div>with</div><div>appr</div><div>mod</div><div>as re</div><div>c. "Bid</div><div>to pr</div><div>d. form</div><div>e. requ</div><div>conc</div><div>appli</div><div>f. othe</div><div>by th</div></div>
	<div>a.</div>	<div><div>a.</div><div>SECTION 4.3 - MINIMUM DESIGNS, PERFORMANCE STANDARDS/SPECIFICATIONS AND ECONOMIC PARAMETERS</div><div>Minimum design and performance standards/specifications, including appropriate environmental standards as prescribed by the DENR, shall be clearly defined and shall refer more to the desired quantity and quality of the outputs of the facility and should state that non-conformity with any of these minimum requirements shall render the bids as non-responsive. Likewise, for the purpose of evaluating bids, the following economic parameters, among others, shall be prescribed:</div><div><div>a. Discount rate, foreign exchange rate and inflation factor as prescribed by the Approving Body, if applicable;</div><div>b. Maximum period of project Construction;</div><div>c. Fixed term for project operation and collection of the proposed tolls/fees/rentals/charges, if applicable;</div></div></div>	

		<div><div></div><div>d. Formula and price indices to be used in the adjustments of tolls/fees/rentals/charges, if applicable;</div><div>e. Minimum period of repayment under the schemes contemplated in Section 12.16, if applicable;</div><div>f. Revenue Share of the Implementing Agency/LGU, if applicable; and</div><div>g. Minimum amount of equity as prescribed by the Approving Body.</div></div>	
	a.	<div><div>SECTION 4.4 - DRAFT CONTRACT</div><div>The Head of the Agency/LGU shall be responsible in ensuring the consistency of the draft contract with the parameters, terms and conditions as approved by the Approving Body.</div><div>The draft contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities including the specific Government Undertakings to be provided by the Agency/LGU relative to the project. The draft contract shall have the following mandatory terms or conditions:</div><div><div>a. specific contractual arrangement, term, and scope of work;</div><div>b. project technical specifications and system features;</div><div>c. implementation milestones including those for securing other approvals, project completion date;</div><div>d. cost recovery scheme via proposed tolls, fees, rentals and charges, as the case may be;</div><div>e. liquidated damages as contemplated under Section 12.14;</div><div>f. performance and warranty bonds contemplated under Sections 12.8 and 12.9;</div><div>g. minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workmen's compensation, third party liability, or comprehensive general liability insurance;</div><div>h. acceptance tests and procedures;</div><div>i. warranty period and procedures (after transfer);</div><div>j. grounds for and effects of contract termination including modes for settling disputes;</div></div></div>	<div><div>Section 4.3 - Draft Contract</div><div>The Head of the Agency/LGU shall be responsible in ensuring the consistency of the draft contract with the parameters, terms and conditions as approved by the Approving Body.</div><div>The draft contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities including the specific Government Undertakings to be provided by the Agency/LGU relative to the project. The draft contract shall have the following mandatory terms or conditions:</div><div><div>a. specific contractual arrangement, term, and scope of work;</div><div>b. project technical specifications and system features;</div><div>c. implementation milestones including those for securing other approvals, project completion date;</div><div>d. cost recovery scheme via proposed tolls, fees, rentals and charges, as the case may be;</div><div>e. liquidated damages as contemplated under Section 12.14;</div><div>f. performance and warranty bonds contemplated under Sections 12.8 and 12.9;</div><div>g. minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workmen's compensation, third party liability, or comprehensive general liability insurance;</div><div>h. acceptance tests and procedures;</div><div>i. warranty period and procedures (after transfer);</div><div>j. grounds for and effects of contract termination including modes for settling disputes;</div></div></div>

Section 4.3 - Draft Contract

The Head of the Agency/LGU shall be responsible in ensuring the consistency of the draft contract with the parameters, terms and conditions as approved by the Approving Body.

Section 2.8 of the Guidelines shall apply to the draft contract.

The draft contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities including the specific Government Undertakings to be provided by the Agency/LGU relative to the project. The draft contract shall have the following mandatory terms or conditions:

a. specific contractual arrangement, term, and scope of work;

b. project technical specifications and system features;

c. implementation milestones including those for securing other approvals, project completion date;

d. cost recovery scheme via proposed tolls, fees, rentals and charges, as the case may be;

e. liquidated damages as contemplated under Section 12.14;

f. performance and warranty bonds contemplated under Sections 12.8 and 12.9;

g. minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workmen's compensation, third party liability, or comprehensive general liability insurance;

h. acceptance tests and procedures;

i. warranty period and procedures (after transfer);

j. grounds for and effects of contract termination including modes for settling disputes;

		<p>k. the manner and procedures for the resolution of warranty against corruption, and</p> <p>l. compliance with all other applicable laws, rules, and regulations.</p> <p>In accordance with Section 2.8, prior to approval of the draft contract by the Head of Agency/LGU, the Office of the Government Corporate Counsel (OGCC), the Office of the Solicitor-General (OSG) or any other entity prescribed by law/issuances as the statutory counsel of GOCCs and LGUs, and if necessary, the Department of Finance (DOF) shall issue an opinion on the draft contract within ten (10) days upon receipt by the corresponding counsel of the draft contract as submitted by the Agency/LGU.</p>	<p>i. accept</p> <p>j. warra</p> <p>and warranty se</p> <p>k. groun</p> <p>l. proce</p> <p>Section 12.22 of</p> <p>m. the ma</p> <p>warranty agains</p> <p>n. compl</p> <p>and regulations.</p> <p>In accordance w</p> <p>draft contract b</p> <p>the Governmen</p> <p>the Solicitor Gen</p> <p>by law/issuance</p> <p>LGUs, and the D</p> <p>of national gove</p> <p>involve funds o</p> <p>projects requirin</p> <p>opinion on the</p> <p>respective man</p> <p>(20) working da</p>
RULE 5 - QUALIFICATIO N OF BIDDERS		<p>SECTION 5.1 - WHO MAY PARTICIPATE</p> <p>Any individual, partnership, corporation or firm, whether local or foreign, including consortia of local, foreign or local and foreign firms, subject to the limits herein set, may participate or apply for pre- or simultaneous qualification for projects covered under the provisions of the Act and these Revised IRR.</p>	<p>Section 5.1 - WH</p> <p>Any individual,</p> <p>local or foreign</p> <p>local and foreign</p> <p>herein set, m</p> <p>simultaneous qu</p> <p>provisions of the</p>
		<p>SECTION 5.4 - PRE-QUALIFICATION REQUIREMENTS</p> <p>To pre-qualify, a prospective Project Proponent must comply with the following requirements:</p> <p>a. Legal Requirements</p> <p>i. For projects to be implemented under a contractual arrangement which requires a public utility Franchise for its operation, and where the project proponent and Facility Operator are one and the same entity, the prospective Project Proponent must be Filipinos or, if corporations, must be duly registered with the Securities and Exchange Commission (SEC)</p>	<p>Section 5.4 - Pre</p> <p>To pre-qualify,</p> <p>comply with the</p> <p>a. Legal R</p> <p>i. For p</p> <p>contractual arra</p> <p>Franchise for</p> <p>Proponent and</p> <p>entity, the pr</p> <p>Filipinos or, if co</p> <p>the Securities an</p> <p>up to at least</p>

		<p>and owned up to at least sixty percent (60%) by Filipinos, or, if a consortium of local, foreign, or local and foreign firms, Filipinos must have at least sixty percent (60%) interest in said consortium.</p> <p>ii. For projects to be implemented through a contractual arrangement requiring a public utility Franchise for its operation but where the Project Proponent and Facility Operator may be two separate and independent entities, the Facility Operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos.</p> <p>iii. For projects that do not require a public utility Franchise for its operation, the prospective Project Proponent or the Facility Operator may be Filipino or foreign-owned.</p> <p>iv. In case the prospective Project Proponent is a consortium, the members or participants thereof shall be disclosed during the pre-qualification stage and shall undergo pre-qualification. Further, the members or participants thereof shall execute an undertaking in favor of the Agency/LGU that if awarded the contract, they shall bind themselves to be jointly and severally liable for the obligations of the Project Proponent under the contract. However, if members of the consortium organize themselves as a corporation registered under Philippine laws, such corporation shall execute such an undertaking binding itself to be liable for the obligations of the Project Proponent under the contract, which shall substitute or be in lieu of the undertaking submitted by the members or participants of the consortium.</p> <p>v. For purposes of pre-qualification, the Contractor proposed to be engaged by the Project Proponent to undertake the Construction of the project must be duly licensed and accredited by the PCAB, in the case of a Filipino Contractor, or by an equivalent</p>	<p>consortium of local and foreign firms, Filipinos must have at least sixty percent (60%) interest in said consortium. The Facility Operator must be duly registered with the SEC and owned up to at least sixty percent (60%) by Filipinos.</p> <p>ii. For projects to be implemented through a contractual arrangement requiring a public utility Franchise for its operation but where the Project Proponent and Facility Operator may be two separate and independent entities, the Facility Operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos.</p> <p>iii. For projects that do not require a public utility Franchise for its operation, the prospective Project Proponent or the Facility Operator may be Filipino or foreign-owned.</p> <p>iv. In case the prospective Project Proponent is a consortium, the members or participants thereof shall be disclosed during the pre-qualification stage and shall undergo pre-qualification. Further, the members or participants thereof shall execute an undertaking in favor of the Agency/LGU that if awarded the contract, they shall bind themselves to be jointly and severally liable for the obligations of the Project Proponent under the contract. However, if members of the consortium organize themselves as a corporation registered under Philippine laws, such corporation shall execute such an undertaking binding itself to be liable for the obligations of the Project Proponent under the contract, which shall substitute or be in lieu of the undertaking submitted by the members or participants of the consortium.</p> <p>v. For purposes of pre-qualification, the Contractor proposed to be engaged by the Project Proponent to undertake the Construction of the project must be duly licensed and accredited by the PCAB, in the case of a Filipino Contractor, or by an equivalent</p>
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		<p>accreditation institution in the Contractor's country of origin, in the case of a foreign Contractor. Once the Project Proponent is awarded the project, such foreign Contractor must secure a license and accreditation from the PCAB.</p> <p>b. Experience or Track Record - The prospective Project Proponent must possess adequate experience in terms of the following:</p> <p>i. Firm Experience - By itself or through the member-firms in case of a consortium or through a Contractor(s) which the prospective Project Proponent may engage for the project, the prospective Project Proponent and/or its Contractor(s) must have successfully undertaken a project(s) similar or related to the subject infrastructure/development project to be bid. The individual firms and/or their Contractor(s) may individually specialize on any or several phases of the project(s). A consortium proponent shall be evaluated based on the individual or collective experience of the member-firms of the consortium and of the Contractor(s) that it has engaged for the project.</p> <p>For purposes of the above, consortia shall submit as part of their pre-qualification statement a business plan which shall, among others, identify their members, the equity interest/contribution of each member to the consortium, their prospective Contractor(s), if the experience of their Contractor(s) are necessary for the determination of the capacity of the consortium to undertake the project, and the description of the respective roles said members and Contractors, if necessary, shall play or undertake in the project, including as to which member(s) is(are) the prospective facility operator(s), if applicable. If undecided on a specific Contractor, the prospective Project Proponent may submit a short list of Contractors from among which it will select the final Contractor. Short listed Contractors are required to submit a statement indicating</p>	<p>b. Experience or Track Record - The prospective Project Proponent must possess adequate experience in terms of the following:</p> <p>i. Firm Experience - By itself or through the member-firms in case of a consortium or through a Contractor(s) which the prospective Project Proponent may engage for the project, the prospective Project Proponent and/or its Contractor(s) must have successfully undertaken a project(s) similar or related to the subject infrastructure/development project to be bid. The individual firms and/or their Contractor(s) may individually specialize on any or several phases of the project(s). A consortium proponent shall be evaluated based on the individual or collective experience of the member-firms of the consortium and of the Contractor(s) that it has engaged for the project.</p> <p>For purposes of the above, consortia shall submit as part of their pre-qualification statement a business plan which shall, among others, identify their members, the equity interest/contribution of each member to the consortium, their prospective Contractor(s), if the experience of their Contractor(s) are necessary for the determination of the capacity of the consortium to undertake the project, and the description of the respective roles said members and Contractors, if necessary, shall play or undertake in the project, including as to which member(s) is(are) the prospective facility operator(s), if applicable. If undecided on a specific Contractor, the prospective Project Proponent may submit a short list of Contractors from among which it will select the final Contractor. Short listed Contractors are required to submit a statement indicating</p> <p>ii. Key Personnel - The prospective Project Proponent must submit a list of key personnel who will be involved in the project, including the prospective Contractor(s) management personnel.</p>
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		<p>willingness to participate in the project and capacity to undertake the requirements of the project.</p> <p>ii. Key Personnel Experience - The key personnel of the prospective Project Proponent and/or its Contractor(s) must have sufficient experience in the relevant aspect of schemes similar or related to the subject project, as specified by the Agency/LGU.</p> <p>c. Financial Capability - The prospective Project Proponent must have adequate capability to sustain the financing requirements for the detailed engineering design, Construction and/or operation and maintenance phases of the project, as the case may be. The Agency/LGU concerned shall determine on a project-to-project basis, and before pre- qualification, the minimum amount of equity needed.</p> <p>For purposes of pre-qualification, this capability shall be measured in terms of proof of the ability of the prospective Project Proponent and/or the consortium to provide:</p> <p>i. Equity</p> <p>(a) a minimum amount of equity to the project measured in terms of the net worth of the company, or in the case of consortia, the net worth of the lead member or the combined net worth of members, or</p> <p>(b) a set-aside deposit equivalent to the minimum equity required</p> <p>ii. Debt</p> <p>A letter testimonial from a domestic universal/commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the BSP attesting that the prospective Project Proponent and/or members of the consortium are banking with them, and that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the project. The Agency/LGU, through its PBAC, shall complete the evaluation of the pre-qualification documents of the</p>	<p>relevant aspect of the subject project,</p> <p>c. Financial Capability - The prospective Project Proponent must have adequate capability to sustain the financing requirements for the detailed engineering design, Construction and/or operation and maintenance phases of the project, as the case may be. The Agency/LGU concerned shall determine on a project-to-project basis, and before pre-qualification, the minimum amount of equity needed.</p> <p>For purposes of pre-qualification, this capability shall be measured in terms of proof of the ability of the prospective Project Proponent and/or the consortium to provide:</p> <p>i. Equity</p> <p>1. a minimum amount of equity to the project measured in terms of the net worth of the company, or in the case of consortia, the net worth of the lead member or the combined net worth of members, or</p> <p>(b) a set-aside deposit equivalent to the minimum equity required</p> <p>ii. Debt</p> <p>A letter testimonial from a domestic universal/commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the BSP attesting that the prospective Project Proponent and/or members of the consortium are banking with them, and that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the project. The Agency/LGU, through its PBAC, shall complete the evaluation of the pre-qualification documents of the</p>
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		prospective Project Proponents within twenty (20) calendar days.	<p>purposes of this refer to unsolici</p> <p>is granted with</p> <p>accordance with</p> <p>(c) a sw</p> <p>Proponent's, or,</p> <p>other projects th</p> <p>debt financing;</p> <p>(d) debt t</p> <p>(e) equity</p> <p>The prospective</p> <p>have the capab</p> <p>project if the lat</p> <p>sum of the lates</p> <p>proposed owner</p> <p>of the minimum</p> <p>and the outstar</p> <p>projects that a</p> <p>implementation</p> <p>2. a set-a</p> <p>equity required,</p> <p>For avoidance</p> <p>agreements, ac</p> <p>from parent con</p> <p>stated above sh</p> <p>in determining t</p> <p>to provide equit</p> <p>ii. Debt</p> <p>The Project Prop</p> <p>finance the pr</p> <p>testimonial from</p> <p>1. the p</p> <p>members of the</p> <p>2. The P</p> <p>consortium are</p> <p>qualified to ob</p> <p>banks to financ</p> <p>debt requireme</p> <p>The testimoni</p> <p>universal/comm</p> <p>is authorized by</p>
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		<p><b>SECTION 5.8 - CHANGES TO PRE-QUALIFICATION AND TENDER DOCUMENTS</b></p> <p>If changes to pre-qualification and tender documents are made prior to pre-qualification of prospective bidders, the Agency/LGU shall issue a bid bulletin to all bidders who had purchased the tender/bid documents informing them of such changes, and afford them reasonable time within which to consider the same in the preparation of their submission/bids. Such issuance shall be duly acknowledged by each bidder prior to the submission of his pre-qualification documents/bid and shall be so indicated in his submission/bid. This shall be observed under the single-stage bidding process (simultaneous qualification) as well as in the two-stage bidding process.</p> <p>Further, if changes to pre-qualification and tender documents are made after the pre-qualification stage, the bid bulletin shall be issued only to all pre-qualified bidders.</p> <p>Provided that, consistent with Section 2.8 of these Revised IRR, the Head of Agency/LGU shall secure approval by the appropriate Approving Body prior to the issuance of the bid bulletin for any of the following material changes in the information contained in the documents obtained by prospective bidders for single-stage and two-stage bidding process:</p> <ol style="list-style-type: none"> <li>Changes which reduce the service levels to the public;</li> <li>Changes which reduce the economic internal rate of return below the hurdle rate used in the original analysis of the project;</li> </ol>	<p><b>Section 5.8 - Changes to Pre-qualification and Tender Documents</b></p> <p>If changes to pre-qualification and tender documents are made prior to pre-qualification of prospective bidders, the Agency/LGU shall issue a bid bulletin to all bidders who had purchased the tender/bid documents informing them of such changes, and afford them reasonable time within which to consider the same in the preparation of their submission/bids. Such issuance shall be duly acknowledged by each bidder prior to the submission of his pre-qualification documents/bid and shall be so indicated in his submission/bid. This shall be observed under the single-stage bidding process (simultaneous qualification) as well as in the two-stage bidding process.</p> <p>Further, if changes to pre-qualification and tender documents are made after the pre-qualification stage, the bid bulletin shall be issued only to all pre-qualified bidders.</p> <p>Changes in the information contained in the documents obtained by prospective bidders for single-stage and two-stage bidding process may be allowed only if approved by the appropriate Approving Body prior to the issuance of the bid bulletin for any of the following material changes in the information contained in the documents obtained by prospective bidders for single-stage and two-stage bidding process:</p> <p>The concerned Agency/LGU shall secure approval by the Department of Finance (DOF) and the Commission on Audit (COA) prior to the issuance of the bid bulletin for any of the following material changes in the information contained in the documents obtained by prospective bidders for single-stage and two-stage bidding process:</p>

		<p>c. Changes which increase the total government subsidy to a project by at least five percent (5%) of the total project cost; and</p> <p>d. Changes in the risk profile which are detrimental to the best interest of the government.</p> <p>The concerned Agency/LGU shall inform in writing the concerned statutory counsel as provided in Section 2.8 of these Revised IRR of such changes.</p>	
RULE 9 - NEGOTIATED CONTRACT	<p>Sec. 5-A. Direct Negotiation of Contracts. - Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:</p> <p>(a) If, after advertisement, only one contractor applied for prequalification and it meets the prequalification requirements, after which it is required to submit a bid/proposal which is subsequently found by the agency/local government unit (LGU) to be complying.</p> <p>(b) If, after advertisement, more than one contractor applied for prequalification but only one meets the prequalification requirements, after which it submits bid/proposal which is found by the agency/LGU to be complying.</p> <p>(c) If, after prequalification of more than one contractor, only one submits a bid which is found by the agency/LGU to be complying.</p> <p>(d) If, after prequalification, more than one contractor submit bids but only one is found by the agency/LGU to be complying: Provided, That, any of the disqualified prospective bidder may appeal the decision of the implementing agency/LGUs Prequalification Bids and Awards Committee within fifteen (15) working days to the head of the agency, in case of national projects or to the Department of the Interior and Local Government, in case of local projects from the date the disqualification was made known to the disqualified bidder. Provided, furthermore, That the implementing agency/LGUs concerned should act on the appeal within forty-five (45) working days from receipt thereof.</p>	<p>SECTION 9.3 - CONDITIONS FOR NEGOTIATED PROJECTS</p> <p>In the instances where negotiated projects are allowed, the ICC shall determine the Reasonable Rate of Return prior to the negotiation in the case of solicited proposals as referred to under Section 9.1 of these Revised IRR. The scope of negotiation, in the case of solicited proposals referred to under Section 9.1 of these Revised IRR, shall be limited to the financial proposal of the proponent and compliance with the ICC-determined Reasonable Rate of Return. Direct negotiation should not result in a higher subsidy, or higher user fee, or lower amount of government revenue, or longer concession period.</p>	<p>Section 9.3 - Conditions for Negotiated Projects</p> <p>In instances where negotiated projects are allowed, the ICC shall determine the Reasonable Rate of Return prior to the negotiation in the case of solicited proposals as referred to under Section 9.1 of these Revised IRR. The scope of negotiation, in the case of solicited proposals referred to under Section 9.1 of these Revised IRR, shall be limited to the financial proposal of the proponent and compliance with the ICC-determined Reasonable Rate of Return. Direct negotiation should not result in a higher subsidy, or higher user fee, or lower amount of government revenue, or longer concession period.</p>

RULE 10 - UNSOLICITED PROPOSALS	SEC. 4-A. Unsolicited proposals. - Unsolicited proposals for projects may be accepted by any government agency or local government unit on a negotiated basis: Provided, That, all the following conditions are met: [1] such projects involve a new concept or technology and/or are not part of the list of priority projects, [2] no direct government guarantee, subsidy or equity is required, and [3] the government agency or local government unit has invited by publication, for three [3] consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty [60] working days: Provided, further, That in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within thirty [30] working days.		
		<p>SECTION 10.2 - NEW TECHNOLOGY</p> <p>The Project Proponent proposing a project involving a new concept or technology shall incorporate in its proposal information regarding said new concept or technology which it should have directly, or through any of its key members, successfully implemented at a scale similar to the proposed project. The information disclosed must be in sufficient detail so as to allow the Agency/LGU to properly evaluate the new concept or technology. Additionally, the new technology must possess at least one of the following attributes:</p> <ul style="list-style-type: none"><li>a. A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of Construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/economic disturbances or disruptions either during the project implementation/Construction phase or the operation phase;</li><li>b. A process for which the Project Proponent or any member of the proponent consortium possesses exclusive rights, either world-wide or regionally; or</li></ul>	<p>Section 10.2 - N</p> <p>The Project Prop</p> <p>concept or a te</p> <p>Philippines shal</p> <p>which it, or thro</p> <p>directly and suc</p> <p>the proposed pr</p> <p>The information</p> <p>to allow the Ag</p> <p>concept or tech</p> <p>the details of t</p> <p>cost-benefit an</p> <p>technology with</p> <p>New concept</p> <p>emerging, or st</p> <p>similar or relate</p> <p>In addition, it</p> <p>implementation</p> <p>not limited to:</p> <ul style="list-style-type: none"><li>a. reduct</li><li>b. accele</li><li>c. impro</li><li>d. enhan</li></ul>

			<p>e. improve the quality of the project and produce;</p> <p>f. extend the life of the project;</p> <p>g. reduce the cost of the project;</p> <p>h. reduce the risk of the project;</p> <p>i. reduce the impact of the project on the environment;</p> <p>either during construction or operation;</p> <p>j. increase the efficiency of the project content.</p> <p>The Agency/LGU shall conduct a study on its assessment of the project, including government and private sector participation or technology transfer, and other features that may be included in the implementation of the project, and certification of the project by the government and the private sector, and the knowledge of the project.</p>
		<p>SECTION 10.4 - INVESTMENT INCENTIVES AND GOVERNMENT UNDERTAKINGS FOR UNSOLICITED PROPOSALS</p> <p>As a general rule, the Government may grant Investment Incentives to Unsolicited Proposals as enumerated under Rule 13.</p> <p>In accordance with Section 4-A of the Act, there shall be no direct government guarantee, subsidy or equity for unsolicited proposals.</p> <p>The grant of usufruct of government assets, including among others, right-of-way, to Project Proponents shall be considered as direct subsidy or equity unless government receives appropriate compensation pursuant to existing laws, rules and regulations, and guidelines.</p> <p>All costs related to relocation and resettlement in connection with the project shall be shouldered by the Project Proponent.</p> <p>The standards for valuation of government assets, including among others, right-of-way, and of relocation and resettlement shall be pursuant to Republic Act</p>	<p>Section 10.4 - INVESTMENT INCENTIVES AND GOVERNMENT UNDERTAKINGS FOR UNSOLICITED PROPOSALS</p> <p>As a general rule, the Government may grant Investment Incentives to Unsolicited Proposals as enumerated under Rule 13.</p> <p>In accordance with Section 4-A of the Act, there shall be no direct government guarantee, subsidy or equity for unsolicited proposals.</p> <p>The grant of usufruct of government assets, including among others, right-of-way, to Project Proponents shall be considered as direct subsidy or equity unless government receives appropriate compensation pursuant to existing laws, rules and regulations, and guidelines.</p> <p>Such grant of usufruct of government assets shall be pursuant to the following guidelines:</p> <p>a. Use of government assets for the project shall be determined by the government.</p>

		<p>No.8974 and other existing laws, rules and regulations, and guidelines. The appraisal or valuation shall be undertaken by a third-party or an independent institution or individuals duly accredited to conduct the appraisal of the property/asset.</p>	<p>shall gove</p> <p>b. Conc usufr is m provi nego publi prop gove and l</p> <p>c. Com comp be ba dete instit any, set fo</p> <p>d. Inter on c inter into regul to ag defar shall</p> <p>The standards including amon and resettlemen to Republic Act and regulations standards for th</p> <p>All costs relat connection with Project Propone</p>
		<p>SECTION 10.5 - SUBMISSION OF A COMPLETE UNSOLICITED PROPOSAL</p> <p>For an unsolicited proposal to be considered by the Agency/LGU, the proponent has to submit a complete</p>	<p>Section 10.5 - Proposal to the</p>

		<p>proposal, which shall include a cover letter, feasibility study which should indicate relevant assumptions, company profile, the draft contract adverted to in Section 4.4 above, and other documents that are needed even if proprietary in nature. The cover letter shall indicate the basic information on the Unsolicited Proposal such as its expected output and outcome, implementation period, and general description of the new concept or technology, among others, and shall include the company profile of the unsolicited proponent. The feasibility study, draft contract, and other documents that are needed even if proprietary in nature shall be submitted in a sealed envelope. The Agency/LGU shall acknowledge receipt of the proposal within seven (7) calendar days and advise the proponent whether the proposal is complete or incomplete within thirty (30) calendar days from submission thereof. If incomplete, the Agency/LGU shall return to the proponent its submission indicating what information is lacking or necessary and the Agency/LGU may entertain thereafter other same or similar project proposal.</p>	<p>Once the Agency shall acknowledge receipt of the proposal, within seven (7) calendar days, the Agency shall inform the PPP Unit of the receipt of the proposal.</p> <p>Within thirty (30) calendar days from receipt of the Agency/LGU's response to the proposal, it shall:</p> <p>a. Assess the proposal, taking into consideration the guidelines described in the IR.</p> <p>For an unsolicited proposal, the Agency shall, for the purposes of assessing the proposal, contain the following:</p> <p>i. cover letter of the unsolicited proponent, its project, its implementation period, and its new concept or technology, as stated in this Revised IR.</p> <p>Proponent or consortium shall submit the following:</p> <p>ii. feasibility study, which shall indicate relevant assumptions, company profile, the draft contract adverted to in Section 4.4 above, and other documents that are needed even if proprietary in nature.</p> <p>iii. draft contract, which shall indicate the basic information on the Unsolicited Proposal such as its expected output and outcome, implementation period, and general description of the new concept or technology, among others, and shall include the company profile of the unsolicited proponent.</p> <p>iv. financial statement of the Project Proponent, which shall be in accordance with Section 2.7 and the guidelines described in the IR.</p> <p>v. pre-qualification documents, which shall be in accordance with Section 5.4;</p> <p>vi. proposal, which shall include a cover letter, feasibility study, draft contract, and other documents that are needed even if proprietary in nature.</p> <p>vii. documents that are needed even if proprietary in nature, which shall be submitted in a sealed envelope.</p> <p>The Agency/LGU shall acknowledge receipt of the proposal within seven (7) calendar days and advise the proponent whether the proposal is complete or incomplete within thirty (30) calendar days from submission thereof. If incomplete, the Agency/LGU shall return to the proponent its submission indicating what information is lacking or necessary and the Agency/LGU may entertain thereafter other same or similar project proposal.</p>
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			<p>The Project Proponent shall submit the above-mentioned information in a form that is proprietary in nature to the Agency/LGU.</p> <p>b. Send a copy of the proposal and the PPP Contract to the Agency/LGU and the PPP Center of the submitted proposal.</p> <p>If a proposal is received by the Agency/LGU, it shall be evaluated by the Proponent confidentially. The Proponent shall submit a copy of the proposal, and in the event the proposal is accepted by the Agency/LGU, the Proponent shall submit a copy of the proposal to the Agency/LGU. The Proponent shall submit a copy of the proposal pursuant to Section 10.6 of the RFP. The notice shall be sent to the Proponent.</p> <p>If a proposal is received by the Agency/LGU, it shall be evaluated by the Proponent listing the requirements, and the Proponent shall submit a copy of the proposal to the Agency/LGU. The notice shall be sent to the Proponent. The Agency/LGU shall evaluate the proposal similar project. If the proposal is rejected, the submission is deemed to be a rejection from re-submission. The Proponent shall be considered as the first in time.</p>
		<p>SECTION 10.6 - TREATMENT OF MORE THAN ONE PROPOSAL FOR THE SAME OR SIMILAR PROJECT</p> <p>In the case where the Agency/LGU receives more than one Unsolicited Proposal involving the same or similar project prior to acceptance of the proposal as the "original proponent", the Agency/LGU may reject all such proposals or instead, bid out the project as a solicited proposal. Otherwise, the Agency/LGU shall evaluate the proposals using a first in time approach. Under this approach, the first complete proposal is evaluated and decided upon. The second complete proposal will only be entertained if the first one is rejected. Otherwise, the second proposal</p>	<p>Section 10.6 - Treatment of More Than One Proposal for the Same or Similar Project</p> <p>In the case where the Agency/LGU receives more than one Unsolicited Proposal involving the same or similar project prior to acceptance of the proposal as the "original proponent", the Agency/LGU may reject all such proposals or instead, bid out the project as a solicited proposal. Otherwise, the Agency/LGU shall evaluate the proposals using a first in time approach. Under this approach, the first complete proposal is evaluated and decided upon. The second complete proposal will only be entertained if the first one is rejected. Otherwise, the second proposal</p>

		<p>will be considered only if there is a failure in the negotiation of the first proposal or during the “invitation for comparative proposals” as defined under Section 10.11.</p> <p>Under the first in time approach, the Head of Agency/LGU shall acknowledge the submission of other unsolicited proponent for the same or similar project concept, and advise the unsolicited proponent on existence of similar project concept and its rank/position based on date of submission of unsolicited proposals. If a contract is awarded to a proponent, the unopened envelope/s shall be returned to the respective proponents.</p>	<p>proposal will be determined to be not accepted per second proposal in the negotiation “invitation for comparative proposals” as defined under Section 10.13.</p> <p>Under the first in time approach, the Head of Agency/LGU shall send a written acknowledgment to the unsolicited proponent project concept and its rank/position based on date of submission of unsolicited proposals. If a contract is awarded to a proponent, the unopened envelope/s shall be returned to the respective proponents.</p> <p>If a contract is awarded to a proponent, the unopened envelope/s shall be returned to the respective proponents.</p>
		<p>SECTION 10.7 - EVALUATION AND ACCEPTANCE OF UNSOLICITED PROPOSALS</p> <p>The Agency/LGU is tasked with the evaluation of the proposal. The Agency/LGU shall: 1) appraise the merits of the project; 2) qualify the proponent based on the provisions of Rule 5 hereof; 3) assess the appropriateness of the contractual arrangement and reasonableness of the risk allocation; 4) recommend a reasonable Rate of Return (ROR); and, 5) inform the ICC and the PPP Center of its receipt of an Unsolicited Proposal. The Agency/LGU shall evaluate the proposal, qualify the proponent, and advise whether it accepts or rejects the proposal within one hundred and twenty (120) calendar days upon receipt of the complete proposal. The Agency/LGU shall indicate in its letter of acceptance the confirmation of the proponent as “original proponent”. In case of acceptance, the Agency/LGU shall endorse the unsolicited proposal and submit all pertinent documentation to the ICC/Approving Body. At this point, the Agency/LGU will no longer entertain other similar proposals unless the parties are unable to agree during the period for negotiations</p>	<p>Section 10.7 - EVALUATION AND ACCEPTANCE OF UNSOLICITED PROPOSALS</p> <p>Within one hundred and twenty (120) calendar days upon receipt of the complete proposal, the Agency/LGU shall inform the proponent of its proposal and shall assess the appropriateness of the contractual arrangement and reasonableness of the risk allocation; 4) recommend a reasonable Rate of Return (ROR); and, 5) inform the ICC and the PPP Center of its receipt of an Unsolicited Proposal. The Agency/LGU shall evaluate the proposal, qualify the proponent, and advise whether it accepts or rejects the proposal within one hundred and twenty (120) calendar days upon receipt of the complete proposal. The Agency/LGU shall indicate in its letter of acceptance the confirmation of the proponent as “original proponent”. In case of acceptance, the Agency/LGU shall endorse the unsolicited proposal and submit all pertinent documentation to the ICC/Approving Body. At this point, the Agency/LGU will no longer entertain other similar proposals unless the parties are unable to agree during the period for negotiations</p> <p>a. The Agency/LGU shall inform the proponent based on the date of submission of unsolicited proposals.</p> <p>b. In evaluation, the Agency/LGU must perform the following:</p> <p>i. Confirm the existence of similar project concept and its rank/position based on date of submission of unsolicited proposals.</p>

		<p>specified in Section 10.8 below, or the original proponent is unable to comply with the parameters set by the Approving Body, or until the solicitation of comparative proposals has been completed.</p>	<p>ii. Validation of the proposed project against the guarantee, subs...</p> <p>iii. Assessment of the proposed project against the arrangement and allocation pursuant to the Allocation Matrix...</p> <p>iv. Review of the proposed project against the criteria described in Section 2.9 of this Revision...</p> <p>v. Ensuring the financial and operational viability of the proposed project in accordance with Section 2.10 and the requirements of the Approving Body...</p> <p>vi. Evaluation of the proposed project against the Project Proponent's proposed RROP and the proposed project.</p> <p>c. After the proposed project has been evaluated, the Proponent and the Approving Body shall accept or reject the proposed project.</p> <p>i. If the Approving Body rejects the proposed project, it shall send a written notice to the Proponent of its intention to accept or reject the proposed project on a conditional OPS...</p> <p>In cases of local government approval, the confirmation of the proposed project shall be in accordance with 2.9 of this Revision...</p> <p>Within thirty (30) days of the receipt of the notice, the Head of the Approving Body shall, in consultation with the Proponent, together with the proposed project, submit the proposed project and other documents to the Approving Body. The notice of such notice shall be submitted to the Center.</p> <p>The Head of the Approving Body shall submit the proposed project and other documentation, together with the proposed project, to the Center...</p>
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			<p>it has done the</p> <p>10.7 of this Rev</p> <p>shall assess the</p> <p>grant of OPS pur</p> <p>ii. If the</p> <p>Agency/LGU sh</p> <p>Project Propone</p> <p>unsolicited pro</p> <p>submitted by th</p> <p>be sent by the A</p> <p>the Agency/LGU</p> <p>project proposa</p>
			<p>Section 10.8 - A</p> <p>to Negotiation v</p> <p>a. Confir</p> <p>Conditional OP</p> <p>Proponent</p> <p>i. Nation</p> <p>Within sixty (6</p> <p>Approving Bod</p> <p>referred to in Se</p> <p>1. The Ap</p> <p>to the Technical</p> <p>2. There</p> <p>completeness a</p> <p>pursuant to Se</p> <p>validate the q</p> <p>pursuant to Rul</p> <p>its decision.</p> <p>3. The IC</p> <p>(a) Confir</p> <p>written notice t</p> <p>state the total</p> <p>qualified to raise</p>

			<p>(b) There shall be a written evaluation of the project with the evaluation report submitted to Section 10.8.1.</p> <p>(c) Reject the project. The project proponent shall submit a written notice to the Sanggunian of the local government unit, stating the reasons for rejection.</p> <p>ii. Local Government Unit (LGU) Sanggunian</p> <p>Within sixty (60) days after the receipt of the Sanggunian of the local government unit's decision to reject the project, the project proponent shall submit to the Sanggunian of the local government unit in Section 10.8.1 an appropriate board resolution and a Revised IRR, the project proponent shall:</p> <ol style="list-style-type: none"><li>1. Assess the project proponent's submitted project proposal and this Revised IRR.</li><li>2. Validate the project proponent's Proponent pursuant to the project proposal.</li><li>3. Confirm the project proponent's the Project Proposal.</li><li>4. Notify the project proponent of the project proposal.</li></ol> <p>The local Sanggunian of the local government unit shall group to provide the project proposal.</p> <p>Within five (5) days after the receipt of the Agency/LGU of the project proposal, the Agency/LGU shall provide the project proposal depending on the project proposal.</p> <p>i. If the project proponent's the Agency/LGU of the project proposal, the project proponent shall provide the project proposal to the Sanggunian of the local government unit. Thereafter, the project proponent shall submit the "original project proposal" to the Sanggunian of the local government unit.</p>
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			<p>ii. If the the Agency/LGU Proponent stati Project Propone documents su Thereafter, th Agency/LGU i Agency/LGU ma proposals.</p> <p>The Agency/LGU of the above no</p> <p>b. Evalua Body</p> <p>Within ninety (9 the ICC/Sanggu Body shall evalu set forth in Se additional guide</p> <p>If the proposal is a written noti approved PTCs f Agency/LGU to</p> <p>If the proposal is</p> <p>i. issue containing the Agency/LGU mu proposal; or</p> <p>ii. issue a the reasons fo returning the pr</p> <p>If the Approving complied with Approving Body Body shall issu containing the</p>
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			<p>formal advice negotiation.</p> <p>If the Approving Body failed to comply with the timeline for the Approving Body of OPS granted to the Agency/Local Authority.</p> <p>The return of the grant of OPS to the Agency/Local Authority of OPS granted to the Agency/Local Authority.</p>
			<p>Section 10.9 - Revocation of OPS (OPS)</p> <p><b>a. Revocation of OPS</b></p> <p>The OPS grant shall be subject to review, be revoked or suspended if:</p> <p>i. The OPS grant is not used for the purpose for which it was granted.</p> <p>ii. The OPS grant is not used in accordance with the terms and conditions of the grant.</p> <p>Upon revocation of the OPS grant, the proponent shall provide a written report to the Agency/Local Authority, detailing the reasons for the revocation and the steps taken to rectify the situation.</p> <p><b>b. Unsolicited Project</b></p> <p>The grant of OPS for an unsolicited project shall be subject to a temporary restriction on the mandatory pre-</p>

			original proponent conflict.
		<p>SECTION 10.8 - ICC DETERMINATION OF REASONABLE RATE OF RETURN (ROR) AND PARAMETERS AND APPROVAL OF THE UNSOLICITED PROJECT PRIOR TO NEGOTIATION WITH THE ORIGINAL PROPONENT</p> <p>Within five (5) calendar days upon issuance of the letter of acceptance by the Agency/LGU to the proponent, the Head of Agency/LGU shall endorse to the ICC the proposed unsolicited project. Pursuant to Section 2(o) of the Act, the ICC shall determine the reasonable ROR on investments and operating and maintenance cost based on the reasonable ROR recommended by the Agency/LGU.</p> <p>Within thirty (30) working days upon receipt of endorsement, results of due diligence evaluation conducted and submission of complete documentation from the Head of Agency/LGU, the Approving Body shall act on the unsolicited project upon recommendation by the ICC of the project including the determination of the reasonable ROR and other parameters for negotiation. The Approving Body shall formally advise the Agency/LGU, thereafter, that such determination is final and executory.</p> <p>Within seven (7) calendar days upon receipt of the Agency/LGU of the formal advise of the ICC/Approving Body, the Agency/LGU shall inform in writing the original proponent of the mechanics of the negotiation including the commencement date and the authorized representative(s) of the Agency/LGU. Negotiations shall focus on the project scope, implementation arrangements, reasonable ROR and other parameters determined by ICC/Approving Body, and the terms and conditions of the draft contract for the Unsolicited Proposal, among others. The Agency/LGU and the original proponent shall conclude negotiations within a period of eighty (80) calendar days from receipt by the proponent of written notice from the Agency/LGU to commence negotiation. The Agency/LGU and the original proponent shall negotiate in good faith and endeavor to complete the negotiation within the eighty (80)-calendar day period; provided, that should there be irreconcilable differences during the negotiation period, the Agency/LGU shall have</p>	<p>Section 10.10 - f</p> <p>a. Notice</p> <p>Within seven (7) calendar days upon receipt of the Agency/LGU of the formal advise of the ICC/Approving Body, the Agency/LGU shall inform in writing the original proponent of the mechanics of the negotiation including the commencement date and the authorized representative(s) of the Agency/LGU. Negotiations shall focus on the project scope, implementation arrangements, reasonable ROR and other parameters determined by ICC/Approving Body, and the terms and conditions of the draft contract for the Unsolicited Proposal, among others. The Agency/LGU and the original proponent shall conclude negotiations within a period of eighty (80) calendar days from receipt by the proponent of written notice from the Agency/LGU to commence negotiation. The Agency/LGU and the original proponent shall negotiate in good faith and endeavor to complete the negotiation within the eighty (80)-calendar day period; provided, that should there be irreconcilable differences during the negotiation period, the Agency/LGU shall have</p> <p>b. Negoti</p> <p>The Agency/LGU shall negotiate in good faith and endeavor to complete the negotiation within the eighty (80)-calendar day period; provided, that should there be irreconcilable differences during the negotiation period, the Agency/LGU shall have</p> <p>c. Failure</p> <p>In case of failure to reach an agreement within seven (7) calendar days from receipt of the Agency/LGU of the formal advise of the ICC/Approving Body, the Agency/LGU shall inform in writing the original proponent of the mechanics of the negotiation including the commencement date and the authorized representative(s) of the Agency/LGU. Negotiations shall focus on the project scope, implementation arrangements, reasonable ROR and other parameters determined by ICC/Approving Body, and the terms and conditions of the draft contract for the Unsolicited Proposal, among others. The Agency/LGU and the original proponent shall conclude negotiations within a period of eighty (80) calendar days from receipt by the proponent of written notice from the Agency/LGU to commence negotiation. The Agency/LGU and the original proponent shall negotiate in good faith and endeavor to complete the negotiation within the eighty (80)-calendar day period; provided, that should there be irreconcilable differences during the negotiation period, the Agency/LGU shall have</p> <p>i.</p> <p>ii.</p>



		<p>the option to reject the proposal by advising the original proponent in writing stating the grounds for rejection and thereafter may accept a new Unsolicited Proposal, or bid out the project as a solicited proposal, or undertake the project on its own. If negotiation is successful, the Head of Agency/LGU and the authorized signatory of the original proponent shall issue a signed certification that an agreement has been reached by both parties. Said certification shall also state that the Agency/LGU shall commence the activities for the solicitation of comparative proposals. The Agency/LGU shall, within seven (7) calendar days after the eighty (80)-calendar day negotiation period, submit a report to the ICC and the Approving Body of the result of its negotiation with the original proponent for approval/validation.</p> <p>The approval by the Approving Body of the unsolicited project under this section shall be valid only for a period of eighteen (18) months from the issuance of the approval unless the invitation for comparative proposals has been issued.</p>	<p>iii.</p> <p>The Agency/LGU shall submit a report to the Approving Body informing the results of the negotiation, and the Agency/LGU shall submit a report to the ICC.</p> <p>d. Success of Negotiation</p> <p>If negotiation is successful, the Agency/LGU shall issue a signed certification that an agreement has been reached by both parties. Said certification shall also state that the Agency/LGU shall commence the activities for the solicitation of comparative proposals. The Agency/LGU shall, within seven (7) calendar days after the eighty (80)-calendar day negotiation period, submit a report to the ICC and the Approving Body of the result of its negotiation with the original proponent for approval/validation.</p> <p>The Agency/LGU shall submit a report to the Approving Body of the conclusion of the negotiation, and the Agency/LGU shall submit a report to the ICC.</p> <p>e. Action of the Approving Body</p> <p>The Approving Body shall approve or disapprove the PTCs for the project.</p> <p>The Approving Body shall approve or disapprove the PTCs from the receipt of the report from the Agency/LGU, valid for a period of eighteen (18) months in accordance with the provisions of this section.</p> <p>If the negotiated PTCs are approved by the Approving Body, the Agency/LGU shall negotiate the project. The Agency/LGU shall submit a report to the ICC stating the grounds for rejection of the PTCs and the options provided for the project.</p> <p>Otherwise, the Agency/LGU shall submit a report to the ICC stating the invitation for comparative proposals in accordance with Section 10.9.</p>
		SECTION 10.9 - APPROVAL OF UNSOLICITED CONTRACTS BY THE HEAD OF AGENCY/LGU	Section 10.11 - Approval of Unsolicited Contracts by the Head of Agency/LGU

		<p>The Head of Agency/LGU shall review and approve the draft contract which shall be based on the parameters, terms and conditions set forth by the Approving Body.</p> <p>Prior to approval of the Head of Agency/LGU, the draft contract shall undergo review by the Office of the Government Corporate Counsel (OGCC), the Office of the Solicitor-General (OSG) or any other entity prescribed by law/issuances as the statutory counsel of GOCCs and LGUs. The prescribed statutory counsel, and if necessary, the DOF, shall issue an opinion on the draft contract within ten (10) days upon their receipt of the draft contract as submitted by the Agency/LGU.</p> <p>Changes to the draft contract as agreed upon by Agency/LGU and the original proponent and as approved by the Head of Agency/LGU shall not be allowed, except for changes to contract terms affected or decided by the winning bidder's bid during the solicitation of comparative proposals and matching by the original proponent.</p>	<p>The Head of the draft contract w by the Approvi Revised IRR.</p> <p>Prior to approv contract shall un Government Co Solicitor Genera law/issuances a LGUs, in accord areas of experti</p> <p>The OSG, OGCC the case may l contract within thereof. The D contract for pr local projects v government, an approval, withi thereof. The D contain an expli Undertakings.</p> <p>Any Governmen not approved by in the DOF op Republic.</p> <p>Changes in the f pursuant to Sect</p>
	a.	<p>SECTION 11.5 - FORMATION OF SPECIAL PURPOSE COMPANY (SPC)</p> <p>The concerned Agency/LGU may require the winning Project Proponent to incorporate with the Securities and Exchange Commission (SEC) in accordance with applicable Philippine laws. The corporation that will be created shall assume and accede to all the rights and obligations of the winning Project Proponent, Provided, that:</p>	<p>Section 11.5 - (SPC)</p> <p>The concerned Project Propone Exchange Comm Philippine laws. and accede to a Project Propone</p>

		<div><div>a. the winning Project Proponent subscribes to and pays for a significant/principal shareholding or controlling interest in the corporation, subject to the nationality and ownership requirements under the Constitution and other applicable laws. The required level of share ownership may be indicated in the tender documents or determined as a condition prior to contract award;</div><div>b. in the case of a consortium, all members thereof shall present proof of contractual or other legally binding ties to or relationships with the corporation for the development and implementation of the project in accordance with their submitted business plan, e.g., for facility owners/developers/equity investors - subscription to and payment for a significant number of shares in the corporation; for Contractors or operators - binding appointment and undertaking to be the Contractor/operator or duly signed engineering, procurement and Construction (EPC) contract/operation and maintenance agreement; for financial institutions - letter of firm commitment to raise or provide financing to the project;</div><div>c. an accession undertaking is executed by the corporation and the winning proponent in favor of the Agency/LGU making the corporation principally liable for the performance of the winning Project Proponent's obligations under the Notice of Award and/or the contract.</div></div>	<div><div>a. the w and pays for controlling inter and ownership other applicabl ownership may determined as a</div><div>b. in the shall present pr ties to or relatio and implement their submitte owners/develop payment for a si Contractors or undertaking to b engineering, p contract/operat financial institut or provide finan</div><div>c. an acc and the Project making the SPC the winning Pro Notice of Award</div><div>The SPC shall concessions, bu the Approving B project or other abuse of domina</div></div>
		<div>SECTION 11.6 - WITHDRAWAL/SUBSTITUTION OF A MEMBER</div> <div>Subject to the approval of the Agency/LGU, any member of the consortium, or a shareholder of the SPC created (who was a member of such consortium), or its pre-qualified Contractors may withdraw as such prior to award of the project or any time during the contract term, provided that, the remaining members or shareholders are still legally, technically, and financially capable of successfully carrying out the implementation/operation of the project. The Agency/LGU shall have the discretion to allow substitution of members or shareholders after pre-</div>	<div>Section 11.6 - W</div> <div>The Project Pro granted with the substituted by approval of the Body. Any with shall lead to rev this Revised IRR of Project Prop after the appro approval of the</div>

		<p>qualification; provided that, the substitute has equal or better qualifications than the withdrawing member or shareholder; provided further, that the Agency/LGU shall undertake necessary procedure to determine the qualification of the substitute.</p> <p>A withdrawal made in violation of this section shall be a ground for disqualification or cancellation of the contract, as the case may be, and forfeiture of the proponent's bid or performance security.</p> <p>The Agency/LGU shall inform in writing the PPP Center of such changes for monitoring purposes.</p>	<p>Further, in case or shareholders capable of implementation</p> <p>A withdrawal m ground for disqu as the case m Proponent's bid</p> <p>The Agency/LGU such changes w purposes.</p>
RULE 12 - CONTRACT APPROVAL AND IMPLEMENTATION		<p>SECTION 12.1 - EXECUTION/APPROVAL OF THE CONTRACT</p> <p>The authorized signatory(ies) of the winning bidder and the Head of Agency/LGU shall execute and sign the contract for the project as approved in accordance with Section 2.8, within five (5) calendar days from receipt by the winning bidder of the notice from the Agency/LGU that all conditions stated in the Notice of Award have been complied with.</p> <p>Consistent with Article 1159 of the New Civil Code, the contract is the law between the parties and the parties shall perform their respective prestations, obligations, and undertakings thereunder with utmost good faith with the end in view of attaining the objective hereof. An original signed copy of the contract shall be submitted to the Approving Body and the PPP Center within five (5) calendar days after signing thereof by the Agency/LGU.</p> <p>In the event of refusal, inability or failure of the winning bidder to enter into contract with the Government within the time provided therefor, the Agency/LGU concerned shall forfeit its bid security. In such an event, the Agency/LGU concerned shall consider the bidder with the next ranked complying bid. If the same shall likewise refuse or fail to enter into contract with the Government, its bid security shall likewise be forfeited and the Agency/LGU concerned shall consider the next ranked complying bid, and so on until a contract shall have been entered into. In the event that the concerned Agency/LGU is unable to execute the contract with any of the</p>	<p>Section 12.1 - Ex</p> <p>The authorized Head of Agency, for the project a 2.12, within five winning bidder r all conditions st complied with.</p> <p>The Project Prop awarded with th contract.</p> <p>Consistent with contract is the la shall perform th and undertaking with the end in original signed o the Approving B calendar days af</p> <p>In the event of r bidder to enter the time provide shall forfeit its b Agency/LGU cor next ranked con refuse or fail to its bid security s Agency/LGU cor complying bid, a</p>

		complying bidders, a failure of bidding will be declared and the project may be subjected to a re- bidding.	entered into. In Agency/LGU is u the complying b declared and the bidding.
		<p>SECTION 12.3 - GRANT OF FRANCHISE</p> <p>Subject to the provisions of the Constitution and other existing laws, rules and regulations, once a contract is executed by the Project Proponent and the Agency/LGU, a presumption arises that the public interest will be served by the implementation of the project covered thereby, and immediately upon application by the Project Proponent, the Regulator shall automatically grant in favor of the Project Proponent a Franchise to operate the facility and collect the tolls, fees, rentals, and other charges stipulated under the contract.</p> <p>Provided that, if the final approval of the franchise by the regulator shall result in a decrease in the amount of tolls, fees, rentals, and other charges stipulated under the contract, the government shall ensure that the Project Proponent recovers the difference between the amount stipulated under the contract/parametric formulae and the amount approved by the regulator or appropriate regulatory body through measures consistent with the Constitution and other applicable laws.</p>	<p>Section 12.3 - G</p> <p>Subject to the p existing laws, ru executed by the a presumption a served by the im thereby, and up and compliance regulations, the Project Propone collect the tolls, stipulated unde</p>
		<p>SECTION 12.8 - PERFORMANCE SECURITY FOR CONSTRUCTION WORKS</p> <p>To guarantee the faithful performance by the Project Proponent of its obligations under the contract, including the prosecution of the Construction works related to the project, the Project Proponent shall post a performance guarantee in favor of the Agency/LGU concerned, within the period and in the form and amount stipulated in the Notice of Award. The Agency/LGU shall determine which form of performance security it will require which may be in cash, bank draft or guarantee confirmed by a local bank (in the case of foreign bidders bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand issued by the GSIS or by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:</p>	<p>Section 12.8 - P and Constructio</p> <p>To guarantee t Proponent of i contract until t contract, includ works related to post a performa concerned, with stipulated in the</p> <p>The form of per with the PTCs ap be in cash, bank bank (in the cas bank), letter of</p>

		<ul style="list-style-type: none"> <li>a. Cash, irrevocable letter of credit, bank draft - a minimum of two percent (2%) of the total Project Cost.</li> <li>b. Bank Guarantee - a minimum of five percent (5%) of the total Project Cost.</li> <li>c. Surety Bond - a minimum of ten percent (10%) of the total Project Cost.</li> </ul> <p>The performance guarantee shall be valid up to acceptance by the Agency/LGU of the facility.</p>	<p>bond callable on demand or insurance covering the Insurance Cost. The amount of security shall be in accordance with the following:</p> <ul style="list-style-type: none"> <li>a. Cash, irrevocable letter of credit, bank draft - a minimum of two percent (2%) of the total Project Cost.</li> <li>b. Bank Guarantee - a minimum of five percent (5%) of the total Project Cost.</li> <li>c. Surety Bond - a minimum of ten percent (10%) of the total Project Cost.</li> </ul> <p>Should the performance guarantee be increased in the contract, the Proponent shall provide for an increase in the security required and the Agency/LGU shall approve the increase.</p> <p>The Agency/LGU shall determine the amount of security and the Proponent shall provide for an increase in the security required and the Agency/LGU shall approve the increase.</p>
		<p>SECTION 12.9 - PERFORMANCE SECURITY FOR OPERATIONS</p> <p>For projects where the proponent or other third parties shall operate the project, the Agency/LGU shall determine whether the Project Proponent will post a performance security for operations, simultaneously with the acceptance of the facility. The performance security for operations will be issued to guarantee the proper operation of the project in accordance with the operating parameters and specifications under the contract. The Agency/LGU shall determine the amount but the form shall be in accordance with the preceding section. This</p>	<p>Section 12.9 - Performance Security for Operations</p> <p>For projects where the proponent or other third parties shall operate the project, the Agency/LGU shall determine whether the Project Proponent will post a performance security for operations, simultaneously with the acceptance of the facility. The performance security for operations will be issued to guarantee the proper operation of the project in accordance with the operating parameters and specifications under the contract. The Agency/LGU shall determine the amount but the form shall be in accordance with the preceding section. This</p>

		<p>performance security for operations shall be valid ninety (90) calendar days after the turn-over of the facility, as contemplated in Section 12.23, or as may be provided in the contract whichever is longer.</p>	<p>The Agency/LGU shall be in accordance with the performance security for the entire operation.</p> <p>Should the performance security be required in the contract, the Proponent shall provide for an amount of performance security such required amount in the event of occurrence thereof.</p> <p>The performance security shall be increased in the event of an increase in the cost of construction causing an increase in the cost of construction. The Proponent shall provide for an amount of performance security in the event of an increase in the cost of construction, as approved by the Agency/LGU.</p> <p>The Agency/LGU shall be in accordance with the Project Proponent's security and the performance security for the entire operation.</p>
		<p>SECTION 12.10 - REVIEW OF PROJECT CONSTRUCTION, OPERATION AND MAINTENANCE</p> <p>The Agency/LGU may inspect and check, from time to time, the project to determine whether the project is constructed, operated and maintained in accordance with the approved plans, specifications, standards and costs under the contract.</p> <p>In the event that the Agency/LGU concerned shall find any deviation from or non-compliance with the approved plans, specifications and standards, it shall bring the same to the attention of the Project Proponent for the necessary corrective actions. Failure of the Project Proponent to correct the deviation within the time prescribed by the Agency/LGU may be a ground for the rescission/ termination of the contract, in accordance with Section 12.21 (b) of these Revised IRR. Such technical supervision by the Agency/LGU concerned shall not diminish the singular responsibility of the Project Proponent for the proper Construction, operation, and</p>	<p>Section 12.10 - REVIEW OF PROJECT CONSTRUCTION, OPERATION AND MAINTENANCE</p> <p>The Agency/LGU may inspect and check, from time to time, the project to determine whether the project is constructed, operated and maintained in accordance with the approved plans, specifications, standards and costs under the contract.</p> <p>In the event that the Agency/LGU concerned shall find any deviation from or non-compliance with the approved plans, specifications and standards, it shall bring the same to the attention of the Project Proponent for the necessary corrective actions. Failure of the Project Proponent to correct the deviation within the time prescribed by the Agency/LGU may be a ground for the rescission/ termination of the contract, in accordance with Section 12.21 (b) of these Revised IRR. Such technical supervision by the Agency/LGU concerned shall not diminish the singular responsibility of the Project Proponent for the proper Construction, operation, and</p>

		<p>maintenance of the facility, nor does it transfer any part of that responsibility to the Agency/LGU.</p>	<p>supervision by t diminish the sin Proponent for th maintenance of of that responsi</p>
		<p>SECTION 12.11 - CONTRACT VARIATION</p> <p>A contract variation may be allowed by the Head of the Agency/LGU, Provided, that:</p> <ul style="list-style-type: none"><li>a. There is no impact on the basic parameters, terms and conditions as approved by the Approving Body; or</li><li>b. There is no increase in the agreed fees, tolls and charges or a decrease in the Agency/LGU’s revenue or profit share derived from the project, except as may be allowed under a parametric formula in the contract itself; or</li><li>c. There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract; or</li><li>d. There is no additional Government Undertaking, or increase in the financial exposure of the Government under the project.</li></ul> <p>Upon due diligence and recommendation of the Head or Agency/LGU, contract variations not covered by above shall undergo approval by the Approving Body in terms of the impacts on government undertakings/exposure, performance standards and service charges. Failure to secure clearance/approval of the Head of Agency/LGU or Approving Body as provided in this section shall render the contract variation void.</p> <p>The Agency/LGU shall report to the Approving Body and the PPP Center on any contract variations including those approved by the Head of Agency/LGU.</p>	<p>Section 12.11 - C</p> <p>A contract varia Agency/LGU, Pro a. There the Approving B b. There and charges or a or profit share d be allowed unde Regulator, or th c. There performance sta contractual arra term; or d. There Undertaking, or Government un Upon due dilige Agency/LGU, co shall undergo ap the impacts on g performance sta The Approving B the project, a ca entire contract, (10%) of the orig In case of contra contract term sh compensate the whatsoever, wit Approving Body this Revised IRR proportionately approved variat Failure to secure Agency/LGU or section, prior to</p>



			<p>shall render the</p> <p>be implemented</p> <p>The Agency/LGU</p> <p>the PPP Center</p> <p>approved by the</p>
		<p>SECTION 12.12 - MILESTONES</p> <p>The Project Proponent shall execute the project in accordance with pre-determined milestones. Failure by the Project Proponent to comply with these milestones may result to contract rescission and forfeiture of the performance security of the proponent, in accordance with Section 12.21 (b) hereof.</p>	<p>Section 12.12 -</p> <p>The Project Pro</p> <p>accordance with</p> <p>delay on the part</p> <p>these milestones</p> <p>damages, contract</p> <p>performance se</p> <p>case may be, in</p> <p>Section 12.21 he</p>
		<p>SECTION 12.14 - LIQUIDATED DAMAGES</p> <p>Where the Project Proponent fails to satisfactorily complete the work on or before completion date, including any extension or grace period duly granted, or meet the operating performance standard as prescribed in the contract, the Project Proponent shall pay the Agency/LGU concerned liquidated damages, as specified in the contract as an indemnity and not by way of penalty. The performance security for construction works or for operations, as the case may be, may be applied to answer for any liquidated damages due to the Agency/LGU. During the Construction period, the amount of liquidated damages due for every calendar day of delay beyond the completion date will be determined by the Agency/LGU based on the formula in the contract. During the operation period, the amount of liquidated damages, which will be determined by the Agency/LGU, shall be based on the principle of fair compensation for damages which the Agency/LGU will sustain as a result of the Project Proponent's failure to meet its obligations. The imposition and collection of liquidated damages shall be without prejudice to the right of the Agency/LGU concerned to rescind the contract and proceed with the procedures prescribed under Section 12.21 (b).</p>	<p>Section 12.14 -</p> <p>Where the Pro</p> <p>complete the</p> <p>including any ex</p> <p>meet the opera</p> <p>in the contract,</p> <p>undertakings as</p> <p>Proponent sha</p> <p>liquidated dam</p> <p>indemnity and</p> <p>security for con</p> <p>case may be, m</p> <p>damages due to</p> <p>During the Cons</p> <p>damages due fo</p> <p>completion date</p> <p>based on the for</p> <p>period, the amo</p> <p>determined by</p> <p>principle of fair</p> <p>Agency/LGU w</p> <p>Proponent's fail</p> <p>Persistent breac</p> <p>and a limit to</p>

			<p>damages shall be reached, such event of default breach of obligation defined in the contract</p> <p>a. an amount of the breach</p> <p>b. an amount of the project liquidation</p> <p>The imposition of the penalty shall be without prejudice to the project Proponent concerned to proceed with the project.</p> <p>12.21.</p>
	<p>Section 6. Repayment Scheme. - For the financing, construction, operation and maintenance of any infrastructure project undertaken through the Build-Operate-and-Transfer arrangement or any of its variations pursuant to the provisions of this Act, the project proponent shall be repaid by authorizing it to charge and collect reasonable tolls, fees, and rentals for the use of the project facility not exceeding those incorporated in the contract and, where applicable, the proponent may likewise be repaid in the form of a share in the revenue of the project or other non-monetary payments, such as, but not limited, to the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirements with respect to the ownership of land: Provided, That for negotiated contracts, and for projects which have been granted a natural monopoly or where the public has no access to alternative facilities, the appropriate government regulatory bodies, shall approve the tolls, fees, rentals, and charges based on a reasonable rate of return: Provided, further, That the imposition and collection of tolls, fees, rentals, and charges shall be for a fixed term as proposed in the bid and incorporated in the contract but in no case shall this term exceed fifty [50] years: Provided, furthermore, That the tolls, fees, rentals, and charges may be subject to adjustment during the life</p>	<p>SECTION 12.16 - REPAYMENT SCHEMES</p> <p>...</p> <p>e. For projects undertaken through arrangements not enumerated under this Act and IRR but approved/authorized by the NEDA Board, the Project Proponent may be repaid through any schemes as recommended by the ICC and approved/authorized by the NEDA Board.</p> <p>...</p> <p>12.16.2 Toll, fees, rentals and charges</p> <p>The proposed tolls, fees, and charges shall be considered by the Agency/LGU in the evaluation of the bid, taking into account the reasonableness thereof to the end-users of the facility. The tolls, fees, charges and rentals that a Project Proponent may charge for the use of the facility shall be those as approved by the Approving Body, resulting from the bidding, and incorporated in the contract, which, shall be upheld, adopted, accorded utmost weight, or recognized by the Regulator.</p> <p>...</p>	<p>Section 12.16 - REPAYMENT SCHEMES</p> <p>...</p> <p>e. For projects undertaken through arrangements not enumerated under this Act and IRR but approved/authorized by the NEDA Board, the Project Proponent may be repaid through any schemes as recommended by the ICC and approved/authorized by the NEDA Board.</p> <p>...</p> <p><u>12.16.1 Toll, fees, rentals and charges</u></p> <p>The proposed tolls, fees, and charges shall be considered by the Agency/LGU in the evaluation of the bid, taking into account the reasonableness thereof to the end-users of the facility.</p> <p>All projects shall be subject to the approval of the Regulator, the fee, and the formula, shall be approved by the Regulator.</p>

	<p>of the contract, based on a predetermined formula using official price indices and included in the instructions to bidders and in the contract: Provided, also, That all tolls, fees, rentals, and charges and adjustments thereof shall take into account the reasonableness of said rates to the end-users of private sector-built infrastructure: Provided, finally, That during the lifetime of the franchise, the project proponent shall undertake the necessary maintenance and repair of the facility in accordance with standards prescribed in the bidding documents and in the contract. In the case of a Build-and-Transfer arrangement, the repayment scheme is to be effected through amortization payments by the government agency or local government unit concerned to the project proponent according to the scheme proposed in the bid and incorporated in the contract.</p>		<p>Adjustments of pursuant to Sect</p>
		<p>SECTION 12.18 - ADJUSTMENTS OF TOLLS/FEES/RENTALS/CHARGES</p> <p>The tolls, fees, rentals and charges may be subject to adjustment during the life of the contract, based on the pre-determined formula prescribed in the “Instructions to Bidders” and the approved contract. For this purpose, prior to bidding, the concerned Agency/LGU shall secure either the advice of the Regulator or the approval of the Approving body or both, as the case maybe, for such formula. The monitoring of the consistency of the proposed adjustments of tolls, fees, rentals and charges with the prescribed rate of return, if any, shall be undertaken by the appropriate regulatory body or Implementing Agency/LGU.</p> <p>Price indices shall be based on the official issuances by the National Statistics Office (NSO), BSP, Department of Labor and Employment (DOLE) and other sources authorized by the Agency/LGU concerned prior to bidding.</p> <p>The government shall ensure that the project proponent recovers the difference between the amount of tolls, fees, rentals and other charges as stipulated or computed based on the contract and/or approved parametric formulae and the amount approved by the Regulator or appropriate regulatory body through measures consistent with applicable laws and the constitution.</p>	<p>Section 1 Tolls/Fees/Rent</p> <p>The concerned power to app tolls/fees/rental prevailing econ with the regula actual financial</p> <p>In no case s automatically e proposed tolls/f the users tolls/fees/rental stipulated in the be automatica tolls/fees/rental approved by th shall not be liab Regulator of any the tolls/fees/re</p> <p>If the Agency/L tolls/fees/rental Regulator, the Proponent shall to recover such</p>

			<p>no case shall the compensation.</p> <p>Price indices shall be based on the Philippine Statistics Authority Labor and Employment Index authorized by the Department of Labor.</p>
		<p>SECTION 12.19 - AUDIT OF COLLECTIONS</p> <p>All revenues, share and/or receipts pertaining to or accruing to the Agency/LGU derived from any project proposed under the Act and these Revised IRR, including expenditures or use of funds and property, owned or held in trust by, or pertaining to the Government, shall be subject to examination audit by the Commission on Audit (COA), including i) ensuring that such revenues, share and/or receipts are fully and properly accounted for and remitted to the Agency/LGU, and ii) determining if the mandated return on rate base is complied with, in the case of negotiated contracts and Public Utility Projects which are natural monopolies.</p> <p>All revenues and receipts pertaining to or accruing to the Project Proponent shall be treated as private funds including interest or yield thereon, which may be remitted directly to the Project Proponent, as may be stipulated in the contract.</p>	<p>Section 12.19 - AUDIT OF COLLECTIONS</p> <p>All revenues, share and/or receipts pertaining to or accruing to the Agency/LGU derived from any project proposed under the Act and these Revised IRR, including expenditures or use of funds and property, owned or held in trust by, or pertaining to the Government, shall be subject to examination audit by the Commission on Audit (COA), including i) ensuring that such revenues, share and/or receipts are fully and properly accounted for and remitted to the Agency/LGU, and ii) determining if the mandated return on rate base is complied with, in the case of negotiated contracts and Public Utility Projects which are natural monopolies.</p> <p>All revenues and receipts pertaining to or accruing to the Project Proponent shall be treated as private funds including interest or yield thereon, which may be remitted directly to the Project Proponent, as may be stipulated in the contract.</p> <p>Pursuant to the provisions of the Code of the Philippines, the revenues and receipts from projects shall be audited in accordance with the auditing rules and regulations of the Revised IRR.</p>
	<p>SEC. 7. Contract Termination. - In the event that a project is revoked, cancelled or terminated by the Government through no fault of the project proponent or by mutual agreement, the Government shall compensate the said project proponent for its actual expenses incurred in the project plus a reasonable rate of return thereon not exceeding that stated in the contract as of the date of such revocation, cancellation or termination: Provided, That the interest of the Government in these instances shall be duly insured with the Government Service Insurance System (GSIS) or any other insurance entity duly accredited by the Office of the Insurance</p>	<p>SECTION 12.21 - CONTRACT TERMINATION/RESCISSION</p> <p>The contract may be terminated/rescinded in the following events:</p> <p>a. If the Agency/LGU concerned fails to comply with any major obligation prescribed in the approved contract, and such failure is not remediable or if remediable shall remain unremedied for an unreasonable length of time, the Project Proponent may, with prior notice to the concerned Agency/LGU, specifying the turn-over date, terminate the contract. In such an</p>	<p>Section 12.21 - CONTRACT TERMINATION/RESCISSION</p> <p>Failure to comply with the terms of the contract, and such failure is not remediable shall remain unremedied for an unreasonable length of time, the Project Proponent may, with prior notice to the concerned Agency/LGU, specifying the turn-over date, terminate the contract. In such an event, the Project Proponent shall be entitled to compensation for the actual expenses incurred in the project plus a reasonable rate of return thereon not exceeding that stated in the contract as of the date of such revocation, cancellation or termination: Provided, That the interest of the Government in these instances shall be duly insured with the Government Service Insurance System (GSIS) or any other insurance entity duly accredited by the Office of the Insurance</p> <p>a. Grounds for Termination/Rescission</p> <p>All contracts shall be subject to termination, in whole or in part, in the following cases:</p>

	<p>Commissioner: Provided, finally, That the cost of the insurance coverage shall be included in the terms and conditions of the bidding referred to above.</p> <p>In the event that the government defaults on certain major obligations in the contract and such failure is not remediable or if remediable shall remain unremedied for an unreasonable length of time, the project proponent/contractor may, by prior notice to the concerned national government agency or local government unit specifying the turn-over date, terminate the contract. The project proponent/contractor shall be reasonably compensated by the Government of equivalent or proportionate contract cost as defined in the contract.</p>	<p>event, the Project Proponent shall be reasonably compensated by the Government for equivalent or proportionate contract cost, as defined in the contract subject to (c) below.</p> <p>b. If the Project Proponent refuses or fails to perform any of the provisions of the approved contract with such diligence as will ensure the project's completion, operation and maintenance in accordance with the prescribed technical and performance standards or otherwise fails to satisfy any of the contract provisions including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of the approved contract, the Agency/LGU shall notify the Project Proponent in writing of the same and if not corrected within the time specified, the Agency/LGU concerned may rescind the contract. In such an event, the Agency/LGU concerned may either:</p> <p>i. Take over the facility; or</p> <p>ii. Allow the Project Proponent's lenders/creditors/banks to exercise their rights and interests under the loan and collateral documents with respect to the project.</p> <p>In any case, the Agency/LGU concerned shall likewise forfeit the performance security of the defaulting Project Proponent.</p> <p>c. In the event that the project/contract is: (a) revoked, cancelled, or terminated by (i) the Agency/LGU in accordance with the contract through no fault of the Project Proponent or (ii) by mutual agreement, or (b) revoked or canceled by a court by final judgment through no fault of the Project Proponent, the Agency/LGU shall compensate the said Project Proponent for its actual expenses incurred in the project plus a Reasonable Rate of Return thereon not exceeding that stated in the contract, as of the date of contract termination, provided that the interest of the Government in these instances shall be duly insured with the GSIS or any other insurance entity duly</p>	<p>i. Govern</p> <p>ii. Project</p> <p>iii. Force events</p> <p>iv. Other upon by the par</p> <p>For such events contract shall p step-in rights, a upon by both p that termination remedy or cur contract.</p> <p>For avoidance terminated for a corresponding r</p> <p>Persistent breac as defined in the Proponent even</p> <p>In cases of Pr government ma contract.</p> <p>b. Termini</p> <p>In cases of term default, the an determined by t</p> <p>The determinati shall be done regulations, incl issued by the following guidin</p> <p>i. Debt g</p>
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		<p>accredited by the office of the Insurance Commissioner, provided further that the cost of the insurance coverage shall be included in the terms and conditions of the approved contract.</p> <p>In the cases referred to in (a) and (c) above, an independent appraiser, mutually acceptable to the Agency/LGU and the Project Proponent, shall determine the amount to be paid to the Project Proponent, which determination shall be made within a period not more than one hundred eighty (180) calendar days from contract rescission or termination. The amount determined by the independent appraiser shall be binding to both the Project Proponent and the Agency/LGU.</p> <p>In cases of emergency or when the public interest so requires, the Agency/LGU may immediately take- over the facility prior to the determination of said amount and payment thereof to the Project Proponent. Unless otherwise agreed upon by the Agency/LGU and the Project Proponent, the amount fixed by said independent appraiser shall be paid by the Agency/LGU not later than ninety (90) calendar days from said independent appraiser's advice of such determination, subject to the enactment of a law or ordinance, as the case may be, appropriating such amount, if required.</p>	<p>ii. Payment of the Project Proponent shall not be allowed.</p> <p>iii. Payment of the Project Proponent shall not be allowed.</p> <p>iv. In the event of a default by the Project Proponent, the Agency/LGU shall have the right to sell the assets, if any, of the Project Proponent, and the proceeds of such sale shall be applied to the payment of the senior debt bond, and the balance shall be used to pay the appraised value of the assets, less (c) the depreciation of the assets, if any, and the balance shall be used to pay the Project Proponent.</p> <p>v. In the event of a default by the Project Proponent, the government shall have the right to sell the assets, if any, of the Project Proponent, and the proceeds of such sale shall be applied to the payment of the senior debt bond, and the balance shall be used to pay the appraised value of the assets, less (c) the depreciation of the assets, if any, and the balance shall be used to pay the Project Proponent.</p> <p>vi. In the event of a default by the Project Proponent, the government shall have the right to sell the assets, if any, of the Project Proponent, and the proceeds of such sale shall be applied to the payment of the senior debt bond, and the balance shall be used to pay the appraised value of the assets, less (c) the depreciation of the assets, if any, and the balance shall be used to pay the Project Proponent.</p>
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			<p>The Project Proponee shall be responsible for the delivery of the tolls/fees/charges to the Government or refusal to hand over the facility or operation thereof.</p> <p>c. Temporary Government</p> <p>In cases of emergency, the Government may, as determined by the Government, take over the facility or operation thereof by written notice to the Project Proponee.</p> <p>Under a temporary concession or concession, the Project Proponee shall be entitled to receive tolls/fees/charges from the Government by the Agency, the Project Proponee shall be entitled to receive such temporary concession or concession from the facility or operation thereof by the Project Proponee.</p> <p>In case of permanent concession or concession, the Project Proponee shall be entitled to receive tolls/fees/charges from the Government according to the terms and conditions of this Section.</p> <p>If necessary, the Government may, as determined by the Government, take over the facility or operation thereof by written notice to the Project Proponee.</p>
		<p>SECTION 12.22 - VENUE FOR LITIGATION</p> <p>The venue for the resolution of disputes, arbitration or litigation shall be as mutually agreed upon by the parties to the contract. In default thereof, the venue shall be in the Philippines.</p>	<p>Section 12.22 - VENUE FOR LITIGATION</p> <p>Contracting Parties shall be responsible for the resolution of disputes, arbitration or litigation whether through arbitration or litigation, subject to applicable law.</p> <p>In default thereof, the venue shall be in the Philippines. Acts and decisions of the Government shall be final and binding on the Project Proponee.</p>

		<p>SECTION 12.23 - EXPIRING BOT/PPP CONTRACTS AND TRANSFER OF AND WARRANTY OVER THE FACILITY</p> <p>Under Contractual Arrangements involving transfer of the facility to the Agency/LGU, the transfer or turnover will necessarily include the transfer of full legal ownership over the project, all documents, property rights, source codes, equipment, among others, which are related to the project in favor of the Agency/LGU, subject to any existing liens as may be agreed upon in the contract. The facility, upon transfer to Agency/LGU, shall be operable and in good condition. The performance indicators for the project/facility and frequency of monitoring the indicators shall be stipulated in the contract. A third-party shall be commissioned to assess the residual value of the facility upon transfer or turnover of the facility to the Agency/LGU. The Project Proponent shall provide warranty that the facility meets the project technical specifications/agreed system features, performance standards and services in connection therewith for a period not less than one (1) year from the turnover of the facility. For this purpose, the Project Proponent shall put up a warranty security in a form to be specified by the concerned Agency/LGU which may be in cash, letter of credit, or bank draft/guarantee issued by a reputable local/foreign bank, or a surety bond issued by the GSIS or an entity duly registered and recognized by the Office of the Insurance Commissioner, callable on demand and acceptable to the Agency/LGU, or any combination thereof payable to the Agency/LGU concerned, the amount of which shall be determined by the Agency/LGU and shall be stipulated in the contract. The warranty security shall be made effective immediately upon transfer of full legal ownership over the project in favor of the Agency/LGU, as described above.</p>	<p>Section 12.23 - Warranty Over t</p> <p>Under Contractu</p> <p>facility to the A</p> <p>necessarily incl</p> <p>over the projec</p> <p>codes, equipme</p> <p>project in favor</p> <p>liens as may be</p> <p>upon transfer t</p> <p>good condition</p> <p>project/facility a</p> <p>shall be stipulat</p> <p>commissioned t</p> <p>upon transfer</p> <p>Agency/LGU.</p> <p>a. Transf</p> <p>To guarantee t</p> <p>Proponent of it</p> <p>facility, the Proj</p> <p>security in favo</p> <p>form, amount, a</p> <p>The Agency/LGU</p> <p>shall be in acc</p> <p>transfer securit</p> <p>determines tha</p> <p>requirements as</p> <p>acceptance cert</p> <p>b. Warran</p> <p>The Project Pro</p> <p>facility meets th</p> <p>in connection th</p> <p>year from the</p> <p>Proponent shall</p> <p>accordance with</p> <p>shall be determin</p> <p>stipulated in the</p>
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			warranty security upon transfer of the project in favor of the Agency.
Regulatory Boards	SEC. 8. <i>Regulatory Boards.</i> - The Toll Regulatory Board which was created by Presidential Decree No. 1112 is hereby attached to the Department of Public Works and Highways with the Secretary of Public Works and Highways as Chairman.		
Project Supervision	SEC. 9. <i>Project Supervision.</i> - Every infrastructure project undertaken under the provisions of this Act shall be in accordance with the plans, specifications, standards, and costs approved by the concerned government agency and shall be under the supervision of the said agency or local government unit in the case of local projects.		
Investment Incentives	SEC. 10. <i>Investment Incentives.</i> - Among other incentives, projects in excess of One billion pesos [1,000,000,000] shall be entitled to incentives as provided by the Omnibus Investments Code, upon registration with the Board of Investments.	<p>SECTION 13.2 - INVESTMENT INCENTIVES</p> <p>The following Investment Incentives will be made available to Project Proponents:</p> <p>a) Projects undertaken through Contractual Arrangements authorized under these Revised IRR costing more than PhP 1.0 billion shall, upon registration with the Board of Investments (BOI), be entitled to incentives as provided for under Executive Order (EO) No. 226, otherwise known as the Omnibus Investment Code of 1987, subject to the compliance of the project with the criteria, as may be set by the BOI in its review thereof under EO 226 such as, but not limited to economic and consumer benefit, technical and financial soundness.</p> <p>b) Projects undertaken through Contractual Arrangements authorized under these Revised IRR costing PhP 1.0 billion or less may, upon registration with BOI, avail of incentives provided for under the Omnibus Investment Code subject to inclusion of the project activity or sector in the current Investment Priorities Plan (IPP) of BOI and compliance of the project with the criteria, as may be set by the BOI in its review thereof under EO 226, such as, but not limited to economic and consumer benefit, technical and financial soundness.</p> <p>c) Projects undertaken through Contractual Arrangements authorized under these Revised</p>	<p>Section 13.2 - Investment Incentives</p> <p>The grant of investment incentives shall be subject to the following rules:</p> <p>a. Projects undertaken through Contractual Arrangements (P1,000,000,000 or more) shall be entitled to incentives as provided for under Executive Order (EO) No. 226, otherwise known as the Omnibus Investment Code of 1987, subject to the compliance of the project with the criteria, as may be set by the BOI in its review thereof under EO 226 such as, but not limited to economic and consumer benefit, technical and financial soundness.</p> <p>b. Projects undertaken through Contractual Arrangements (P1,000,000,000 or less) may, upon registration with BOI, avail of incentives provided for under the Omnibus Investment Code subject to inclusion of the project activity or sector in the current Investment Priorities Plan (IPP) of BOI and compliance of the project with the criteria, as may be set by the BOI in its review thereof under EO 226, such as, but not limited to economic and consumer benefit, technical and financial soundness.</p> <p>This is without prejudice to the incentives given under existing laws.</p> <p>Such grant shall be subject to the following regulations; project activity or sector shall be disclosed and included in the Investment Priorities Plan (IPP) models submitted during the project registration process.</p>

		<p>IRR shall also be entitled to other incentives, as provided under existing laws, such as, but not limited to incentives under R.A. 9513, otherwise known as the “Renewable Energy Act of 2008”, R.A. 9593, otherwise known as “The Tourism Act of 2009”, and R.A. 7156, otherwise known as the “Mini-Hydroelectric Power Incentives Act”.</p> <p>d) LGUs may provide additional tax incentives, exemptions, or reliefs, subject to the provisions of the Local Government Code (LGC) of 1991 and other pertinent laws.</p>	
		<p><b>SECTION 13.3 - GOVERNMENT UNDERTAKINGS</b></p> <p>Subject to existing laws, policies, rules and regulations, the Government may provide any form of support or contribution to solicited projects, such as, but not limited, to the following:</p> <p>a) Cost Sharing - This shall refer to the Agency/LGU concerned bearing a portion of capital expenses associated with the establishment of an infrastructure development facility, such as, the provision of access infrastructure, right-of-way, transfer of ownership over, or usufruct, or possession of land, building or any other real or personal property for direct use in the project and/or any partial financing of the project, or components thereof, Provided, that such shall not exceed fifty percent (50%) of the Project Cost, and the balance to be provided by the Project Proponent. Such government share may be financed from direct government appropriations and/or from Official Development Assistance (ODA) of foreign government or institutions.</p> <p>b) Credit Enhancements - This shall refer to support to a development facility by the Project Proponent and/or Agency/LGU concerned, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the contract. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements may include, but are not limited to, government guarantees</p>	<p>Section 13.3 - G</p> <p>Subject to existi the Government contribution to limited, to the fo</p> <p><b>a.</b> Credit to an i the P concer upon t risks, enhanc best conseq enhanc to, gov or the contra</p> <p><b>b.</b> Direct to an any of respon incurre implem default</p> <p><b>c.</b> Direct agreen its Age i.</p>

		<p>on the performance, or the obligation of the Agency/LGU under its contract with the Project Proponent.</p> <p>c) Direct Government Subsidy - This shall refer to an agreement whereby the Government, or any of its Agencies/LGUs will: (a) defray, pay for or shoulder a portion of the Project Cost or the expenses and costs in operating or maintaining the project; (b) contribute any property or assets to the project; (c) in the case of LGUs, waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/or (d) waive charges or fees relative to business permits or licenses that are to be obtained for the Construction of the project, all without receiving payment or value from the Project Proponent and/or Facility operator for such payment, contribution or support.</p> <p>d) Direct Government Equity - This shall refer to the subscription by the Government or any of its agencies or Local Government Units of shares of stock or other securities convertible to shares of stock of the project company, whether such subscription will be paid by the money or assets.</p> <p>e) Performance Undertaking - This shall refer to an undertaking of a department, bureau, office, commission, authority, agency, GOCC, or LGU in assuming responsibility for the performance of the Agency's/LGU's obligations under the contractual arrangement including the payment of monetary obligations, in case of default. These undertakings may be subject to payment of risk premium to the Government or LGU, or any other authorized agency.</p> <p>f) Legal Assistance - This shall refer to the extension of representation by government lawyers to a Project Proponent but only in cases, hearings, or inquiries where the Agency/LGU and Project Proponent are party-defendants/respondents therein including the adoption by such government lawyers of positions and strategies consistent with</p>	<p>ii.</p> <p>iii.</p> <p>iv.</p> <p>v.</p> <p>vi.</p> <p>All without rece Project Propone government sub total Project Cos Project Costs, it O&amp;M cost as de</p> <p>The above unde government app development as institutions. In t which are costs feasibility study, of the direct gov Cost. In case of value of the dire determined by a the project is su</p>
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		<p>upholding the validity of the approved contractual arrangement.</p> <p>g) Security Assistance - This shall refer to the deployment of government security forces, either from the Philippine National Police (PNP) or the Armed Forces of the Philippines (AFP) in the vicinity of the project site to provide security during the implementation of the project up to completion.</p> <p>The Agency/LGU may offer any one or more Government Undertakings relative to a project, which shall be pre-cleared in principle, in writing, by the department, bureau, office, commission, authority, agency, GOCC, or LGU or any other government entity that will grant the same as mandated by law; provided that the total government undertakings shall not exceed fifty percent (50%) of the total project cost.</p> <p>The government undertakings shall be based on the approved risk allocation matrix which shall be issued by the Approving Body/ICC.</p>	<p>In case of contri compensation s value of the con of the contribut government fina compensation s operations. Non date shall incur</p> <p>The interest rate the contract, tak regulations on in on the applicabl prevailing risk-fr</p> <p>Subject to Sectio proposals, excep build-lease-and payments is a di prohibited.</p> <p>d. Direct subscri agencie securit project be paid</p> <p>e. Perform undert commi assumi the A contrac of mon undert premi other a</p> <p>f. Legal A of repr Project inquiri Propo</p>
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Coordination and Monitoring of Projects	<p>SEC. 12. <i>Coordination and Monitoring of Projects.</i> - The Coordinating Council of the Philippine Assistance Program [CCPAP] shall be responsible for the coordination and monitoring of projects implemented under this Act.</p> <p>Regional development councils and local government units shall periodically submit to CCPAP, information on the status of said projects.</p> <p>At the end of every calendar year, the CCPAP shall report to the President and to Congress on the progress of all projects implemented under this Act.</p>		
		<p>Section 14.1 - The PPP Center</p> <p>The PPP Center shall be responsible for the coordination and monitoring of projects implemented under Contractual Arrangements or schemes authorized under these Revised IRR. Project monitoring will be undertaken</p>	<p>Section 14.1 -</p> <p>The PPP Ce coordination a under Contr authorized unc</p>

		<p>to ensure that the project complies with these Revised IRR, including the proponent’s required environmental clearances from the DENR. For this purpose, concerned Agencies/LGUs shall periodically submit to the PPP Center information on the status of projects implemented by them. In addition, all concerned Agencies/LGUs shall submit to the PPP Center a copy of all Unsolicited Proposals that they receive and all other related documents. The PPP Center is also hereby mandated to guide the Agency/LGU in the preparation and development of the project.</p> <p>At the end of every calendar year, PPP Center shall report to the ICC, President, and the Congress on the progress of all projects implemented under these Revised IRR.</p>	<p>monitoring with project compliance. Project Proponent shall secure clearances from the Agency/LGU shall submit information on the status of projects implementing, frequency of projects among others, agencies and organizations.</p> <p>In addition, all concerned Agencies/LGU shall submit to the PPP Center a copy of all Unsolicited Proposals that they receive and all other related documents. The PPP Center is also hereby mandated to guide the Agency/LGU in the preparation and development of the project.</p> <p>At the end of every calendar year, PPP Center shall report to the ICC, President, and the Congress on the progress of all projects implemented under these Revised IRR.</p>
		<p>SECTION 14.3 - PPP UNITS</p> <p>Each concerned Agency/LGU may create a PPP Unit headed by a senior official of the Agency/LGU and shall designate a senior official as PPP Project Development Officer (PDO), who shall be responsible for planning, overseeing, and monitoring projects of Agencies/LGUs authorized under the Act and these Revised IRR. The PPP Unit may also include as members, among others, technical and legal personnel who are knowledgeable on the technical and legal aspects, respectively, of the PPP projects that may be implemented pursuant to the Act and this IRR.</p>	<p>Section 14.3 - Agency/LGU Units</p> <p>The Agency/LGU shall create a PPP Unit headed by a senior official of the Agency/LGU and shall designate a senior official as PPP Project Development Officer (PDO), who shall be responsible for planning, overseeing, and monitoring projects of Agencies/LGUs authorized under the Act and these Revised IRR. The PPP Unit may also include as members, among others, technical and legal personnel who are knowledgeable on the technical and legal aspects, respectively, of the PPP projects that may be implemented pursuant to the Act and this IRR.</p> <p>The Agency/LGU shall submit to the PPP Center a copy of all Unsolicited Proposals that they receive and all other related documents. The PPP Center is also hereby mandated to guide the Agency/LGU in the preparation and development of the project.</p> <p>At the end of every calendar year, PPP Center shall report to the ICC, President, and the Congress on the progress of all projects implemented under these Revised IRR.</p>

			<p>the technical a projects that m and this Revised</p>
			<p>Section 14.5 - TH</p> <p>An independent third party/part corporations, sh provide indepe Project Propone Construction of the performan procurement of working days fro done in accorda Government Pro</p> <p>The prospective statement speci planned futur independent co person who has confirming that interest. The IC statement to the</p> <p>Upon selection Project Propone with scope of Proponent shall to the Agency/L</p> <p>All costs of the between the A Such costs to be considered as a</p> <p>The parties sha enable the IC to the contract. Th influence, or oth or commit simil integrity and the</p>

			<p>The terms and conditions shall be consistent with the respective responsibilities and shall provide the panel of government Body, if any, and documents prior to appointment.</p> <p>The terms of reference shall include, but shall not be limited to, and the frequency of review by the Agency/LGU, and the Agency/LGU shall comment on the progress within fourteen days.</p> <p>The IC report shall include project progress, project accomplishments, concerns, matters for discussion, and documents as may be required.</p>
			<p>Section 14.6 - Dispute Resolution</p> <p>Prior to signing the Project Proponent and the Agency/LGU on the agreement:</p> <ul style="list-style-type: none"><li>a. Proposer shall provide a default</li><li>b. Any project shall be of right of agreement have a the Project under</li><li>c. Any lender,</li></ul>



			<p>Agency's/LGU's project; and</p> <p>d. Any agreement into force</p> <p>The Agency/LGU evaluating the agreement.</p> <p>If any of the foregoing in Government risk allocation, the clearance of the to the Project P</p> <p>In the event the agreement with required above Proponent even shall be prohibited any obligations</p> <p>Under no circumstances consent on the a conditions are government.</p> <p>During the implementation Project Proponent the PPP Center documents on the</p> <p>a. status of the loan</p> <p>b. status of by the agreement</p> <p>The PPP Center submission of such Section 14.7 - A</p>

			<p>To further promote transparency, the COA shall ensure that all proceeds from the sale of the land have been awarded to the Commission on Higher Education (CHED) for the purpose of ensuring over compliance with the COA, in the functions, shall ensure that the government employees are not engaged in any activity pursuant to the COA and any other laws, rules and regulations of the Philippines and ensuring that the proceeds are not used for any purpose other than to or accruing to the benefit of the government or any government-owned or controlled corporation proposed under the COA. The COA shall ensure that the proceeds are not used for and remitted to the government or any government-owned or controlled corporation.</p> <p>To this end, the COA shall ensure that the proceeds are not used for and remitted to the government or any government-owned or controlled corporation with the PPP guidelines that shall be developed by the COA and the guidelines that shall be developed by the COA and the guidelines that shall be assigned to audit the COA.</p> <p>The COA shall ensure that the proceeds are not used for and remitted to the government or any government-owned or controlled corporation related documents and records shall be maintained in Rules 4 to 12 of the COA and the Project Proposal shall provide the latter with the audit of the COA.</p>
			<p>Section 14.8 - Conflict of Interest.</p> <p>All relevant parties shall be required to declare their interest, as defined in the Code of Conduct and Ethics, to the COA and the Employees. To ensure the integrity of the COA, the regulatory agency shall ensure that the COA prepare a conflict of interest statement.</p> <p>In case a conflict of interest is identified, the COA shall inhibit the COA from performing its duties in connection with the COA member with the COA.</p>

			member shall re within thirty (30
			Section 14.9 - D  Copies of all con be considered a submit a copy o and annexes, to PPP Center sha contracts, toge through their re
Implementing Rules and Regulations	<p>SEC. 11. <i>Implementing Rules and Regulations.</i> - A committee composed of one (1) representative each from the Department of Public Works and Highways, the Department of Transportation and Communications, the Department of Energy, the Department of Environment and Natural Resources, the Department of Agriculture, the Department of Trade and Industry, the Department of Finance, the Department of the Interior and Local Government, the National Economic and Development Authority, the Coordinating Council of the Philippine Assistance Program, and other concerned government agencies shall within sixty [60] days from the effectivity of this Act, formulate and prescribe, after public hearing and publication as required by law, the implementing rules and regulations including, among others, the criteria and guidelines for evaluation of bid proposals, list of financial incentives and arrangements that the Government may provide for the project, in order to carry out the provisions of this Act in the most expeditious manner.</p> <p>The Chairman of this committee shall be appointed by the President of the Philippines from its members.</p> <p>From time to time the Committee may conduct, formulate and prescribe after due public hearing and publication, amendments to the implementing rules and regulations, consistent with the provisions of this Act.</p>		
RULE 15 - GOVERNMENT LIABILITIES IN CONTRACTS			Section 15.1 - Fi  Government lia and contingent l

			<p>firm liabilities as described in the but are not limited to payments, availability variation payments undisputed claims</p> <p>Contingent liabilities from events specifying timing, or amount but are not limited to government warranty obligations.</p> <p>Section 15.2 - Contracts</p> <p>a. Project liability shall require approval:</p> <p>i. The project viability, economic climate change</p> <p>ii. The proposed firm model showing unless the firm</p> <p>iii. The firm sustainable base</p> <p>iv. The A and this Revised competitively and a minimum.</p> <p>v. Payment</p> <p>vi. Payment Proponent achievement applicable performance</p>
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			<div><div><div>b. The a payments shall model.</div><div>c. The P be approved by</div><div>i. the an</div><div>ii. the sc</div><div>d. The A funds necessary identified and s and regulations.</div></div><div>Section 15.3 - R</div><div><div>a. Contin that the nation applicable, is be</div><div>b. Pursua submit a risk Approving Body Revised IRR. Su assumed by the assumed by the estimated costs measure in plac Agency/LGU to</div><div>c. The A proposed risk a approved by th Deviations coul of the Approvin Revised IRR.</div><div>d. Both consistent with liabilities, in acc IRR.</div></div></div>
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			<p>e. All costs of the government shall be borne by the Proponent, if compensation for the materiality threshold is not met.</p> <p>f. For the purpose of the above the insurance policy shall be issued between parties.</p> <p>g. The Proponent must be approved by the Section 2.10 of the Revised IRR.</p> <p>i. A contingent liability risk event</p> <p>ii. A term of the insurance policy</p> <p>iii. The policy shall cover or losses, including national or local losses.</p> <p>iv. A contingent liability risk event</p> <p>v. Parameter of the insurance policy</p> <p>h. The A contingent liability risk event shall be issued by the Revised IRR.</p> <p>Section 15.4 - A contingent liability risk event</p> <p>The identification of contingent liabilities in accordance with the accounting rules shall be issued by the Revised IRR.</p> <p>Section 15.5 - E and Risk Mitigation</p>
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			<p>All Heads of Development Projects shall be required to deliver obligations to the PPP Center, CO, or other entity designated by the Project Sponsor for execution including proposed actions and to keep up-to-date and ensure timely execution of the Project. The Project Sponsor shall be responsible for the above-mentioned obligations within a reasonable time frame consistent with their obligations.</p> <p>Section 15.6 - Contingent Liabilities</p> <p>a. The Project Sponsor shall ensure that the Liabilities (TWG) are included in the Budget Coordinating Committee's 2015-2 shall coordinate the budget appropriated for the Project and shall be included in the Project's analysis of the Project's financial viability.</p> <p>b. The Project Sponsor shall ensure that the agencies for obligations are included in the Project's performance under the Project by the national government and the DBCC, which shall be included in the Project's analysis of contingent liabilities.</p> <p>Section 15.7 - Monitoring and Reporting</p> <p>The PPP Center shall develop and implement processes, procedures, and mechanisms for the Agency/LGU for the Project to ensure that the contingent liabilities are consistent with the Project's financial viability and regulations to be implemented under the Revised IRR.</p>
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			The Agency/LC information on contracts follow processes, procedures Center. The P provide the Agency reasonable time obligation under
	<p>SEC. 15. Section 11, 12 and 13 of the same Act are hereby renumbered as Sections 13, 14, and 15, respectively.</p> <p>[Section 13. <i>Repealing Clause.</i> – All laws or parts of any law inconsistent with the provisions of this Act are hereby repealed or modified accordingly.</p> <p>Section 14. <i>Separability Clause.</i> – If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation.</p> <p>Section 15. <i>Effectivity.</i> – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.]</p>		
Repealing Clause	SEC. 16. Repealing Clause. - All laws or parts of any law inconsistent with the provisions of this Act are hereby repealed or modified accordingly.		
			<p>Section 16.6 - Rules</p> <p>Unless expressly any statute, law, agreement made include reference regulation, does supplemented, time. Provided, obligation of contract</p>
Separability Clause	SEC. 17. Separability Clause. - If any provision of this Act is held invalid, the other provisions not affected thereby shall continue in operation		
Effectivity Clause	SEC. 18. Effectivity Clause. - This Act shall take effect fifteen [15] days after its publication in at least two (2) newspapers of general circulation.		