
[IRR of REPUBLIC ACT NO. 11966, March 21, 2024]

IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 11966, "AN ACT PROVIDING FOR THE PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE PHILIPPINES"

This Implementing Rules and Regulations, hereinafter referred to as the IRR, is promulgated pursuant to Section 34 of Republic Act (RA) No. 11966, otherwise known as the "Public-Private Partnership Code of the Philippines" (PPP Code or the Code), for the purpose of carrying out the provisions of said Code.

TITLE I. GENERAL PROVISIONS

Section 1. *Title.* This IRR shall be known as the IRR of the PPP Code.

Section 2. *Declaration of Policy.* The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments. To this end, the State shall provide an enabling environment for the private sector to mobilize its resources to finance, design, construct, operate, and maintain infrastructure or development projects and services.

It is further declared that the State shall protect the public interest by providing affordable, accessible, and efficient public services. In order to achieve better quality of PPP Projects at lower costs, the State shall ensure equitable risk allocation in PPP Projects, and that all PPP Projects yield sufficient Value for Money (VFM), promote sustainability, and advance public welfare.

The State shall pursue a policy of financing infrastructure and other development projects and services through all means available to effectively meet the objectives of the government. These may include appropriations, official development assistance (ODA), and PPPs, as well as combinations and variations thereof. The government shall determine the appropriate financing by considering budget availability, VFM, timelines, stakeholder commitments, and market capacity.

The State recognizes the autonomy of local government units (LGUs) in entering and implementing Local PPP Projects to enable them to attain their fullest development as self reliant communities and make them more effective partners in the attainment of national goals.

The State shall also ensure the integration of climate resilience, sustainability, and gender and development policies and programs in the planning, design, and implementation of PPP Projects.

The State shall take cognizance of partnerships that have not been submitted through the administrative process as long as they are PPPs as defined in the Code and shall therefore subject such projects under its jurisdiction and rules.

Finally, it is declared that the State and LGUs shall affirm open, fair, transparent, and competitive selection as the central tenet for securing private investment in PPP Project. It shall implement a policy of full public disclosure of all its transactions involving public interest, subject to terms and conditions as prescribed by pertinent laws.

Section 3. *Computation of Periods.* In computing a period indicated in the Code and this IRR, the first day shall be excluded and the last day included, pursuant to Article 13 of RA No. 386 or the Civil Code of the Philippines or any amendments thereto.

If the last day of any period for action by a government entity or for submission to a government entity falls on a non-working day (i.e. Saturday and Sunday), legal holiday, special non working holiday, or other non-working

days duly declared by the President, Governor, Mayor, or other government official authorized to make such declaration for such government entity, it is understood that the last day shall be the next working day.

Section 4. *Definition of Terms.* The following terms shall apply for purposes of this IRR.

- (a) Administrative Franchise refers to a special privilege to do certain things conferred by a Regulatory Body on a Private Partner and which does not belong to citizens generally of common right;
- (b) Alternative Financial Instruments refer to Green Financing instruments, corporate or project bonds, Islamic bonds (sukuk), real estate investment trust instruments, blue financing instruments, municipal bonds, bonds from securitization, other forms of capital market financing, and such other instruments suitable for PPP Projects;
- (c) Approving Body refers to an entity authorized to approve PPP Projects, in accordance with Section 7 of the Code and *Title IV* of this IRR;
- (d) Availability Payments refer to predetermined payments by the Implementing Agency to the Private Partner in exchange of delivering an asset or service in accordance with the PPP Contract. Availability Payments shall not be construed as Government Undertakings, Subsidy, or government contribution;
- (e) Blended Finance refers to the approach to structured finance where a partner government, bilateral or multilateral agency, local or international quasi-sovereign entities, or international or multilateral financing institution may mobilize financing from private or commercial institutions for one or more components of a PPP Project;
- (f) Confidential Business Information refers to information which are proprietary in nature and concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures, which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
- (g) Consolidated List of Investment Programs (CLIPs) refer to national, local, regional, and sectoral investment programs such as, but not limited to, the Public Investment Program (PIP), Three-Year Rolling Infrastructure Program (TRIP), Infrastructure Flagship Projects (IFPs), Regional Development Investment Programs (RDIPs), Provincial Development Investment Programs (PDIPs), City Development Investment Programs (CDIPs), Local Development Investment Programs (LDIPs), Annual Investment Programs (AIPs), Land Use Development and Infrastructure Plan (LUDIP), Institutional Development Plan (IOP), and their successors;
- (h) Construction refers to new construction, rehabilitation, improvement, expansion, alteration, and related works and activities including the necessary design, supply, installation, testing and commissioning of equipment, systems, plants, materials, labor and services, and related items needed to build or rehabilitate an Infrastructure or Development Project and Service. For the purpose of calculating the Project Cost, Construction shall not involve those new construction, rehabilitation, improvement, expansion, alteration, and related works, expended during the operations and maintenance (O&M) stage of the PPP Project;
- (i) Contingent Liability refers to an obligation that may arise from events specified in a PPP Contract, the occurrence, timing, and amount of which are uncertain. These events include, but are not limited to, regulatory action, force majeure, breach of government warranties, and Material Adverse Government Action (MAGA);
- (j) Contractor refers to any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the Private Partner, that shall be responsible for the Construction and/or supply of equipment or services for PPP Projects. For avoidance of doubt, the term 'services' in the preceding sentence shall refer to services related to Construction;
- (k) Credit Enhancements refer to support to an Infrastructure or Development Project and Service by the

Private Partner and/or Implementing Agency concerned, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the PPP Contract. Credit Enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved, and may include, but are not limited to, government guarantees on the performance, or the obligation of the Implementing Agency under the PPP Contract with the Private Partner;

(l) Economic Model refers to a model which presents the economic benefits and costs of a project. The Economic Model must present the assumptions, which shall have sufficient basis and justifications, used in calculating economic benefits, conversion of financial costs to economic costs, and calculation of economic viability (e.g., economic internal rate of return, economic net present value, benefit-cost ratio);

(m) Facility Operator refers to any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the Private Partner, that shall be responsible for operating and/or maintaining a facility;

(n) Feasibility Studies refer to a project study which shall include the information provided under Section 19 of this IRR, and which may be further defined in the guidelines to be issued by the Investment Coordination Committee (ICC) for National PPP Projects, and the PPP Governing Board for Local PPP Projects;

(o) Financial Close refers to the specific milestone in a PPP Contract where the Private Partner successfully secures all necessary project and financing agreements. The achievement of such milestone confirms that all prior conditions have been met, allowing the Private Partner to draw down the financing, as applicable, to commence work on the PPP Project;

(p) Financial Model refers to a model that presents the projected balance sheet, income statement, and cash flows statement of a PPP Project for its full life cycle including assumptions which shall have sufficient basis and justification. The Financial Model must present the calculations on financial viability (e.g., debt service coverage ratio, free cash flows to firm and equity holders, project and equity internal rates of return, project and equity net present value, and weighted average cost of capital) of a Project;

(q) Generic Preferred Risk Allocation Matrix (GPRAM) refers to the document issued by the ICC of the National Economic and Development Authority (NEDA) Board to guide government entities and the private sector in the optimal allocation of risks in structuring PPP Projects;

(r) Government Equity refers to the subscription by the Implementing Agency of shares of stock or other securities convertible to shares of stock of the project company, whether such subscription will be paid by money or assets;

(s) Government Financial Institutions (GFIs) refer to financial institutions or corporations in which the government directly or indirectly owns majority of the capital stock and which are either: (i) registered with or directly supervised by the Bangko Sentral ng Pilipinas (SSP); or (ii) collecting or transacting funds or contributions from the public and placing them in financial instruments or assets such as deposits, loans, bonds, and equity, including, but not limited to, the Government Service Insurance System (GSIS), the Social Security System, and the Maharlika Investment Corporation;

(t) Government Instrumentalities with Corporate Powers (GICPs) I Government Corporate Entities (GCEs) refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter;

(u) Government-Owned or -Controlled Corporation (GOCC) refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable, as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock, as defined in RA No. 10149, otherwise known as the "GOCC Governance Act of 2011", including GICPs, GCEs, GFIs, water districts created under Presidential Decree (PO) No. 198, series of 1973, and economic zone authorities, which are hereby

authorized to undertake PPP Projects with a Private Partner in accordance with the provisions of the Code and this IRR;

(v) Government Undertakings refer to any form of contribution and/or support, which the government may extend to a Private Partner for the implementation of PPP Projects, as provided under the Code and this IRR;

(w) Green Financing refers to investments that create environmental benefits in support of green growth, low-carbon, carbon avoidance, and sustainable development, and the use of alternative assets such as carbon credits, such as those pursuant to Article 6 of the Paris Agreement, or ecosystem services;

(x) Guarantee on Demand refers to an agreement where the Implementing Agency undertakes to assume the market demand risks associated with the PPP Project: *Provided*, That the adoption of availability-based schemes and Availability Payments shall not be considered as Guarantee on Demand;

(y) Guarantee on Loan Repayment refers to an agreement where the Implementing Agency guarantees to assume responsibility for the repayment of debt directly incurred by the Private Partner in implementing the PPP Project in case of a loan default. As an exception, government repayment of debt as part of Termination Payments shall not be considered as Guarantee on Loan Repayment;

(z) Guarantee on Private Sector Return refers to an agreement where the Implementing Agency guarantees to provide a predetermined rate of return on the investment of the Private Partner. This shall not cover Termination Payments arising from government events of default;

(aa) Implementing Agency refers to a department, bureau, office, instrumentality, commission, authority of the national government, state university and college (SUC), local university and college (LUC), LGU, and GOCC;

(bb) Independent Consultant refers to a non-aligned or neutral third-party, either individual, partnership, or corporation, procured by the Implementing Agency to provide independent advice to the contracting parties for the design and Construction of the PPP Project and monitoring of the performance of the contracting parties during such phases of the PPP Project. An Independent Consultant may also be procured during the O&M phase and handover/turnover phase of the PPP Project;

(cc) Infrastructure or Development Projects and Services refer to the construction, improvement, rehabilitation, repair, and/or maintenance of facilities or provision of services for use by the public that underlie and enable, sustain, and enhance the economic and social development of the country. These include those listed under Section 5 of this IRR;

(dd) Joint Venture (JV) refers to a national or local PPP contractual arrangement, whether solicited or unsolicited, where both the Implementing Agency performing its proprietary function and the Private Partner pool resources comprising of capital, services, or assets, including equipment, land, or intellectual property, to jointly undertake a specific investment activity within a specific period of cooperation, to deliver an Infrastructure or Development Project and Service typically provided by the public sector;

(ee) Key Performance Indicators (KPIs) refer to the financial or non-financial indicators used to measure the progress or success of the Private Partner on critical factors relevant to the project, and which will normally vary depending on the contracted services and other attributes of the PPP Project. These may include metrics that cover gender equality, disability, and social inclusion (GEDSI), climate change, and environmental considerations;

(ff) Land Value Capture Strategies refer to a set of mechanisms used to recover and re invest land-based value increases that arise in the catchment area of public infrastructure investments, such as but not limited to, betterment contributions, grant or sale of commercial development rights, and strategic land management. For purposes of the Code and this IRR, land value capture strategies may be employed to optimize the financial and economic efficacy of a PPP Project;

(gg) Legal Assistance refer to the extension of representation by government lawyers to a Private Partner but only in cases, hearings, or inquiries where the Implementing Agency and Private Partner are party-

defendants/respondents therein including the adoption by such government lawyers of positions and strategies consistent with upholding the validity of the approved contractual arrangement;

(hh) Local Franchise refers to a special privilege to do certain things conferred by an LGU, as the case may be, on a Private Partner and which does not belong to citizens generally of common right;

(ii) Local Government Units refer to units of provinces, cities, municipalities, barangays, and other political subdivisions created under RA No. 7160 or the Local Government Code of the Philippines;

(jj) Local PPP Project refers to a PPP Project where the Implementing Agency is either an LGU or an LUC;

(kk) Local Universities and Colleges refer to Commission on Higher Education (CHED) accredited public Higher Education Institutions (HEIs) established by LGUs through an enabling ordinance, financially supported by the LGU concerned, and compliant with the policies, standards, and guidelines of the CHED;

(ll) Market Sounding refers to a feedback gathering exercise with the appropriate or relevant stakeholders and potential partners, such as but not limited to prospective investors, prospective bidders, financing groups, and industry groups.

Market Sounding aims to (i) assess the appropriateness and attractiveness of the PPP scheme; (ii) solicits inputs on project requirements to achieve an optimal structure for the PPP Project, and (iii) identify potential issues that may affect the viability of the proposed PPP Project;

(mm) Material Adverse Government Action refers to any act of the government which the Private Partner had no knowledge of, or could not be reasonably expected to have had knowledge of, prior to the effectivity of the PPP Contract, and that occurs after the effectivity of the PPP Contract, other than an act which is authorized or permitted under the PPP Contract, which (i) specifically discriminates against the sector, industry, or project, and (ii) has a significant negative effect on the ability of the Private Partner to comply with any of its obligations under the approved PPP Contract. MAGA may include unanticipated regulatory risks;

(nn) Most Responsive Bid refers to the bid that conforms, in all material respects, to the bid solicitation requirements and approved bid parameters, and the one that is most advantageous to the government;

(oo) National PPP Project refers to a PPP Project that is undertaken by the national government, SUCs, and GOCCs;

(pp) Original Proponent refers to the Private Proponent conferred the "Original Proponent status (OPS)", in accordance with Section 10 of the Code and Section 60 of this IRR;

(qq) Performance Undertaking refers to an undertaking of a department, bureau, office, commission, authority, agency, GOCC, LGU, or by the Republic of the Philippines, other than the Implementing Agency, in assuming responsibility for the performance of the Implementing Agency'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;

(rr) PPP refers to a contractual arrangement between an Implementing Agency and a Private Partner to finance, design, construct, operate, and maintain, or any combination or variation thereof, Infrastructure or Development Projects and Services which are typically provided by the public sector, where each party shares in the associated risks, and where the investment recovery of the Private Partner is linked to performance;

(ss) PPP Center refers to the institution referred to in Section 24 of the Code and *Title XVII* of this IRR;

(tt) PPP Contract refers to the contract as approved, executed, and implemented for the PPP Project;

(uu) PPP Governing Board refers to the overall policy making body for PPPs referred to in Section 25 of

the Code and *Title XVIII* of this IRR;

(vv) PPP Project refers to any public Infrastructure or Development Projects and Services, which satisfies the elements provided under Section 4(rr) of this IRR;

(ww) Private Partner refers to the private sector entity determined to be financially, legally, and technically capable to undertake obligations under an awarded PPP Contract. The Private Partner may create a special purpose company (SPC) or a special purpose vehicle (SPV) for the PPP Project;

(xx) Private Proponent refers to the private sector entity which has submitted a bid in relation to a Solicited Project, or a private sector entity which has submitted an Unsolicited Proposal. The Private Proponent may be Filipino or foreign-owned, and may engage the services of a foreign Contractor or foreign Facility Operator, subject to requirements and limitations provided under the Constitution, existing laws, rules, and regulations;

(yy) Probity Advisor refers to a non-aligned or neutral third-party, whether natural or juridical, who shall provide guidance and advice on all aspects and stages of the procurement process from commencement up to contract signing with the selected bidder;

(zz) Project Cost refers to the total cost to be expended to plan, develop, and construct the PPP Project to completion stage, including cost of Feasibility Studies, engineering and design, Construction, equipment, land or right-of-way (ROW), taxes imposed on said cost, and development cost. For this purpose, "completion stage" shall refer to completion of Construction, as defined under the Code and this IRR. For avoidance of doubt, interest charges and other financing costs incurred during Construction shall be considered as part of the Project Cost.

For O&M PPP Projects without initial capital expenditures, the present value of costs incurred in delivering the contracted service, including any reinvestment requirements shall be considered as the Project Cost. For this purpose, "initial capital expenditures" shall refer to capital expenditures expended during Construction, as defined under the Code and this IRR. The government borrowing rate shall be the discount rate used in determining the present value of costs incurred in delivering the contracted service, including any reinvestment requirements;

(aaa) Reasonable Rate of Return (RROR) refers to the net gain of an investment over a specified time period, expressed as an annualized percentage as prescribed by the appropriate Approving Body and reflected in the PPP Contract: *Provided*, That where the realized rate of return exceeds the prescribed RROR, the excess shall be remitted to the National Treasury. Pursuant to Section 9(d) of the Code and Section 90 of this IRR, the required setting of RROR shall only apply to single complying and responsive bids for a Solicited Project;

(bbb) Regulatory Body refers to any agency, whether national or local, in charge of approving initial tolls, fares, fees, rentals, and other charges and adjustments in a PPP Project;

(ccc) Security Assistance refers to the deployment of government security forces, either from the Philippine National Police or the Armed Forces of the Philippines in the vicinity of the project site to provide security during the implementation of the project up to completion, subject to the request of the Implementing Agency or Private Partner;

(ddd) Solicited Project refers to a PPP Project identified by an Implementing Agency as part of its List of PPP Projects referred to in *Title II*, Chapter 2 of this IRR, that is subjected to a public bidding as provided in Section 9 of the Code and in accordance with *Title VI* of this IRR;

(eee) State Universities and Colleges (SUCs) refer to public HEIs established by the national government and are governed by their respective independent Boards of Trustees or Regents;

(fff) Subsidy refers to an agreement where the Implementing Agency will: (i) defray, pay for, or shoulder a portion of the Project Cost or the expenses and costs in operating or maintaining the PPP Project; (ii) bear a portion of capital expenditures, associated with the establishment of an Infrastructure or Development Project and Services; (iii) contribute any property or assets to the PPP Project; and/or (iv)

waive charges or fees relative to business permits or licenses that are to be obtained for the Construction of the PPP Project: *Provided*, That items (i) to (iv) shall not be considered as Subsidy if the government receives payment or remuneration from the Private Partner for such; *Provided*, further, That Subsidy falling under items (i) and (ii) shall not exceed fifty percent (50%) of the Project Cost; *Provided*, finally, That in the case of solicited proposals, the expenses for existing ROW or ROW to be acquired shall not be included in the said cap.

Subsidy shall also include Viability Gap Funding (VGF) which refers to a type of Subsidy that may be extended by the government to make an economically viable revenue-based PPP Project financially viable: *Provided*, That government payments for ROW and resettlement shall not be considered as VGF. VGF may also be extended to revenue-based PPP Projects having an element of Availability-based PPP;

(ggg) Tariff refers to the tolls, fares, fees, rentals, and other user charges referred to in Section 13 of the PPP Code and *Title IX* of this IRR;

(hhh) Termination Payment refers to the amount payable by the government or the Private Partner on the occurrence of an event or series of events provided for in the PPP Contract that results in the early termination of said contract;

(iii) Third-party Appraiser refers to an independent third-party appraiser accredited by the Securities and Exchange Commission (SEC), an independent professional association of appraisers engaged by the Implementing Agency or the Private Proponent, GFIs, or a combination thereof, to determine the fair market value of a property or asset;

(jjj) Unsolicited Proposal refers to a project proposal made by a Private Proponent to undertake a PPP Project pursuant to Section 10 of the Code and *Title V* of this IRR;

(kkk) Value for Money refers to the effective, efficient, and economic use of resources, which requires the evaluation of relevant costs and benefits, along with an assessment of risks, and of non-price attributes and/or life cycle costs, as appropriate. Price alone may not necessarily represent VFM;

(lll) VFM Model refers to a model, including assumptions which shall have sufficient basis and justification, which presents the quantitative VFM analysis of the project showing PPP as the more beneficial mode of procurement than traditional government procurement;

(mmm) Virtual Data Room (VDR) refers to a secure online facility provided by the government for storing, accessing, and distributing bid documents, project studies, and other project-related data among authorized prospective bidders. It may serve as a repository to house relevant project information for authorized bidders to access as part of their due diligence and review of the investment potential of a PPP Project.

TITLE II. PUBLIC-PRIVATE PARTNERSHIPS

Section 5. *Infrastructure or Development Projects and Services.* The Implementing Agency and the Private Partner may enter into a PPP as defined in Section 4(rr) of this IRR for the following Infrastructure or Development Projects and Services, among others:

- (a) Highways, including expressways, roads, bridges, interchanges, tunnels, viaducts, and related facilities;
- (b) Land transportation systems, including railways, road-based transportation systems, bus rapid transit, high priority public utility vehicle systems, active transportation, transit-oriented developments, public utility vehicle stations, transport plazas, intermodal terminals, park and ride, and related facilities;
- (c) Transport and traffic management projects, including transportation databases, automated fare and toll collection systems, traffic signaling, traffic monitoring systems, traffic enforcement systems, congestion and management systems, and related facilities;
- (d) Port infrastructure like piers, wharves, quays, storage, handling, roll-on roll-off facilities, and other

related facilities;

(e) Maritime infrastructure like navigable inland waterways, shipping and ferry services, shipping vessels or components thereof, shipping and freight enterprises, and related facilities;

(f) Airports, air navigation, and related facilities;

(g) Power generation, transmission, sub-transmission, distribution, including hydropower plants, and related facilities;

(h) Downstream oil and gas industry facilities, and other energy-related facilities;

(i) Energy efficiency and conservation, renewable energy, and electric vehicle charging stations, and related facilities;

(j) Telecommunications, backbone network, terrestrial, aerial, and space infrastructure, and related service facilities;

(k) Information technology networks and database infrastructure, geo-spatial resource mapping, cadastral survey for resource accounting and planning, and related facilities;

(l) Irrigation and related facilities;

(m) Water supply, sewerage, drainage, waste water and water treatment, desalination, and related facilities;

(n) Educational infrastructure, including technological equipment used to facilitate learning and teaching, and related facilities;

(o) Health infrastructure, hospitals, clinics, research facilities, clinical laboratories, and other related facilities;

(p) Multi-purpose water resources projects covering a combination of irrigation, power, water supply, flood control, and related facilities;

(q) Land reclamation, dredging, flood control projects, and related facilities;

(r) 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;

(s) Government buildings, convention centers, and other related facilities;

(t) Urban redevelopment, townships, and housing projects;

(u) Heritage preservation and adaptive reuse projects;

(v) Markets, slaughterhouses, trading posts, and related facilities; (w) Warehouses and post-harvest facilities;

(x) Public fish ports and fishponds, including storage and processing facilities;

(y) Agri-fishery industrial hubs, agribusiness facilities, agricultural research facilities, agricultural estates, agrilogistics systems, contract farming, and related facilities;

(z) Cold chain systems or centers, and related-facilities;

(aa) Prisons, lease of security-related government assets, O&M of military facilities and equipment, and other national defense or security-related facilities;

(bb) Environmental and solid waste management related facilities such as but not limited to waste

collection, transportation and disposal facilities, transfer stations, composting plants, material recovery, landfill, and tidal barriers, among others;

(cc) Climate change adaptation and mitigation and disaster risk reduction and management infrastructure projects, biodiversity conservation projects, and related facilities; and

(dd) Other Infrastructure or Development Projects and Services, as may be authorized by the Implementing Agency pursuant to the Code and this IRR, and following applicable laws, rules, and regulations.

Related facilities may include commercial spaces within the project scope.

Section 6. Coverage of PPP. The Code and this IRR shall cover any Infrastructure or Development Project or Service that satisfies the elements of a PPP as defined in Section 4(rr) of this IRR, or as may be approved by the appropriate Approving Body, including but not limited to the following:

(a) JVs as defined in the Code and this IRR;

(b) Toll operation agreements or supplemental toll operation agreements, or any contractual arrangements involving the Construction, O&M, or a combination or variation thereof, of toll facilities in accordance with PD No. 1112 series of 1977, PD No. 1113, series of 1977, and PD No. 1894, series of 1983;

(c) Lease agreements providing for the rehabilitation, operation, and/or maintenance, including the provision of working capital and/or improvements to, by the Private Partner of an existing land or facility owned by the government for a fixed period of time covering more than one (1) year;

(d) Lease agreements, when such lease is a component of a PPP Project, as defined under the Code and this IRR;

(e) Build-Operate-Transfer (BOT) and its variants such as, but not limited to, Build-and Transfer (BT), Build-Lease-and-Transfer (BLT), Build-Own-and-Operate (BOO), Build-Transfer-and-Operate (BTO), Contract-Add-and-Operate (CAO), Add-Operate and-Transfer (AOT), Develop-Operate-and-Transfer (DOT), Rehabilitate-Operate and-Transfer (ROT), and Rehabilitate-Own-and-Operate (ROO); and

(f) O&M.

The PPP contractual arrangement proposed for a PPP Project shall be part of the parameters, terms, and conditions (PTCs) described under *Title IV* of this IRR, which the Implementing Agency shall submit to the appropriate Approving Body for approval.

Section 7. Non-Applicability. The Code and this IRR shall not apply to the following:

(a) Infrastructure or development projects and services procured under RA No. 9184 or the "Government Procurement Reform Act" (GPRA);

(b) Infrastructure projects exclusively funded through foreign loans and grants covered by RA No. 8182, as amended by RA No. 8555, titled "An Act Excluding Official Development Assistance (ODA) from the Foreign Debt Limit in order to facilitate the absorption and optimize the utilization of ODA resources, amending for the purpose paragraph 1, Section 2 of RA No. 4860, as amended," unless the Government of the Philippines and the foreign grantor/foreign or international financing institution agree otherwise;

(c) management contracts which do not possess elements of a PPP as defined in Section 4(rr) of this IRR; *Provided*, That for purposes of this IRR, "management contracts" shall be understood to exclude O&M PPP Projects;

(d) service contracts such as the following:

(i) coal service contracts contemplated by PD No. 972, as amended, or the "Coal Development Act of 1976";

(ii) petroleum service contracts contemplated by RA No. 387, as amended, or the "Petroleum Act of 1949";

(iii) agreements contemplated by RA No. 7942, or the "Philippine Mining Act of 1995";

(iv) renewable energy service or operating contracts awarded pursuant to RA No. 9513, or the "Renewable Energy Act of 2008": *Provided*, That if the renewable energy project or renewable energy service or operating contract is bundled as a component of a PPP Project, such shall be considered a PPP and shall therefore be subject to the provisions of the Code and this IRR; and

(v) service contracts contemplated by the relevant circulars of the Commission on Audit (COA) and Department of Budget and Management (DBM);

(e) divestments or dispositions which refer to the manner or scheme of taking away, depriving, withdrawing of an authority, power or title over a government asset;

(f) corporatization or transfer of any government assets and liabilities, staff, and the ongoing business of a utility into a public corporation;

(g) incorporation of subsidiaries with private sector equity;

(h) onerous donations which refer to a donation subject to burdens, considerations, or future services equal to or more in value than the thing donated;

(i) gratuitous donations which refer to a donation disposed by a person without charge, in favor of another who accepts it;

(j) joint venture and lease agreements involving purely commercial arrangements that neither provide nor include public infrastructure or development services, and which do not satisfy the elements of a PPP as defined in Section 4(rr) of this IRR.

In such cases, the aforementioned contractual arrangements shall be implemented in accordance with relevant governing laws: *Provided*, That if the infrastructure or development project and service subject of a contractual arrangement satisfies the elements of a PPP as defined in Section 4(rr) of this IRR, such shall be considered a PPP and shall therefore be covered by the Code and this IRR.

The Implementing Agency may request for a non-policy matter opinion from the PPP Center to determine whether a project is covered by the Code and this IRR.

Section 8. Authority to Undertake PPP Projects. All Implementing Agencies are authorized to identify, develop, assess, evaluate, approve, negotiate, award, and undertake PPP Projects in accordance with the provisions of the Code and this IRR.

A Regulatory Body, exercising quasi-judicial functions, shall not be allowed to undertake PPP Projects in the sector or industry that it is mandated to regulate except where there are no available alternative Implementing Agencies which have the capacity to undertake such projects. In the event that a Regulatory Body undertakes a PPP Project, it shall adopt a conflict mitigation plan as part of its contract management plan.

The conflict mitigation plan shall identify all potential and actual conflicts throughout the development, approval, procurement, and implementation of the PPP Project, the parties involved or interested parties, and mitigating measures and mechanisms to address all identified potential and actual conflicts, respectively.

Section 9. Financing of PPP Projects. Depending on the contractual arrangement, the PPP Project may be solely or partially financed by the Private Partner. PPP Projects may also be financed partly from direct government appropriations, GFIs, and/or from ODA of foreign governments or institutions through Blended Finance.

In cases of Blended Finance where a component of the PPP Project is financed by government appropriations, any procurement activities for such component shall be governed by the provisions of RA No. 9184 or the GPRA, and its IRR. If a component of the PPP Project is financed by an ODA agreement, such financing shall

be in accordance with RA No. 8182, as amended by RA No. 8555, and its IRR, subject to the terms and conditions, including procurement activities, agreed in the ODA agreement. For purposes of the Code and this IRR, ODA agreements executed between the Government of the Republic of the Philippines, acting by and through the Department of Finance (DOF), and the partner government, bilateral or multilateral agency, or international or multilateral financial institution shall be considered executive agreements. The processing of ODA agreements shall adhere to policies, rules, and procedures, and/or guidelines applied for the purpose, including those issued by or that may be issued by the DOF, the DBM, the Office of the President, and the BSP in processing ODA loans and ODA grants, ODA agreements, or those applicable to foreign-assisted projects/programs.

PPP Projects may also be financed through Alternative Financial Instruments, subject to the approval of relevant Regulatory Bodies for such instruments under existing laws, rules, and regulations. The PPP Governing Board may, from time to time, provide an updated list of Alternative Financial Instruments to assist Implementing Agencies and Private Partners considering such instruments for PPP Projects.

TITLE III. PREPARATION OF PPP PROJECTS PRIOR TO APPROVAL

Chapter 1. PPP Units

Section 10. *Establishment of PPP Units.* Implementing Agencies that undertake PPP Projects may form a dedicated PPP units responsible for planning, overseeing, implementing, and monitoring the PPP Projects.

The Head of the Implementing Agency may issue an official order, resolution, or a similar instrument to formally institute the PPP unit, which can be:

- (a) A newly established unit, office, committee, or group, which shall serve as focal persons for PPP projects, and subject to applicable laws, rules, and regulations; or
- (b) An existing unit, office, committee, or group designated to shoulder the responsibilities set forth in this section.

For this purpose, the Head of the Implementing Agency is encouraged to set up its own PPP unit and develop its in-house personnel to undertake PPP Projects. Such unit shall, among others, provide reports to the Head of the Implementing Agency and the PPP Center and shall comply with other reporting and monitoring processes and procedures as may be required by the PPP Center, consistent with the Code, this IRR, and the Project Monitoring Framework and Protocols to be issued by the PPP Governing Board referred to in Section 114 of this IRR.

The PPP Center shall provide the necessary technical assistance and capacity development needed by the PPP units to effectively discharge their roles and responsibilities.

Section 11. *Composition of PPP Units of National Implementing Agencies.* National Implementing Agencies that create PPP units pursuant to Section 10 of this IRR shall be guided by the following:

- (a) The PPP unit of national Implementing Agencies shall be headed by a senior official who is at least a third ranking official of the Implementing Agency holding a plantilla position. For purposes of this section, 'plantilla' shall refer to government employees' positions included in the Personal Services Itemization approved by the DBM.
- (b) The PPP unit shall be composed of the following minimum members who are knowledgeable on PPPs, and shall be under the supervision of the head of the PPP unit:
 - (i) Technical personnel for planning;
 - (ii) Technical personnel for project development;
 - (iii) Technical personnel for contract management;
 - (iv) Finance personnel; and

(v) Legal personnel.

Such personnel may be outsourced by the Implementing Agency.

(c) The national Implementing Agency may, subject to its discretion, add any other personnel which it deems relevant and necessary to carry out the functions of the PPP unit.

Section 12. *Composition of PPP Units of Local Implementing Agencies.* The composition of the PPP unit of local Implementing Agencies shall be subject to the discretion of the Local Chief Executive or the Head of LUC, whichever is applicable: *Provided*, That it shall be headed by a senior official and also include as members, among others, technical, finance, and legal personnel who are knowledgeable on PPPs. Such personnel may be outsourced by the local Implementing Agency.

Chapter 2. Consolidated List of Investment Programs and the List of PPP Projects

Section 13. *Guiding Principles in Identifying PPP Projects.* Implementing Agencies shall identify Infrastructure or Development Projects and Services that may be financed, designed, constructed, operated, maintained, or any combination and variation thereof, by a Private Partner through the Code and this IRR, without prejudice to the right of the Private Proponents to submit Unsolicited Proposals under Section 10 of the Code and Section 48 of this IRR.

In identifying PPP Projects, the Implementing Agencies shall be guided by the following principles:

- (a) Effectiveness in meeting government objectives;
- (b) Appropriateness of the chosen procurement modality and source of funding;
- (c) Preliminary indicators of VFM, economic viability, and financial viability;
- (d) Accountability and transparency; (e) Consumer rights;
- (f) Affordability;
- (g) Market acceptability and commercial attractiveness; and
- (h) Public access, safety, and security.

The Implementing Agency shall also consider the CLIPs, including national, local, regional, and sectoral development plans and investment programs of relevant government entities, which shall be submitted to NEDA and PPP Center within thirty (30) calendar days from effectivity of this IRR.

The CLIPs shall be posted completely and conspicuously on the websites of NEDA and the PPP Center, and of the Implementing Agency, if any, within twenty (20) calendar days from the last day of submission of government entities. Updates thereto shall be submitted to NEDA and PPP Center within seven (7) calendar days from approval by the relevant government entity. Updates to the CLIPs shall be published by NEDA and PPP Center within five (5) calendar days from receipt of such update. The NEDA, in coordination with the PPP Center, may issue supplemental guidelines to ensure efficient submission and publication of the CLIPs.

All government entities, including the Implementing Agencies, shall ensure that the sectoral development plans and investment programs that they will submit in accordance with the preceding paragraphs shall be approved by their respective Heads of Agency or an official designated to approve such document.

Only projects that are included in the CLIPs may be included in the List of PPP Projects to be prepared by Implementing Agencies pursuant to Section 14 of this IRR.

Section 14. *Preparation of the List of PPP Projects.* Identified PPP Projects shall be included in the Lists of PPP Projects which the Implementing Agencies shall prepare, and which shall include the following information:

- (a) Name and brief description of the PPP Project, as listed in the relevant investment and infrastructure plan;

- (b) Indicative Project Cost;
- (c) Project location (region, city or municipality) which shall include information that are sufficient for the Implementing Agency and the PPP Center to determine alignment and effect to other projects pursuant to Section 24 of this IRR. For this purpose, the Implementing Agency may use geographical information system mapping in planning PPP Projects;
- (d) Plan or investment program where the PPP Project is included;
- (e) Status of the project (e.g., under implementation, under procurement, for approval, pending approval, ongoing negotiation, under development, under conceptualization);
- (f) Development costs, as defined in Section 10(c) of the Code and Section 49 of this IRR; and
- (g) Recommended objectives, goals, and desired outcomes of the proposed PPP Project, and its alignment with national and public sector strategic objectives.

The PPP Center may issue further guidelines, forms, and templates in the preparation of the Lists of PPP Projects.

All PPP Projects listed in the aforementioned List shall be consistent with and responsive to national, regional, local, and sectoral development direction, thrusts, and corresponding strategies embedded in, but not limited to the following documents, the Philippine Development Plan (PDP), National Framework for Physical Planning (NFPP), Regional Development Plans (RDPs), Regional Physical Framework Plans (RPFPs), Provincial Development and Physical Framework Plans (PDPFPs), Comprehensive Development Plans (COPs), Comprehensive Land Use Plans (CLUPs), development or master plans of Implementing Agencies, and such other plans or programs as may be mandated by the President or by law, or as may be confirmed or approved by the NEDA Board through its committees or the respective Boards of SUCs and LUCs.

Section 15. *Submission and Updating of the List of PPP Projects.* Within thirty (30) calendar days from the effectivity of this IRR, Implementing Agencies which intend to undertake PPP Project/s or are currently undertaking PPP Project/s, shall submit their respective Lists of PPP Projects or any update thereto to the following oversight agencies, for information and in accordance with existing laws, rules, and regulations:

- (a) For National PPP Projects:
 - (i) NEDA;
 - (ii) PPP Center; and
 - (iii) Regional development councils (RDCs) concerned;
- (b) For Local PPP Projects:
 - (i) NEDA;
 - (ii) PPP Center;
 - (iii) RDCs concerned; and
 - (iv) Local Sanggunian concerned.

Any updates to the Lists of PPP Projects shall also be submitted to the aforementioned oversight agencies within seven (7) calendar days from approval of the Implementing Agency.

Section 16. *Publication of the List of PPP Projects.* Implementing Agencies and the PPP Center shall ensure that the Lists of PPP Projects proposed for implementation through the Code and this IRR shall be widely publicized to inform interested parties.

For this purpose, Implementing Agencies shall post their respective List of PPP Projects on their websites. In

case the Implementing Agency does not have a website, the list may be posted in any of their official digital platforms.

The PPP Center shall post on its website a consolidated list of all submitted Lists of PPP Projects within twenty (20) calendar days from the last day of submission of Implementing Agencies, and shall be updated regularly. Updates to the List of PPP Projects submitted by the Implementing Agencies shall be reflected in the consolidated list by the PPP Center within five (5) calendar days from receipt thereof.

Should there be any discrepancies between the list of the Implementing Agency and the PPP Center, the consolidated list of the PPP Center shall prevail.

Unsolicited Proposals shall be included by the PPP Center in the consolidated List of PPP Projects once the PPP Center has endorsed such proposal to the Implementing Agency for processing in accordance with *Title V* of this IRR. Once the Implementing Agency decides to continue processing the Unsolicited Proposal for detailed evaluation under Section 54 of this IRR, the Implementing Agency shall submit an updated List of PPP Projects including the said Unsolicited Proposal. For avoidance of doubt, inclusion of an Unsolicited Proposal to the List of PPP Projects shall not be construed as a conversion of the subject Unsolicited Proposal to a Solicited Project.

The PPP Center, in coordination with the aforementioned oversight agencies, may issue supplemental guidelines to ensure efficient submission and publication of the List of PPP Projects.

Section 17. *Delisting of projects in the List of PPP Projects.* Implementing Agencies may delist projects from their List of PPP Projects through a written notice, including the reason for delisting the PPP Project, to the appropriate oversight agencies referred to in Section 15 of this IRR.

Projects shall be automatically delisted by the PPP Center from the List of PPP Projects, based on the following grounds, among others:

- (a) If the allowable period for procurement has lapsed, in case of Solicited Projects;
- (b) If there is a failure of bidding, in the case of Solicited Projects: *Provided*, That the Implementing Agency decides not to subject the PPP Project to re-bidding;
- (c) If the Implementing Agency rejects the Unsolicited Proposal at any point of the process under *Title V* of this IRR;
- (d) If there is a failure of negotiation in the case of Unsolicited Proposals, unless the Implementing Agency accepts a new Unsolicited Proposal for the same project, or bids out the project as a Solicited Project in accordance with *Title VI* of this IRR;
- (e) If the OPS has expired and the comparative challenge process for the subject Unsolicited Proposal has not yet commenced;
- (f) If the Implementing Agency revoked the OPS granted for the Unsolicited Proposal; or
- (g) If the project has been terminated and discontinued for whatever reason.

The delisting of a PPP Project based on the above grounds shall be without prejudice to the Implementing Agency's right to reconsider such delisting and to continue the procurement of the PPP Project, in accordance with the requirements of the Code and this IRR. For avoidance of doubt, the rules and grounds for delisting shall only be applicable to the List of PPP Projects and not to the CLIPs.

Chapter 3. Development of PPP Projects

Section 18. *Guiding Principles in Developing PPP Projects.* In developing PPP Projects, the following shall be considered, among others:

- (a) Legal, technical, economic, and financial feasibility of the PPP Project;
- (b) VFM of the proposed PPP Project;

- (c) Optimal risk allocation;
- (d) Affordability of Tariffs;
- (e) Climate resilience and sustainability;
- (f) Commercial feasibility and market acceptability;
- (g) Social and environmental safeguards;
- (h) Lessons learned from previous or ongoing PPP Projects; and
- (i) Whole-of-government approach.

Section 19. *Scope and Depth of Feasibility Studies.* A PPP Feasibility Study shall be developed following the identification and initial screening of PPP Projects by the Implementing Agency or Private Proponent. The scope and depth of the study may vary depending on the size, nature, and complexity of the PPP Project: *Provided, That, at the minimum, the Feasibility Study shall contain the following information:*

- (a) Problem definition or statement of objectives;
- (b) Project description;
- (c) Project context in the Implementing Agency's overall strategy or program, including information on which sectoral plan and/or investment program the project is included in;
- (d) Sectoral program context;
- (e) Regional and spatial context;
- (f) Expected outcomes and KPIs, including means for verification and key assumptions;
- (g) Analysis of technical solutions or alternatives, including analysis of risks and impact;
- (h) Project Cost;
- (i) Legal due diligence, which includes policy and regulatory framework of the market/s affected by the project, and institutional analysis;
- (j) Demand and supply/market analysis including the supply chain of market/s affected; identification of potential competitors or entities that provide substitutable products or services with the proposed PPP Project and their corresponding market shares; alternatives available to suppliers and users of the proposed PPP Project; barriers to entry into the markets affected by the proposed PPP Project, and other information on industry structure and prevailing conditions of the market;
- (k) Market sounding feedback, in the case of Solicited Projects;
- (l) Information on the proposed Tariff structure;
- (m) Financial analysis, which includes information on projected financial statements consistent with the Financial Model;
- (n) Economic analysis, which includes information on economic benefits and costs consistent with the Economic Model;
- (o) Social and environmental analysis, including project safeguards with regard to, among others, environmental quality, natural resources sustainability, climate change and hazards, equity in development benefits, GEDSI, disability and accessibility, and health;
- (p) Risk allocation and risk mitigating plan;

- (q) VFM analysis, in the case of Solicited Projects;
- (r) Information supporting the assumptions used in the demand, financial, economic and VFM analysis, and other assertions and representations made in the Feasibility Study;
- (s) PPP contractual arrangement options and assessment of the proposed contractual arrangement;
- (t) Information on job creation or impact from development to O&M of the project, which includes corresponding disaggregated data on sex and disability, and amount of wages/salaries;
- (u) Land acquisition and resettlement action plan, as applicable;
- (v) Heritage impact assessment, if applicable;
- (w) Geotechnical report, if applicable;
- (x) Description of the products or services to be provided and its target users or consumers; and
- (y) Description of the geographic or catchment area where the Private Proponent will operate.

For purposes of item (g) herein, the technical analysis shall include a minimum level of detail of a conceptual design, schematic design or operational plan, as applicable, containing a graphical representation of the elements of the intended physical structures of the project with preliminary specifications, scale, shape, location and orientation.

The ICC for National PPP Projects, or the PPP Governing Board for Local PPP Projects, may issue guidelines further specifying the requirements on the scope and detail of the Feasibility Study in accordance with prudent industry practice.

Section 20. Stakeholder Consultations and Analyses. The development process of PPP Projects to be implemented by the Implementing Agency shall include stakeholder consultations that are conducted in accordance with the provisions indicated in the PPP Center guidelines for completeness check of Unsolicited Proposals, the procedural guidelines to be issued by the ICC for National PPP Projects, and the procedural guidelines to be issued by the PPP Governing Board for Local PPP Projects. The guidelines shall also contain the target stakeholders, which may include, among others, facility users, landowners, informal settlers, businesses or existing operators, and project-affected persons.

The results of the said stakeholder consultations shall be reflected in the Feasibility Study of the Implementing Agency in the case of Solicited PPP Projects.

In the case of Unsolicited Proposals, requirements pertaining to stakeholder consultations and analyses shall be in accordance with the guidelines referred to in the first paragraph.

Section 21. Investment Recovery Schemes. In undertaking PPP Projects, the Private Partner shall be allowed to recover its investments and earn reasonable profit through any of the following schemes or a combination thereof:

- (a) Revenue-based - refers to a scheme where the Private Partner is authorized to charge and collect, in whole or in part, from users, reasonable Tariff subject to appropriate regulation in accordance with Section 13 of the Code and *Title IX* of this IRR. Where applicable, the Private Partner may likewise be repaid in the form of a share in the revenue of the PPP Project;
- (b) Availability-based - refers to a scheme where the Implementing Agency commits to make predetermined payments, which do not take the form of charges paid by the users of the works or of the service, but of regular payments by the Implementing Agency in exchange of delivering an asset or service in accordance with the PPP Contract; and
- (c) Other investment recovery schemes, such as commercial development rights, or the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirements on land ownership, may also be allowed in both Solicited Projects and Unsolicited Proposals to supplement the foregoing

schemes: *Provided*, That such investment recovery scheme involving the grant of a portion or percentage of a reclaimed land shall be subject to fair valuation by a Third-party Appraiser.

Section 22. *Mitigation of Interconnectivity and Interface Risks.* Implementing Agencies of all solicited and unsolicited PPP Projects which will interconnect or interface with a local or national facility or an Infrastructure or Development Project and Service, either operational, under development, or proposed, shall be required to submit a written instrument containing an agreed plan to address all identified interconnection and/or interface between or among relevant facilities. Such instrument shall also contain the commitment of the Implementing Agency and the concerned entity lies to implement the agreed interconnection and/or interface plan.

The Implementing Agency shall submit the agreed interconnection and/or interface plan as part of the documentary requirements it shall submit to the appropriate Approving Body, copy furnished the PPP Center, and in the case of National PPP Projects, the ICC.

Upon execution of the PPP Contract, the agreed interconnection and/or interface plan, or any necessary updates thereto, shall be formalized through a Memorandum of Agreement (MOA) between or among the Implementing Agency, the Private Partner, and other concerned entities. All executed MOAs and updates thereto shall likewise be submitted to the PPP Center, copy furnished the appropriate Approving Body, and in the case of National PPP Projects, the ICC.

Guidelines on the contents, process of submission, and further operationalization of this section may be included in the procedural guidelines to be issued by the ICC for National PPP Projects and the PPP Governing Board for Local PPP Projects.

Implementing Agencies may seek the assistance of applicable statutory counsels in drafting the MOA. For purposes of the Code and this IRR, statutory counsels may either be the Office of the Solicitor General (OSG), the Office of the Government Corporate Counsel (OGCC), the Office of the Legal Counsel in the case of Local PPP Projects, or as may be provided by the Department of Justice (DOJ).

Section 23. *Land Value Capture Strategies.* PPP Project design shall consider adopting land value capture strategies to optimize the financial and economic value of the PPP Project. Mechanisms for such may be proposed by the Implementing Agency in reference to the guidelines which the PPP Governing Board may issue.

TITLE IV. REVIEW AND APPROVAL OF PPP PROJECTS

Chapter 1. Review and Approval of National PPP Projects

Section 24. *Appropriate Approving Body for National PPP Projects.* National PPP Projects shall be approved as follows:

Section 24.1. For National PPP Projects with Project Cost of Fifteen billion pesos (Php15,000,000,000.00) and above, the Approving Body shall be the NEDA Board, upon favorable recommendation by the ICC.

The NEDA Board shall render its decision on the PPP Project within one hundred twenty (120) calendar days upon determination of the completeness of submitted requirements for purposes of approval, pursuant to Section 7 of the Code and Section 29 of this IRR and the procedural guidelines to be issued by the ICC referred to in Section 31 of this IRR.

Section 24.2. For National PPP Projects to be implemented by SUCs with a Project Cost of Fifteen billion pesos (Php15,000,000,000.00) and above but do not require any Government Undertaking from the national government, a green lane process shall be established. For this purpose, the detailed procedural guidelines to be issued by the ICC referred to in Section 31 of this IRR shall contain the following:

- (a) list of documentary requirements;
- (b) guidance on what constitutes Government Undertakings described in this subsection; and
- (c) procedures and mechanisms to facilitate, simplify, and expedite the approval process for

projects under the green lane, such as the creation of a subcommittee to whom the review of projects under the green lane can be delegated.

Section 24.3. For National PPP Projects with Project Cost of below Fifteen billion pesos (Php15,000,000,000.00), the Approving Body shall be as follows, whichever is applicable:

- (a) For Implementing Agencies with a governing board, whether or not it is an attached agency, the respective governing board;
- (b) For attached agencies without a governing board, the head of the department or agency to which the Implementing Agency is attached; or
- (c) For Implementing Agencies without a governing board or a mother agency, the Head of the Implementing Agency.

If the Approving Body is the Head of the Agency to which the Implementing Agency is attached or its governing board, the appropriate Approving Body shall render its decision in writing on the National PPP Project within ninety (90) calendar days from receipt of complete requirements for purposes of review and approval, in accordance with Section 29 of this IRR. Such period may be extended up to one hundred twenty (120) calendar days, subject to the procedural guidelines to be issued by the ICC.

If the Approving Body is the Head of Implementing Agency, the Implementing Agency shall issue its guidelines for approval that outline the process of its review and approval of National PPP Projects with Project Cost of below Fifteen billion pesos (Php15,000,000,000.00). These guidelines shall be consistent with the Code and this IRR, and shall adhere to the procedural guidelines to be issued by the ICC, and the following principles:

- (a) A focal person or a focal unit of the Implementing Agency shall review the project and submit its recommendations to the Head of Implementing Agency with the complete requirements for purposes of review and approval;
- (b) The Head of the Implementing Agency shall render its decision in writing within ninety (90) calendar days upon receipt of the complete requirements for purposes of review and approval. Such period may be extended up to one hundred twenty (120) calendar days, subject to the procedural guidelines to be issued by the ICC; and
- (c) The processing and approval of each PPP Project shall be well documented using the forms and templates prescribed by the ICC.

To ensure proper monitoring, all Implementing Agencies shall submit a copy of their procedural guidelines to the PPP Center within seven (7) calendar days from approval of the Head of Implementing Agency. It shall also submit any changes to the guidelines to the PPP Center within seven (7) calendar days from approval of the Head of Implementing Agency. In case there are inconsistencies between the Code and this IRR, and the guidelines for approval to be issued by the Implementing Agencies, precedence will be given to the Code and this IRR.

For monitoring purposes, the Implementing Agencies of PPP Projects approved under Section 24.3 of this IRR shall notify the NEDA and the PPP Center in writing of the details of the PPP Project, and submit the complete set of project documents in accordance with the procedural guidelines to be issued by the ICC.

The Approving Body may consult with the DOF prior to approval in respect of the feasibility of the Government Undertakings and/or Availability Payments, regardless of source of funds, involved in PPP Projects contemplated under this Section 24.3 of this IRR, subject to the requirements of existing laws, rules, and regulations. The DOF shall issue a non-binding letter in relation to the results of the consultation within twenty (20) calendar days from the request of the Implementing Agency.

Section 24.4. Notwithstanding the above, a proposed National PPP Project with Project Cost of below Fifteen billion pesos (Php15,000,000,000.00) shall be approved by the ICC in any of the following circumstances:

- (a) The proposed National PPP Project physically overlaps with a project approved by a government authority or with a project being developed by another government entity based on the CLIPs.
- (b) The proposed National PPP Project negatively affects the economic benefits, demand, and/or financial viability of a project approved by a government authority, or a project being developed by another government entity based on the CLIPs.
- (c) The proposed National PPP Project requires financial Government Undertakings to be sourced and funded under the General Appropriations Act (GAA). Government Undertaking in the form of ROW and other ROW-related undertakings, including support in ROW acquisition, shall not be considered as a financial Government Undertaking under this sub-item. For avoidance of doubt, the Private Proponent shall pay or reimburse the Implementing Agency the actual cost of the ROW and other ROW-related undertakings.
- (d) The proposed PPP Project involves Availability Payments to be sourced and funded under the GAA.
- (e) The contribution of an Implementing Agency in a proposed JV exceeds fifty percent (50%) of its entire assets based on either the average of its values for the last three (3) years or the latest audited financial statement, whichever is lower, and subject to Section 3(gg) of the Code.

For the determination of whether a National PPP Project falls under any of the items listed as (a) to (e) above, the provisions under Section 25 of this IRR shall apply.

Section 25. Determination if the National PPP Project below Php 15,000,000,000.00 requires ICC Approval

Section 25.1. Physical Overlap with or Negative Effects on Another Project. To determine if the proposed National PPP Project has any physical overlap with or has negative effects on the economic benefits, demand, and/or financial viability of another project approved by a government authority or with a project being developed by another government entity based on the CLIPs or with existing operational facility, the Implementing Agency shall check such National PPP Project against the CLIPs and the List of PPP Projects referred to in *Title III*, Chapter 2 of this IRR as published by the PPP Center. The following factors shall be considered in such determination:

- (a) The proposed PPP Project or a significant part thereof has the same alignment or site;
- (b) The proposed PPP Project or a significant part thereof has the same catchment area; or
- (c) The proposed PPP Project caters to affected markets or groups such that it may negatively affect the economic benefits, demand, and/or financial viability of another project as described under this subsection.

If the Implementing Agency deems that the information in the CLIPs and in the List of PPP Projects are insufficient for its determination, the Implementing Agency shall be responsible for validating the existence of a physical overlap or of negative effects contemplated herein with the relevant government agencies _ A finding of the existence of any physical overlap or of negative effects pursuant to this section will subject the National PPP Project to ICC approval.

The Implementing Agency shall take such steps necessary to confirm that the proposed project is in accordance with the overall mandate of the department, bureau, agency, or office of the government that has regulatory authority over the proposed and existing projects.

Section 25.2. Requiring Government Undertakings or Availability Payments to be funded by GAA. A National PPP Project which requires financial Government Undertakings, such as Subsidy, VGF, and any similar financial instrument, or which includes Availability Payments, shall be subject to ICC approval should such Government Undertakings or Availability Payments be sourced and funded under the GAA.

For avoidance of doubt, if a National PPP Project requires Government Undertakings or Availability

Payments sourced from funds other than the GAA, such project shall not be subject to approval of the ICC.

Section 25.3. JV Contribution of Implementing Agency Exceeds Fifty Percent of Assets. In determining whether the contribution of an Implementing Agency to a proposed JV exceeds fifty percent (50%) of its entire assets, information from its latest audited financial statements and other pertinent documents such as, but not limited to valuation reports by Third-party Appraisers, development plans, financial performance reports, and management reports, shall be considered. Such contribution must be valued according to accepted standard methodologies and practices commensurate to the nature of the assets.

The assets contemplated herein shall refer to the entire assets, whether current or noncurrent, of the Implementing Agency at the time of its submission of the National PPP Project to the Approving Body, and not the assets of the subject PPP Project.

For PPP Projects that do not fall under any of the above, the Implementing Agency shall notify the NEDA and the PPP Center in writing of such information and submit the project details for monitoring purposes.

For PPP Projects which have been determined to not fall under any or more of the scenarios falling under Sections 25.1, 25.2, and 25.3 above and have been reported to NEDA and the PPP Center as such pursuant to Section 7 of the Code, NEDA and the PPP Center may:

- (a) Validate scenarios falling under **Section 25.1** above through the CLIPs, the List of PPP Projects, and the project documents; and
- (b) Validate scenarios falling under **Section 25.2** above with the ICC.

Upon finding that a National PPP Project falling under any of the above scenarios has not been brought before the ICC for its approval, the NEDA or the PPP Center shall notify the concerned Implementing Agency and the ICC of such fact within seven (7) calendar days from its finding. The Implementing Agency, upon receipt of such notice from NEDA or the PPP Center, shall subject the concerned National PPP Project to ICC approval under the procedures laid down in the Code and in this IRR. Failure to comply shall constitute a violation of Section 7 of the Code and shall subject the Implementing Agency to the corresponding penalties provided in Section 32 of the Code.

Prior to making a determination on whether its proposed National PPP Project falls under any or more of the scenarios falling under Sections 25.1, 25.2, and 25.3 above which would subject such project to ICC approval, an Implementing Agency may request for a consultation with the PPP Center on whether its proposed National PPP Project falls under any such scenarios. The PPP Center may provide a non-binding opinion to the Implementing Agency and such non-binding opinion shall not be controlling or take precedence over the Implementing Agency's own determination or of a later determination by NEDA or the PPP Center for the determination of existence of any physical overlap or negative effects.

The determination of the Implementing Agency that its project does not fall in any of the scenarios contemplated above may be subject to further validation pursuant to guidelines the ICC may issue on the matter.

Section 26. Non-delegation of Approving Authority by the Approving Body. In no case shall the Approving Body delegate its authority to render a decision of a project for approval. However, the Approving Body may be allowed to establish units to aid in rendering such decision on the proposed PPP Project. The PPP Center may provide capacity development assistance for Approving Bodies to aid in their review and approval of National PPP Projects.

Section 27. ICC Review and Updating of Project Cost Thresholds. The ICC may, as it deems necessary, and with strict adherence with the principles of prudence and reasonableness, review, evaluate, and update the above threshold amounts. The ICC may issue guidelines or protocols in reviewing and updating the threshold amounts.

Section 28. Criteria for Approval of National PPP Projects. The Approving Body shall be guided by the following criteria in evaluating and approving PPP Projects, among others:

- (a) project context and objectives are clearly specified;
- (b) scope, outputs, and performance indicators of the project are clearly specified;
- (c) proposed project is technically feasible and is optimal, considering, among others, the technical requirements of gender and persons with disability in accordance with existing laws, rules, and regulations;
- (d) proposed project has an environment, climate change, and social safeguards framework including identified risks and mitigating measures;
- (e) Project Cost is sufficient to achieve the technical requirements of the project, including the general performance standards and targets set for the project, and those components needed to meet gender, social, and environmental standards;
- (f) operating costs are sufficient to achieve the operational requirements;
- (g) project is economically viable, and the information used are reasonable and robust to determine viability;
- (h) VFM analysis shows that PPP modality is the more viable procurement option than traditional government procurement;
- (i) project is financially viable for investors at the project level, and the information used are reasonable and robust to determine viability;
- (j) project's cash flows are healthy and sufficient to service debt obligations;
- (k) risk allocation complies with the GPRAM. Any deviation to the proposed risk allocation shall be justified by the Implementing Agency and shall be approved by the appropriate Approving Body;
- (l) Government Undertakings and investment recovery schemes are justified by the Implementing Agency;
- (m) proposed bid parameter is the most advantageous to the government, fosters competition, fairness, and transparency, and ensures the best interest of the public
- (n) Implementing Agency has the capability to deliver its assumed obligations for the project;
- (o) proposed Tariff regime is affordable to users; and
- (p) fiscal consideration are sufficiently provided, including Contingent Liabilities, foregone government revenue streams, and indirect costs associated with the project.

The ICC may prescribe additional criteria for the approval of National PPP Projects: *Provided*, That the same are consistent with the Code and this IRR.

Section 29. Completeness of National PPP Projects submitted to the Approving Body. A National PPP Project shall be deemed complete for purposes of review by the appropriate Approving Body when the Implementing Agency has submitted a complete set of documents, in form and in substance, in accordance with the approval guidelines to be issued by the ICC, which shall include, but are not limited to

- (a) complete Feasibility Study as defined in Section 19 of this IRR;
- (b) traceable Economic and Financial Models in electronic copy;
- (c) proposed PTCs;
- (d) VFM analysis;

- (e) Valuation report, as applicable, in accordance with *Title XII* of this IRR;
- (f) documentation of the stakeholders' consultations conducted, including the participating sector or communities consulted; and
- (g) Other documents, information, or materials that may be required by the ICC in its procedural guidelines, including the forms and templates, needed to commence review of the project.

The Economic and Financial Models shall be in traceable format, where the assumptions/inputs, together with their sources of data and information, shall be shown in a summary sheet, and are appropriately linked to the relevant computation work sheets of the model, and which will sufficiently enable the Approving Body to analyze and decide on a proposed project.

The Implementing Agency shall ensure that all submissions contain up-to-date information that is not older than three (3) years from the date of submission to the appropriate Approving Body.

Determination of completeness, in form and in substance, shall be conducted within seven (7) calendar days from receipt thereof, and pursuant to the procedural guidelines to be issued by the ICC. Should the submission be determined as complete, the same shall be communicated to the Implementing Agency, in writing, within the same seven (7)-calendar day period. The determination of completeness may be extended in extraordinary circumstances pursuant to the guidelines to be issued by the ICC referred to in Section 31 of this IRR.

In all cases, the period within which the appropriate Approving Body shall render its decision on the National PPP Project shall only commence upon its receipt of complete requirements for purposes of review and approval.

In cases where it receives a submission which is determined as not complete, the period for the appropriate Approving Body to render its decision shall not begin to run, and the submission is not complete within the same seven (7) -calendar day period.

In case the National PPP Project is subject of an Unsolicited Proposal, the Implementing Agency shall ensure compliance with *Title V* of this IRR.

Section 30. Minimum PTCs for National PPP Projects. The Implementing Agency shall submit to the Approving Body as part of the proposed PPP Project for approval, the following minimum PTCs:

- (a) Scope of the PPP Project;
- (b) Contractual arrangement;
- (c) Contract duration;
- (d) Rights and obligations of the Implementing Agency and the Private Proponent, and corresponding penalties for failure to fulfill obligations under the PPP Contract;
- (e) Performance standards and targets upon which the KPIs, targets, and measurement for monitoring and reporting results may be derived in preparing the draft PPP Contract;
- (f) Safeguards that will protect the interests of the government and the public;
- (g) Investment recovery scheme, including terms of payment; (h) Revenue share for the government, if any;
- (i) Government Undertakings, including appropriate compensation to the government, as applicable;
- (j) Risk allocation for the PPP Project, including a risk mitigation plan for risks assumed by the Government;
- (k) Contingent Liabilities arising from risks including an intent to avail of the PPP Risk Management Fund, as applicable;

- (l) Bid parameter;
- (m) Ceiling for debt-to-equity ratio;
- (n) In case of Solicited Projects, the proposed public bidding process, i.e., whether single-stage or two-stage; and
- (o) In case of Unsolicited Proposals, the proposed period for comparative challenge process, whether single-stage or two-stage, i.e., not less than ninety (90) calendar days and not more than one (1) year.

The Approving Body shall set forth the required PTCs which shall be the basis for the drafting and approval of tender documents and PPP Contract: *Provided*, That the same are consistent with the Code and this IRR.

Section 31. Guidelines, Forms, Templates for National PPP Project Review and Approval. The ICC, in coordination with the PPP Center, shall prescribe the detailed guidelines on the process and procedures for the review and approval of National PPP Project, including the forms and templates to be used by the Implementing Agency and the appropriate Approving Body.

Such guidelines shall clearly define the timelines for approval, which shall in no case exceed one hundred twenty (120) calendar days from receipt of complete requirements up to the

decision of the appropriate Approving Body rendered in writing, the actions required from entities involved, and the list of complete set of documentary requirements.

The guidelines to be issued shall also cover the following:

- (a) Review and approval of proposed changes for approved PTCs prior to bid submission;
- (b) In case of Unsolicited Proposals, guidelines on cases where the appropriate Approving Body requires PTCs outside of the negotiated PTCs;
- (c) In case of single complying and responsive solicited bids, the determination of RROR;
- (d) Review and approval of proposed variation, expansion, or extension of an existing PPP Project requiring the approval of the appropriate Approving Body; and
- (e) Guidelines on cases where the appropriate Approving Body failed to render its decision on a PPP Project within one hundred twenty (120) calendar days from receipt of complete requirements.

The ICC, in coordination with the PPP Center, may review and update the said guidelines, forms, and templates, as may be necessary.

Section 32. Failure of the Approving Body to render a final decision on the National PPP Project. The appropriate Approving Body shall provide its decision in writing within the timelines provided in Section 24 of this IRR and the procedural guidelines to be issued by the ICC.

If the Approving Body fails to render a final decision within the specified period, the PPP Project shall be deemed approved, and the Implementing Agency may proceed with the procurement of the PPP Project within seven (7) calendar days from receipt of a notification from the PPP Center, without prejudice to the timelines prescribed under *Title VI* of this IRR. Such notification shall be sent to the appropriate Approving Body and the Implementing Agency in writing, stating that the approval period has lapsed and that the project has been deemed approved. The proposed PTCs, as submitted, shall be used to guide the procurement of the project that has been deemed approved.

If the Head of Implementing Agency acting as the Approving Body, fails to render a final decision within the specified period, the PPP Center shall notify the appropriate Approving Body and the Implementing Agency in writing, stating that the period for approval has lapsed and that the project has been deemed approved. The PPP Center shall also require the Implementing Agency to report its catch-up plan for the project that has not been acted upon, within fifteen (15) calendar days from receipt of such notification.

If the Implementing Agency fails to comply with the catch-up plan within the specified period, the PPP Center shall report to the Anti-Red Tape Authority (ARTA), the COA, and the Joint Congressional Oversight Committee said failure to approve the project within the specified period.

The foregoing actions shall be without prejudice to any liability that the erring or negligent officials or employees may incur under the Code, this IRR, and other existing laws.

To ensure the timely processing of National PPP Projects, the NEDA Board and the ICC shall hold its meetings as follows:

- (a) NEDA Board -at least once a month;
- (b) ICC Cabinet Committee- at least once a month;
- (c) ICC Technical Board- at least twice a month.

The above recommended frequency of meetings of the Approving Body may not apply if there is no project set for review or evaluation.

Section 33. *Finality of the Decisions of the Approving Body.* In case the PPP Project has been approved, the Approving Body shall issue a Notice of Approval to the Implementing Agency within ten (10) calendar days from its decision to approve the PPP Project. The Implementing Agency shall then proceed with the procurement of the PPP Project pursuant to *Title VI* of this IRR.

In case the PPP Project has been approved by the appropriate Approving Body but the Implementing Agency intends to decide to procure such project through a different procurement modality other than the PPP Code and this IRR, such shall be accompanied with a justification, and shall be made pursuant to the guidelines to be issued by the ICC.

In case the PPP Project has been disapproved and returned by the appropriate Approving Body for whatever reason, the Implementing Agency may resubmit the project for approval: *Provided*, That such resubmission shall be considered a submission of a new project. Grounds and reasons for disapproval shall be provided in writing by the Approving Body within the prescribed period.

The decision of the appropriate Approving Body in all cases above shall be final and executory. The splitting of any PPP Project to circumvent the thresholds prescribed herein is strictly prohibited.

Chapter 2. Review and Approval of Local PPP Projects

Section 34. *Confirmation by Local Development Councils of Local PPP Projects Implemented by LGUs prior to Approval.* Local PPP Projects to be implemented by LGUs or LUCs shall be submitted to the respective local development councils (LDCs) for confirmation prior to approval of the local Sanggunian in the case of LGUs, or the boards in the case of LUGs. The submission shall include:

- (a) a letter request for such confirmation;
- (b) the PTC forms for the project; and
- (c) other documentary requirements to be issued by the PPP Governing Board in the procedural guidelines it shall issue.

Within thirty (30) calendar days from receipt of complete requirements, the Executive Committee of the LDC shall:

- (i) Review if the project is aligned and consistent with local development plans;
- (ii) Review the proposed project and identify concerns to aid the decision of the Approving Body during approval; and
- (iii) Submit such confirmation and the results of review to the Approving Body.

If the LDC fails to issue such confirmation within this period, the proposal shall be deemed confirmed, without prejudice to sanctions that may be imposed under Section 32 of the Code.

Upon receipt of the notice from the LDC, or after the prescribed period for confirmation has lapsed, whichever comes first, the LGU or LUC shall submit the Local PPP Project for approval by the appropriate Approving Body, pursuant to Section 7 of the Code and the procedural guidelines to be issued by the PPP Governing Board.

To improve ease of doing business and ensure expeditious processing of endorsements, the PPP Governing Board shall prescribe guidelines and requirements to be followed by all LDCs when endorsing Local PPP Projects.

Prior to its confirmation of Local PPP Projects, the LDC may consult with the DOF in respect of the feasibility of the LGU's Government Undertakings and/or Availability Payments, which are not funded by the national government, involved in Local PPP Projects under this Section 34, subject to the requirements of existing laws, rules, and regulations. The DOF shall issue a non-binding letter in relation to the results of the consultation within twenty (20) calendar days from the request of the Implementing Agency.

Section 35. *National Government Endorsement of Local PPP Projects Affecting National or Sectoral Development Plans and National Projects.* Local PPP Projects affecting national or sectoral development plans, as well as national projects, shall first secure the endorsement of the national government through the respective RDCs through the concerned sectoral committee. RDCs shall only review the alignment of the project with the CLIPs and the List of PPP Projects referred to in *Title III, Chapter 2* of this IRR.

Once the RDC endorsement is secured, the Local PPP Project shall also be endorsed by the LOC concerned, and approved by the local Sanggunians concerned in the case of LGUs, or by the Boards in the case of LUCs.

The NEDA shall provide the RDCs with copies of the Consolidated Investment Programs, the relevant national and sectoral development plans, and updates thereof, with a copy furnished to the PPP Center for monitoring purposes.

Within thirty (30) calendar days from the submission of a written request for endorsement and a complete set of requirements as prescribed by the PPP Governing Board, the RDC shall send a written notice to the LGU or LUC endorsing or rejecting the Local PPP Project, and stating its justification for its decision. In case the RDC does not endorse the Local PPP Project, the LGU or LUC may, within seven (7) calendar days, resubmit the Local PPP Project with appropriate modifications to address the grounds for the non-endorsement by the RDC, and the RDC is given a fresh period of thirty (30) calendar days to endorse or reject the resubmitted Local PPP Project.

If the RDC fails to render a final decision on the requested endorsement within the specified period, it shall be deemed approved, without prejudice to sanctions that may be imposed under Section 32 of the Code.

Upon receipt of the notice from the RDC, or after the prescribed period for endorsement has lapsed, whichever comes first, the LGU or the LUC shall submit the Local PPP Project to the LDC for confirmation prior to the approval by the local Sanggunian concerned in the case of LGUs, or by the Boards in the case of LUCs.

To improve ease of doing business and ensure expeditious processing of endorsements, the PPP Governing Board shall prescribe guidelines and requirements to be followed by all RDCs.

Section 36. *Approval of Proposed Government Undertakings or Availability Payments using National Government Funds for Local PPP Projects.* Local PPP Projects that involve Government Undertakings and/or Availability Payments using national government funds shall be submitted to the respective RDC for review and endorsement. Prior to its endorsement, the RDC may consult with the DOF in respect of the feasibility of any Government Undertaking and/or Availability Payments, not funded by the national government, involved in Local PPP Projects, subject to the requirements of existing laws, rules, and regulations. The DOF shall issue a non-binding letter in relation to the results of the consultation within twenty (20) calendar days from the request of the Implementing Agency.

Such Government Undertakings shall include, among others, the following items to be provided by the national

government to a Local PPP Project:

- (a) Guarantees on Demand;
- (b) Guarantees on Private Sector Return;
- (c) Guarantees on Loan Repayment;
- (d) VGF and other forms of Subsidy; and/or
- (e) Monetary payment of Contingent Liability. through the PPP Risk Management Fund of the national government.

Permits, clearances, licenses, or endorsements from national government agencies required for Local PPP Projects under laws, rules, and regulations shall not be considered as Government Undertakings by the national government for Local PPP Projects. The National Tax Allotment for LGUs under Section 284 of RA 7160 or the Local Government Code of 1991 shall also not be considered as Government Undertakings by the national government for Local PPP Projects.

Within thirty (30) calendar days from the submission of a written request for endorsement and a complete set of requirements as prescribed by the PPP Governing Board, the RDC shall send a written notice to the LGU or LUC endorsing or not endorsing the requested Government Undertaking or Availability Payments for the PPP Project, and stating its justification for such.

If the RDC fails to render a final decision on the requested endorsement within thirty (30) calendar days, the requested Government Undertaking or Availability Payments shall be deemed endorsed, without prejudice to sanctions that may be imposed under Section 32 of the Code.

After the receipt of the notice from the RDC, or once the prescribed period for endorsement has lapsed, whichever comes first, the Implementing Agency shall submit the Government Undertaking/s and/or Availability Payment/s using national government funds of the subject PPP Project to the ICC for approval.

To improve ease of doing business and ensure expeditious processing of endorsements, the PPP Governing Board shall prescribe guidelines and requirements to be followed by all RDCs when endorsing Local PPP Projects that involve Government Undertakings and/or Availability Payments using national government funds.

Within sixty (60) calendar days from receipt of a written request for approval and a complete set of requirements as prescribed by the ICC, the ICC shall send a written notice to the LGU or LUC informing of its decision. In the event that the ICC disapproves the requested Government Undertaking and/or Availability Payments, it shall not be construed as a disapproval of the Local PPP Project.

If the ICC fails to act on the request within this period, the proposed Government Undertakings and/or Availability Payment/s using national government funds shall be deemed approved, without prejudice to sanctions that may be imposed under Section 32 of the Code.

Upon receipt of the notice from the ICC, or after the prescribed period for approval has lapsed, whichever comes first, the LGU or LUC shall submit the Local PPP Project to the LDC for confirmation prior to submission to the appropriate Approving Body for approval under Section 7 of the Code and the guidelines to be issued by the PPP Governing Board referred to in Section 42 of this IRR

Section 37. *Appropriate Approving Body for Local PPP Projects.* Local PPP Projects shall be approved by the respective local Sanggunians in the case of LGUs, or by the boards in the case of LUCs, within one hundred twenty (120) calendar days from receipt of complete requirements and subject to the guidelines to be issued by the PPP Governing Board referred to in Section 42 of this IRR. Prior to approval, Local PPP Projects implemented by LGUs shall be confirmed by the respective LDCs.

In case of a Local PPP Project to be implemented by two or more LGUs, such PPP Project shall be approved by the local Sanggunians concerned. The respective RDCs may assist in the coordination of LGUs in the approval of such project.

Section 38. *Non-delegation of Approving Authority by the Approving Body.* In no case shall the Approving Body delegate its authority to render a decision of a project for approval. However, the Approving Body may be allowed to establish units to aid in rendering such decision on the proposed PPP Project. The appropriate Approving Body may also request capacity development assistance from the PPP Center to aid in their review and approval of Local PPP Projects.

Section 39. *Criteria for Approval of Local PPP Projects.* The Approving Body shall be guided by the following criteria in evaluating and approving PPP Projects, among others:

- (a) project context and objectives are clearly specified;
- (b) scope, outputs, and performance indicators of the project are clearly specified;
- (c) proposed project is technically feasible and is optimal, considering, among others, the technical requirements of gender and persons with disability in accordance with existing laws, rules, and regulations;
- (d) proposed project has an environment, climate change, and social safeguards framework including identified risks and mitigating measures;
- (e) Project Cost is sufficient to achieve the technical requirements of the project, including the general performance standards and targets set for the project, and those components needed to meet gender, social, and environmental standards;
- (f) operating costs are sufficient to achieve the operational requirements;
- (g) project is economically viable, and the information used are reasonable and robust to determine viability;
- (h) VFM analysis shows that PPP modality is the more viable procurement option than traditional government procurement;
- (i) project is financially viable for investors at the project level, and the information used are reasonable and robust to determine viability;
- (j) project's cash flows are healthy and sufficient to service debt obligations
- (k) risk allocation complies with the GPRAM. Any deviation to the proposed risk allocation shall be justified by the Implementing Agency and shall be approved by the appropriate Approving Body;
- (l) Government Undertakings and investment recovery schemes are justified by the Implementing Agency;
- (m) proposed bid parameter is the most advantageous to the government, fosters competition, fairness, and transparency, and ensures the best interest of the public;
- (n) Implementing Agency has the capability to deliver its assumed obligations for the project;
- (o) proposed Tariff regime is affordable to users; and
- (p) fiscal considerations are sufficiently provided, including Contingent Liabilities, foregone government revenue streams, and indirect costs associated with the project.

The PPP Governing Board may prescribe additional criteria for the approval of Local PPP Projects: *Provided*, That the same are consistent with the Code and this IRR.

Section 40. *Completeness of Local PPP Projects submitted to the Approving Body.* A Local PPP Project shall be deemed complete for purposes of review by the appropriate Approving Body when the Implementing Agency has submitted a complete set of documents, in form and in substance, in accordance with the approval guidelines to be issued by the PPP Governing Board, which shall include, but are not limited to:

- (a) complete Feasibility Study as defined in Section 19 of this IRR;
- (b) traceable Economic and Financial Models in electronic copy;
- (c) proposed PTCs;
- (d) VFM analysis;
- (e) Valuation report, as applicable, in accordance with *Title XII* of this IRR;
- (f) documentation of the stakeholders' consultations conducted, including the participating sector or communities consulted; and
- (g) Other documents, information, or materials that may be required by the PPP Governing Board in its procedural guidelines, including the forms and templates, needed to commence review of the project.

The Economic and Financial Models shall be in traceable format, where the assumptions/inputs, together with their sources of data and information, shall be shown in a summary sheet, and are appropriately linked to the relevant computation work sheets of the model, and which will sufficiently enable the Approving Body to analyze and decide on a proposed project.

The Implementing Agency shall ensure that all submissions contain up-to-date information that is not older than three (3) years from the date of submission to the appropriate Approving Body.

Determination of completeness, in form and in substance, shall be conducted within seven (7) calendar days from receipt thereof, and pursuant to the procedural guidelines to be issued by the PPP Governing Board. Should the submission be determined as complete, the same shall be communicated to the Implementing Agency, in writing, within the same seven (7) -calendar day period. The determination of completeness may be extended in extraordinary circumstances pursuant to the guidelines to be issued by the PPP Governing Board referred to in Section 31 of this IRR.

In all cases, the period within which the appropriate Approving Body shall render its decision on the Local PPP Project shall only commence upon its receipt of complete requirements for purposes of review and approval.

In cases where it receives a submission which is determined as not complete, the period for the appropriate Approving Body to render its decision shall not begin to run, and the Implementing Agency and the Private Proponent shall be informed in writing that its submission is not complete within the same seven (7) -calendar day period.

In case the Local PPP Project is subject of an Unsolicited Proposal, the Implementing Agency shall ensure compliance with *Title V* of this IRR.

Section 41. *Minimum PTCs for Local PPP Projects.* The Implementing Agency shall submit to the Approving Body as part of the proposed PPP Project for approval, the following minimum PTCs:

- (a) Scope of the PPP Project;
- (b) Contractual arrangement;
- (c) Contract duration;
- (d) Rights and obligations of the Implementing Agency and the Private Proponent, and corresponding penalties for failure to fulfill obligations under the PPP Contract;
- (e) Performance standards and targets upon which the KPIs, targets, and measurement for monitoring and reporting results may be derived in preparing the draft PPP Contract;
- (f) Safeguards that will protect the interests of the government and the public;
- (g) Investment recovery scheme, including terms of payment;

- (h) Revenue share for the government, if any;
- (i) Government Undertakings, including appropriate compensation to the government, as applicable;
- (j) Risk allocation for the PPP Project, including a risk mitigation plan for risks assumed by the Government;
- (k) Contingent Liabilities arising from risks including an intent to avail of the PPP Risk Management Fund, as applicable;
- (l) Bid parameter;
- (m) Ceiling for debt-to-equity ratio;
- (n) In case of Solicited Projects, the proposed public bidding process, i.e., whether singlestage or two-stage; and
- (o) In case of Unsolicited Proposals, the proposed period for comparative challenge process, whether single-stage or two-stage, i.e., not less than ninety (90) calendar days and not more than one (1) year.

The Approving Body shall set forth the required PTCs which shall be the basis for the drafting and approval of tender documents and PPP Contract: *Provided*, That the same are consistent with the Code and this IRR.

Section 42. Guidelines, Forms, and Templates for Local PPP Project Review and Approval. The PPP Governing Board, after consultation with the relevant stakeholders, shall formulate the detailed guidelines, forms, and templates that the appropriate Approving Body shall use in reviewing and approving Local PPP Projects pursuant to Section 7(e) of the Code. Such guidelines shall adhere to the same principles guiding the ICC in developing guidelines, forms, and templates for the processing of National PPP Projects, as indicated in Section 31 of this IRR.

Section 43. Failure of the Approving Body to render a final decision on the Local PPP Project. The appropriate Approving Body shall provide its decision in writing within the timelines provided in Section 37 of this IRR and the guidelines to be issued by the PPP Governing Board.

If the Approving Body fails to render a final decision within the specified period, the PPP Project shall be deemed approved, and the Implementing Agency may proceed with the procurement of the PPP Project within seven (7) calendar days from receipt of a notification from the PPP Center. Such notification shall be sent to the appropriate Approving Body and the Implementing Agency in writing, stating that the approval period has lapsed and that the project has been deemed approved. The proposed PTCs, as submitted, shall be used to guide the procurement of the project that has been deemed approved.

The foregoing actions shall be without prejudice to any liability that the erring or negligent officials or employees may incur under Section 32 of the Code.

Section 44. Finality of the Decision of the Approving Body for the Local PPP Project. In case the PPP Project has been approved, the Approving Body shall issue a Notice of Approval to the Implementing Agency within ten (10) calendar days from its decision to approve the PPP Project. The Implementing Agency shall then proceed with the procurement of the PPP Project pursuant to *Title VI* of this IRR.

In case the PPP Project has been approved by the appropriate Approving Body but the Implementing Agency intends to convert such project to a different procurement modality, such shall be accompanied with a justification, and shall be made pursuant to the guidelines to be issued by the PPP Governing Board.

In case the PPP Project has been disapproved and returned by the appropriate Approving Body for whatever reason, the Implementing Agency may resubmit the project for approval: *Provided*, That such resubmission shall be considered a submission of a new project. Grounds and reasons for disapproval shall be provided in writing by the Approving Body within the prescribed period.

The decision of the appropriate Approving Body in all cases above shall be final and executory.

The splitting of any PPP Project to circumvent the thresholds prescribed herein is strictly prohibited.

CHAPTER 3. CO-GRANTORSHIP ARRANGEMENT AMONG IMPLEMENTING AGENCIES

Section 45. *Approval of National PPP Projects Implemented by More Than One (1) National Implementing Agencies.* National PPP Projects that encompass beyond jurisdictional boundaries, or where bundling of similar projects can benefit from economies of scale and can increase the viability of a proposed PPP Project, may be jointly implemented by Implementing Agencies concerned under a single PPP Contract. In such cases, all the Implementing Agencies concerned shall secure the required approvals of all Approving Bodies concerned pursuant Section 7 of the Code and *Title IV* of this IRR.

In cases where the Implementing Agencies concerned comprise of three (3) or more national Implementing Agencies, the subject project may be approved by the ICC instead of independently by all Approving Bodies concerned, in accordance with the procedural guidelines of the ICC.

Section 46. *Approval of Local PPP Projects Covering Two or More Local Implementing Agencies.* A PPP Project covering two or more local Implementing Agencies may be implemented by the national government, subject to the approval process for National PPP Projects under *Title IV*, Chapter 1; or by the next higher level of LGU or by the LGUs concerned, subject to the approval process for Local PPP Projects under *Title IV*, Chapter 2. If the PPP Project is to be implemented by the next higher level of LGU, such project shall secure the approval of the next higher level of LGU only, and not of all the LGUs concerned.

In these cases, the respective RDCs may assist in the coordination of LGUs in the approval of a Local PPP Project covering two (2) or more LGUs.

To facilitate expedient processing, the Approving Bodies concerned may establish a joint Sanggunian that shall be responsible in approving the subject PPP Project: *Provided*, That the respective Approving Bodies shall be represented in the said joint Sanggunian.

Section 47. *Approval of PPP Projects Implemented by a National and a Local Implementing Agency.* In cases where the Implementing Agencies concerned comprise of a national and a local Implementing Agencies, the subject project may be evaluated and approved following the processes for both National and Local PPP Projects. To facilitate expedient processing, the Approving Bodies concerned may establish a joint committee that shall be responsible in approving the subject PPP Project: *Provided*, That the respective Approving Bodies shall be represented in the said joint committee; *Provided*, further, That in cases where one of the concerned Approving Bodies is the ICC, the establishment of a joint committee shall not apply.

The Implementing Agencies concerned may opt to subject the PPP Project for approval of the ICC instead of all Approving Bodies concerned, subject to the procedural guidelines to be issued by the ICC referred to in Section 31 of this IRR, without prejudice to the authority of the local Sanggunian in the case of LGUs, or boards in the case of LUCs, to approve the PPP Project.

TITLE V. UNSOLICITED PROPOSALS

Chapter 1. General Rules on Unsolicited Proposals

Section 48. *Unsolicited Proposals in the Lists of PPP Projects.* Unsolicited Proposals may be allowed for projects included in the List of PPP Projects referred to in *Title III*, Chapter 2 of this IRR, excluding those that have already been approved as PPP Projects by the appropriate Approving Body.

Section 49. *Reimbursement of development costs of the Government.* In case the Implementing Agency has already incurred any development costs for projects subject of an Unsolicited Proposal, the winning Private Proponent shall reimburse the Implementing Agency of such documented development costs notwithstanding whether it is funded through government appropriations, grants, and/or other sources.

For this purpose, development costs shall include the conduct of Feasibility Study, business case, and surveys, among others, for the last three (3) years from the submission of the Unsolicited Proposal to the Implementing Agency.

Such reimbursement shall be in an amount not exceeding six percent (6%) of the Project Cost, excluding the cost of ROW acquisition, and shall be based on the development costs indicated by the Implementing Agency in the published List of PPP Projects.

The development cost to be reimbursed shall be documented through the following:

- (a) Copies of invoices and proofs of payment for services provided to the project, as certified by the COA;
- (b) Contract of Consulting Services or similar contractual agreement/s covering the services paid;
- (c) Copies of outputs (e.g., Feasibility Study, business case, survey) for the services paid;
- (d) Copies of official receipt for other expenses incurred for the project, as certified by COA; or
- (e) Certificate of taxes withheld and proof of tax remittances to the Bureau of Internal Revenue (BIR), as certified by COA.

The reimbursement amount shall be included in the bidding documents for the comparative challenge, to be reimbursed by the winning bidder as a condition for award. In cases where the Unsolicited Proposal did not proceed due to failure of negotiation pursuant to Section 58.2 of this IRR, the Private Proponent who submitted the Unsolicited Proposal shall be the one to reimburse the development costs.

The detailed scope and procedures for such reimbursement shall be determined by the Implementing Agency. The PPP Governing Board may also issue supplemental guidelines on the operationalization of this section.

Section 50. Prohibited Government Undertakings for Unsolicited Proposals. An Unsolicited Proposal shall not contain any of the following Government Undertakings:

- (a) VGF and other forms of Subsidy;
- (b) Payment of ROW-related costs;
- (c) Performance Undertaking;
- (d) Additional exemptions from any tax specifically provided for the PPP Project through a legal issuance, other than those provided for by applicable laws;
- (e) Guarantee on Demand;
- (f) Guarantee on Loan Repayment;
- (g) Guarantee on Private Sector Return;
- (h) Government Equity;
- (i) Credit Enhancements; and
- (j) Contribution of assets, properties, and/or rights.

Payment of ROW-related costs may be allowed if the government receives appropriate compensation, which shall in no case be lower than the value of the costs of ROW to be acquired; *Provided*, That the Private Partner must submit a ROW acquisition and resettlement plan, which shows the extent of ROW that has been acquired and ROW necessary to be acquired for the PPP Project; *Provided*, further, That the Private Partner shall advance the payment for such ROW acquisition and related costs.

For purposes of this section, appropriate compensation may be a portion of Implementing Agency or government share in the Tariff collection, or regular payments to the Implementing Agency or to the government.

Contributions of the usufruct of assets, properties, and/or rights may be allowed if the government receives appropriate compensation, which shall in no case be lower than the value of the usufruct of assets, properties and/or rights contributed, subject to fair valuation by a Third-party Appraiser. In determining such compensation, taxes, handback value of government assets, and cash flows incidental to the PPP Project shall not form part of the compensation for the usufruct of assets, properties, and rights contributed.

In the case of JV arrangements, Government Equity and contribution of assets, properties, and/or rights may be allowed.

Section 51. *Claiming Confidentiality in Unsolicited Proposals.* For confidentiality claims on Unsolicited Proposal documents that are used for other purposes, the claiming entity shall submit to the Implementing Agency, copy furnished the PPP Center, a table identifying the Confidential Business Information and giving reasons why the information should be treated as confidential.

Blanket claims for confidentiality shall not be accepted. Failure to comply with the foregoing shall result in the waiver of the entity's claim for confidentiality.

Should the Implementing Agency find the claim for confidentiality unjustified, it shall, prior to any disclosure of such information, notify the entity which claimed confidentiality that the information shall be treated as non-confidential. The claiming entity may move for reconsideration of the finding of the Implementing Agency: *Provided*, That the Implementing Agency's decision on the motion for reconsideration shall be final.

A subsequent decision of any appropriate authority that the finding of the Implementing Agency is erroneous shall not make the Implementing Agency liable under Section 32 of the Code.

Chapter 2. Processing of an Unsolicited Proposal

Section 52. *Submission of an Unsolicited Proposal to the PPP Center for Determination of Completeness and Appropriate Approving Body.* All Unsolicited Proposals shall first be submitted by the Private Proponent to the PPP Center for completeness check and determination of the appropriate Approving Body.

The PPP Center shall issue an acknowledgement on the day of the receipt of the electronic copy of the Unsolicited Proposal, copy furnished the identified Implementing Agency. Within ten (10) calendar days from the issuance of the official acknowledgement, the PPP Center shall then determine the completeness of the Unsolicited Proposal and the appropriate Approving Body. The PPP Center may collect fees on Private Proponents submitting Unsolicited Proposals, pursuant to the guidelines that the PPP Governing Board may issue, and other applicable laws, rules, and regulations.

In the case of National PPP Projects, this step will include determining whether the proposed Unsolicited Proposal will fall under the five (5) circumstances requiring ICC approval as defined in **Section 24.4 of this IRR**. In the case of Local PPP Projects, this step will include determining whether an endorsement from the ROC, pursuant to Section 35 of this IRR, and/or an approval from the ICC of a proposed Government Undertaking or Availability Payments using national government funds is required, pursuant to Section 36 of this IRR.

Once the submission is acknowledged by the PPP Center, no supplementary submissions or documents from the Private Proponent shall be considered in the completeness check.

Unsolicited Proposals received outside of business hours shall be considered submitted the following working day.

No Unsolicited Proposal submitted by a certain Private Proponent subsequently determined by the PPP Center to be incomplete three (3) times on separate occasions may be entertained for determination of completeness and appropriate Approving Body. The PPP Governing Board may issue further guidelines to operationalize this provision.

If the PPP Center failed to render a final decision within the said period, the Unsolicited Proposal shall be deemed incomplete.

The completeness check to be conducted by the PPP Center is for purposes of the detailed evaluation of the

appropriate Implementing Agency, and shall not be counted as part of the approval period by the appropriate Approving Body.

No Unsolicited Proposal is deemed submitted unless processed by the PPP Center for completeness check and determination of appropriate Approving Body.

Prior to submitting an Unsolicited Proposal to the PPP Center, a Private Proponent may request for a meeting with the PPP Center for purposes of clarifying the requirements in the determination of completeness of an Unsolicited Proposal.

Section 53. Assessing the Completeness of an Unsolicited Proposal. An Unsolicited Proposal shall be considered complete if it includes the following documents, among others:

- (a) Complete Feasibility Study;
- (b) Traceable Economic and Financial Models;
- (c) Minimum PTCs that will provide sufficient information for the Implementing Agency to decide on the Unsolicited Proposal;
- (d) Certification that the Unsolicited Proposal does not possess prohibited Government Undertakings;
- (e) Valuation report, as applicable, in accordance with *Title XII* of this IRR;
- (f) Proposed Implementing Agency;
- (g) Information on the qualifications of the Private Proponent;
- (h) Draft PPP Contract; and
- (i) Project site plan.

An Unsolicited Proposal involving ROW acquisition, whether owned or not owned by the Original Proponent, may be considered: *Provided*, That the submission includes a ROW and resettlement plan; *Provided*, further, That in no case shall the Implementing Agency be obliged to make an advance payment for such ROW acquisition and related costs.

The PPP Center shall issue detailed guidelines on the procedures for submitting Unsolicited Proposals, including a list of requirements to determine completeness of the submitted Unsolicited Proposal, the descriptions for each requirement, and the use of a digital platform to facilitate efficient processing.

The Private Proponent shall ensure that the information in its submissions are not older than three (3) years from the date of submission to the PPP Center, except for the valuation report pursuant to *Title XII* of this IRR.

If the Unsolicited Proposal is determined to be complete by the PPP Center, it shall endorse the proposal to the appropriate Implementing Agency in writing, and shall include the confirmation of its completeness and the determined appropriate Approving Body for such proposal. A copy of the notice shall also be sent by the PPP Center to the Private Proponent. The endorsement shall include the PPP Center's confirmation that the Unsolicited Proposal does not contain any Government Undertaking based on the certification and valuation report submitted by the Private Proponent in Sections 53(d) and 53(e) of this IRR.

If the Unsolicited Proposal is determined to be incomplete by the PPP Center, it shall send a written notice to the Private Proponent listing down the lacking information or requirement, and returning all the documents submitted by the Private Proponent. The Private Proponent whose submission is deemed incomplete shall not be precluded from resubmitting the Unsolicited Proposal, without prejudice to the rules provided under Section 52 of this IRR. The resubmission shall be considered as a new submission and shall therefore restart the period for completeness check.

The decision of the PPP Center to return the Unsolicited Proposal shall be final and nonappealable.

Section 54. *Processing of an Unsolicited Proposal by the Implementing Agency.* Upon receipt of the complete Unsolicited Proposal endorsed by the PPP Center, the following process applies:

(a) If the Implementing Agency is not developing a Solicited Project with similar scope and/or objective as the Unsolicited Proposal, the Implementing Agency shall:

- (i) Continue processing the Unsolicited Proposal pursuant to Section 55 of this IRR; or
- (ii) Reject the Unsolicited Proposal if such proposal is deemed not aligned with the development plans of the Implementing Agency.

(b) If the Implementing Agency is already developing a solicited proposal with similar scope and/or objective as the Unsolicited Proposal, the Implementing Agency shall:

- (i) Continue processing the Unsolicited Proposal and cease processing the Solicited Project with similar scope and/or objective already being developed, subject to rules on reimbursement provided in Section 49 of this IRR; or
- (ii) Continue processing the Solicited Project and reject the Unsolicited Proposal.

In all the cases contemplated above, the Implementing Agency shall inform the Private Proponent in writing of its decision, within ten (10) calendar days from receipt of the Unsolicited Proposal from the PPP Center. In case the Implementing Agency decides to reject the Unsolicited Proposal, the written decision of the Implementing Agency shall include the corresponding justification for such rejection. A copy of the decision shall also be sent to the PPP Center, for monitoring purposes.

Section 55. *Detailed Evaluation of an Unsolicited Proposal by the Implementing Agency.* Within ninety (90) calendar days from the issuance of the written decision of the Implementing Agency to continue with the processing, the Implementing Agency shall conduct a detailed evaluation of the Unsolicited Proposal. In conducting the detailed evaluation, the Implementing Agency shall, among others:

- (a) Validate the absence of prohibited Government Undertakings under Chapter 2 of this title and Availability Payments to be sourced and funded under national government funds through general appropriations;
- (b) Validate the absence or presence of physical overlaps with a project/s or with a project/s being developed by the Implementing Agency or any government authority, based on the List of PPP Projects and the CLIPs;
- (c) Assess the appropriateness of the contractual arrangement and reasonableness of the proposed risk allocation considering the GPRAM; (d) Review the proposed PTCs for the PPP Project;
- (e) Evaluate the robustness of the valuation by Third-party Appraiser/s for the assets, properties, and/or rights proposed to be contributed by the government, if any, to the PPP Project;
- (f) Assess the appropriateness of the compensation to the government for Government Undertakings, if any, relative to the valuation by Third-party Appraiser/s;
- (g) Conduct detailed review of the technical, financial, and economic viability, the corresponding Economic and Financial Models, and the Project Cost of the PPP Project, pursuant to the criteria set under Sections 28 and 39 of this IRR, including verification and vetting of the assumptions and estimates used;
- (h) Conduct a preliminary VFM analysis for the Unsolicited Proposal; (i) Assess the qualifications of the Private Proponent;
- (j) Consider market sounding feedback; and
- (k) Assess the entirety of the proposed project pursuant to the guidelines to be issued by the ICC.

The Implementing Agency may request the assistance of the PPP Center in conducting a detailed evaluation of

the subject Unsolicited Proposal.

Section 56. *Treatment of More Than One Unsolicited Proposal for the Same or Similar Project.* Similar proposals may be entertained within ten (10) calendar days from the receipt of the first Unsolicited Proposal by the PPP Center, in accordance with Section 52 of this IRR.

Any same or similar proposal that has been received by the PPP Center within the 10-calendar day period shall be subject to completeness check pursuant to Section 52 of this IRR.

In such cases, the Implementing Agency shall conduct a detailed evaluation on all endorsed complete Unsolicited Proposals pursuant to Section 55 of this IRR, and shall determine the most advantageous proposal for the government and the public among the submitted proposals, considering, among others, the *Declaration of Policy* under Section 2 of the Code and this IRR, and the following factors:

- (a) Economic viability of the project;
- (b) Financial viability of the project;
- (c) Proposed project scope and terms;
- (d) Investment recovery scheme;
- (e) Risks proposed to be assumed by the government; and
- (f) Qualifications of the Private Proponent, including its shareholdings of the consortia, if applicable.

The detailed evaluation of all similar proposals shall be conducted until the 90th day of the last complete proposal endorsed by the PPP Center.

If the PPP Center receives similar proposal/s beyond the 10-calendar day period, said submissions shall no longer be assessed for completeness and shall be returned to the Private Proponent/s. Such Private Proponent/s may instead participate in the comparative challenge process, pursuant to Section 10(e) of the PPP Code.

Section 57. *Acceptance or Rejection of an Unsolicited Proposal by the Implementing Agency.* After conducting the detailed evaluation, the Implementing Agency shall either:

- (a) Accept the proposal and proceed to negotiation pursuant to Section 58 of this IRR;
- (b) In case multiple Unsolicited Proposals for the same or similar project, accept the most advantageous proposal, proceed to negotiation under Section 58 of this IRR, and reject all other proposals;
- (c) Reject the Unsolicited Proposal or all similar proposals; or
- (d) Reject the Unsolicited Proposal or all similar proposals and bid out the project as a Solicited Project.

The decision of the Implementing Agency shall be final and non-appealable.

In all the cases contemplated above, the Implementing Agency shall inform the Private Proponent of its decision in writing within three (3) calendar days from the end of the detailed evaluation period, copy furnished the PPP Center.

If the Implementing Agency accepts the Unsolicited Proposal, the notice to be sent to the Private Proponent shall also include the mechanics of the negotiation including the commencement date and the Implementing Agency's representative/s to the negotiation committee.

If the Implementing Agency rejects the Unsolicited Proposal, all documents submitted shall also be returned to the Private Proponent.

Private Proponents whose Unsolicited Proposals were rejected under item (b) shall have the opportunity to submit a comparative proposal during the comparative challenge period.

If the Implementing Agency fails to render a decision on the Unsolicited Proposal within ninety (90) calendar days from the end of the evaluation period, the proposal shall be deemed approved to proceed to the negotiation process, without prejudice to sanctions that may be imposed under Section 32 of the Code. The Implementing Agency and the Private Proponent shall then commence negotiation under Section 58 of this IRR.

If the Implementing Agency receives multiple similar proposals and fails to act on them, the first submitted proposal that is deemed complete shall be considered approved to proceed to the negotiation process. All other proposals shall have an opportunity to submit a comparative proposal during the comparative challenge period.

Section 58. Negotiation. The Implementing Agency and the Private Proponent shall negotiate in good faith and shall complete and conclude the negotiations within a period of eighty (80) calendar days, but not less than thirty (30) calendar days, based on the complexity of the project, from the commencement date of negotiation, as stipulated in the formal advice to the Private Proponent.

Such negotiation period may be subject to extension for a period agreed upon by the Implementing Agency and the Private Proponent: *Provided*, That the total negotiation period shall not exceed one hundred fifty (150) calendar days.

The Implementing Agency shall designate, through a special order, permanent representatives to the Negotiation Committee for the Unsolicited Proposal. These designated representatives must have the authority to negotiate and make decisions on behalf of the Implementing Agency. Any changes to the members of the negotiation committee shall also be issued through a special order and subject to guidelines to be issued by the PPP Governing Board.

The designated representatives shall, as far as practicable, consist of the following:

- (a) A team lead officially designated by the Head of the Implementing Agency;
- (b) A legal officer;
- (c) An officer knowledgeable in finance; and
- (d) An officer knowledgeable in the technical aspects and/or management and operations of the project.

In case of co-grantors, each Implementing Agency shall have adequate representation in the Negotiation Committee.

The Private Proponent shall also designate permanent representatives to the Negotiation Committee. The Private Proponent shall, within seven (7) calendar days upon receipt of the Notice to Commence Negotiations, notify in writing the Implementing Agency of its duly authorized representatives, copy furnished the PPP Center.

The Implementing Agency may also involve the PPP Center, the DOF, and government lawyers specializing in PPPs from the OSG, the OGCC, or the prescribed statutory counsel of the Implementing Agency, as the case may be, to assist in the negotiation process: *Provided*, That the involvement of the OSG, OGCC, PPP Center, and DOF shall not prevent it to review and provide comments to the final PPP Contract under Section 80 of the IRR; *Provided*, further, That the absence of the aforementioned agencies shall not delay or nullify the proceedings of negotiation.

Section 58.1. Successful Negotiation. If negotiation is successful, the Implementing Agency shall grant an OPS to the Private Proponent, which shall be valid for a period not exceeding one (1) year from conferment.

The Implementing Agency and the Private Proponent shall submit the complete set of requirements for approval, including the negotiated PTCs, to the appropriate Approving Body, within thirty (30) calendar days from the end of negotiation.

If the Approving Body for a PPP Project is the Head of Implementing Agency, it shall confirm that all requirements have been met and approve the negotiated PTCs. The Head of the Implementing Agency shall provide the PPP Center with the complete set of requirements for monitoring purposes.

Section 58.2. Failure of Negotiation. In case of failure of negotiation, the Implementing Agency shall reject the proposal in writing within seven (7) calendar days from the lapse of the negotiation period or the declaration of the failure of negotiations. Thereafter, the Implementing Agency may accept a new Unsolicited Proposal, if there be any, or bid out the project as a Solicited Project.

If the Implementing Agency fails to act during the negotiation period, such shall be deemed a failure of negotiation.

The Implementing Agency shall inform the PPP Center of such failure of negotiation, for monitoring purposes.

Section 59. Negotiating Government Share in the Upside of a PPP Project. Depending on the nature of the PPP Project, the Implementing Agency may negotiate the inclusion of the following as part of the project's PTCs during the negotiation process under Section 58 of this IRR:

- (a) Setting a pre-determined rate of return based on prevailing market conditions, risks to be assumed by the Private Partner, and duration of the PPP Project;
- (b) Sharing by the Private Partner with the government, of revenues, net revenues, earnings before interest and taxes, net income, or the like if there is an upside;
- (c) Implementing a graduated share in cases where government already has a share in the project revenues, net revenues, earnings before interests and taxes, net income, or the like even without upside;
- (d) Setting a period for monitoring the returns;
- (e) Setting a period for remitting the share of the government in the upside;
- (f) Reduction in the Tariff on the users, if the pre-determined rate is exceeded.

Reasons for non-inclusion of any of the above items in the PTCs shall be disclosed by the Implementing Agency to the Approving Body.

The Approving Body may also require the above as part of the PTCs which it shall approve during the approval stage under *Title IV* of this IRR.

Section 60. Original Proponent Status. All OPS shall automatically expire or become invalid after one (1) year from conferment. The Implementing Agency shall inform the Private Proponent in writing about the expiration of the OPS. The letter is not a prerequisite before the OPS shall be deemed invalid or expired.

The OPS granted to a Private Proponent may also be revoked by the Implementing Agency which granted it based on any of the following grounds:

- (a) It is found that the facts disclosed are incomplete, incorrect, misleading, fraudulent, untrue, inaccurate, or different from what was presented;
- (b) There is a non-compliance or violation of the Code and this IRR; or
- (c) There is a change in the composition of the Original Proponent that will affect its legal, technical, and/or financial capability to successfully carry out the PPP Project, or there is a change in control that will affect its majority ownership and/or beneficial ownership. For avoidance of doubt, majority ownership or control is presumed when the ownership and/or control is more than fifty percent (50%) of the Original Proponent's outstanding shares: *Provided*, That in the case of JVs, majority ownership or control is presumed when such is more than half of its share in the JV.

In such cases, the Implementing Agency shall inform the Private Proponent of the revocation of its OPS citing the grounds relied upon for its revocation.

Without prejudice to the Original Proponent's right-to-match during the comparative challenge process, the expiration of the OPS shall no longer have an effect or consequence once the Invitation for Comparative

Proposals has been issued pursuant to Section 64 of this IRR.

TITLE VI. PROCUREMENT OF PPP PROJECTS

Chapter 1. Procurement Rules Common to Solicited Projects and Unsolicited Proposals

Section 61. PPP Pre-Qualification/Qualification, Bids and Awards Committee (PBAC) of Implementing Agencies. The Head of the Implementing Agency undertaking PPP Projects shall create a PBAC through the issuance of a department or special order in the case of National PPP Projects, or an executive order in the case of Local PPP Projects, which shall be responsible for all aspects of the pre-bidding and bidding processes, including, among others:

- (a) preparation and issuance of the tender documents;
- (b) publication of the Invitation to Qualify/Pre-qualify and Bid I for Comparative Proposals;
- (c) assessment of qualification/pre-qualification of prospective bidders/challengers;
- (d) conduct of pre-bid conferences and issuance of bid bulletins and supplemental notices;
- (e) interpretation of the rules regarding the bidding;
- (f) conduct of bidding;
- (g) evaluation of bids;
- (h) resolution of protests in accordance with Sections 82 and 83 of this IRR; and
- (i) recommendation for the acceptance of the bid and/or for the award of the PPP Contract.

Section 61.1. Composition of the PBAC of National Implementing Agencies. The Head of the Implementing Agency shall determine the appropriate composition of the PBAC of the National Implementing Agency: *Provided*, That it shall, at the minimum, include the following voting members:

- (a) Chairperson -At least a third ranking official of the Implementing Agency;
- (b) Secretary- A legal officer of the Implementing Agency;
- (c) An officer of the Implementing Agency knowledgeable in finance;
- (d) An officer of the Implementing Agency knowledgeable in procurement; and
- (e) An officer of the Implementing Agency knowledgeable in the management/operation and in the technical aspects or requirements of the PPP Project.

Except for the Chairperson, who shall in any case be a holder of a plantilla position, the Implementing Agency may engage external consultants/entities for the abovementioned minimum voting members: *Provided*, That such external consultants/entities shall be under the supervision of the Chairperson, and that such engagement shall be duly documented and shall be in accordance with the required expertise of the minimum voting members as set forth in this section. The Implementing Agency may also include other members to the PBAC through an issuance of a department or special order.

For purposes of this section, the term "plantilla" shall refer to employees' positions included in the Personal Services Itemization approved by the DBM.

A quorum of the PBAC shall be composed of a simple majority of all voting members. The Chairperson may vote and shall be counted as part of the simple majority.

The PBAC may organize a technical working group (TWG) per project to assist in the pre bidding and bidding process. The Implementing Agency may also constitute more than one PBAC, if the Head of

Implementing Agency deems it necessary.

Section 61.2. Non-voting Members and Observers of the PBAC of National Implementing Agencies. The PBAC shall invite the following in its proceedings:

(a) Non-voting members:

- (i) A representative from the Implementing Agency's statutory counsel (OSG, OGCC, or as designated by the DOJ);
- (ii) A representative from the Philippine Competition Commission (PCC);
- (iii) A representative from the PPP Center, if PPP Center is not the procuring entity;
- (iv) A representative from the Regulatory Body concerned duly authorized by its Head, who is knowledgeable with the PPP Project and is to be invited by the Implementing Agency on a project-to-project basis; and
- (v) A representative from either the facility users, if applicable, or a duly recognized accounting association and/or consumer group.

(b) Observers:

- (i) A representative from COA; and
- (ii) A representative from a SEC-registered association related to the PPP Project.

Section 61.3. Composition of the PBAC of LGUs and LUCs. The Head of the Implementing Agency shall determine the appropriate composition of the PBAC of the Local Implementing Agency: *Provided*, That it shall, at the minimum, include the following voting members:

- (a) Chairperson- the Administrator or at least a third ranking permanent official of the local Implementing Agency;
- (b) Treasurer or Accountant of the Implementing Agency;
- (c) Planning and Development Coordinator or Engineer of the Implementing Agency; (d) Legal officer of the LGU, as applicable, or of the LUC; and
- (e) A representative from and selected by the local Sanggunian or by the LUC Board designated through a resolution.

In case the LGU does not have a legal officer, the LGU shall seek legal advice from either an external legal advisor or the legal officer of the next higher level of LGU, as applicable, to assist the PBAC.

Except for the Chairperson, who shall, in case of a third ranking permanent official, be a holder of a plantilla position, the Implementing Agency may engage external consultants/entities for the abovementioned minimum voting members: *Provided*, That such external consultants/entities shall be under the supervision of the Chairperson, and that such engagement shall be duly documented and shall be in accordance with the required expertise of the minimum voting members as set forth in this section. The Implementing Agency may include other members to the PBAC through an executive order.

For purposes of this section, the term "plantilla" shall refer to employees' positions included in the Personal Services Itemization approved by the DBM.

A quorum of the PBAC shall be composed of a simple majority of all voting members. The Chairperson may vote and shall be counted as part of the simple majority.

The PBAC may organize a TWG per project to assist in the pre-bidding and bidding process. The Implementing Agency may also constitute more than one PBAC, if the Head of Implementing Agency

deems it necessary.

Section 61.4. Non-voting Members and Observers of the PBAC of Local Implementing Agencies. The PBAC shall invite the following in its proceedings:

(a) Non-voting members:

- (i) Local Economic Development and Investment Promotion (LEDIP) officer which shall serve as the Secretariat of the PBAC;
- (ii) A representative from the PPP Center, if PPP Center is not the procuring entity;
- (iii) Two (2) representatives from and chosen by the accredited CSOs, POs, and NGOs who are members of the local development council; and
- (iv) A representative from the Regulatory Body concerned duly authorized by its Head, who is knowledgeable with the PPP Project and who is to be invited by the LGU or Board on a project-to-project basis.

(b) Observers:

- (i) A representative from COA;
- (ii) A representative from the Department of the Interior and Local Government (DILG) Regional Office or Field Unit;
- (iii) A representative from the NEDA Regional Office, if applicable; and
- (iv) A representative from a SEC-registered association related to the PPP Project.

Section 62. Rules for the Non-Voting Members and Observers. Non-voting members and observers shall be notified at least seven (7) calendar days before the following stages: pre bid conference, opening of bids, evaluation of bids, contract award, and special meetings of the PBAC. The absence of observers and non-voting members shall not nullify the PBAC proceedings: *Provided*, That they have been duly invited in writing. For purposes of this section, "in writing" shall include electronic mail.

In case the non-voting members cannot attend the PBAC proceedings, they may be allowed to submit their written advice or opinions to the PBAC within a period provided for by the PBAC.

Non-voting members and observers shall be provided with the following documents free of charge:

- (a) minutes of BAC meetings;
- (b) abstract of bids;
- (c) post-qualification summary report; and
- (d) opened proposals.

In all instances, non-voting members and observers other than the statutory counsel of the Implementing Agency shall be required to enter into a confidentiality agreement with the Implementing Agency. The PPP Governing Board may provide a template of the confidentiality agreement, which shall cover confidentiality on both the information and the deliberations during the proceedings.

Non-voting members can participate in the discussions and deliberations of the PBAC. They may be consulted or be allowed to give advice or opinions to the voting members of the PBAC.

Observers shall not influence or attempt to influence the votes/actions of the voting members of the PBAC. Observers shall not be placed in a conflicted situation and, if placed in such a situation, shall immediately inhibit and notify the Implementing Agency in writing. Observers may however still prepare a report indicating

their observations, submit the same to the PBAC, copy furnishing the Head of the Implementing Agency, and furnish a copy to the Office of the Ombudsman, if deemed necessary. The PBAC shall respond to and document the action/sit has taken regarding the observations submitted to it.

Section 63. PBAC Bidding Rules. With the objective of ensuring competition, the PBAC shall have the authority to decide on the best mechanism in assessing the qualification/pre qualification of prospective bidders/challengers and in evaluating proposals, such as, but not limited to, a shortlisting mechanism in the case of evaluating qualification/pre-qualification documents, a scoring system in the evaluation of technical proposals, and the like.

As required under Section 9 of the Code, the Implementing Agency shall recommend whether to conduct the procurement in a single-stage or two-stage bidding process, subject to the approval of the appropriate Approving Body as part of the PTCs.

The bidding or comparative challenge may be conducted manually or electronically (e.g. via a VDR).

Section 64. Invitation to Qualify/Pre-Qualify and Bid and Invitation for Comparative Proposals. After securing the approval of the appropriate Approving Body for the PPP Project, the Implementing Agency shall proceed with the publication of the Invitation to Qualify/Pre qualify and Bid, in the case of Solicited Projects, and Invitation for Comparative Proposals in the case of Unsolicited Proposals, on the websites of the Implementing Agency and the PPP Center. In case the Implementing Agency does not have a website, it may publish such invitation on its official digital platform.

The Implementing Agency may opt to publish the invitation in a newspaper of general circulation, either print or online, or a local newspaper of general circulation in the case of Local PPP Projects, or an appropriate publication of international circulation.

The invitation shall, at the minimum, include the following:

- (a) date and place where the tender documents can be obtained;
- (b) objective and Scope of the PPP Project;
- (c) contract duration;
- (d) period for bidding/comparative challenge; and
- (e) participation fees and manner of payment, pursuant to Section 69 of this IRR; *Provided*, That the public shall be given access to published tender documents prior to the payment of participation fees; *Provided*, further, That the PBAC shall have the discretion on whether to include the draft PPP Contract in the tender documents to be published; *Provided*, finally, That prospective bidders/challengers, prior to submission of their qualification/pre-qualification documents and/or bids, shall be required to pay the corresponding participation fees; and
- (f) deadline for submission of qualification/pre-qualification documents, as applicable.

Section 65. Preparation of Tender Documents. Upon issuance of the Invitation to Qualify/Pre-Qualify and Bid or Invitation for Comparative Proposals, the Implementing Agency shall issue tender documents, which shall include the following:

- (a) Instructions to Bidders/Challengers;
- (b) Draft PPP Contract, as approved in accordance with Section 80 of this IRR, reflecting the PTCs approved by the appropriate Approving Body;
- (c) "Bid Form" reflecting the required information to properly evaluate the bid proposal;
- (d) Forms of bid and performance securities;
- (e) Requirements and timelines/milestones of agencies concerned in granting of Administrative or Local

Franchise, if applicable; and

(f) Other documents as may be deemed necessary by the PBAC.

The PPP Governing Board may issue templates for such tender documents.

Section 66. *Issuance of Tender Documents.* The Implementing Agency shall make tender documents available to prospective bidders/challengers by posting either manually or electronically. The bidders/challengers shall be provided ample time to examine the tender documents and to prepare their respective proposals prior to the bid submission date which shall be at least thirty (30) calendar days from the last bid bulletin or supplemental notices posted by the PBAC. The PBAC shall not proceed with the bid submission date unless the PPP Contract is approved by the Head of the Implementing Agency and cleared in accordance with Section 80 of this IRR.

Section 67. *Instruction to Bidders/Challengers.* The Instruction to Bidders/Challengers, which establish the rules of the bidding, shall be clear, comprehensive, and fair to all bidders/challengers, and shall, as far as necessary and practicable, include the following information:

- (a) General description and objectives of the PPP Project, including a statement that the PPP Project shall be implemented under the Code and this IRR;
- (b) Contractual arrangement under which the PPP Project shall be undertaken;
- (c) Bid parameters and documents comprising the bid;
- (d) Bid submission procedures and requirements, which shall include information on the manner of bid submission, the number of copies of the bids to be submitted, where the bids are to be submitted, the deadline for the submission of bids, permissible mode of transmission of bid proposals, etc.;
- (e) Financial Proposal of the Original Proponent, for Instructions to Challengers;
- (f) Details of access to the physical and/or VDR and a template confidentiality agreement with prospective bidders/challengers in relation to the access to the physical data room and/or VDR;
- (g) Participation fees in accordance with Section 69 of this IRR and manner of payment;
- (h) Amount and form of the bid security, its validity period, and the grounds for its forfeiture;
- (i) Project Milestones;
- (j) Minimum performance standards and specifications for design, construction, operation, and/or maintenance for the project prescribed by the Implementing Agency;
- (k) Method, parameters, and criteria for the evaluation of the proposals;
- (l) Minimum amount of equity of the Private Partner;
- (m) Requirements of the appropriate Regulatory Bodies, as may be pertinent or applicable to the PPP Project;
- (n) Nationality and ownership requirements as required by law;
- (o) Grounds for revocation of award; and
- (p) Lock-in or holding conditions during which the Private Partner cannot sell their ownership, rights, or interests in the PPP Project, if applicable.

The PBAC shall provide a period of thirty (30) calendar days prior to bid submission date wherein no new bid documents, bid bulletins, or changes thereto, shall be issued.

The bidding may be conducted in a single-stage or two-stage bidding process, as proposed by the Implementing

Agency, and approved by the appropriate Approving Body as part of the PTCs referred to in Section 30 and Section 41 of this IRR. The public bidding may be conducted either manually or electronically, as may be determined by the PBAC of the Implementing Agency.

In Unsolicited Proposals, the Instruction to Bidders/Challengers shall inform the prospective challengers that the draft PPP Contract is either non-negotiable or that the prospective challengers may clarify or propose changes to the draft PPP Contract. In the case of the latter, the Instruction to Bidders/Challengers shall clarify the extent of what the bidders/challengers may clarify or propose.

Section 68. Bid bulletin. Any substantive interpretation given by the PBAC of the Implementing Agency concerned shall be issued in the form of a bid bulletin or supplemental notice prior to the freeze period set forth in Section 67 of this IRR, for purposes of clarifying any provisions of the tender documents.

Any supplemental notice shall also be posted on the website of the Implementing Agency, if available, and at any conspicuous place within the premises of the Implementing Agency.

If changes are made to the bidding rules, the Implementing Agency shall publish the changes in a bid bulletin, informing the prospective bidders/challengers of such changes, and afford them reasonable time within which to consider the same in the preparation of their bids.

If the changes are to the qualification/pre-qualification requirements prior to the deadline of submissions of qualification/pre-qualification documents, the bid bulletin shall be open to the public. If the changes are to the Instructions to Bidders/Challengers after the qualification/pre qualification stage, the bid bulletin shall be issued only to qualifiedpre-qualified bidders/challengers, as the case may be. Notice/receipt of all changes shall be duly acknowledged by each bidder prior to the submission of its bid and shall be so indicated in the bid.

The Implementing Agency shall inform in writing the PPP Center, its statutory counsel, and DOF, as the case may be in accordance with Section 80 of this IRR, of such changes.

Section 69. Participation Fees for Qualification/Pre-Qualification and Bid Submission and Comparative Challenge. The participation fees to apply for qualification/pre-qualification and bid submission, which shall be fair and in an amount that does not discourage competition nor encourage frivolous participation, and which shall be non-refundable, shall be set forth by the PBAC and included in the Invitation to Qualify/Pre-qualify and Bid and Invitation for Comparative Proposals.

The PBAC shall only consider the submission of prospective bidders/challengers upon full payment of the corresponding participation fees in accordance with the tender documents.

Only those who have paid the corresponding participation fees shall be allowed to be qualified and/or submit bids: *Provided*, That in case of a consortium, purchase of the bidding documents by one consortium member shall be sufficient. No transfer or assignment of the purchased bidding documents by the purchasing entity to a third party (other than the consortium in which the purchasing entity is a member or an affiliate of the purchasing entity) shall be allowed, except with the prior written consent of the PBAC.

Only bidders/challengers who have paid the participation fee shall be entitled to attend the Pre-Bid Conference, to One-on-One meetings, to send queries to the PBAC, and to submit a bid.

Section 70. Conduct of Pre-Bid Conference and One-on-One meetings. A pre-bid conference shall be conducted by the Implementing Agency at least forty-five (45) calendar days before the deadline for the submission of bids, or simultaneous submission of qualification requirements and bid proposals in the case of a single-stage bidding process, to clarify any provisions, requirements, and/or terms and conditions of the tender documents, and/or any other matter that prospective bidders/challengers may raise.

Notwithstanding, the PBAC of the Implementing Agency may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed PPP Project: *Provided*, That the principles of transparency, competition, and accountability are observed; *Provided*, further, That the period for procurement process shall not exceed one (1) year.

Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions of the tender

documents, unless such is made as written amendment thereto by the PBAC of the Implementing Agency concerned in the form of bid bulletins. Any amendments shall be issued by the PBAC of the Implementing Agency through bid bulletins to all bidders/challengers within a reasonable time to allow them to consider the same in the preparation of their bids and shall be duly acknowledged by each bidder prior to the submission of their bid and shall be so indicated in their bid.

Prior to the freeze period contemplated in Section 67 of this IRR, a summary of the proceedings of the pre-bid conference shall also be issued to all prospective bidders/challengers by the PBAC through bid bulletins. Attendance to the pre-bid conference by prospective bidders/challengers shall not be mandatory.

The PBAC may arrange for One-on-One meetings with prospective bidders/challengers prior to the freeze period contemplated in Section 67 of this IRR. No provision, term, or condition in the bid/tender documents shall be modified by statements made during these meetings unless these are made in writing and contained in a bid bulletin issued by the PBAC to all prospective bidders/challengers.

Section 71. *Qualification/Pre-Qualification of Prospective Bidders/Challengers.*

Section 71.1. Preparation and Application for Qualification/Pre-Qualification. Any individual, partnership, corporation, or firm, whether local or foreign, including consortia of local, foreign, or both local and foreign firms, or cooperatives may apply for qualification/pre-qualification for PPP Projects implemented under the Code and this IRR, subject to the limits set herein, and applicable laws, rules, and regulations.

The Implementing Agency concerned shall allow prospective bidders/challengers at least fifteen (15) calendar days, in the case of single-stage bidding process, from the last date of publication of the Invitation to Qualify/Pre-qualify and Bid to prepare their respective qualification/pre-qualification documents.

Section 71.2. Rules on Qualifying/Pre-Qualifying Prospective Bidders/Challengers. At the date, time, and place stipulated in the Invitation to Pre Qualify and Bid or Instruction to Bidders/Challengers, as may be applicable, which shall be within ten (10) calendar days after the deadline set for the submission of qualification/pre-qualification documents, the PBAC shall open the documents and ascertain whether the same is complete in terms of the information required under Section 72 of this IRR. Such information shall be recorded at the time, including the names and addresses of required witnesses.

All prospective bidders/challengers shall be invited to the opening of the qualification/pre-qualification documents, and prospective bidders/challengers present at the opening shall sign a register. The absence of any invited prospective bidder/challenger during the opening shall not nullify the opening proceedings.

In case the documents cannot be opened as scheduled due to justifiable reasons, the PBAC shall take custody of the submitted documents and reschedule the opening on the next working day or at the soonest possible time through the issuance of a notice of postponement to be posted on the website of the Implementing Agency and the PPP Center.

The PBAC shall check the submitted qualification/pre-qualification documents of each prospective bidder/challenger against the rules set forth in the Instruction to Bidders/challengers. Accordingly, the PBAC shall duly inform the qualified/pre-qualified prospective bidders/challengers whether they are qualified/pre-qualified or disqualified, and for the latter, the reasons for disqualification, within twenty (20) calendar days or such longer period as may be allowed but, in any case, not longer than thirty (30) calendar days after the opening of bids/comparative proposals.

In the course of evaluating the qualification/pre-qualification documents, the PBAC may seek clarifications and make inquiries with the prospective bidder/challenger, any person, government authority, client organization, consortium member, officer, director, employee or other agent of any bidder, consortium member, or affiliate of any of these entities for the purpose of clarifying any matter included in the prospective bidder's/challenger's submission.

The PBAC shall make all requests for clarification in writing. Clarifications shall be limited to providing explanations and/or supporting documentation for information included as part of the qualification/pre-qualification documents and shall not include the submission of additional elements and new

requirements, nor modification of the submitted documents in any way. Any clarification by the bidder/challenger or third-parties that is not in response to the request by the PBAC shall not be considered.

Disqualified prospective bidders/challengers shall be similarly given notice of such disqualification, stating therein the ground for disqualification within the same period provided under this section. Those disqualified may appeal the disqualification in accordance with the protest mechanism under this IRR

In the case of Solicited Projects, any substitution in the composition of the qualified Private Proponent shall be allowed prior to bid submission: *Provided*, That the substitute has equal or better qualifications. In the case of Unsolicited Proposals, any change in the composition of the Original Proponent that will affect its majority ownership shall be strictly prohibited.

Only qualified/pre-qualified prospective bidders/challengers shall be allowed to participate in the opening of technical and financial proposals.

Section 71.3. Unopened Technical and Financial Proposals of Disqualified Bidders/Challengers. The technical and financial proposals of the disqualified bidders/challengers shall be returned unopened upon the lapse of the period to file a motion for reconsideration of such disqualification or the final resolution of the protest regarding such disqualification, whichever is applicable

Section 72. PBAC Considerations in Qualifying/Pre-Qualifying Prospective Bidders/Challengers. The PBAC, in setting forth the requirement for qualification/prequalification, shall consider: (a) preventing the creation of shell companies for purposes of circumventing shareholding restrictions; and (b) imposing stricter requirements for majority entity/ies that will control the consortium.

To qualify/pre-qualify, a prospective Private Partner must comply with the following requirements:

Section 72.1. Legal Requirements.

(a) For PPP Projects where there is a nationality requirement, and where the Private Partner and Facility Operator are one and the same entity, the prospective Private Partner must be:

- (i) a Filipino, or
- (ii) if a corporation, must be duly registered with the SEC and owned up to at least sixty percent (60%) by Filipinos, or
- (iii) if a consortium of local, foreign, or local and foreign firms, Filipinos must have at least sixty percent (60%) interest in said consortium, or
- (iv) if a cooperative, must be duly registered with the Cooperative Development Authority (CDA).

(b) For PPP Projects where there is a nationality requirement but where the Private Partner and Facility Operator may be two separate and independent entities, the Facility Operator must be:

- (i) a Filipino, or
- (ii) if a corporation, must be duly registered with the SEC and owned up to at least sixty percent (60%) by Filipinos, or
- (iii) if a cooperative, must be duly registered with the CDA.

(c) For PPP Projects where there is no nationality requirement for its operation, the prospective Private Partner or the Facility Operator may be Filipino or foreign owned, subject to applicable laws, rules, and regulations.

For purposes of determining compliance with the required constitutional or statutory requirement, the required Filipino ownership shall be determined in accordance with SEC Memorandum Circular No. 8, s.

2013, as may be amended or supplemented from time to time .

In case the prospective Private Partner is a consortium, the members or participants thereof shall be disclosed during the qualification/pre-qualification stage and shall undergo qualification/pre-qualification. Further, the members or participants thereof shall execute an undertaking in favor of the Implementing Agency that if awarded the PPP Contract, they shall bind themselves to be jointly and severally liable for the obligations of the Private Partner under the PPP 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 the rights and obligations of the Private Partner under the PPP Contract, which shall substitute or be in lieu of the undertaking submitted by the members or participants of the consortium.

For purposes of qualification/pre-qualification, the Contractor proposed to be engaged by the prospective Private Partner to undertake the Construction of the PPP Project must be duly licensed by the Philippine Contractors Accreditation Board (PCAB) in the case of a Filipino Contractor, or by an equivalent accreditation institution in the Contractor's country of origin in the case of a foreign Contractor. Once the Private Proponent is awarded the PPP Project, such foreign Contractor must secure a license from PCAB.

Prospective Private Partners may be required to submit to the Implementing Agency a certification under oath indicating that the prospective Private Partner: (a) is not included in blacklists issued by any government agency, (b) has not been found by final judgment to be liable for violating the Anti-Money Laundering Act or for violating statutes that carry the penalty of disqualification from participating in tenders for government contract, (c) has no pending case filed against it by the government or by it against the government, or, should there be any, that such cases shall not impact the capability of the prospective Private Partner to carry out its obligations under the PPP Project. The prospective Private Partner shall be required to submit full disclosure of its pending cases, whether by it against the government or filed against it by the government. Any misrepresentation in the certification under oath shall be a ground to disqualify the prospective Private Partner.

For avoidance of doubt, pending cases shall include criminal, civil, administrative, and arbitration proceedings.

Section 72.2. Experience or Track Record. The prospective Private Partner must possess adequate experience in terms of the following:

(a) Firm Experience.

By itself or through the member-firms in case of a consortium, or through a Contractor/s or nominated affiliates, proposed Facility Operators and/or entities bound by a technical services agreement, collectively referred to as Nominated Entities, which the prospective Private Partner may engage for the project, the prospective Private Partner, its Contractors, and/or Nominated Entities, must have successfully undertaken a project/s similar or related to the subject Infrastructure or Development Project and Service to be bid. The individual firms, their Contractors, and/or Nominated Entities may individually specialize on any or several phases of the project. A consortium shall be evaluated based on the individual or collective experience of the member-firms of the consortium and of the Contractors and/or Nominated Entities that it has engaged for the project, even if the Contractor and/or Nominated Entity is not a member of the consortium. The experience of the Contractors and/or Nominated Entities which the prospective Private Partner will engage for the project shall be evaluated if it is necessary for the determination of the capacity of the consortium to undertake the project. In such case, the Contractors and/or Nominated Entities must have successfully undertaken a project similar or related to the project to be bid. Such Contractor, and/or nominated entities if such nominated entities are eventually engaged for the PPP Project, shall be subject to a lock-in conditions pursuant to the PPP contract.

In the bidding documents for each project, the Implementing Agency shall specify the required minimum work experience - in terms of scope and costs - of projects similar or related to the subject project that have been successfully undertaken by the prospective

Private Partner or its nominated entities. The prospective Private Partner must submit documented proof of such work experience, including certificates of satisfactory accomplishments from its concerned clients.

For purposes of the above, the consortia shall submit as part of their qualification/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 Contractors and/or nominated entities, if the experience of their Contractors and/or nominated entities 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 and/or nominated entities, if necessary, shall play or undertake in the project, including as to which members are the prospective Facility Operators, if applicable. If undecided on a specific Contractor and/or nominated entities, the prospective Private Partner may submit a short list of Contractors and/or nominated entities from among which it will select from. Shortlisted Contractors and/or nominated entities are required to submit a statement indicating willingness to participate in the project and capacity to undertake the requirements of the project.

(b) Key Personnel Experience

The key personnel of the prospective Private Partner and/or its Contractors and/or nominated entities must have sufficient experience in the relevant aspect of schemes similar or related to the subject project, as specified by the Implementing Agency. Any substitution in the key personnel of the qualified/pre-qualified Private Proponent shall be allowed prior to bid submission, in accordance with the Instructions to Bidders: *Provided*, That the substitute has equal or better qualification/pre-qualifications.

Section 72.3. Financial Capability. The prospective Private Partner must have adequate capability to sustain the financing requirements for the detailed engineering design, Construction, and/or operations and maintenance phases of the PPP Project, as the case may be.

The Implementing Agency shall determine on a project-to-project basis, and before qualification/pre-qualification, the minimum amount of equity needed.

For purposes of qualification/pre-qualification, this capability shall be measured in terms of proof of the ability of the prospective Private Partner and/or the consortium to provide:

(a) Equity- a minimum amount of equity to the project measured in terms of the latest net worth of the company as of the nearest date to the deadline for submission of qualification/pre-qualification documents, or in the case of a consortium, the net worth of the lead member or the combined net worth of members as of the nearest date to the deadline for submission of qualification/pre-qualification documents;

(b) Debt- The prospective Private Partner shall demonstrate its capability to finance the PPP Project with debt by submitting a current letter testimonial from a financial institution attesting that:

(i) The prospective Private Partner or members of the consortium are banking with them; and

(ii) The prospective Private Partner and/or members of the consortium are in good financial standing and/or qualified to obtain debt financing from such financial institution to finance the PPP Project equivalent to the value of the debt requirement in the proposal.

The testimonial must come from an established financial institution that (1) is authorized by SSP to transact in the Philippines, or (2) has an investment grade foreign currency credit rating from a reputable agency which has an outstanding rating on the Republic of the Philippines.

The ICC, in the case of National PPP Projects, and the PPP Governing Board, in the case of Local PPP Projects, may prescribe and revise detailed guidelines on the methodology to establish the legal, technical, and financial qualification/pre-qualifications of the Private Proponents.

Section 73. *Technical and Financial Bids/Comparative Proposals.* Bidders shall be required to submit their bids through their authorized representative using the forms specified by the PBAC in the tender documents on or before the deadline stipulated in the Instruction to Bidders/Challengers. The PBAC shall open and evaluate bids by checking against the rules set forth in the Instructions to Bidders/Challengers.

As may be prescribed by the PBAC, submissions of bids/comparative proposals may be made manually or electronically as may be prescribed in the Invitation to Qualify/Pre-qualify and Bid.

Section 73.1. Technical Proposals. The technical proposal shall contain the following, as may be deemed necessary by the PBAC:

- (a) Compliance statements with regard to the technical parameters as stated in the bid/tender documents;
- (b) Operational feasibility of the PPP Project, which shall indicate the organization, methods, and procedures for the operation and maintenance of the PPP Project under bidding;
- (c) Technical soundness/preliminary engineering design, including the proposed project timeline;
- (d) Preliminary environmental assessment, which shall indicate the probable adverse effects of the PPP Project on the environment and the corresponding mitigating measures to be adopted and showing how it is integrated into the preliminary engineering design;
- (e) Bid security, which may be in cash, certified check, manager's check, letter of credit, or bank draft/guarantee issued by a reputable local/foreign bank, or a surety bond callable on demand issued by the GSIS or an entity duly registered and recognized by the Office of the Insurance Commission acceptable to the Implementing Agency, or any combination thereof payable to the Implementing Agency concerned based on the total Project Cost in accordance with the following schedule:

Project Cost	Required Bid Security
Less than Php5 billion	2.0% of the Project Cost
Php 5 billion to less than Php 10 billion	Php 100 million + 1.5% of the Project Cost excess over the Php 5 billion
Php 10 billion and above	Php 175 million + 1.0% of the Project Cost excess over Php 10 billion

The Implementing Agency shall determine whether the bid security shall be issued by a local bank, an international bank, or both. In case the bid security is issued by an international bank, said security must be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP.

The posting of the bid security is for the purpose of guaranteeing that the proposed contract awardee shall enter into contract with the Implementing Agency within the time prescribed therefore.

Bids and bid securities shall be valid for a period to be prescribed by the Implementing Agency concerned in the tender documents, which shall in no case be beyond one hundred and eighty (180) calendar days from the date of opening of bids. The actual amount of bid security to be posted by bidders will be fixed by the Implementing Agency concerned prior to bidding. Said actual amount shall not be less than the amount prescribed in the above schedule.

The Implementing Agency may also require other documents to support the bidder's technical proposal:

Provided, That such requirements shall be advised in a bid bulletin issued prior to the deadline for submission of bids.

Section 73.2. Criteria in the Evaluation of Technical Proposals. The evaluation of the technical proposal shall involve the assessment of the technical, operational, and environmental viability of the proposal vis-a-vis the prescribed requirements and criteria/minimum standards and basic parameters prescribed in the bidding documents. Only those bids that have been determined to have passed the evaluation of qualification/pre-qualification requirements, pursuant to the bidding rules under this IRR, shall be qualified and considered for the evaluation of the technical proposal.

The Implementing Agency shall evaluate the technical proposals of the bidder/challenger in accordance with the following criteria:

- (a) **Technical soundness-** The basic engineering design of the project should conform to the minimum performance standards and specifications set by the Implementin Agency as prescribed in the bidding documents. The engineering surveys, plans and estimates should be undertaken within +/- 20% of the final quantities. The Construction methods and schedules should also be presented and shown to be feasible or "doable" and shall conform to the minimum performance standards and specifications set by the Implementing Agency.
- (b) **Operational feasibility-** The proposed organization, methods, and procedures for operating and maintaining the completed facility shall be well defined, should conform to the prescribed minimum performance standards and specifications, and should be shown to be workable. Where feasible, it should provide for the transfer of technology used in every phase of the project.
- (c) **Environmental and social standards and impact mitigation measures -** The proposed design and the technology of the project to be used must be in accordance with the environmental standards set forth by the Department of Environment and Natural Resources (DENR), and social standards provided in applicable laws, rules and regulations, as indicated in the bid documents. Any risk of adverse effects on the environment and on communities as a consequence of the project as proposed by the prospective Private Proponent must be properly identified, including the corresponding corrective/mitigating measures to be adopted.

The PBAC shall have the authority to decide on the best mechanism in assessing the technical proposals, such as, but not limited to a scoring system. The PBAC shall check the submitted technical proposal of each bidder against the rules set forth in the Instruction to Bidders.

The PBAC shall complete the evaluation of the technical proposal within thirty (30) calendar days from the date the bids are opened.

Section 73.3. Financial Proposals. The financial proposal shall contain the following, as the case may be:

- (a) Compliance statements with regard to the financial parameters stated in the tender documents;
- (b) Proposed project cost, operations and maintenance cost, and all other related costs, including cost of environment and social impact/risk management measures;
- (c) Project financing scheme, which may include the amount of equity to be infused, debt to be obtained for the PPP Project, and sources of financing;
- (d) Financial proposal corresponding to the bid parameters set by the Implementing Agency;
- (e) Financing plan and third-party valuation of the bidder's/challenger's contribution, in the case of JV arrangements; and
- (f) Other documents to support the bidder's/challenger's financial proposal, as may be required by the Implementing Agency.

Section 73.4. Criteria in the Evaluation of Financial Proposals. The evaluation of the financial proposal shall involve the assessment and comparison of the financial proposals of the bidders/challengers, based

on the following parameters, in addition to the parameters stated in Section 73.3 of this IRR:

- (a) Consistency and responsiveness with the requirements of the Concession Agreement;
- (b) Consistency with the submitted technical proposal. Consistency can be determined through practices such as, but not limited to, benchmarking and third-party expert opinion; and
- (c) Reasonableness of assumptions. This may be determined through practices such as, but not limited to, benchmarking and third-party expert opinion.

In case of two-stage bidding process, the stage of evaluation of the financial proposal shall be completed by the PBAC of the Implementing Agency within fifteen (15) calendar days from the date the first stage evaluation of the technical proposal shall have been completed. The PBAC shall have the authority to decide on the best mechanism in assessing the financial proposals. The PBAC shall check the submitted financial proposal of each bidder against the rules set forth in the Instruction to Bidders/Challengers.

Section 74. *Simultaneous Evaluation of Technical and Financial Proposals.* In cases where the nature of the PPP Project shall warrant the appreciation of both the technical and financial proposals as a whole in order to determine the best proposal, simultaneous evaluation of the technical and financial proposals may be resorted to: *Provided*, That said evaluation procedure shall be explicitly stated in the tender documents.

For purposes of this section, the Implementing Agency may consider giving weight to the technical proposal apart from the financial proposal in determining the Most Responsive Bid, which shall be set out in the Instructions to Bidders/Challengers.

Simultaneous evaluation of the technical and financial proposals shall be completed within forty-five (45) calendar days from the date the bids are opened.

Section 75. *Submission of Late Bids.* Bids/comparative proposals submitted after the deadline for submission prescribed in the Instructions to Bidders/Challengers shall be considered late and shall be returned unopened pursuant to the provisions under this title.

Section 76. *Rejection of Bids.* Incomplete information on any of the proposals and/or non compliance with the bid security requirements prescribed in this IRR shall be grounds for automatic rejection of bids.

Section 77. *Withdrawal and/or Modification of Bids.* Modification and/or withdrawal of bids may be allowed upon written notice by the bidder/challenger concerned to the Implementing Agency before the deadline for the submission and receipt of bids as specified in the Instructions to Bidders. No bids shall be modified or withdrawn after the time prescribed. Bid modifications received after said period shall be considered late and will be returned unopened.

Withdrawal of bids after the bid opening date shall cause the forfeiture of the bidder's bid security and shall be subject to appropriate sanctions as prescribed in this IRR. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

Section 78. *Right to Reject All Bids.* The Implementing Agency reserves the right to reject any or all bids, waive any defects therein, and accept the Most Responsive Bid, in accordance with the provisions of this IRR, the Code, and issuances released by the PPP Governing Board and the ICC. Waiving of defects should only be limited to nonconformities that do not constitute a material deviation, reservation, or omission.

Section 79. *Breaking Tie Bids/Comparative Proposals.* In case tie bids/comparative proposals occur, the tie shall be broken by the drawing of lots or by similar non-discretionary and non-discriminatory methods where results are based on sheer luck or chance.

Section 80. *PPP Contract Review and Approval.* The Head of the Implementing Agency shall be responsible in ensuring the consistency of the draft PPP Contract with the PTCs as approved by the appropriate Approving Body, pursuant to *Title IV* of this IRR.

Section 80.1. Release of draft PPP Contract to reviewing bodies, for initial comments. The draft PPP Contract to be released to bidders/comparative proponents shall also be sent to the following reviewing

bodies for initial comments in relation with the jurisdiction provided by law, within seven (7) calendar days from the release of the complete set of tender documents to bidders/comparative proponents:

(a) For National PPP Projects:

- (i) PPP Center, for compliance with the approved PTCs;
- (ii) Statutory counsel/s, for compliance with all other applicable laws, rules, and regulations; and
- (iii) DOF, for national Government Undertakings or Availability Payments under the draft PPP Contract.

(b) For Local PPP Projects:

- (i) Statutory counsel/s, for compliance with all other applicable laws, rules, and regulations; and
- (ii) DOF, if there is a national Government Undertaking or Availability Payments under the draft PPP Contract.

The statutory counsel to review the draft PPP Contract shall be the one as applicable to the Implementing Agency, which may be the OSG, OGCC, DOJ, or as may be determined by the DOJ.

Reviewing bodies shall have fifteen (15) calendar days from receipt of the draft PPP Contract to review and provide their initial comments.

Section 80.2. Incorporation of initial comments of the reviewing bodies into the draft PPP Contract and release of draft PPP Contract to reviewing bodies for final review. Prior to the final review and approval of the Head of Implementing Agencies, the draft PPP Contract, revised to incorporate initial comments of the reviewing bodies, shall be released to the reviewing bodies for final review not later than sixty (60) calendar days before the date of bid submission/comparative challenge.

Section 80.3. Final review of draft contract by reviewing bodies. Reviewing bodies shall have fifteen (15) calendar days from receipt of the draft PPP Contract, as revised, to complete the final review.

The final letter of the concerned reviewing body shall be considered as their clearance of the draft PPP Contract, for consideration of the Head of the Implementing Agency. The unfavorable comments or clearance made by the appropriate reviewing body shall not be deemed as a prima facie evidence or claim, sufficient to sustain a judgment in favor of the issue it supports.

Any Government Undertaking and Availability Payment commitments to be sourced and funded under GAA stated in the draft PPP contract not approved by the Approving Body and not cleared by the DOF shall not be binding against the government.

Section 80.4. Approval of the Head of Implementing Agency of the PPP Contract. The Head of Implementing Agency shall have ten (10) calendar days from receipt of the final comments to finalize and approve the draft PPP Contract and to release the same to bidders/challengers. The Head of the Implementing Agency shall ensure that the draft PPP Contract shall be based on the PTCs set forth by the Approving Body pursuant to *Title IV* of this IRR.

The release of the PPP Contract to the bidders/challengers shall be thirty (30) calendar days before the date of comparative challenge. The PBAC shall not proceed with the bid submission date unless the PPP Contract is approved by the Head of the Implementing Agency and cleared in accordance with this section.

For purposes of Section 8 of the Code and this section, an executed PPP Contract shall be null and void if it contains provision/s which are contrary with the approved PTCs and are grossly disadvantageous to the government, upon the determination/finding of a court of competent jurisdiction, without prejudice to the provisions under Section 32 of the Code.

Section 81. *Changes to PTCs of the Draft PPP Contract.* In Solicited Projects, changes to the PTCs of the draft PPP contract may be allowed prior to submission of bids for Solicited Projects: *Provided*, That the prior approval for such changes of the appropriate Approving Body and the Head of the Implementing Agency shall be secured.

The Implementing Agency shall inform in writing the PPP Center, its statutory counsel, and the DOF, as the case may be in accordance with Section 80 of this IRR, of such changes.

Changes to the PTCs of the draft PPP Contract after bud submission and prior to contract execution shall not be allowed except for changes to contract terms affected or decided by the winning bidder's bid.

For Unsolicited Proposals, changes to the PTCs of the draft PPP Contract are not allowed, except for changes to contract terms affected or decided by the winning challenger's bid.

Section 82. *Protests on Resolution of the PBAC for National PPP Projects.* In all stages of the procurement process for National PPP Projects, the mechanism for protest shall be resolved in the most expeditious manner which shall not exceed forty-five (45) calendar days from the filing of the motion for reconsideration to the PBAC. A protest may only be raised on the basis of the following grounds:

- (a) The tender documents or procurement process failed to comply with the requirements of the Code, this IRR, or other applicable laws, rules, and regulations;
- (b) The selection process of the Private Partner violated the requirements of the PPP Code, this IRR, or other relevant laws so as to adversely affect fair and transparent competition between bidders/challengers; and/or
- (c) There is evidence of corruption, bribery, receipt, brokerage, or similar behavior, bid rigging or collusion, fraud or abuse of position or power in relation to the procurement process, to the extent that such acts may have actually affected the results of the tender.

Section 82.1. Procedure in Filing a Motion for Reconsideration to the PBAC. Within five (5) calendar days upon receipt of the written notice of the PBAC Resolution, the aggrieved Private Proponent may file a Motion for Reconsideration of such PBAC Resolution with the PBAC, or its equivalent. The PBAC shall render a decision within five (5) calendar days upon receipt of the Motion for Reconsideration.

No party shall be allowed a second motion for reconsideration for the decision of the PBAC.

Section 82.2. Procedure in Filing an Appeal to the Head of the Implementing Agency. Upon receipt of the decision on their Motion for Reconsideration, the aggrieved Private Proponent may appeal to the Head of the Implementing Agency and pay an appeal fee within five (5) calendar days upon receipt of the decision by the PBAC_ The Head of the Implementing Agency shall act on the appeal and render its decision within ten (10) calendar days upon receipt of the appeal and payment of the appeal fee.

Section 82.3. Procedure in Filing an Appeal to the Department Secretary. If the Head of the Implementing Agency in the immediately preceding Section is not a Department Secretary, the decision of the Head of the Implementing Agency may be further appealed by the aggrieved Private Proponent to the Secretary of the Department to which the Implementing Agency is attached, and pay an appeal fee within five (5) calendar days upon receipt of the decision by the Head of the Implementing Agency. The Department Secretary shall act on the appeal and render a decision within fifteen (15) calendar days upon receipt of the appeal and payment of the appeal fee, otherwsie it shall be deemed denied.

The amount of appeal fees for Sections 82.2 and 82.3 shall be as prescribed by the PBAC in accordance with the principles of fairness and integrity. Such amount shall not discourage potential appellants from challenging the decision of the PBAC or the Head of the Implementing Agency, as may be applicable; and at the same time, dissuade frivolous bidders/challengers from filing appeals which can impede the procurement process for PPP Projects.

All appeal fees set forth herein, from appeals that are found meritorious, are reimbursable, subject to guidelines to be issued by the PPP Governing Board.

Unless otherwise provided in the PPP Code, in no case shall a motion for reconsideration or an appeal from any decision by the PBAC, the Head of the Implementing Agency, or the Department Secretary, stay or delay the bidding process. No award shall however be made until a decision on any pending appeal is rendered.

Section 83. *Protests on Resolution of the PBAC for Local PPP Projects.* In all stages of the procurement process for Local PPP Projects, the mechanism for protest shall be resolved in the most expeditious manner which shall not exceed forty-five (45) calendar days from the filing of the motion for reconsideration to the PBAC. A protest may only be raised on the basis of the following grounds:

- (a) The tender documents or procurement process failed to comply with the requirements of the Code, this IRR, or other applicable laws, rules, and regulations;
- (b) The selection process of the Private Partner violated the requirements of the PPP Code, this IRR, or other relevant laws so as to adversely affect fair and transparent competition between bidders/challengers; and/or
- (c) There is evidence of corruption, bribery, receipt, brokerage, or similar behavior, bid rigging or collusion, fraud or abuse of position or power in relation to the procurement process, to the extent that such acts may have actually affected the results of the tender.

Section 83.1. Procedure in Filing a Motion for Reconsideration to the PPP Bids and Awards Committee (PBAC). Within five (5) calendar days upon receipt of the written notice, the aggrieved Private Proponent may file a Motion for Reconsideration with the PBAC, or its equivalent. The PBAC shall render a decision within ten (10) calendar days upon receipt of the Motion for Reconsideration.

No party shall be allowed a second motion for reconsideration for the decision of the PBAC.

Section 83.2. Procedure in Filing an Appeal to the Local Chief Executive. Upon receipt of the decision on their Motion for Reconsideration, the aggrieved Private Proponent may appeal to the Local Chief Executive, and pay an appeal fee within ten (10) calendar days upon receipt of the decision by the PBAC. The Local Chief Executive shall act on the appeal and render its decision within twenty (20) calendar days upon receipt of the appeal and payment of the appeal fee.

The amount of appeal fees for Section 83.2 shall be as prescribed by the PBAC in accordance with the principles of fairness and integrity. Such amount shall not discourage potential appellants from challenging the decision of the PBAC or the Head of the Implementing Agency, as may be applicable; and at the same time, dissuade frivolous bidders from filing appeals which can impede the procurement process for PPP Projects. Appeal fees set forth herein, from appeals that are found meritorious, are reimbursable, subject to guidelines to be issued by the PPP Governing Board.

Unless otherwise provided in the PPP Code, in no case shall a motion for reconsideration or an appeal from any decision by the PBAC or the Local Chief Executive stay or delay the bidding process. No award shall however be made until a decision on any pending appeal is rendered.

Section 84. *Mandatory Provisions in PPP Contracts.* The draft PPP Contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities, including the specific Government Undertakings, and obligations and undertakings of the Private Partner relative to the PPP Project. The draft PPP Contract shall have the following mandatory terms or conditions:

- (a) specific contractual arrangement, term, and scope of work;
- (b) minimum performance standards and specification;
- (c) KPIs, targets, and procedures for measuring and reporting results, including dimensions of gender equality, disability and social inclusion (GEDSI);
- (d) implementation milestones, including those for securing other approvals, period within which Financial Close shall be achieved by the Private Partner, and the project completion date;

- (e) cost recovery scheme via proposed Tariff, as the case may be;
- (f) obligation of the Private Partner to disclose loan or financing documents, as required under this IRR;
- (g) liquidated damages as contemplated under this IRR;
- (h) performance security requirements, including their validity and top-up mechanism procedures, contemplated under this IRR;
- (i) minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workforce's compensation, third party liability, force majeure, or comprehensive general liability insurance, as may be applicable;
- (j) acceptance tests and procedures;
- (k) warranty period and procedures (after transfer) and warranty security;
- (l) lock-in conditions, as applicable;
- (m) grounds for contract termination, including events of default, and effects of contract termination, including formula for Termination Payment, and manner and timeline of payment;
- (n) conditions and procedures for lender step-in rights;
- (o) conditions for acceptable permitted security interest;
- (p) the manner and procedures for the resolution of corruption;
- (q) wind-up and transfer measures pursuant to Section 22 of the Code;
- (r) compliance with all other applicable laws, rules, and regulations;
- (s) total cost of the project, project specifications and features;
- (t) gender, social, disability, and environment safeguards;
- (u) provisions on the use of dispute avoidance and Alternative Dispute Resolution (ADR) mechanisms pursuant to RA No. 9285, or the "Alternative Dispute Resolution Act of 2004";
- (v) ownership or retention of patents, technology and consultant reports; and
- (w) monitoring, evaluation and reporting scheme/plan for all safeguard-related mandatory provisions of the PPP Contract.

For item (u) above, the contracting parties shall be given complete freedom to choose which ADR mechanisms to be followed, subject to applicable laws, rules, and regulations.

All PPP Contracts shall require a period within which Financial Close shall be achieved by the Private Partner. Failure to achieve Financial Close within such period, without the fault of the government, shall subject the Private Partner to penalties under the signed PPP Contract.

Section 85. *The PBAC in Case the PPP Center is the Procuring Agent.* In cases where the PPP Center grants the request of the Implementing Agency and acts as the procurement agent, the composition of the PBAC in such cases shall follow the composition of the PBAC under Section 61: *Provided*, That all PBAC members coming from the Implementing Agency shall come from the PPP Center; *Provided*, further, That the concerned Implementing Agency shall be a voting member of the PBAC.

Except for the Chairperson, who shall in any case be a holder of a plantilla position, the Implementing Agency may engage external consultants/entities for the minimum voting members set forth in Section 61 of this IRR: *Provided*, That the term 'plantilla' refers to employees' positions included in the Personal Services Itemization

approved by the DBM; *Provided*, further, That such external consultants/entities shall be under the supervision of the Chairperson, and that such engagement shall be duly documented and shall be in accordance with the required expertise of the minimum voting members as set forth in this section.

The PPP Governing Board shall issue guidelines on the requirements and procedures governing such cases where the PPP Center is requested by the Implementing Agency to act as the procurement agent, and where the PPP Center acts as such accordingly.

Section 86. *Procurement of Probity Advisor.* An Implementing Agency may procure the services of a Probity Advisor to assist with the PPP procurement process. The procurement of a Probity Advisor shall be undertaken, and the fees of the Probity Advisor shall be paid, in accordance with the guidelines to be issued by the PPP Governing Board and applicable laws, rules, and regulations. The Probity Advisor to be appointed shall perform the following duties:

- (a) Provide insights on the PPP procurement process to determine whether relevant government guidelines and appropriate policies are being complied with;
- (b) Ensure that the procurement process is impartial and fair to all bidders/challengers, with no bidder being given an advantage over another or unfairly discriminated against;
- (c) Protect confidential information;
- (d) Highlight potential conflict-of-interest situations, as they arise; and
- (e) Report any unlawful acts or concerns that occurred during the procurement process.

Section 87. *Acceptance of Criteria and Waiver of Rights to Enjoin Project.* All prospective bidders/challengers shall be required to submit, as part of their qualification/pre-qualification requirements, a statement stipulating that the bidder:

- (a) has accepted the qualification/pre-qualification criteria established by the PBAC of the Implementing Agency concerned; and
- (b) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the Implementing Agency or its PBAC to prevent or restrain the qualification/pre-qualification process or any proceedings related thereto, the holding of a bidding or any proceedings related thereto, the negotiation of and award of the PPP Contract to a successful bidder, and the carry out of the awarded PPP Contract.

Such waiver shall, however, be without prejudice to the right of a disqualified prospective bidder/challenger or losing bidder/challenger to question the lawfulness of its disqualification or the rejection of its bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

Section 88. *Safekeeping and Confidentiality of Documents.*

- (a) **Safekeeping of PPP Tender Documents.** Without prejudice to the rules on publication of tender documents to commence bidding, the Implementing Agency, through its PBAC, may disclose the tender documents to the public for the entirety of the bidding process by posting such documents online on the websites of the Implementing Agency concerned. However, copies of all tender documents shall be considered, appropriately kept safe, and preserved, as public documents after execution of the PPP Contract. Bid submissions and records of deliberations of the PBAC shall not be considered as part of the tender documents to be disclosed to the public.
- (b) **Nondisclosure of Confidential Business Information.** Confidential Business Information submitted by entities pursuant to the Code and this IRR, shall not, in any manner, be directly or indirectly disclosed, published, transferred, copied, or disseminated: *Provided*, That the confidentiality rule shall not apply if the entity consents to the disclosure, or if the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or Regulatory

Body or may pose threats to national security or public safety. In such cases, the disclosure of information shall be consistent with existing and applicable laws, rules, and regulations.

(c) Claiming confidentiality in tender documents. Any entity, whether public or private, may claim confidentiality of information it submits in relation to any activity being conducted pursuant to the Code and this IRR, as well as any deliberation in relation thereto following the procedure under Section 64 of this IRR: *Provided*, That, such information claimed to be confidential is Confidential Business Information as defined under this IRR.

For confidentiality claims on tender documents that will be published by an Implementing Agency, the rules provided in Section 51 of this IRR on claiming confidentiality for Unsolicited Proposals shall apply.

Chapter 2. Procurement Rules Applicable to Solicited Projects

Section 89. *Applicable Timelines for Solicited Proposals.* The Invitation to Qualify/Pre Qualify and Bid shall be issued within ninety (90) calendar days from the issuance of the Notice of Approval by the appropriate Approving Body.

Section 90. *Single Complying and Responsive Bid.* The Implementing Agency, whether national or local, may consider, on a negotiated basis, a single complying and responsive bid, in case of any of the following arising from either a single-stage or two-stage bidding process, in accordance with the provisions of the Code, this IRR, the tender documents, and the procedural guidelines to be issued by the ICC in the case of National PPP Projects and the PPP Governing Board in the case of Local PPP Projects:

- (a) If, after advertisement, more than one bidder applied for qualification/prequalification, but only one met the qualification/pre-qualification requirements;
- (b) If, after advertisement, only one bidder applied for and met the qualification/pre qualification requirements, provided such was allowed by the Head of the Implementing Agency, upon recommendation of the PBAC;
- (c) If, after qualification/pre-qualification of more than one bidder, only one submitted a bid; or
- (d) If, after qualification/pre-qualification, more than one bidder submitted bids but only one is found by the Implementing Agency to be complying.

The negotiation with the single complying and responsive bid shall be limited to the financial proposal of the bidder and in compliance with the RROR prescribed by the appropriate Approving Body. The single complying and responsive bid, prior to proceeding with the negotiation of the financial proposal, shall be required to pass the technical proposal requirements of the Implementing Agency. In case the Implementing Agency and the Single Complying and Responsive Bidder do not agree on the resulting terms following the prescribed RROR, the Implementing Agency shall declare a failure of bidding.

In any of the above instances of a single complying and responsive bid, Approving Body shall set an RROR. The RROR shall refer to the net gain of an investment over a specified period, expressed as an annualized percentage. The setting of RROR shall consider prevailing market conditions, risks to be assumed by the Private Partner, and duration of the project, as decided upon by the appropriate Approving Body. The RROR, as prescribed by the appropriate Approving Body, shall be provided in the PPP Contract.

When an RROR will be applied to a PPP Project, the Implementing Agency shall monitor the realized rate of return and determine the excess, if any, annually. For an Implementing Agency to do so, the Private Partner shall submit its audited financial statements and other pertinent documents annually to the Implementing Agency.

A trust account shall be established for the purpose of retaining excess cash when the realized rate of return exceeds the RROR. The establishment of the RROR trust account shall refer to the guidelines on RROR trust accounts to be issued by the PPP Governing Board. The following mechanisms to operationalize the trust account shall be considered in the PPP Contract:

- (a) When the realized rate of return exceeds the prescribed RROR the Private Partner will deposit excess cash into the trust account in such amount as to cause the realized rate of return to equal RROR;
- (b) When the realized rate of return falls below RROR, the Private Partner may draw from the trust account in such amount as to cause the realized rate of return to equal RROR or the total amount remaining in the trust account, whichever is lower: *Provided*, That at all times, the trust account is funded only by sources coming from provision.

The provisions under (a) and (b) shall be done periodically from the start of the PPP Contract. An independent financial consultant shall be engaged and paid from the trust account to evaluate the RROR.

At the end of the PPP Contract, the provisions under (a) and (b) shall also be implemented. After which, the trust account balance will be remitted to the National Treasury. The terms of the remittances shall be part of the negotiation with the single complying and responsive bidder, as well as the final draft PPP Contract.

For purposes of this section, the 'realized rate of return' means the cumulative rate of return from the start of the PPP Contract, expressed as an annualized percentage, based on actual project cash flows available to all providers of capital calculated in accordance with the PPP Contract.

The detailed process in approving, and the methodology in calculating, the RROR to be set shall be in accordance with the guidelines to be issued by the ICC. Such guidelines may be updated by the ICC as necessary.

Section 91. *Conditions for Negotiations between the Implementing Agency and the Single Complying and Responsive Bidder.* Negotiations between the Implementing Agency and the single complying and responsive bidder shall be limited to the financial proposal of the bidder and in compliance with the RROR prescribed by the appropriate Approving Body.

Section 92. *Failure of Bidding.* The PBAC shall declare failure of bidding in case of any of the following events occur:

- (a) If there are no bids received;
- (b) If no prospective bidder is eligible;
- (c) If there are no complying bids; or
- (d) If there is failure to enter into contract as defined in Section 108 of this IRR.

The Head of the Implementing Agency, upon the recommendation of the PBAC, may opt to declare a failure of bidding if, after advertisement, only one bidder applied for and met the qualification/pre-qualification requirements.

Chapter 3. Procurement Rules Applicable to Unsolicited Proposals

Section 93. *Applicable timelines for Unsolicited Proposals.* The PBAC shall release the Invitation for Comparative Proposals within seven (7) days from the issuance of the document showing the appropriate Approving Body's approval of the Unsolicited Proposal: *Provided*, That within twenty (20) calendar days after said seven (7) days, the Implementing Agency shall prepare and issue the comparative challenge documents; *Provided*, further, That within a period not less than ninety (90) calendar days and not more than one (1) year, as approved by the appropriate Approving Body, from the issuance of the comparative challenge documents, the prospective comparative proponents shall submit their comparative proposals.

Section 94. *Comparative Challenge.* Upon approval of the Unsolicited Proposal by the appropriate Approving Body, the Unsolicited Proposal shall be subjected to a comparative challenge. The comparative challenge shall be conducted, either manually or electronically, by the Implementing Agency within the period proposed by it and approved by the appropriate Approving Body, taking into consideration the nature and complexity of the PPP Project.

Section 95. *Qualification/Pre-Qualification of Comparative Proponents.* The evaluation criteria used to

qualify/pre-qualify the Original Proponent shall be the same criteria to be defined in the Instructions to Comparative Proponents.

Section 96. *Disclosure of the Financial Proposal of the Original Proponent.* The financial proposal of the Original Proponent shall be disclosed in the Instruction for Comparative Proposals.

Section 97. *Posting of Bid Bond by the Original Proponent.* The Original Proponent shall be required at the date of the first day of the publication of the Invitation for Comparative Proposals to submit a bid bond equal to the amount and in the form required of the comparative proponents, following the requirements set forth in this IRR.

Section 98. *Right-to-match mechanism.* The comparative challenge shall be conducted using the right-to-match mechanism. Under such mechanism, the Original Proponent shall have the right to match the proposal submitted by a challenger during the comparative challenge: *Provided*, That the Original Proponent shall have thirty (30) calendar days to match the said proposal put forth by the challenger. For avoidance of doubt, the period for right-to match shall be excluded from the counting of the period for comparative challenge process.

The Original Proponent shall match or better the financial proposal of the most superior comparative proposal.

Subject to the foregoing right-to-match procedure, should the Original Proponent fail to match the financial proposal of the comparative proponent within the specified period, the contract shall be awarded to the comparative proponent.

In case the government entity determines the financial proposal of the Original Proponent to be superior or more advantageous to the government or in case there is no challenger, the PPP Contract shall be awarded to the Original Proponent.

If tie proposals occur between the original proponent and challengerIs, the PPP Contract shall be awarded to the Original Proponent

TITLE VII. AWARD AND EXECUTION OF THE PPP CONTRACT

Section 99. *Recommendation of the PBAC to Award the PPP Contract.* Within seven (7) calendar days from the date of completion of the final evaluation of the Most Responsive Bid, or the comparative challenge period or the right-to-match, whichever is applicable, in the case of Unsolicited Proposals, the PBAC of the Implementing Agency shall submit to the Head of the Implementing Agency a recommendation to award. The PBAC shall prepare and submit a detailed evaluation or assessment report on its decision regarding the evaluation of the bids, where both form and substance of the bids are given due consideration, and explain in clear terms the basis of its recommendations.

The PBAC shall ensure that the PPP Contract be awarded to the bidder who has satisfied all qualification/pre-qualification and eligibility requirements and has submitted the Most Responsive Bid to the bid parameter proposed by the Implementing Agency and set forth in the PTCs approved by the appropriate Approving Body.

Section 100. *Decision to Award.* Within seven (7) calendar days from the submission by the PBAC of the recommendation to award, the Head of the Implementing Agency shall render decision on the recommendation to award. If the recommendation to award is approved, the Head of Implementing Agency shall sign and issue the Notice of Award to the winning Private Proponent not later than three (3) calendar days from approval thereof. Such Notice of Award shall be issued in accordance with Section 101 of this IRR.

All unsuccessful bidders shall be informed in writing of the decision of the Implementing Agency to award the PPP Contract to the winning Private Proponent on the same day that the Notice of Award is issued.

Section 101. *Notice of Award.* The Notice of Award to be issued by the Head of the Implementing Agency shall clearly indicate, among others, the subject PPP Project, the Project Cost, and the list of documents required to be submitted by the winning Private Proponent within twenty (20) calendar days from official receipt of the Notice of Award. Such documents, shall include, but not limited to, the following:

- (a) prescribed performance security;

(b) proof of commitment of the required equity contribution, as specified by the Implementing Agency:

(i) in cases where the winning Private Proponent is a corporation - a treasurer's affidavit attesting to actual paid-up capital, subscription agreement between shareholders of the winning Private Proponent and the winning Private Proponent itself covering said equity contribution, or shareholders agreement between and amongst two (2) or more shareholders of the winning Private Proponent undertaking to contribute or subscribe the required equity contribution; or

(ii) in the case of a consortium - an undertaking of the members thereof to infuse the required equity contribution to the consortium

(c) proof of firm commitments from reputable financial institution to provide sufficient credit lines to cover the Project Cost to be shouldered by the winning Private Proponent;

(d) in case an SPC or a JVC has already been formed for purposes of undertaking the PPP Project, proof of registration in accordance with Philippine laws; and

(e) such other conditions imposed by the Implementing Agency.

Failure to submit the requirements within the prescribed period shall result in the automatic cancellation of the Notice of Award and the confiscation of the bid security.

Within five (5) calendar days upon receipt of the foregoing requirements for award, the Head of the Implementing Agency shall determine its compliance with all the conditions stated in the said notice, and notify the winning Private Proponent thereof.

Section 102. *Public Dissemination of Bidding Results.* The PBAC shall post the Notice of Award and/or bidding results on the websites and/or official digital platforms of the PPP Center and the Implementing Agency, within seven (7) calendar days from the issuance of the Notice of Award.

Section 103. *Formation of an SPC or a JVC.* The Implementing Agency may require the winning Private Proponent to incorporate with the SEC in accordance with applicable Philippine laws. The SPC or JVC that will be created shall assume and accede to all the rights and obligations of the winning Private Proponent: *Provided, That:*

(a) the SPC shall be wholly owned by the winning Private Proponent, subject to the nationality and ownership requirements under the Constitution and other applicable laws;

(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 SPC or JVC for the development and implementation of the PPP Project in accordance with their submitted business plan;

(c) in case of JVs involving the formation of a JVC, the JV Partners shall be further guided by the following parameters:

(i) The formation of a JVC shall be in accordance with the legal mandate of the Implementing Agency and provisions of the Revised Corporation Code of the Philippines and other applicable laws, rules, and regulations. The Implementing Agency, shall, subject to the approval of the appropriate Approving Body, determine the minimum PTCs of the JV PPP Contract including veto rights in favor of the government. Formation of JV between the Implementing Agency and the Private Partner shall not change the nature or alter the mandate of the Implementing Agency entering into such JV. The Implementing Agency's governmental responsibility shall not be diminished and shall not be a reason to avoid compliance with and coverage of existing laws, rules, or regulations.

(ii) The shares of the Implementing Agency and the Private Partner in the profits, losses, assets acquired and/or constructed, and any other interests derived from the JV shall be proportionate to their respective contributions.

(iii) The equity contribution, including contribution of assets, properties, and rights, and other

allowable Government Undertakings, of the government in a JV PPP Contract shall in no case exceed fifty percent (50%) of the Project Cost, in the case of a contractual JV, or fifty percent (50%) of the outstanding capital stock of the JVC. All equity contributions of the government and the Private Partner shall be subject to fair valuation by a Third-party Appraiser pursuant to *Title XII* of this IRR.

(iv) The Implementing Agency shall be represented in the Board of the JVC. The composition of the Board shall be based on the JV partners' proportional contribution. The JV partners may agree for the Implementing Agency to have greater representation in the Board; and

(v) The Implementing Agency and the Private Sector Partner shall be entitled to receive dividends from the net profits proportionate to the equity contributions of each party: *Provided*, That the Implementing Agency and the Private Partner may agree to include mechanisms that would provide a higher return for the government entity than it is entitled to, based on the actual percentage of government contribution in the JV.

The government entity may also accept any other more favorable terms as may be agreed upon with the Private Partner in the JV PPP Contract. Should the contracting parties deem it necessary, dividends to be issued in favor of each party may be held in trust by the JVC for their exclusive benefit: *Provided*, That, the dividends to be issued to the Implementing Agency for the government may be used to offset against any of its payment obligations to the JV under the JV PPP Contract, including the eligible liabilities of the JV; *Provided* further, That such liabilities be limited to reasonable obligations incurred for the purpose of pursuing the objectives of the JV and that these be necessary expenses to the business and its operations; *Provided* finally, That any deduction charged to dividends of either JV Partner that is held in trust by the JVC must be properly accounted for and reported to the JV Partners concerned. The foregoing shall be without prejudice to existing laws, rules, regulations, and issuances on the matter, including RA No. 7656.

(d) an accession undertaking is executed by the SPC or JVC and the winning Private Proponent in favor of the Implementing Agency, making the SPC or JVC principally liable for the performance of the winning Private Proponent's obligations under the Notice of Award and/or the contract.

In the case of JVs, the formation of the JV between the Implementing Agency and the Private Partner shall not prevent the parties from entering into other JV PPP contracts with other parties or from profitably entering into other business ventures or markets: *Provided*, That such other ventures shall not compete with the first JV for the same product and geographic market.

The cost of producing the particular product, conducting the activity, or performing the service shall be efficient or potentially efficient towards earning potential profits for the Implementing Agency and the Private Partner.

In the case of SPC, the Private Proponent which are members of the SPC, may engage in other concessions, businesses, or undertakings only with the approval of the Approving Body and the relevant Regulatory Body.

Section 104. *Withdrawal or Substitution of a Member.* Without prejudice to the application of lock-in provisions in the PPP Contract, changes in, withdrawals, or substitution of Private Partners or member-firms of a consortium that result in a change of control of the Private Partner or consortium that will affect its majority ownership and/or beneficial ownership, after the approval of the project, shall be subject to the approval of the appropriate Approving Body. Any substitution of member-firms of a consortium should be with substitutes of equal or better qualification/pre-qualifications as with the original member.

In determining whether there is a change of control, the Approving Body may consider the following:

Control is presumed to exist when the parent owns directly or indirectly, through subsidiaries, more than one half (1/2) of the voting power of an entity. Control also exists even when an entity owns one half (1/2) or less of the voting power of another entity when:

(a) There is power over more than one half (1/2) of the voting rights by virtue of an agreement with investors;

(b) There is power to direct or govern the financial and operating policies of the entity under a statute or

agreement;

(c) There is power to appoint or remove the majority of the members of the board of directors or equivalent governing body;

(d) There is power to cast the majority votes at meetings of the board of directors or equivalent governing body;

(e) There exists ownership over or the right to use all or a significant part of the assets of the entity;

(f) There exist rights or contracts which confer decisive influence on the decisions of the entity;

(g) Other factors which may be considered by the Approving Body such as but not limited to the concept of Beneficial Owner under the relevant rules and regulations of the SEC.

Further, in case of withdrawals, the remaining members or shareholders must still be legally, technically, and financially capable of successfully carrying out the implementation or operation of the project.

A withdrawal made in violation of this Section shall be grounds for disqualification or cancellation of the PPP Contract and forfeiture of the winning Private Proponent's bid or performance security.

The Implementing Agency shall inform in writing the PPP Center of such changes within five (5) calendar days for monitoring purposes.

Section 105. *Validity of Bids/Return of Bid Security.* The execution of the PPP Contract shall be made within the period of the validity of the bid security. The required bid security shall be valid for a reasonable period but in no case beyond one hundred eighty (180) calendar days from the bid submission date, subject to the provisions in this IRR. Bid securities shall be returned to the winning bidder and unsuccessful bidders as soon as the PPP Contract is signed by the winning bidder.

Section 106. *Extension of Validity of Bids.* When an extension of validity of bids is considered necessary by the Head of the Implementing Agency, those who submitted bids shall be requested in writing to extend the validity of their bids before the expiration date of the same. However, bidders shall not be allowed to modify or revise their bids apart from the validity of their bids.

Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security. As a condition of the extension of the validity of their bids, bidders must correspondingly extend the validity of their bid securities.

Section 107. *Execution of the PPP Contract.* The authorized signatories of the winning bidder and the Head of the Implementing Agency shall execute the PPP Contract, as approved in accordance with Section 80 of this IRR, within five (5) calendar days from receipt by the winning bidder of the notice from the Implementing Agency that all conditions stated in the Notice of Award have been complied with.

The Private Proponent that was qualified and awarded the PPP Project, or the SPC that the winning Private Proponent formed for purposes of undertaking the PPP Project, shall be the signatory to the PPP Contract.

Consistent with Article 1159 of the New Civil Code of the Philippines, the PPP 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 objectives hereof. An original signed copy of the PPP Contract shall be submitted to the Approving Body and the PPP Center within five (5) calendar days after signing thereof by the Implementing Agency.

Section 108. *Failure to Enter into Contract.* In the case of Solicited Projects, if the winning bidder fails to comply with any post-award requirement which shall be set as part of the tender documents, or fails to enter into the PPP Contract with the Implementing Agency, the latter shall forfeit the bid security of the former without prejudice to other legal remedies available to the Implementing Agency. The Implementing Agency may then proceed to consider awarding the PPP Contract to the bidder with the next Most Responsive Bid. In case the PPP Contract is awarded to the bidder with the next Most Responsive Bid, it shall be without prejudice to legal remedies available to the Implementing Agency, such as forfeiture of bid security, withdrawal of award,

and such other remedies allowed under existing laws, rules, and regulations. If the same shall likewise refuse or fail to enter into contract, its bid security shall likewise be forfeited, and the Implementing Agency shall consider awarding the PPP Contract to the bidder with the next Most Responsive Bid. The procedure under this section shall be repeated for the bidder with the next Most Responsive Bid until the PPP Contract is executed or the PBAC declares a failure of bidding, as the case may be.

If the Implementing Agency is unable to execute the PPP Contract, a failure of bidding shall be declared and the PPP Project may be subjected to a re-bidding.

The PBAC shall also declare failure of bidding if the winning bidder refuses without justifiable cause to accept the award of PPP Contract. Thereafter, the PPP Project may be subjected to a re-bidding.

In the case of Unsolicited Proposals, in the event of refusal, inability, or failure of a winning comparative proponent to enter into contract with the Implementing Agency, its bid security shall be forfeited in favor of the Implementing Agency. In such an event, the Implementing Agency shall consider the comparative proponent with the next Most Responsive Bid. Such comparative proposal shall be subjected to a right-to-match mechanism as enumerated in Section 98, as approved by the Approving Body. If no other comparative proposal is determined to be better than that of the Original Proponent, the PPP Contract shall be awarded to the Original Proponent. If the second comparative proponent fails to comply with any post award requirement which shall be set as part of the tender documents, or fails to enter into the PPP Contract with the Implementing Agency, its bid security shall be forfeited in favor of the Implementing Agency. The procedure under this section shall be repeated for the comparative proponent with the next Most Responsive Bid, subject to the Original Proponent's right-to-match, until the PPP Contract is executed or the PBAC declares a failure of bidding, as the case may be.

In case the Original Proponent refuses, neglects, or is unable to enter into contract with the Implementing Agency, the Original Proponent forfeits the privilege to match proposals of inferior rank to its own.

In case of failure of the winning bidder, comparative proponent, or the Original Proponent, as the case may be, or of the next Most Responsive Bid that accordingly ranked higher, the right of the next Most Responsive Bids to be considered by the Implementing Agency to enter into contract with the Implementing Agency, as contemplated under this section, shall be recognized by the Implementing Agency up until financial close.

Section 109. *Issuance of Administrative or Local Franchise.* Subject to the provisions of the Constitution and other existing laws, rules, and regulations, once a PPP Contract is executed by the Private Partner and the Implementing Agency, a presumption arises that the public interest will be served by the implementation of the PPP Project covered thereby, and immediately upon application by the Private Partner in accordance with the guidelines of the Regulatory Body concerned. The latter shall, upon determining compliance by the Private Partner with the said guidelines and, where applicable, considering its prior clearance or approval of the maximum acceptable Tariff set by the Implementing Agency before the bidding, grant in favor of the Private Partner an Administrative or Local Franchise to operate the facility and collect the Tariff stipulated under the PPP Contract, including adjustment formula, if any.

TITLE VIII. IMPLEMENTATION OF PPP PROJECTS

CHAPTER 1. INDEPENDENT CONSULTANT

Section 110. *Procurement of Independent Consultants.* An Independent Consultant, either an individual, partnership, or corporation, shall be procured by the Implementing Agency to provide independent advice to the Implementing Agency and the Private Partner or its Contractor for the design and Construction of the facility and monitoring of the performance of the contracting parties during such phases of the PPP Project.

An Independent Consultant may also be procured during the O&M and/or handover phase of the PPP Project. There may be different Independent Consultants for the different stages of implementation.

The procurement of the Independent Consultant shall commence within thirty (30) calendar days from the signing of the PPP Contract or from a date the Implementing Agency deems appropriate for the project that is consistent with the requirements and timelines under the PPP Contract. The period of appointment of the Independent Consultant shall be consistent with the Construction, O&M, and/or handover period as stipulated under the PPP Contract. Any delays or deviations from the stipulated Construction, O&M, and/or handover

period that may result in the premature conclusion of the Independent Consultant engagement may warrant an extension or a new procurement process for an Independent Consultant, as deemed necessary by the Implementing Agency.

The terms of reference for the procurement of the Independent Consultant shall include, but shall not be limited to, the scope of reports and the frequency of their submissions to the Implementing Agency, and the process for their evaluation. The Implementing Agency shall allow the Private Partner to comment on the terms of reference prior to approval within fifteen (15) calendar days from receipt thereof.

A prospective Independent Consultant shall submit to the Implementing Agency and the Private Partner a complete disclosure statement specifying all of its past, present, and anticipated or planned future relationships to the PPP Project and with every person who has or is likely to have a connection with it, confirming that there is or is not likely to be any conflict of interest.

Upon selection of an Independent Consultant, the Implementing Agency shall notify the Private Partner of its proposed award of the Independent Consultant contract with scope of duties as agreed upon, and the Private Partner shall send a written acknowledgment thereof to the Implementing Agency.

Costs of procurement of an Independent Consultant shall be borne equally by the Implementing Agency and the Private Partner. Such costs borne by the Implementing Agency shall not be considered as a Subsidy.

The parties shall provide all the assistance necessary to enable the Independent Consultant to carry out its functions and duties under the Independent Consultant contract. The parties shall not deceive, intimidate, influence, or otherwise exert undue pressure, upon the Independent Consultant, or commit similar acts that would adversely impact the integrity and the independence of the Independent Consultant.

The terms and conditions provided in the Independent Consultant contract shall be consistent with the PPP Contract. In addition to the responsibilities of the Independent Consultant set forth in the Independent Consultant contract, the Independent Consultant shall provide the Implementing Agency, Private Partner, COA, a panel of government offices designated by the Approving Body, if any, and the PPP Center with copies of all documents procured by the Independent Consultant during its period of appointment.

The Independent Consultant report shall, at the minimum, contain the following: project progress plan and schedule, project status in terms of accomplishments and backlogs, project issues and concerns, materials report, Independent Consultant activities, compliance to construction environmental and social impacts, and risks management plan, and other documents as may be required.

CHAPTER 2. PROJECT SUPERVISION, PROJECT MONITORING, AND CONTRACT MANAGEMENT

Section 111. *Project Supervision.* Every PPP Project shall be implemented in accordance with the executed PPP Contract. The Implementing Agency shall be entitled to exercise sufficient powers of supervision, monitoring, and control over the implementation of each PPP Contract it has entered into, and shall be responsible for the submission of periodic monitoring reports, executed under oath, to the appropriate oversight agencies. The submission of monitoring reports shall be made by the PPP unit of the Implementing Agency, as applicable.

Section 112. *Contract Management and Risk Mitigation.* The Implementing Agency, being accountable for each PPP Project it has undertaken, shall ensure proper implementation of the PPP Project and timely compliance with the contractual obligations by adopting a contract management plan for each contract it has entered. The contract management plan shall, at the minimum, include the following:

- (a) an agreed project execution plan, which covers the roles and responsibilities of the parties and other stakeholders during project implementation, the monitoring of project milestones and KPIs, and the resources required to execute the project;
- (b) the conflict mitigation plan referred to in Section 8 of this IRR, as applicable; and
- (c) the risk mitigation plan approved by the Approving Body pursuant to *Title IV* of this IRR, or any updates thereto, which includes all risks assumed by the government under the PPP Contract, risks assumed by the Implementing Agency, risk mitigating measures, estimated costs to be incurred in

addressing identified risks, target timeline to have each measure in place, and the appropriate action plan by the Implementing Agency to manage each type of risk.

The Implementing Agency may customize its contract management plan considering the size and scope of its PPP Project. All plans shall be kept up-to-date and submitted to the PPP Center for monitoring. A copy of these plans, and any updates thereto, shall be submitted to the PPP Center within five (5) calendar days after the approval of such plan by the Head of the Implementing Agency.

These provisions shall apply to PPP Contracts executed under the Code and this IRR and to PPP Contracts executed prior to the effectivity of the Code: *Provided*, That for the latter, such application does not infringe upon established rights and obligations; *Provided further*, That for contracts executed prior to the effectivity of the Code, which do not have an existing contract management plan, the Implementing Agency shall prepare a contract management plan covering the remaining contract duration.

Section 113. *Creation of a Trust Liability Block Account (TLBA) for National PPP Projects, as applicable.*

Pursuant to Joint Circular No. 2023-01 issued by the DOF, DBM, and COA, revenues collected or received by departments, bureaus, offices, and instrumentalities of the National Government, including Constitutional Offices enjoying fiscal autonomy, SUCs, and GOCCs, such as toll fees, charges, and other revenues arising from National PPP Projects shall be deposited in an authorized government depository bank and booked as trust liability account of the IA concerned. The creation of the TLBA and the management of revenues received from said projects shall be in accordance with the aforementioned Joint Circular and its subsequent issuances.

Section 114. *Project Monitoring.* The PPP Center shall be responsible for the coordination and monitoring of all PPP Projects and shall serve as the central repository of all PPP Project information. For this purpose, the Implementing Agency shall submit to the PPP Center a copy of all executed PPP Contracts and other project documents as required by the PPP Code and this IRR, and as may be required by the PPP Center. The Implementing Agency shall submit the executed PPP Contracts within fifteen (15) calendar days upon the effectivity of this IRR for existing contracts, and within five (5) calendar days from signing for contracts executed under the Code and this IRR. Such contracts shall be considered, appropriately kept safe, and preserved, as public documents and shall be published by the Implementing Agency and the PPP Center through their respective websites. In case of PPP Contracts with provisions which are proprietary, or may pose threats to national security or public safety, the procedures for the disclosure and publication of such contracts shall be consistent with existing and applicable laws, rules, and regulations.

At the end of every calendar year, the PPP Center shall submit a report to the President of the Philippines and to Congress, particularly to the Senate President and the Speaker of the House of Representatives, and the Joint Oversight Congressional Committee referred to in Section 33 of the Code, on the progress of all PPP Projects.

The PPP Governing Board shall set the framework for monitoring and reporting the progress of PPP Projects. The framework shall cover both National and Local PPP Projects and shall provide the protocols for monitoring compliance with contractual obligations and project performance in the following aspects:

- (a) Physical - includes the monitoring of actual progress against scheduled milestones, compliance with the minimum performance, standards, and specifications, achievement of KPIs, project risks and issues encountered, and expected outputs and benefits;
- (b) Financial- includes the monitoring of project spending and financial performance, and the payment of Availability Payments, Government Undertakings, Contingent Liabilities from risks that have materialized, project loans, and other liabilities under the PPP Contract; and
- (c) Project safeguards - includes the monitoring of compliance and performance in accordance with gender equality, disability, social inclusivity, health and safety, and environmental policies, standards, and best practices.

The framework shall also cover the reportorial requirements of the parties and the corresponding processes, including the prescribed format, content, schedule, and frequency of submissions, and appropriate penalties for the non-compliance of parties to the set reportorial requirements.

These provisions shall apply to PPP Contracts executed under the Code and this IRR and to contracts executed

prior to the effectivity of the Code, provided that for the latter, such application does not infringe upon established rights and obligations.

CHAPTER 3. PRE-CONSTRUCTION

Section 115. *Notice to Commence.* The Implementing Agency, when deemed necessary, shall issue the Notice to Commence Implementation of the PPP Project, or any equivalent document, to the Private Partner within a reasonable period to be determined by the Implementing Agency and subject to the compliance to the conditions stated in the PPP Contract.

Section 116. *Preparation and Approval of the Detailed Engineering Design.* Where the PPP Project involves design, the Private Partner shall be responsible for the preparation of the detailed engineering designs and plans based on the prescribed minimum performance standards and specifications, KPIs, and targets, and shall submit the same to the Implementing Agency pursuant to the timeline stipulated in the PPP Contract.

The Implementing Agency shall review the detailed engineering designs and plans prepared by the Private Partner in terms of its compliance with the prescribed minimum performance standards and specifications, and if found acceptable, shall approve the same for incorporation in the PPP Contract. This approval by the Implementing Agency notwithstanding, the Private Partner shall be solely responsible for the integrity of its detailed engineering designs and plans. The approval thereof by the Implementing Agency does not diminish this responsibility, nor does it transfer any part of such responsibility to the Implementing Agency.

The Implementing Agency shall ensure that the technical designs, plans, specifications, and related aspects necessary for the PPP Project's construction, operation and maintenance shall be based on relevant local and national laws, rules and regulations, policies, standards, and guidelines. Moreover, the Implementing Agency and its Private Partner may consult with appropriate regulators regarding relevant laws, rules and regulations, policies, standards, and guidelines in granting the necessary Administrative or Local Franchise.

CHAPTER 4. PROJECT CONSTRUCTION

Section 117. *Notice to Commence.* The Implementing Agency, when deemed necessary, shall issue the Notice to Commence Construction of the PPP Project, or any equivalent document, to the Private Partner within a reasonable period to be determined by the Implementing Agency and subject to the compliance with the conditions stated in the PPP Contract.

The Private Partner shall construct the PPP Project in accordance with the minimum performance standards and specifications prescribed in the approved detailed engineering design. For this Construction stage, the Private Partner may engage the services of Filipino and/or foreign Contractors that comply with the requirements as prescribed under this IRR. In the case of foreign Contractors, Filipino workforce shall be employed in the different phases of the Construction works where Filipino skills are available. Preference shall be given to the hiring of Filipino construction workforce. Hiring of workforce shall be subject to existing labor laws, rules and regulations.

Section 118. *Performance Security for Construction Works.* To guarantee the faithful performance by the Private Partner of its obligations after the signing of the PPP Contract until the acceptance of the facility under the contract, including the prosecution of the Construction works related to the project, the Private Partner shall post a performance security in favor of the Implementing Agency, within the period and in the form and amount stipulated in the PPP Contract and Notice of Award.

The form of performance security shall be in accordance with the PTCs approved by the Approving Body, which may be in cash, bank draft or guarantee confirmed by a local bank or bonded by a foreign bank in the case of foreign bidders, 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. The amount of security to be set by the Implementing Agency shall be in accordance with the following schedules:

- (a) Cash, irrevocable letter of credit, or bank draft- a minimum of two percent (2%) of the total Project Cost;

(b) Bank Guarantee- a minimum of five percent (5%) of the total Project Cost.

(c) Surety Bond - a minimum of ten percent (10%) of the total Project Cost. The performance guarantee shall be valid up to acceptance by the Implementing Agency of the facility.

Should the performance security fall below the amount as required in the PPP Contract, the Private Partner shall provide for an additional performance security to meet such required amount within fifteen (15) calendar days from the occurrence thereof.

The performance security shall be proportionately increased in the case of government approved variations causing an increase in the Project Cost. The Private Partner shall provide for the necessary additional performance security within fifteen (15) days from the approval of the variation.

The Implementing Agency shall strictly monitor compliance by the Private Partner with the requirements for performance security and the sufficiency thereof.

Section 119. Release of Performance Security for Construction Works. Upon completion of Construction, the Implementing Agency shall issue a Certificate of Completion. Within a period of no more than one (1) year after its issuance, the Implementing Agency shall issue a Certificate of Acceptance of the Construction works upon (a) determination that the works had been completed in accordance with the prescribed minimum standards and specifications and with the approved detailed engineering design, and (b) in case the PPP Contract includes operation, the posting of a performance security for operations.

The performance security for Construction works shall be released by the Implementing Agency after the issuance of the Certificate of Acceptance of the Construction works provided that there are no claims filed against the Private Partner or its Contractor.

As may be agreed upon in the PPP Contract, a portion of the performance security shall be released upon compliance with corresponding milestones.

Section 120. Review of Project Construction. The Implementing Agency, the PPP Center, a panel of government offices designated by the Approving Body, if any, and the Independent Consultant, if procured by the Implementing Agency, may individually or jointly inspect and check, at any 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 and applicable laws, rules, regulations, and industry standards.

In the event that the Implementing Agency concerned, PPP Center, or a panel of government offices designated by the Approving Body, if any, shall find any deviation from or non compliance with the approved plans, specifications, standards, and costs under the PPP Contract and applicable law, rules, regulations, and industry standards, the Implementing Agency shall bring the same to the attention of the Private Partner for the necessary corrective actions. Failure of the Private Partner to correct the deviation within the time prescribed by the Implementing Agency may be a ground for the termination of the contract, in accordance with *Title XVI* of this IRR. Such technical supervision by the Implementing Agency shall not diminish the singular responsibility of the Private Partner for the proper Construction, operation, and maintenance of the PPP Project, nor does it transfer any part of that responsibility to the Implementing Agency.

Section 121. Liquidated Damages during Construction. Where the Private Partner fails to satisfactorily complete the work on or before the completion date, including any extension or grace period duly granted, or fail to perform any of its obligations and undertakings as stipulated in the PPP Contract, the Private Partner shall pay the Implementing Agency liquidated damages, as specified in the PPP Contract, as an indemnity and not by way of penalty. The performance security for Construction works may be applied to answer for any liquidated damages due to the Implementing Agency.

The amount of liquidated damages due for every calendar day of delay beyond the completion date will be based on the formula in the PPP Contract.

Persistent breach of obligations by the Private Partner and a limit to the amount of consequent liquidated damages shall be defined in the PPP Contract. Should the limit be reached, such shall be considered a Private

Partner event of default. Persistent breach of obligations by the Private Partner shall be defined in the PPP Contract by using the following parameters:

- (a) an accumulation of a significant number of breaches over a stated period of time; and/or
- (b) an accumulation of payment deductions from the performance security or of payment of liquidated damages above a certain threshold.

The imposition and collection of liquidated damages shall be without prejudice to the right of the Implementing Agency to avail of its remedies provided under the PPP Contract and laws including the right to terminate the PPP Contract and proceed with the procedures prescribed under this IRR.

CHAPTER 5. OPERATIONS AND MAINTENANCE

Section 122. *Notice to Commence.* The Implementing Agency, when deemed necessary, shall issue the Notice to Commence Operations of the PPP Project, or any equivalent document to the Private Partner within a reasonable period to be determined by the Implementing Agency and subject to the compliance to the conditions stated in the PPP contract.

Section 123. *Performance Security for Operations and Maintenance.* For PPP Projects where the Private Partner or other third parties shall operate the facility, the Implementing Agency shall require the Private Partner to 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 facility in accordance with the prescribed minimum performance standards and specifications under the PPP Contract.

The Implementing Agency shall determine the amount but the form shall be in accordance with this IRR. This performance security for operations shall be valid during the entire operations period.

Should the performance security fall below the amount as required in the contract, the Private Partner shall provide for an additional performance security to meet such required amount within fifteen (15) calendar days from the occurrence thereof.

The performance security shall be proportionately increased in the case of government approved variations causing an increase in the Project Cost. The Private Partner shall provide for the necessary additional performance security within fifteen (15) calendar days from the approval of the variation.

The Implementing Agency shall strictly monitor compliance by the Private Partner with the requirements for performance security and the sufficiency thereof.

Section 124. *Release of Performance Securities.* The Performance Security for Operations shall be released by the Implementing Agency concerned on the transfer date of the facility, provided that there are no claims filed against the Private Partner and its Contractor.

Section 125. *Review of Operations and Maintenance.* The Implementing Agency, the PPP Center, a panel of government offices designated by the Approving Body, if any, or the Independent Consultant, if procured by the Implementing Agency, may individually or jointly inspect and check, at any time, the project to determine whether the project is operated and maintained in accordance with the approved plans, specifications, standards and costs under the PPP Contract.

In the event that the Implementing Agency, the PPP Center, or a panel of government offices designated by the Approving Body, if any, or the Independent Consultant, if procured by the Implementing Agency, shall find any deviation from or non-compliance with the approved plans, specifications and standards, the Implementing Agency shall bring the same to the attention of the Private Partner for the necessary corrective actions. Failure of the Private Partner to correct the deviation within the time prescribed by the Implementing Agency may be a ground for the termination of the contract, in accordance with *Title XVI* of this IRR. Such technical supervision by the Implementing Agency shall not diminish the singular responsibility of the Private Partner for the proper Construction, operation, and maintenance of the PPP Project, nor does it transfer any part of that responsibility to the Implementing Agency.

Section 126. Liquidated Damages during Operations. Where the Private Partner fails to meet the operating performance standard as prescribed in the PPP Contract, or fails to perform any of its obligations and undertakings as stipulated in the PPP Contract, the Private Partner shall pay the Implementing Agency liquidated damages, as specified in the PPP Contract, as an indemnity and not by way of penalty. The performance security for operations may be applied to answer for any liquidated damages due to the Implementing Agency.

The amount of liquidated damages, which shall be stipulated in the PPP Contract, shall be based on the principle of fair compensation for damages which the Implementing Agency will sustain as a result of the Private Partner's failure to meet its obligations.

Persistent breach of obligations by the Private Partner and a limit to the amount of consequent liquidated damages shall be defined in the PPP Contract. Should the limit be reached, such shall be considered a Private partner event of default. Persistent breach of obligations by the Private Partner shall be defined in the contract by using the following parameter:

- (a) an accumulation of a significant number of breaches over a stated period of time; and/or
- (b) an accumulation of payment deductions from the performance security or of payment of liquidated damages above a certain threshold.

The imposition and collection of liquidated damages shall be without prejudice to the right of the Implementing Agency avail of its remedies under the PPP Contract including the right to terminate the PPP Contract and proceed with the procedures prescribed under this IRR.

Section 127. Repair and Maintenance Costs. The Private Partner shall, within the contract term and the warranty period prescribed under this IRR, undertake the necessary and appropriate repair and maintenance of the project, in accordance with the prescribed minimum performance standards, and other terms prescribed in the approved contract, in order to ensure that the facility operates at the desired level of service. For this purpose, and where applicable, a portion of the project's revenues equivalent to the cost of the project's repair and maintenance, as indicated in the Private Partner's bid shall be set aside and reserved exclusively for repair and maintenance costs of the project. For facility, an escrow account may be established for the purpose.

CHAPTER 6. HANDOVER

Section 128. Expiring Contracts and Transfer of and Warranty Over the Facility. Under contractual arrangements involving transfer of the facility to the Implementing Agency, the transfer or turnover will necessarily include the transfer of full legal ownership over the PPP Project, all documents, property rights, source codes, equipment, among others, which are related to the project in favor of the Implementing Agency, subject to any existing liens as may be agreed upon in the PPP Contract. The facility, upon transfer to Implementing Agency, shall be operable and in good condition. The performance indicators for the PPP Project and frequency of monitoring the indicators shall be stipulated in the PPP Contract and in a handover plan. A third-party valuator shall be commissioned by the Implementing Agency to assess the residual value of the facility upon transfer or turnover of the facility to the Implementing Agency.

Section 129. Transfer Security. To guarantee the faithful performance by the Private Partner of its obligations during the transfer of the facility, including ensuring that project assets are in such condition as required in the handover plan under Section 128 of this IRR, the Private Partner shall post an asset transfer security in favor of the Implementing Agency, in the form, amount, and period stipulated in the PPP Contract.

The Implementing Agency shall determine the amount taking into account the valuation of a Third-party Appraiser. The asset transfer security shall be valid until the Implementing Agency determines that the facility complies with the transfer requirements as stipulated in the PPP Contract and issues an acceptance certificate.

Section 130. Warranty Security. The Private Partner shall provide warranty that the facility meets the KPIs and targets in connection therewith for a period not less than one (1) year from the transfer of the facility. The Private Partner shall put up a warranty security, and the amount of which shall be determined by the Implementing Agency and shall be stipulated in the PPP Contract. The warranty security shall be made effective immediately upon transfer of full legal ownership over the project in favor of the Implementing Agency, as

described above.

TITLE IX. REGULATION OF TARIFFS

Section 131. *Identification of Regulatory Bodies.* The PPP Center shall identify all relevant Regulatory Bodies including, but not limited to, the Toll Regulatory Board, the Civil Aviation Authority of the Philippines, and the Land Transportation Franchising and Regulatory Board charged with approval of initial Tariff and adjustments thereof, and within a reasonable time after the effectivity of this IRR, shall conduct consultations with these Regulatory Bodies on the issuance of Administrative or Local Franchise, and regulation of Tariff. The consultation shall cover process for early engagement of the Regulatory Bodies with the Implementing Agencies - before the approval of a PPP Project and its procurement - particularly to obtain the comments and inputs of the Regulatory Bodies on the draft contract and other bidding documents pertaining to Tariffs and other regulatory aspects.

In the absence of an appropriate Regulatory Body, the initial Tariff and adjustments thereof shall be as stipulated in the PPP Contract.

Section 132. *Issuance of Guidelines, Frameworks, or Mechanisms.* Regulatory Bodies charged with approval of initial Tariff and adjustments thereof for PPP Projects, in coordination with the PPP Center, shall issue a policy document, within one hundred eighty (180) calendar days from the effectivity of this IRR detailing the guidelines, frameworks, or mechanisms for the consultation, application, review, and approval of said initial Tariff and adjustments.

The said policy document shall include the following minimum provisions, processes, and applicable timelines:

- (a) The procedures in securing regulatory approvals of the initial Tariff, and adjustments thereof, for Solicited Projects and Unsolicited Proposals: *Provided*, That all regulatory approvals shall be made prior to the approval of a PPP Project and that during the implementation period of the PPP Project, the Private Partner shall have the right to file the application for Tariff and adjustments thereof;
- (b) Procedures for the publication of, hearing for, and decision and order on the proposed initial Tariff, and adjustments thereof;
- (c) Factors in setting and adjusting such Tariff which may include a parametric formula; and
- (d) Appeal process for decisions of the Regulatory Bodies.

Section 133. *Basis for Approval of Initial Tariff and Adjustments.* All Regulatory Bodies shall approve the initial Tariff and adjustments thereof, on the basis of service quality, KPis, the principles of fairness, transparency, predictability, and protection of public interest while providing for RROR pursuant to Section 90 of this IRR, on capital or investment by the Private Partner, as applicable, and other stipulations in the PPP Contract.

Section 134. *Upholding of Initial Tariff and Adjustments.* During implementation of the PPP Project, all Regulatory Bodies shall uphold the approved initial Tariff and adjustments thereof.

In case any Implementing Agency fails to implement the initial Tariff and adjustments thereof as stipulated in the PPP Contract, including action or inaction of the Regulatory Body, the Private Partner shall be allowed to recover the difference through measures consistent with the PPP Contract and applicable laws, rules, and regulations, and without prejudice to the penal sanctions provided under Section 32 of the Code.

Section 135. *Inclusion of the Initial Tariff and Adjustments or the Maximum Acceptable Initial Values in the Final Draft of the PPP Contract.* The approved initial Tariff - or the maximum acceptable initial values of the Tariff that may be proposed by bidders in the case of projects for public bidding where the bid parameter is the initial value of the tariff itself- and adjustments thereof shall be included in the final draft PPP Contract that will be circulated to all bidders prior to the bid submission date to be set by the Implementing Agency.

Section 136. *Absence of an Appropriate Regulatory Body and Creation of a Local Rate Setting Body.* In the absence of an appropriate Regulatory Body, the initial Tariff and adjustments thereof shall be as stipulated in the

PPP Contract. In the case of Local PPP Projects, the Implementing Agency may also opt to create and establish a local rate setting body: *Provided*, That the composition, powers, and responsibilities of such body shall be set forth in an ordinance or resolution approved by the local Sanggunian of the Implementing Agency.

Pursuant to Section 2 of the Code and this IRR, the local rate-setting body shall in the exercise of its powers, adhere to the standards set out under RA No. 7160 or the Local Government Code of 1991, among others, in establishing rates that must be both reasonable and just.

Section 137. *Posting of the Approved Initial Tariff and Adjustments on the Websites.* The Implementing Agency and the PPP Center shall post on their respective websites the approved initial Tariff and adjustments thereof in a PPP Project.

TITLE X. GOVERNMENT UNDERTAKINGS

Section 138. Allowable Government Undertakings for PPP Projects. The Implementing Agency may offer any one or more Government Undertakings to a PPP 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 for JVs, the total Government Undertakings shall not exceed fifty percent (50%) of the Project Cost.

The Government Undertakings shall be based on the approved risk allocation matrix which the Approving Body shall issue.

Subject to existing laws, policies, rules and regulations, the government may provide form of support or contribution to PPP Projects, unless otherwise prohibited by the Code and this IRR, such as, but not limited, to the following:

- (a) VGF and other forms of Subsidy;
- (b) Payment of ROW-related costs;
- (c) Performance Undertaking;
- (d) Exemptions from any tax, unless otherwise prohibited by this IRR or other applicable laws, rules, and regulations;
- (e) Guarantee on Demand;
- (f) Guarantee on Loan Repayment;
- (g) Guarantee on Private Sector Return;
- (h) Government Equity;
- (i) Contribution of assets, properties, and/or rights;
- (j) Monetary payment of Contingent Liability through the PPP Risk Management Fund of the national government, in the case of Local PPP Projects; and
- (k) Credit Enhancements.

In the case of a contribution of assets, properties, and/or rights, compensation shall be considered appropriate if the value of the compensation is at least equal to the value of the contribution or undertaking as determined by a Third-party Appraiser. For Unsolicited Proposals, the Private Proponent shall procure, at its own cost, the services of a Third-party Appraiser.

Payment of the compensation shall be made not later than the start of operations of the PPP Project. Non-payment of compensation on the said date shall incur interest on the compensation.

The PPP Contract shall include the interest rate to be applied taking into consideration relevant rules and

regulations on interest. In no case shall the parties agree on an interest below the prevailing risk-free rate. In cases where the proposed compensation mechanism is not fixed, the Private Proponent shall ensure that the totality of payments shall meet the requirements set herein: *Provided*, That at the end of concession period, if compensation still falls short of the required amount, the Private Proponent shall pay the difference between the required payment and the actual payments.

TITLE XI. INVESTMENT INCENTIVES

Section 139. *Investment Incentives for PPP Projects.* PPP Projects undertaken through the Code and this IRR, whether solicited or unsolicited, shall be entitled to national and local investment incentives, subject to the qualifications, criteria, and conditions set forth under applicable laws and policies of the government: *Provided*, That appropriate investment incentives shall be granted to registered business enterprises only to the extent of their approved registered project or activity under the Strategic Investment Priority Plan, in the case of national incentives, and the applicable Local Investment and Incentives Code, in the case of local incentives.

Intent to avail incentives shall be disclosed to the appropriate Approving Body during the project approval stage. Further, such incentives shall be included as part of the assumptions in the Financial and Economic Models submitted during project approval. Two distinct Financial and Economic Models may be submitted to operationalize this paragraph. Incentives shall be considered in the Tariffs approved by the Regulatory Body concerned.

Any exemptions or special rates on taxes for a PPP Project granted during the term of its PPP Contract shall be reported by the registered business enterprise or the Private Proponent to the PPP Center in writing for every taxable year. The PPP Center may also enter into agreements with Investment Promotion Agencies and other government agencies administering tax incentives for joint monitoring and information sharing on PPP Projects with incentives granted.

TITLE XII. VALUATION OF GOVERNMENT ASSETS, PROPERTIES, AND/OR RIGHTS

Section 140. *Valuation of Assets, Properties, and/or Rights Contributed to PPP Projects.* Assets, properties, and/or rights to be contributed by an Implementing Agency to a National or Local PPP Project shall be valued through a fair valuation as determined by a Third-party Appraiser in any of the foregoing circumstances:

- (a) in case of Unsolicited Proposals containing Government Undertakings in the form of payment of ROW-related costs and/or contribution of assets, properties, and/or rights, including usufruct, where the government receives appropriate compensation, pursuant to Section 10(c) of the Code;
- (b) in case of solicited and unsolicited JV PPP Contracts, the valuation shall cover all equity contribution of the government, pursuant to Section 11(b) of the Code. Private sector equity contribution in the form of assets, properties, and/or rights shall also be subject to valuation prior to the submission of the project documents for the proposed unsolicited JV to the appropriate Approving Body; and
- (c) in PPP Projects where the investment recovery scheme involves the grant of a portion or percentage of a reclaimed land, pursuant to Section 18 of the Code.

The report should not be older than one (1) year from the date of submission to the appropriate Approving Body. In case the Third-party Appraiser is accredited by the SEC, proof of the valuation company's inclusion in the list of Accredited Asset Valuers of the SEC must be also submitted.

Such contribution must be valued according to accepted standard methodologies and practices commensurate to the nature of the assets.

For avoidance of doubt, valuation reports for PPP Projects where there is no contribution of assets, properties, and/or rights shall not be required.

Further details on the requirements for the valuation of assets, properties, and/or rights to be contributed for PPP Projects may be issued by the ICC in the case of National PPP Projects, and by the PPP Governing Board in the case of Local PPP Projects.

TITLE XIII. AUDITING OF PPP PROJECTS

Section 141. *Examination/Audit by COA.* All PPP Projects shall be subject to the Government Auditing Code of the Philippines and the 2009 Revised Rules of Procedures of the Commission on Audit and any amendments thereto. The COA, in consultation and coordination with the PPP Center, shall adopt and promulgate the necessary framework and guidelines on accounting and auditing PPP Projects.

All revenues, share, and/or receipts pertaining to or accruing to the Implementing Agency or to the government, derived from any PPP Contract, including expenditures or uses of funds and property, owned or held in trust by the Government, shall be subject to examination/audit by COA, for purposes of ensuring that such revenues, share, and/or receipts are fully and properly accounted for and remitted to the Implementing Agency or the government.

Section 142. *Private Partner Revenues.* All revenues and receipts pertaining to or accruing to the Private Partner in a PPP arrangement may be remitted directly to the Private Partner, as may be stipulated in the contract and subject to applicable laws, rules, and regulations.

TITLE XIV. VARIATION, EXPANSION, OR EXTENSION OF AN EXISTING PPP PROJECT

CHAPTER 1. NATIONAL PPP PROJECTS

Section 143. *General Rules on Variation, Expansion, or Extension.* A contract variation, expansion, or extension of an executed PPP Contract may be allowed, subject to the due diligence of the Head of the Implementing Agency.

The following variation, expansion, or extension of an executed PPP Contract, shall be approved by the appropriate Approving Body pursuant to Section 7 of the Code and *Title IV* of this IRR:

- (a) Change/s in the agreed schedule or parametric formula to calculate tariff and adjustments thereof, as stipulated in the PPP Contract, unless already regulated and publicly-disclosed in accordance with *Title IX* of this IRR;
- (b) Decrease in the Implementing Agency's revenue or profit share derived from the project, except as may be allowed under a formula approved by the relevant Regulatory or Approving Body;
- (c) Change/s in the approved scope of works, decrease in the performance standards, deferment of committed service levels, or change in the contractual arrangement: *Provided*, That if the proposed variation involves a change in the approved project scope, the Implementing Agency shall establish that the Private Partner and its contractors possess the capacity to implement the requested variation by assessing the qualifications of the same pursuant to Section 71 of this IRR, prior to submitting the proposed variation to the appropriate Approving Body;
- (d) Extension in the contract term; or
- (e) Any variation that will result in an increase in the financial liabilities of the government under the PPP Project.

In determining the appropriate Approving Body, the project cost to be used shall be the sum of (i) the Project Cost indicated in the financial proposal of the winning bid of the Private Partner during bid submission and (ii) the cumulative value of the proposed variations and all previously approved variations, if any.

All variations outside of items (a) to (e) above shall be approved in writing by the Head of the Implementing Agency.

In all cases, the Implementing Agency shall inform the PPP Center of any proposed or approved variation, expansion, or extension.

Failure to secure the approval of the Head of the Implementing Agency and/or the appropriate Approving Body, as provided in this section, shall render the variation, expansion, or extension void. No variation, expansion, or extension shall be implemented before it is approved.

The rules and procedure under this title shall apply to all new requests for variation, expansion, or extension and those pending approval, unless there is an infringement on the substantive rights of the Private Partner.

For avoidance of doubt, any allowable amendments to the PPP Contract and waivers executed by and between the Implementing Agency and the Private Partner which have the same effect or consequence as items (a) to (e) above shall constitute a variation and shall require approval in accordance with this title.

Section 144. *Setting of Allowable Variation, Expansion, or Extension during the Approval Period.* The Approving Body may establish limitations on allowable variations relating to items (c), (d), and (e), as part of the approved PTCs of the PPP Project during the approval process: *Provided*, That if the Approving Body is the Head of the Implementing Agency, the head of the department or agency to which the Implementing Agency is attached, or the governing board, whichever is applicable, such established limitations shall not result in a PPP Project which approval is beyond its jurisdiction provided in Section 7 of the Code and *Title IV* of this IRR.

Section 145. *Proposed Variation, Expansion, or Extension during the Implementation Period.* During the implementation of the PPP Contract, proposed variations relating to items (c), (d), and (e) which are within the limitations established during the approval process of the project shall be approved by the Head of the Implementing Agency. Proposed variations relating to items (a) and (b); and proposed variations relating to items (c), (d), and (e), which are beyond the limitations established during the approval process, shall be approved by the appropriate Approving Body pursuant to Section 7 of the Code and *Title IV* of this IRR.

The Approving Body may approve the proposed variations or treat the proposed changes as a new project.

The splitting of proposed variation, extension, or expansion for the purpose of circumventing the limitations and conditions prescribed in the Code, this IRR, and the PTCs set by the Approving Body, is expressly prohibited.

CHAPTER 2. LOCAL PPP PROJECTS

Section 146. *General Rules on Variation, Expansion, or Extension.* A contract variation, expansion, or extension of an executed PPP Contract may be allowed, subject to the due diligence of the Head of the Implementing Agency.

The following variation, expansion, or extension of an executed PPP Contract, shall be approved by the local Sanggunian in the case of LGUs, or by the board in the case of LUCs pursuant to Section 7 of the Code and *Title IV* of this IRR:

(a) Change/s in the agreed schedule or parametric formula to calculate Tariff and adjustments thereof, as stipulated in the PPP Contract, unless already regulated and publicly-disclosed in accordance with *Title IX* of this IRR;

(b) Decrease in the Implementing Agency's revenue or profit share derived from the project, except as may be allowed under a formula approved by the relevant Regulatory or Approving Body;

(c) Change/s in the approved scope of works, decrease in the performance standards, deferment of committed service levels, or change in the contractual arrangement: *Provided*, That if the proposed variation involves a change in the approved project scope, the Implementing Agency shall establish that the Private Partner and its contractors possess the capacity to implement the requested variation by assessing the qualifications of the latter pursuant to Section 71 of this IRR, prior to submitting the proposed variation to the appropriate Approving Body;

(d) Extension in the contract term; or

(e) Any variation that will result in an increase in the financial liabilities of the government under the PPP Project.

All variations outside of items (a) to (e) above shall be approved in writing by the Head of the Implementing Agency.

In all cases, the Implementing Agency shall inform the PPP Center of any proposed or approved variation, expansion, or extension.

Failure to secure the approval of the Head of the Implementing Agency and/or the appropriate Approving Body, as provided in this section, shall render the variation, expansion, or extension void. No variation, expansion, or extension shall be implemented before it is approved.

The rules and procedure under this title shall apply to all new requests for variation, expansion, or extension and those pending approval, unless there is an infringement on the substantive rights of the Private Partner.

For avoidance of doubt, any allowable amendments to the PPP Contract and waivers executed by and between the Implementing Agency and the Private Partner which have the same effect or consequence as items (a) to (e) above shall constitute a variation and shall require approval in accordance with this title.

Section 147. *Setting of Allowable Variation, Expansion, or Extension during the Approval Period.* The local Sanggunian in the case of LGUs, or the board in the case of LUCs, may establish limitations on allowable variations relating to items (c), (d), and (e), as part of the approved PTCs of the PPP Project during the approval process.

Section 148. *Proposed Variation, Expansion, or Extension during the Implementation Period.* During the implementation of the PPP Contract, proposed variations relating to items (c), (d), and (e) which are within the limitations established during the approval process of the project shall be approved by the Head of the Implementing Agency. Proposed variations relating to items (a) and (b); and proposed variations relating to items (c), (d), and (e), which are beyond the limitations established during the approval process, shall be approved by the local Sanggunian in the case of LGUs, or the board in the case of LUCs, pursuant to Section 7 of the Code and *Title IV* of this IRR.

The local Sanggunian or the board, whichever is applicable, may approve the proposed variations or treat the proposed changes as a new project.

The splitting of proposed variation, extension, or expansion for the purpose of circumventing the limitations and conditions prescribed in the Code, this IRR, and the PTCs set by the Approving Body, is expressly prohibited

TITLE XV. DIVESTMENT OR TAKEOVER BY THE GOVERNMENT

Section 149. *Divestment.* Subject to the approval of the Head of the Implementing Agency, a Private Partner may divest its ownership, rights, or interest in a PPP Project: *Provided*, That the divestment shall be after the lock-in conditions as indicated in the PPP Contract; *Provided*, further, That the new Private Partner has equal or better qualifications as with the previous Private Partner.

A divestment of the Private Partner made in violation of the Code and this IRR shall be a ground for disqualification, cancellation of the PPP Contract, as the case may be, and/or forfeiture of the Private Partner's bid or performance security.

The Implementing Agency may divest its ownership, rights, or interest in a PPP Project: *Provided*, That PPP Projects which involve full or partial divestment or transfer of ownership of government assets or properties shall be subject to approval of the appropriate Approving Body and applicable laws, decrees, orders, rules, and regulations.

In cases of JV PPP Contracts where the government deems that divestment from the JV is in the best interest of the public, the government may allow the Private Partner to take over the undertaking of the project in its entirety, pursuant to the provisions of the JV PPP Contract.

Such takeover shall be in accordance with the laws, rules, and regulations governing privatization.

The Implementing Agency shall, within five (5) calendar days from the approval of any divestment or takeover, whether by the government or by the Private, inform in writing the PPP Center for monitoring purposes.

Section 150. *Temporary or Permanent Takeover by the Government.* In cases of emergency or when public interest so requires, the Implementing Agency may, by written notice to the Private Partner immediately take over the PPP Project or any part thereof.

(a) *Temporary Takeover.* During a temporary takeover, the Implementing Agency shall retain the Tariff

from the PPP Project and shall be responsible for the corresponding costs to rectify, operate, and maintain the PPP Project. Once the temporary takeover has ceased, the Implementing Agency shall return the PPP Project to the Private Partner.

During such temporary takeover, the contract duration shall be suspended until the PPP Project or operations thereof has been returned to the Private Partner.

The PPP Contract must include provisions allowing for a temporary takeover by the Implementing Agency along with the conditions that must be met for the cessation of the temporary takeover. The PPP Contract must also provide for the terms of the return of the PPP Project to the Private Partner after a temporary takeover, such as but not limited to:

- (i) Compensation due to the Private Partner resulting from the temporary takeover;
- (ii) Adjustment of KPIs to the extent that defects in the PPP Project cannot be rectified; and
- (ii) Warranty in favor of the Private Partner that the PPP Project is capable of meeting the KPIs as adjusted, covering a reasonable period from the time of return of the PPP Project to the Private Partner.

(b) Permanent Takeover. In case of a permanent takeover, the Private Partner shall be entitled to claim Termination Payments in accordance with *Title XVI* of this IRR. For purposes of this section, the continuous and uninterrupted takeover by the Implementing Agency of the PPP Project over a minimum period to be defined in the PPP Contract from the date of receipt by the Private Partner of a written takeover notice shall be deemed to be a permanent takeover.

If necessary, the Implementing Agency shall immediately issue the relevant rules, regulations, or ordinance to facilitate the takeover of PPP Projects.

TITLE XVI. CONTRACT TERMINATION

Section 151. *Termination Events.* All PPP contracts shall define all events that may lead to its termination, including but not limited:

- (a) Implementing Agency event of default;
- (b) Private Partner event of default;
- (c) Force majeure and other no-fault termination events; and
- (d) Other termination events, as may be agreed upon by the parties to the PPP Contract.

For such events that may lead to contract termination, the PPP Contract shall provide remedies, curing periods, lender step-in rights, remittance procedures, default interest rates, and written notice requirements agreed upon by both parties. The contract shall likewise provide that termination shall take place only upon failure to remedy or cure the default in accordance with the PPP Contract. The PPP Project shall not be terminated for an event of default without exhausting the corresponding remedy or curing period.

Section 152. *Termination Payments.* The amount of Termination Payment shall be determined by the parties pursuant to the PPP Contract, following the guidelines and related reportorial requirements to be issued by the PPP Governing Board.

An independent appraiser shall be required under the PPP Contract for purposes of computing the Termination Payment. Such independent appraiser shall be chosen by mutual consent of the parties. The cost of hiring the independent appraiser shall be borne by the party at fault, except in cases of termination that is neither the fault of the Implementing Agency nor the Private Partner, in which case, the cost shall be divided equally.

The amount of Termination Payment determined by the independent appraiser shall be binding on both the Private Partner and the Implementing Agency, absent manifest error or fraud.

For the continuity of public services, the government is authorized to take possession of the assets or facilities prior to the payment of termination payment.

TITLE XVII. PPP CENTER

Section 153. *Institutionalization of the PPP Center.* To achieve the goals of the Code and this IRR, the PPP Center created under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, and further amended by Executive Order No. 30, series of 2023, is institutionalized by the Code. It is authorized by the Code to adopt its current organizational structure, absorb its existing employees, and upgrade its human resource component, as may be necessary, subject to applicable laws, rules, and regulations.

The PPP Center shall report directly to the PPP Governing Board and be attached to the NEDA for policy and program coordination.

Section 154. *Powers and Functions of the PPP Center.* To work towards a more efficient and effective performance of its mandate, the PPP Center shall have the following powers and functions:

- (a) Assist Implementing Agencies in identifying, prioritizing, developing, and maintaining a pipeline of PPP Projects;
- (b) Provide project advisory services and technical assistance to Implementing Agencies, Approving Bodies, and other oversight agencies in all PPP-related matters, and act as a procurement agent upon the request of the Implementing Agency, in accordance with Section 156 of this IRR;
- (c) Facilitate the appraisal and approval of PPP Projects by the ICC and the NEDA Board;
- (d) Review PPP Contracts pursuant to Section 8(a) of the Code and Section 80 of this IRR;
- (e) Require the submission of PPP Project documents including executed PPP Contracts, and any subsequent amendment or supplement thereto, including settlement agreements, entered into by Implementing Agencies, notwithstanding the confidentiality clauses that are stipulated therein;
- (f) Provide regular monitoring and status reports on the implementation of the PPP Program and all PPP Projects entered into by Implementing Agencies, including potential public interest concerns and violations of the PPP Code, to the Office of the President, the Congress of the Philippines, and relevant oversight committees and agencies, and publish the same in the official website of the PPP Center unless otherwise prohibited by existing laws, rules, and regulations;
- (g) Serve as the central repository of all PPP Project information;
- (h) Develop the capacities of Implementing Agencies, Approving Bodies, PPP units referred to in Section 28 of the Code and *Title III*, Chapter 1 of this IRR, and other relevant stakeholders on PPPs;
- (i) Promote and market the PPP Program and PPP Projects, in collaboration with other government investment promotion agencies;
- (j) Recommend plans, policies, and implementation guidelines related to PPPs, in consultation with appropriate oversight committees or agencies, Implementing Agencies, private sector, and other relevant stakeholders;
- (k) Draft policy matter opinions for approval by the PPP Governing Board in response to requests by government agencies and private entities;
- (l) Issue non-policy matter opinions relating to PPPs;
- (m) Ensure sustainability of the implemented PPP Program and PPP Projects through monitoring, documenting, and sharing the lessons learned and best practices to Implementing Agencies, Approving Bodies, oversight committees or agencies, and other relevant stakeholders;
- (n) Advise and assist Implementing Agencies and oversight agencies in developing and periodically

updating an organizational development plan that will enable them to competently perform their functions under the Code and this IRR; and recommend to the DBM the appropriate structure of a PPP unit referred to in *Title III*, Chapter 1 of this IRR, including the standards of training, qualification, and compensation for necessary personnel under these organizational development plans;

- (o) Manage and administer the PDMF as provided in Section 26 of the Code and *Title XIX* of this IRR;
- (p) Manage and administer the PPP Risk Management Fund as provided in Section 27 of the Code and *Title XX* of this IRR;
- (q) Act as Secretariat to the PDMF Committee and the PPP Governing Board; and
- (r) Perform such other functions as may be necessary to achieve the objectives and purposes of the Code and this IRR.

The PPP Center may receive contributions, grants, and/or other funds from, among others, government agencies and corporations, LGUs, local and foreign donors, development partners, and private sector/institutions subject to applicable laws, rules, and regulations.

Section 155. *The Executive Director.* The PPP Center shall be headed by an Executive Director with the rank equivalent to an Undersecretary, who shall be appointed by and co terminus with the President of the Philippines. The Executive Director shall perform the following functions:

- (a) Undertake the day-to-day management and supervise the operations of the PPP Center;
- (b) Recommend to the PPP Governing Board such policies and measures which are deemed necessary for the effective exercise and discharge of the powers and functions of the PPP Center;
- (c) Sit as a member of the PPP Governing Board, the Technical Boards of Infrastructure Committee (INFRACOM) and ICC, and other inter-agency bodies in cases where PPPs are concerned; and
- (d) Perform such other functions as may be assigned by the PPP Governing Board.

Section 156. *PPP Center as Procurement Agent.* During the procurement stage, the Implementing Agency may request in writing that the PPP Center conduct procurement for a specific PPP Project on their behalf. The PPP Center may accept such request for a reasonable fee pursuant to the guidelines to be issued by the PPP Governing Board and other applicable laws, rules, and regulations, under the following circumstances:

- (a) If the PPP Project to be procured is complex and the Implementing Agency lacks the capacity to procure such project; or
- (b) If the PPP Project is considered pioneering and the Implementing Agency lacks capacity to procure such project.

For purposes of this section, a project is considered to be pioneering if it falls under any of the following: green, smart, emerging, state-of-the-art technology, or any other similar or related concepts/technologies.

As a procurement agent, the PPP Center shall assume the functions of the PBAC under *Title VI* of this IRR and recommend to the Head of the Implementing Agency the award of the PPP Contract. The Implementing Agency shall appoint at least one (1) qualified member in the PBAC as a voting member to oversee the procurement and represent their interests in all relevant decisions.

The Implementing Agency and the PPP Center shall execute a legal document that clearly states the terms and conditions of the procurement arrangement. Both agencies must strictly adhere to best practices and principles that promote accountability, integrity, fairness, transparency, and efficiency in the procurement process.

TITLE XVIII. PPP GOVERNING BOARD CHAPTER 1. POWERS, FUNCTIONS, AND COMPOSITION

Section 157. *Powers and Functions of the PPP Governing Board.* The PPP Governing Board, created under Executive Order No. 136, series of 2013, as amended by Executive Order No. 30, series of 2023, is

institutionalized by the Code. It shall be the overall policy making body for all PPP-related matters, including the PDMF. It shall also be responsible for setting the strategic direction of the PPP Program and PPP Projects and in creating an enabling policy and institutional environment for PPP.

To achieve the goals of the Code and this IRR, the PPP Governing Board may issue supplemental guidelines, forms, and templates to further operationalize the provisions set forth herein.

All issuances, orders, resolutions, decisions, or other acts of the PPP Governing Board shall be binding, unless otherwise stated thereby.

Section 158. *Composition of the PPP Governing Board.* The PPP Governing Board shall be composed of the following:

Chairperson: Secretary of NEDA

Vice-Chairperson: Secretary of DOF

Secretariat: PPP Center

Members:

- (a) Secretary of DBM;
- (b) Secretary of DOJ;
- (c) Secretary of Department of Trade and Industry;
- (d) Secretary of the DILG;
- (e) Secretary of the DENR;
- (f) Chairperson of the CHED;
- (g) Executive Secretary;
- (h) Executive Director of the PPP Center; and
- (i) One (1) private sector representative from the infrastructure sector to be appointed by the PPP Governing Board.

The members of the PPP Governing Board may designate, through a special order, their respective alternates, who shall in no case be lower than Assistant Secretary, and whose acts shall be considered the acts of their principals. The official designation of alternates signed by the principal member concerned shall be submitted to the PPP Center within fifteen (15) calendar days after the effectivity of this IRR.

The presence of the Chairperson and five (5) other members of the PPP Governing Board shall constitute a quorum and a majority vote of the members present shall be necessary for the adoption of any issuance, order, resolution, decision, or other act of the PPP Governing Board in the exercise of its functions. The PPP Governing Board shall act as a collegial body.

The PPP Governing Board may prescribe and, as deemed necessary, update guidelines and protocols for the conduct of its regular and special meetings.

Section 159. *Appointment of the Private Sector Representative.* The PPP Governing Board shall issue the necessary rules and procedures on appointing the private sector representative from the infrastructure sector, including its alternate representative, if any, and their duration of service.

The private sector representative shall promptly notify the Board of any actual, perceived, or potential conflict of interest that could affect the performance of their duties as a member of the PPP Governing Board.

TITLE XIX. PROJECT DEVELOPMENT AND MONITORING FACILITY (PDMF)

Section 160. *Institutionalization of the PDMF.* The PDMF referred to under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, and further amended by Executive Order No. 30, series of 2023, is institutionalized by the Code. The PDMF is a funding mechanism available to Implementing Agencies for the procurement of advisory and support services related to the preparation, structuring, evaluation, procurement, probity management, Financial Close, and monitoring of implementation of PPP Projects. These services may include preparation and conduct of business case, pre-feasibility and Feasibility Studies, preparation of tender documents, appointment of Probity Advisors, procurement of Independent Consultants, and Third-party Appraisers who will conduct valuation of government assets in accordance with Title XII of this IRR, and other activities in the preparation, procurement, and implementation of PPP Projects.

The PDMF may also be used for such other services as may be required or contemplated under applicable laws, rules, and regulations, and as may be determined by guidelines and procedures to be issued by the PPP Governing Board.

Section 161. *Sources of the PDMF Funds.* The PDMF may be funded through the GAA, ODA, or other sources, subject to applicable laws, rules, and regulations. The Implementing Agencies are authorized to reallocate their funds for purposes of the PDMF, subject to the provisions of the GAA and relevant accounting and auditing rules and regulations.

Section 162. *PDMF Management.* The PDMF shall be managed and administered by the PPP Center as a revolving fund. To sustain the PDMF, the PPP Center may recover amounts disbursed and receive fees under the guidelines to be issued by the PDMF Committee and approved by the PPP Governing Board. Such amount shall be retained and authorized to be used by the PPP Center for the purposes indicated in the Code and this IRR.

Section 163. *Institutionalization of the PDMF Committee and its Powers and Functions.* The PDMF Committee institutionalized by the Code shall approve applications for PDMF support submitted by the Implementing Agencies.

Subject to the approval of the PPP Governing Board, the PDMF Committee shall also formulate, prescribe, and recommend policies, procedures, and guidelines for PDMF use and recovery of costs charged to the fund. Such guidelines shall include reporting mechanism on the use of the fund, which shall be publicly available and accessible.

Section 164. *Composition of the PDMF Committee.* The PDMF Committee shall be composed of one (1) representative from the following agencies, who shall in no case be lower than Assistant Secretary:

- (a) NEDA as Chairperson;
- (b) DOF as Vice Chairperson;
- (c) DBM as member; and
- (d) PPP Center as member and Secretariat.

The official designation of the representatives signed by the head of the Agency concerned shall be submitted to the PPP Center within fifteen (15) calendar days after the effectivity of this IRR.

TITLE XX. PPP RISK MANAGEMENT FUND

Section 165. *Creation and the Use of the PPP Risk Management Fund.* To ensure fiscal sustainability and negotiate better financing terms for PPP Projects, and pursuant to Section 27 of the Code, a PPP Risk Management Fund shall be created. The Fund shall be used to pay government Contingent Liabilities arising from PPPs, in accordance with the executed PPP Contract: *Provided*, That the Implementing Agency has exhausted all remedies under the PPP Contract and other identified measures in the risk mitigation plan prior to availing the fund. The Development Budget Coordination Committee (DBCC) shall include the nature or authorization of the PPP Risk Management Fund in the guidelines it shall issue pursuant to Section 27 of the Code and this title.

The PPP Risk Management Fund shall serve as a measure to manage the national government's fiscal risks arising from PPP Projects, strengthen the country's credibility among the private sector, and ensure timely compliance with the contractual obligations of the Implementing Agencies.

Local Implementing Agencies may establish a similar PPP Risk Management Fund subject to the guidelines to be issued by the PPP Governing Board. Sources of the fund may include the budget of the LGU and the income of the LGU from PPP Projects.

Section 166. *Coverage of the PPP Risk Management Fund.* A PPP Project may be covered by the PPP Risk Management Fund support upon the Implementing Agency's payment of contribution to the fund, following the guidelines to be issued by the DBCC.

Local PPP Projects may be covered by the PPP Risk Management Fund of the national government even if the LGU has its own PPP Risk Management Fund, subject to the payment of contributions under the guidelines to be issued by the DBCC.

The fund support for a PPP Project shall start thirty (30) calendar days upon confirmation by the PPP Center of the Implementing Agency's first contribution.

Section 167. *Roles and Responsibilities of Agencies and Committees Involved.* The following agencies and committees shall have the following roles and responsibilities:

(a) The PPP Center

- (i) Manage and administer the PPP Risk Management Fund;
- (ii) As the repository of all PPP Project information, undertake the monitoring of project risks and Contingent Liabilities and report them to the Inter-Agency Technical Working Group on Contingent Liabilities (TWG-CL) created under the DBCC Resolution No. 2015-2, and the DBCC; and
- (iii) In coordination with the TWG-CL, formulate guidelines on managing Contingent Liabilities arising from PPP Projects and using the PPP Risk Management Fund, for approval by the DBCC.

(b) TWG-CL which shall be composed of the Bureau of the Treasury, the DOF, the DBM, and the PPP Center as permanent members

- (i) Recommend to the DBCC the target amount of the PPP Risk Management Fund using risk-adjusted methods or such other means that estimate the exposure of the Government of the Philippines to PPP Contingent Liabilities;
- (ii) Evaluate applications for fund support, using the criteria in the guidelines to be issued by the DBCC, and submit its recommendation to the DBCC; and
- (iii) As necessary, recommend to the DBCC appropriate actions to mitigate and avoid the recurrence of realized obligations, subject to prudent risk management measures.

(c) DBCC

- (i) Determine the target amount of the PPP Risk Management Fund using risk adjusted methods or such other means that estimate the exposure of the Government of the Philippines to Contingent Liabilities;
- (ii) Issue the guidelines on the management of Contingent Liabilities arising from PPP Projects and the use of the PPP Risk Management Fund; and
- (iii) Considering the recommendation of the TWG-CL, decide on the application through the issuance of a resolution, or if circumstances warrant, refer the matter to the President.

Section 168. *Sources of Funding.* The PPP Risk Management Fund shall be funded by: (a) general appropriations; (b) income from existing PPP Projects; and (c) other sources as may be determined by the

DBCC.

Section 169. *Guidelines to be Issued by the DBCC on the Use of the PPP Risk Management Fund.* The guidelines to be issued by the DBCC shall include the following:

- (a) mechanisms on the management of Contingent Liabilities arising from PPP Projects;
- (b) determination of the amount, timing, and process for the payment of the contribution to be made by the Implementing Agency for each PPP Project;
- (c) process for the application of Implementing Agencies for fund support;
- (d) process and criteria for the evaluation and approval of the DBCC of fund support applications;
- (e) process for the disbursement of funds, subject to applicable laws, rules, and regulations; and
- (f) protocols for reporting project risks and Contingent Liabilities, the status of the contribution of the Implementing Agencies, applications for fund support, and disbursements made.

TITLE XXI. PRIVATE LEGAL AND MEDICAL ASSISTANCE

Section 170. *Private Legal and Medical Assistance.* All government employees and officials processing PPP Projects in accordance with the provisions of the Code and this IRR, as well as all PBAC members and other public officials providing services to the PBAC, shall be authorized to engage the services of private lawyers, or shall be provided with free legal assistance by the respective Implementing Agency, where a civil, criminal, or administrative action is filed against them by reason of the performance of their official functions or duties, unless they are found liable for gross negligence or misconduct or grave abuse of discretion in such action or proceeding by final decision of a court of competent jurisdiction.

An Implementing Agency may grant the free legal assistance contemplated under this section pursuant to the appropriate guidelines to be issued by the said Implementing Agency.

Government employees and officials processing PPP Projects, PBAC members, and other public officials providing services to the PBAC, shall reimburse the legal fees they received that was paid for by the Implementing Agency if finally adjudged to be liable for gross negligence, misconduct, or grave abuse of discretion in such action or proceeding.

In the event of settlement or compromise, indemnification shall be confined only on matters covered by the settlement, for events where the government employee and official processing PPP Projects, PBAC member, and other public official providing services to the PBAC to be indemnified have not committed gross negligence, misconduct, or grave abuse of discretion in the performance of their functions and duties.

Government employees and officials processing PPP Projects, PBAC members, and other public officials providing services to the PBAC shall also be entitled to medical assistance from the Implementing Agency for injuries incurred in the performance of their functions subject to the guidelines to be issued by the said Implementing Agency.

TITLE XXII. PROHIBITION ON THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, PRELIMINARY MANDATORY INJUNCTIONS, AND SIMILAR PROVISIONAL REMEDIES

Section 171. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions, Preliminary Mandatory Injunctions, and Similar Provisional Remedies.* No temporary restraining order, preliminary injunction, preliminary mandatory injunction, temporary environmental protection order, or similar temporary or provisional reliefs or remedies shall be issued by any court, except the Supreme Court, against any Implementing Agency or the PPP Center, its officials or employees, or any person or entity, whether public or private acting under the government direction, to restrain, prohibit, or compel the following acts:

- (a) Evaluation, acceptance, and rejection of Unsolicited Proposals, including but not limited to, preliminary examination and screening for completeness, and any and all acts, determinations, or

decisions by the Implementing Agency, NEDA Board, ICC, and its committees, and the PPP Center, in relation thereto;

- (b) Bidding, rebidding, or declaration of failure of bidding of any PPP Project;
- (c)' Awarding of any PPP Contract;
- (d) Acquisition, clearance, development of the ROW, site, or location of any PPP Project;
- (e) Construction, operation, and maintenance of any PPP Project;
- (f) Commencement, execution, implementation, termination, or rescission of any PPP Contract; and
- (g) Undertaking or authorization of any other lawful activity necessary for such PPP Project.

This prohibition shall apply in all cases, disputes, or controversies instituted by any person, including cases filed by bidders or those claiming to have rights through such bidders. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, unless otherwise stated by other relevant laws, rules, and regulations. The bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

In addition to any civil and criminal liabilities a judge may incur under existing laws, any judge who shall issue a temporary restraining order, preliminary injunction or preliminary mandatory injunction, temporary environmental protection order, or similar temporary or provisional reliefs or remedies in violation of this section, shall suffer the penalty of suspension of at least sixty (60) calendar days without pay.

Any temporary restraining order, preliminary injunction, preliminary mandatory injunction, temporary environmental protection order, or similar temporary or provisional reliefs or remedies issued in violation of this section is void and of no force and effect.

If after due hearing the court finds that the award of the PPP Contract is null and void, the court may, if appropriate under the circumstances, award the PPP Contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

TITLE XXIII. ADMINISTRATIVE, CIVIL, AND PENAL SANCTIONS

Section 172. Prohibited Acts and Penalties. A penalty of imprisonment of three (3) to six (6) years and a fine ranging from One million pesos (P1,000,000.00) to Five million pesos (P5,000,000.00) shall be imposed on any person, whether a private individual or a public officer or employee, who commits the following prohibited acts:

- (a) Downgrading the category of the Project Cost for purposes of evading the required approvals under the Code;
- (b) Falsifying or inserting provisions in the execution copy of the PPP Contract which are materially and substantially different from the approved final draft contract;
- (c) Without prejudice to other acts or omissions that may be punishable under Sections 6, 7, 8, 9, 10, 11, 13, 16, 19, 20, 29, 30(b), and 30(c) of the Code, and subject to the Guidelines or Policy Matter Opinions that may be issued by the PPP Governing Board on other punishable acts or omissions not enumerated herein, the following are considered to be violations in the aforementioned Sections:
 - (i) Section 6 on the Identification and Development of PPP Projects, particularly the failure of government entities to submit their investment programs, sectoral master plans, or the Lists of PPP Projects, or any update thereto to the appropriate oversight agencies: *Provided*, That such failure is attendant with bad faith, gross negligence, or fraud;
 - (ii) Section 7 on the Evaluation and Approval of PPP Projects, particularly (a) the failure of any person to secure the required approvals for National and Local PPP Projects and to secure the necessary endorsements prior to the approval of the PPP Projects, (b) the failure of the Approving

Bodies and oversight agencies to render a decision on the PPP Project within the prescribed period, and (c) the intentional splitting of any PPP Project by any person for the purpose of circumventing the thresholds prescribed by the Code, or (d) the submission by any person of fraudulent or false material information for the approval of a PPP Project.

(iii) Section 8 on the PPP Pre-qualification, Bids and Awards Committee, particularly (a) the failure of the Implementing Agency to secure the clearance of the relevant agencies and statutory counsels prior to the approval of the Head of the Implementing Agency of the PPP Contract; or (b) the execution by any person of a PPP Contract which contains provisions contrary with the approved PTCs and are grossly disadvantageous to the government without prejudice to subparagraph (e) of this Section;

(iv) Section 9 on Solicited Proposals particularly (a) the failure of the Implementing Agency to conduct a public bidding in awarding a PPP Contract, or (b) the award of the PPP Contract by the Implementing Agency to the bidder who did not satisfy all qualification requirements and/or did not submit the Most Responsive Bid to the bid parameter proposed by the Implementing Agency and set forth in the PTCs approved by the appropriate Approving Body; (c) the submission by any person of fraudulent or false material information in response to a public bidding process or in compliance with any post-award requirements, or (d) the failure, without justifiable cause, of the winning bidder to comply with post-award requirements or enter in a PPP Contract;

(v) Section 10 on Unsolicited Proposals particularly (a) the failure of the Implementing Agency, the Private Proponent, or other government agencies to follow the process provided under Section 10 of the Code and this IRR, or (b) submission by any person of fraudulent or false material information in an Unsolicited Proposal;

(vi) Section 11 on Joint Ventures, particularly (a) the failure of the Implementing Agency or the Private Partner to observe the threshold requirements on the equity contribution, including contribution of assets, properties, and/or rights, and other allowable Government Undertakings, except as otherwise provided in pertinent laws, rules, and regulations; (b) the creation of a joint venture which compete for the same product and geographic market of any existing joint venture between the Implementing Agency and the Private Partner; or (c) the creation of a joint venture which changes the nature or alter the mandate of the Implementing Agency entering into such joint venture.

(vii) Section 13 on the Issuance of Franchise and Regulation of Tolls, Fares, Fees, Rentals, and Other Charges particularly (a) the withholding of approval, without justifiable cause, by any Regulatory Body, local Implementing Agency, or local rate-setting body of the initial Tariff and adjustments thereof; or (b) the failure of the Regulatory Body, local Implementing Agency, or local rate-setting body without justifiable cause to uphold the approved initial Tariff and adjustments thereof during the implementation of the PPP Project.

(viii) Section 16 on Project Supervision and Monitoring particularly (a) the failure of the Implementing Agency to submit periodic monitoring reports to the appropriate oversight agencies, (b) the failure of the Implementing Agency to submit to the PPP Center all executed PPP Contracts, information on the status of projects implemented by, as well as copies of all Unsolicited Proposals and related documents such as arbitral awards or settlement agreements, and loan or financing documents of the Private Partner for the PPP Project; (c) refusal, without justifiable cause, of the Private Proponent or Private Partner to allow its PPP Project and PPP Contract be supervised or monitored by the Implementing Agency or PPP Center; or (d) the submission by any person of fraudulent or false material information in compliance with the supervision and monitoring function of the Implementing Agency or PPP Center.

(ix) Section 19 on Variation, Expansion, or Extension of an Existing PPP Project particularly the implementation by the Implementing Agency and the Private Partner of a contract variation, expansion, or extension of an Existing PPP Project without securing the approval or recommendation of the Head of the Implementing Agency and/or the appropriate Approving Body, (b) approval of a contract variation, expansion, or extension of an Existing PPP Project outside the authority or jurisdiction of the Head of the Implementing Agency and/or the appropriate Approving

Body; or (c) the splitting by the Implementing Agency and the Private Partner of the proposed contract variation, expansion, or extension for the purpose of circumventing the prescribed threshold under the Code, or the limitations and conditions prescribed in the PTCs set by the Approving Body.

(x) Section 20 on Divestment particularly (a) when full or partial divestment of the Implementing Agency of its ownership, rights, or interests in a PPP Project without the approval of the appropriate Approving Body, and contrary to applicable laws, decrees, orders, rules, and regulations ; (b) a Private Partner, without justifiable reason and with intent to defraud the Implementing Agency, divest its ownership, rights, or interests in a PPP Project; or (c) a Private Partner consummated the divestment without securing the approval of the Head of the Implementing Agency.

(xi) Section 29 on Safekeeping and Public Disclosure of Tender Documents and PPP Contracts particularly (a) the failure of the Implementing Agency and the PPP Center to publish, through their respective websites, copies of tender documents and PPP Contracts executed under the Code; provided that such failure is attendant with bad faith, gross negligence or fraud, or (b) the fraudulent disclosure by any person of PPP Contracts with provisions which are proprietary, or may pose threats to national security or public safety, without adhering to the procedures for disclosure and publication under existing and applicable laws, rules, and regulations.

(xii) Section 30(b) on Conflict of Interest particularly (a) the failure of the Regulatory Body to prepare, submit, adopt, or implement a conflict mitigation and management plan if the Regulatory Body is the Implementing Agency of a PPP Project; provided that such failure is attendant with bad faith, gross negligence, or fraud; (b) the failure of any public officer or employee, with a conflict of interest to inhibit themselves from the performance of their duties in connection with the PPP Project, and the failure of the PBAC member with a conflict of interest, to resign from his position within thirty (30) calendar days from the time such conflict of interest arises.

(xiii) Section 30(c) on Confidentiality of Information particularly the disclosure, publication, transfer, copying, or dissemination, by any person, of Confidential Business Information submitted by entities, whether public or private, relevant to any activity being conducted pursuant to the Code as well as any deliberation in relation thereto, without the consent of the entity concerned, or without a law, valid order of a court of competent jurisdiction, or of a government or Regulatory Body, mandating the disclosure of such document or information.

(d) In case of public officers or employees, whether in connivance with others or acting alone, with gross negligence or by fraud, failing to exercise the required due diligence and/or to ensure compliance with the PTCs as approved by the Approving Body, and the signed PPP Contract, by approving, issuing, or confirming any certification, required documents, or deliverables of the Private Partner and the Private Proponent, which are non-compliant with existing rules, erroneous, not authentic, or fraudulent;

(e) In case of public officer/s acting as the approving authority or member of the Approving Body, knowingly or with gross negligence, approving any PPP Contract that is contrary to law or manifestly and grossly disadvantageous to the government and the public, whether or not the public officer/s is/are signatory/ies to the PPP Contract;

(f) In case of two (2) or more Private Proponents, agreeing and submitting different bids as if bona fide, with the knowledge that such will not be accepted, and that the PPP Contract will be awarded to the pre-arranged Most Responsive Bid;

(g) In case of a Private Proponent, maliciously submitting different bids through two (2) or more persons, corporations, partnerships, or any other business entity in which they have interest in to create the appearance of competition that does not in fact exist so as to be adjudged as the winning Private Proponent;

(h) In case of two or more Private Proponents or prospective Private Proponents, entering into an agreement which call upon one to refrain from bidding or participating in a PPP Project, or which call for withdrawal of bids already submitted, or which are otherwise intended to secure as undue advantage to

any one of them;

- (i) Participating in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding; and
- (j) Withdrawing a bid, after it shall have been declared the winner, or refusing award, without just cause for the purpose of forcing the Implementing Agency to award the PPP Contract to another bidder. This shall include the non-submission of requirements such as, but not limited to, performance security, preparatory to the final award of the PPP Contract.

A penalty of imprisonment of three (3) to six (6) years or a fine ranging from One million pesos (Php1,000,000.00) to Five million pesos (Php5,000,000.00) shall be imposed on any person, whether a private individual or a public officer or employee, who commits the following prohibited acts:

- (a) Submitting of any false information or falsified documents, or concealing any information at any stage of a PPP Project by a Private Proponent or Private Partner that may affect their eligibility or is otherwise required by the PPP Contract or the law;
- (b) Opening any proposal or any sealed bid including any and all documents required to be sealed or divulging their contents, prior to the appointed time for their public opening;
- (c) Unduly influencing or exerting undue pressure on any member, officer, or employee of the Approving Body or Implementing Agency to take a particular action with the intent to, or tends to favor a particular Private Proponent or Private Partner; and
- (d) Performing any act which restricts transparency or tend to restrain the natural rivalry of parties or operates to stifle or suppress competition in the PPP process.

Each act committed in violation of the Code shall be treated as a separate and independent violation and shall each be subject to the appropriate penalty.

Section 173. *Setting of the Fine.* The setting of the fine shall be on a case-by-case basis, depending on the gravity and duration of the violation, taking into account all the relevant circumstances of the case: *Provided*, That, in no case shall the imposable fine for each violation exceed Five Million Pesos (Php5,000,000.00) nor shall the imposable fine be less than One Million Pesos (Php1,000,000.00) for each offense.

Section 174. *Liability of Private Individuals.* The commission of prohibited acts under the Code and this IRR by the Private Partner and its concerned officers may cause the termination of the PPP Contract, the lapse of any applicable warranty period, and the perpetual disqualification of the Private Partner from participating in any public bidding or entering into any contractual arrangement allowed in the Code. This is without prejudice to any other civil or administrative liability that erring officials, Private Proponents, or Private Partners may incur.

Section 175. *Liability of Public Officers and Employees.* The liability of the public officer or employee, or former public officer or employee for any violation of the Code and this IRR shall survive the retirement, resignation, expiration of term, or removal from office, of said public officer or employee, and shall include the prohibition for the erring officer to hold public office, either as an elected, or an appointed government official to any local or national position. The said public officer or employee is also prohibited to act as a consultant for the Philippine Government with regard to any activity provided or authorized in the Code, the termination of the PPP Contract, and the lapse of any applicable warranty period/s.

Section 176. *Effect of Lawful Performance of Duties.* No administrative, criminal, or civil proceedings shall lie against any person for having committed acts in violation of the Code and this IRR in the regular performance of his duties in good faith.

TITLE XXIV. TRANSITORY CLAUSE

Section 177. *Established rights and obligations.* The governmental acts, including but not limited to the execution of PPP Contracts, enactment of laws, promulgation of rules and regulations, and issuances of notices, have created established rights and obligations for relevant parties relying on such governmental acts. These

established rights and obligations present a fixed interest and is recognized during a specific stage of a PPP Project, as provided in the succeeding sections.

Section 178. *Existing Contracts.* All existing PPP Contracts shall be governed by the agreements entered into by the concerned parties. The provisions of the Code and this IRR shall be applied suppletorily to the extent that such application does not infringe upon established rights and obligations of the parties under the existing PPP Contracts.

Section 179. *PPP Projects with a Winning Bidder but no executed PPP Contracts.* All PPP Projects issued with a Notice of Award but without any executed PPP Contracts at the time of the effectivity of the Code to the extent that such application does not infringe upon established rights and obligations, shall be governed by the Code and this IRR, except for the rules provided under the instruction to bidders and the conditions stated in the Notice of Award that was issued prior to the effectivity of the Code and this IRR.

The composition of the Special Bids and Awards Committee (SBAC), Joint Venture Selection Committees (JVSC), and all other applicable bidding committees of the PPP Projects covered under this section at the time of the effectivity of the Code shall remain the same and effective.

Section 180. *Solicited Projects which have published an Invitation to Pre Qualification/Qualification and/or Bid prior to the effectivity of the Code and this IRR.* Solicited Projects which have commenced bidding before the effectivity of the Code and this IRR, shall be governed by the rules under the Code and this IRR to the extent that such application does not infringe upon established rights and obligations, except for the bidding rules or any amendments thereto issued by SBAC, PBAC, JVSC, or the applicable bidding committee. In case of gaps in the rules of the bidding process, the respective bidding committee shall use the provisions of the Code and this IRR as reference.

The composition of the SBAC, PBAC, JVSC, and all other applicable bidding committees of the projects covered under this section, created before the effectivity of the Code, shall remain the same and effective.

Section 181. *Unsolicited PPP Proposals which have commenced comparative challenge prior to the effectivity of the Code and this IRR.* Unsolicited Proposals which have commenced comparative challenge before the effectivity of the Code and this IRR shall be governed by the rules under the Code and this IRR to the extent that such application does not infringe upon established rights and obligations, except for the comparative challenge rules or any amendments thereto issued by SBAC, PBAC, JVSC, or the applicable bidding committee. In case of gaps in the rules of the comparative challenge process, the respective bidding committee shall use the provisions and principles of the Code and this IRR as reference.

For avoidance of doubt, the qualification/pre-qualification rules and requirements, which were used to qualify/pre-qualify the Original Proponent before the effectivity of the Code and this IRR, shall apply to all challengers.

The OPS conferred to the Original Proponent and the issued Certificate of Successful Negotiation shall remain effective.

Section 182. *Solicited Projects and Unsolicited Proposals Pursuant to the BOT Law which are already Approved for Bidding or Comparative Challenge but Pending Publication of Applicable Invitation Prior to the Effectivity of the Code and this IRR.* Projects which have secured the approvals necessary to publish an Invitation to Pre Qualify/Qualify and/or Bid, or invitation for comparative challenge but have not yet published the applicable invitation shall proceed with its publication.

The rules under the Code and this IRR shall be applied for the bidding process or the comparative challenge process, and all succeeding stages.

Section 183. *Solicited Projects Pursuant to the BOT Law Pending Approval of the Appropriate Approving Body Prior to the Effectivity of the Code.* Solicited projects pursuant to the BOT Law, pending approval of the appropriate Approving Body, shall mean those PPP Projects that have been submitted to the appropriate Approving Body prior to the effectivity of the Code. This does not include PPP Projects pursuant to the BOT Law that have been returned by the appropriate Approving Body, and have not yet been resubmitted to the appropriate Approving Body.

Solicited projects pursuant to the BOT Law pending approval of the appropriate approving body prior to the effectivity of the Code shall be continuously and expeditiously processed in accordance with the approval rules in effect at the time the project was submitted to the appropriate approving body.

Upon securing the approval of the appropriate approving body, the Code and its IRR shall be applied to the bidding process and the succeeding stages, based on the approved PTCs.

For avoidance of doubt, solicited projects pursuant to the BOT Law which were (a) submitted to the appropriate approving body prior to the effectivity of the Code, (b) were returned by the approving body to the Implementing Agency, and (c) were not yet resubmitted to the approving body before the effectivity of the Code, may be resubmitted in accordance with the approval rules under the Code and this IRR.

Section 184. *Unsolicited Proposals pursuant to the BOT Law pending approval of the appropriate Approving Body prior to the effectivity of the PPP Code.* Unsolicited proposals pursuant to the BOT Law, and pending approval of the appropriate approving body, shall mean those PPP Projects that have been granted an OPS and submitted to the appropriate approving body prior to the effectivity of the PPP Code. This does not include PPP Projects pursuant to the BOT Law that have been returned by the appropriate approving body and have not yet been resubmitted to the appropriate Approving Body.

For such projects, the Original Proponent shall have the option to proceed with the approval process pursuant to the BOT Law or resubmit the Unsolicited Proposal under the PPP Code and this IRR.

Original Proponents shall notify the Implementing Agency, copy furnished the PPP Center, in writing, within thirty (30) calendar days after the effectivity of this IRR of its decision on whether to proceed with the approval process pursuant to the BOT Law or resubmit the Unsolicited Proposal under the PPP Code and this IRR.

(a) Approval process under the BOT Law. Should the Original Proponent decide to proceed with the approval process pursuant to the BOT Law, such unsolicited proposal shall be continuously and expeditiously processed in accordance with the approval rules in effect at the time the project was submitted to the appropriate approving body. For avoidance of doubt, the approval process in this section shall refer to the process of approval of the PTCs for negotiation, the negotiation process under the BOT Law and its Revised 2022IRR, and the approval of the negotiated PTCs by the appropriate approving body.

(i) PPP Projects that are in the process of securing the approval of the PTCs for negotiation prior to the effectivity of the Code shall be continuously and expeditiously processed in accordance with the approval rules in effect at the time the project was submitted to the appropriate approving body. If the appropriate approving body approves the PTCs for negotiation, the Implementing Agency shall proceed to the negotiation process and shall thereafter secure the approval by the appropriate approving body of the negotiated PTCs.

If the appropriate approving body does not approve the PTCs for negotiation, the Implementing Agency shall return the unsolicited proposal to the Original Proponent or revoke the OPS. The Original Proponent may resubmit the Unsolicited Proposal under the Code and this IRR, which shall be considered as a new PPP Project, without prejudice to the validity of the OPS contemplated in Section 57 of this IRR.

(ii) PPP Projects in the negotiation stage prior to the effectivity of the Code shall be continuously processed for negotiation. In case of successful negotiations, the Implementing Agency shall re-confirm the OPS granted to the Original Proponent, without prejudice to the validity contemplated in Section 57 of this IRR. The Implementing Agency shall ensure that the documentary requirements to be submitted to the appropriate Approving Body shall be complete pursuant to Section 29 for National PPP Projects and Section 40 for Local PPP Projects of this IRR.

In case of failure to reach successful negotiation, the Implementing Agency shall reject the proposal in accordance with Section 55 of this IRR, and shall revoke the OPS. The Original Proponent may resubmit the Unsolicited Proposal under the Code and this IRR, and shall then be considered as a new PPP Project.

(iii) PPP Projects that have secured the approval of negotiated PTCs by the appropriate Approving Body prior to the effectivity of the Code shall follow the rules under this IRR regarding the comparative challenge process and the succeeding stages based on the approved negotiated PTCs.

If the PPP project fails to secure the approval of the negotiated PTCs by the appropriate approving body, the Implementing Agency shall return the PPP Project to the Original Proponent or revoke the OPS. The Original Proponent may resubmit the Unsolicited Proposal under the Code and this IRR, which shall be considered as a new PPP Project, without prejudice to the validity of the OPS contemplated in Section 57 of this IRR.

(b) Approval process under the Code and this IRR. Should the Original Proponent decide to resubmit the project under the Code and this IRR, its submission shall be processed in accordance with the rules stated in the Code and *Title V* of this IRR, starting from the completeness check by the PPP Center. The OPS that was conferred to the Original Proponent prior to the effectivity of the Code shall remain effective, unless revoked by the Implementing Agency.

In case of successful negotiation, the OPS shall be re-confirmed by the Implementing Agency before resubmission to the appropriate Approving Body under Section 7 of the Code and *Title IV* of this IRR, without prejudice to its validity contemplated in Section 57 of this IRR.

Section 185. *Non-BOT Law PPP Projects pending approval of the relevant approving authorities prior to the effectivity of the PPP Code.* For non-BOT Law PPP projects (e.g., JVs of GOCCs, JVs of LGUs, Toll Operation Agreements or STOA), pending approval of the relevant approving authorities, the rules and procedures under the PPP Code and this IRR shall apply.

Section 186. *PPP Projects Processed Using the PPP Governing Board Resolution No. 2013-12-02 or the "Interim Guidelines on PPP Projects Whose Processing Has Commenced by the Effectivity of Republic Act No. 11966 and Before the Effectivity of its Implementing Rules and Regulations"*

(a) The enactment of the PPP Code shall not affect or alter the PTCs of PPP Projects that have already been approved by the appropriate approving body prior to the effectivity of the PPP Code. The same principle of recognizing approved project terms shall be applicable to (a) Local PPP Projects approved under local PPP or JV codes and ordinances, and (b) PPP Projects of GOCCs approved under their respective charters or the 2023 Revised Guidelines and Procedures for Entering into Joint Venture (JV) Agreements between Government and Private Entities.

(b) All acts done pursuant to the PPP Governing Board Resolution No. 2023-12-02 shall remain valid and binding upon the parties, unchanged, and in full force and effect, unless otherwise stated in this IRR.

Section 187. *Funds of the PPP Center.* All unexpended funds of the PPP Center at the end of the fiscal year, as well as unreleased appropriations, and undisbursed funds after the end of the validity period, shall revert to the National Treasury and shall not thereafter be available for expenditure, except by subsequent legislative enactment. The amount necessary to carry out the organizational changes of the PPP Center provided in the Code shall be determined by the PPP Governing Board. Appropriations for succeeding years shall be incorporated in its budget proposals, subject to the existing budgeting rules and regulations. All officials and employees of the PPP Center shall be retained and shall not suffer any loss of seniority or rank or decrease in emoluments.

Section 188. *Prohibition on the Issuance of Inconsistent Policy Documents.* Upon effectivity of the Code and this IRR, no other JV guidelines, PPP guidelines, codes, or ordinance, whatsoever may be enacted, issued and/or used by any government entity to enter into PPPs, except those that are enacted, issued, and/or used in accordance with the Code and this IRR.

TITLE XXV. REPEALING CLAUSE

Section 189. *Repealed, Amended, and Modified Laws, Decrees, and Special Charters.* The following are hereby repealed by the Code:

(a) RA No. 6957, as amended by RA No. 7718, otherwise known as "An Act Authorizing the Financing,

Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes";

(b) Section 6(p) of RA No. 10844, otherwise known as the "Department of Information and Communications Technology Act of 2015";

(c) Section 4(r) of RA No. 8292, otherwise known as the "Higher Education Modernization Act of 1997";

(d) Section 3(a) of PD No. 1112, series of 1977, otherwise known as "An Act Authorizing the Establishment of Toll Facilities on Public Improvements, Creating a Board for the Regulation Thereof and for Other Purposes";

(e) Second paragraph of Section 1 of PD No. 1894, series 1983, Amending the Franchise of the Philippine National Construction Corporation (PNCC), granting the PNCC the right, privilege and authority to construct, maintain and operate any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon Expressway or Metro Manila Expressway or to divert the original route and change the original end-points of the North Luzon Expressway or South Luzon Expressway as may be approved by the Toll Regulatory Board;

(f) Pertinent provisions of PD No. 857, series of 1975, as amended, or the "Revised Charter of the Philippine Ports Authority" created under PD No. 505, which are inconsistent with the provisions of the Code and this IRR;

(g) Sections of PD No. 1113, series of 1977, granting to the Construction and Development Corporation of the Philippines (CDCP) the right to construct, operate and maintain toll facilities in the North and South Luzon Toll Expressways, which are inconsistent with the provisions of the Code and this IRR;

(h) Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, "Reorganizing and Renaming the Build-operate-and-Transfer (BOT) Center to the Public-Private Partnership (PPP) Center of the Philippines and transferring its attachment from the Department of Trade and Industry to the National Economic and Development Authority and for other purposes", and further amended by Executive Order No. 30, series of 2023, "Strengthening Private Sector Participation in the Public Private Partnership Governing Board established under Executive Order No. 136, series of 2013, and further amending Executive Order No. 8, series of 2010, as amended";

(i) Section 8 of Executive Order No. 423, series of 2005, repealing Executive Order No. 109-a, dated September 18, 2003, Prescribing the Rules and Procedures on the Review and Approval of all Government Contracts to Conform with Republic Act No. 9184, otherwise known as "The Government Procurement Reform Act";

(j) Sections 2.2.2 and 2.3.2 of the Implementing Rules and Regulations of Executive Order No. 74, dated February 1, 2019 series of 2019, Repealing Executive Order No. 798 series of 2009 and Executive Order No. 146 series of 2013, transferring the Philippine Reclamation Authority (PRA) to the Office of the President (OP), delegating to the PRA Governing Board the Power of the President to Approve Reclamation Projects, and for other purposes;

(k) 2023 Revised Guidelines and Procedures for entering into Joint Venture Agreements between Government and Private entities;

(l) Tourism Infrastructure and Enterprise Zone Joint Venture Guidelines;

(m) Metro Manila Development Authority Alternative PPP Guidelines;

(n) Guidelines issued by GOCCs, SUCs, and other government agencies on partnerships between government and private sector for the financing, designing, constructing, operating, and maintaining, or any combination or variation thereof, of infrastructure or development projects outside of Republic Act No. 9184; and

(o) Specific provisions in the special charters of GOCCs, SUCs, and other government agencies that

allow the issuance of guidelines governing partnerships between government and private sector for the financing, designing, constructing, operating, and maintaining, or any combination or variation thereof, of infrastructure or development projects outside of Republic Act No. 9184;

The following are hereby amended or modified accordingly:

(a) Section 10(e)(1) of RA No. 7227, otherwise known as the "Bases Conversion and Development Act", insofar as it refers to RA No. 6957, as amended by RA No. 7718;

(b) Executive Order No. 78, series of 2012, "Mandating the Inclusion of Provisions on the Use of Alternative Dispute Resolution Mechanisms in all Contracts involving Public Private Partnership Projects, Build-Operate and Transfer projects, Joint Venture Agreements between the Government and Private Entities and those entered into by Local Government Units";

(c) Section 7(c) of Executive Order No. 423, series of 2005, repealing Executive Order No. 109-a, dated September 18, 2003, Prescribing the Rules and Procedures on the Review and Approval of all Government Contracts to Conform with Republic Act No. 9184, otherwise known as "The Government Procurement Reform Act"; and

(d) Section 3(c) of Executive Order No. 74 s. 2019 (repealing Executive Order No. 798 s. 2009 and Executive Order No. 146 s. 2013, transferring the Philippine Reclamation Authority (PRA) to the Office of the President (OP), delegating to the PRA Governing Board the power of the President to approved reclamation projects, and for other purposes), insofar as it refers to RA No. 6957, as amended by RA No. 7718.

Insofar as the provisions pertaining to the identification, evaluation, approval, procurement, and/or implementation of PPP Projects, including leases and Joint Ventures, the following are likewise amended or modified accordingly:

(a) Sections 22(C) and 22(E) of RA No. 9500, otherwise known as the "University of the Philippines Charter of 2008";

(b) PD No. 1113, Series of 1977 and PD No.1894, Series of 1983 granting a franchise to the Philippine National Construction Corporation (PNCC) (then the Construction and Development Corporation of the Philippines (CDCP)) to construct, operate, and maintain the North and South Luzon Expressways and Metro Manila Expressways; and

(c) Section 2.4 of the *Implementing Rules and Regulations* of Executive Order No. 74 series of 2019, repealing Executive Order No. 798 series of 2009 and Executive Order No. 146 series of 2013, transferring the Philippine Reclamation Authority (PRA) to the Office of the President (OP), delegating to the PRA Governing Board the power of the President to approve reclamation projects, and for other purposes.

All other references to RA No. 6957 and RA No. 7718 in existing laws, decrees, and other legislations are hereby amended to refer to the Code.

All executive orders and administrative laws, decrees, orders, codes, issuances, rules and regulations, and ordinances, or any part thereof inconsistent with or contrary to the Code and this IRR are hereby repealed or modified accordingly. Local PPP and JV codes and ordinances issued by LGUs are also hereby repealed.

TITLE XXVI. FINAL PROVISIONS

Section 190. *Conflict of Interest.* All relevant parties, including but not limited to, transaction advisors, approving entities, Independent Consultants, Third-party Appraisers, and members of Regulatory Bodies, shall, at all times, avoid conflicts of interest in the interpretation and implementation of the Code and this IRR. Conflict of interest, as defined in Republic Act No. 6713 or the "Code of Conduct and Ethical Standards for Public Officials and Employees", shall include personal, pecuniary, and regulatory conflicts of interests. In case a conflict of interest arises for any public officer or employee, the concerned parties shall inhibit themselves from the performance of their duties in connection to the project.

In cases where a member of the PPP unit or a member of the PBAC has a conflict of interest, the concerned member shall inhibit from performing its duties as part the PPP unit, and/or resign from their position as PBAC member within thirty (30) calendar days from the time such conflict arises.

In the case of Regulatory Bodies implementing PPP Projects, a conflict mitigation plan shall be adopted and strictly implemented, pursuant to Section 8 of this IRR.

The PPP Governing Board may issue supplemental guidelines on the conflict of interest.

Section 191. Oversight Provision. Pursuant to Section 33 of the Code, a Joint Congressional Oversight Committee on PPP is created to oversee the implementation of the Code. The Committee shall be composed of five (5) members each from the Senate and House of Representatives to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The Committee shall be jointly chaired by the respective Chairpersons of the House Committee on Public Works and Highways, the House Committee on Appropriations, the Senate Committee on Public Works, and the Senate Committee on Finance.

Section 192. Amendments to the IRR. The IRR Committee, composed of the members of the PPP Governing Board, may be reconvened by the Chairperson at their instance, or upon the recommendation of any member of the IRR Committee, to conduct, formulate, and prescribe, after due public hearing and publication, amendments to this IRR. Any amendments to this IRR shall be consistent with the provisions of the Code, and shall take effect fifteen (15) calendar days after its complete publication in the Official Gazette or in a newspaper of general circulation.

The Secretary of NEDA shall serve as the Chairperson of the IRR Committee, with the PPP Center as the Secretariat. The members of the IRR Committee may designate their respective alternates in writing, whose acts shall be considered the acts of their principals.

Section 193. Separability Clause. If any provision of this IRR is held unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

Section 194. Effectivity. This IRR shall take effect fifteen (15) calendar days after its publication in the Official Gazette or in any newspaper of general circulation.

Approved. 21 March 2024

(SGD.) **ARSENIO M. BALISACAN**
IRR Committee Chairperson and Secretary
National Economic and Development
Authority

(SGD.) **RALPH G. RECTO**
IRR Committee Vice Chairperson and
Secretary
Department of Finance

(SGD.) **AMENAH F. PANGANDAMAN**
Secretary
Department of Budget and Management

(SGD.) **JESUS CRIPIN C. REMULLA**
Secretary
Department of Justice

(SGD.) **ALFREDO E. PASCUAL**
Secretary
Department of Trade and Industry

(SGD.) **JESUS CRIPIN C. REMULLA**
Secretary
Department of the Interior and Local
Government

(SGD.) **MARIA ANTONIA YULO
LOYZAGA**
Secretary
Department of Environment and Natural
Resources

(SGD.) **J. PROSPEROSO E. DE VERA
III**
Chairperson
Commission on Higher Education

LUCAS P. BERSAMIN
Executive Secretary
Office of the President

(SGD.) MA. CYNTHIA C. HERNANDEZ
Executive Director
Public-Private Partnership Center

(SGD.) FERDINAND D. TOLENTINO
Private sector representative

The Lawphil Project - Arellano Law Foundation
