

REVISED GUIDELINES AND PROCEDURES FOR ENTERING INTO JOINT VENTURE (JV) AGREEMENTS BETWEEN GOVERNMENT AND PRIVATE ENTITIES (Series of 2022)

- 1.0. **Legal Basis.** These Revised Guidelines are being issued pursuant to Section 8 (Joint Venture Agreements) of Executive Order (EO) No. 423 dated 30 April 2005, which mandates the National Economic and Development Authority (NEDA), in consultation with the Government Procurement Policy Board (GPPB), to issue the necessary guidelines on Joint Ventures (JVs). **AS PROVIDED FOR UNDER SECTION 9 OF THE 2013 REVISED JV GUIDELINES**, the Office of the Government Corporate Counsel (OGCC) and the Governance Commission for Government-Owned and/or -Controlled Corporations (GCG) were likewise consulted in the revision of the Guidelines. ~~The proposed revisions were deliberated and subsequently approved by the NEDA Board Committee on Infrastructure (INFRACOM) and the Economic Development Cluster (EDC).~~
- 2.0. **Principles.** The Government ENTITY shall enter into a JV arrangement consistent with the following principles:
- 2.1. **TRANSPARENCY SHALL BE OBSERVED IN THE CONDUCT OF THE COMPETITIVE SELECTION/CHALLENGE PROCESS AND IN THE IMPLEMENTATION OF THE JV AGREEMENT, EITHER THROUGH A CONTRACTUAL JV OR A JV COMPANY, THROUGH WIDE DISSEMINATION OF JV OPPORTUNITIES;**
 - 2.2. **OPEN AND FAIR COMPETITION SHALL BE OBSERVED DURING THE JV SELECTION PROCESS AND AWARD;**
 - 2.3. The ~~creation~~ **FORMATION** of the JV **BETWEEN GOVERNMENT ENTITY AND PRIVATE ENTITIES SHALL ~~should~~** not prevent **OTHER** potential players from profitably entering into business ventureS/marketS;
 - 2.4. **THE FORMATION OF THE JV BETWEEN THE GOVERNMENT ENTITY AND PRIVATE ENTITIES SHALL NOT PREVENT THE JV PARTIES FROM ENTERING INTO OTHER JV AGREEMENTS AND/OR FROM PROFITABLY ENTERING INTO OTHER BUSINESS VENTURES/MARKETS;**
 - 2.5. The cost of producing the particular product, **CONDUCTING THE** activity, or **PERFORMANCE OF** service **SHALL ~~should~~** be efficient or potentially efficient towards earning potential profits for Government and the market player/Private ENTITY ~~sector Partner~~;
 - 2.6. ~~The role of government~~ **IF THE GOVERNMENT ENTITY IS MANDATED BY EXISTING LAW** as A regulator of the business of the JV, **SUCH ROLE SHALL ~~should~~** be clearly and explicitly delineated from its role as implementer of the business to avoid conflicts of interest;
 - 2.7. As differentiated from projects procured under Official Development Assistance (ODA), Government Procurement Reform Act (GPRA), and Build-Operate-and-Transfer (BOT) Law, except for the Build-Operate-and-Own (BOO) scheme and similar schemes under the BOT Law, where generally ownership of the asset/business will stay with the Government, JV Agreements allow **SHARING OF PROFITS AND LOSSES BETWEEN THE GOVERNMENT ENTITY AND THE PRIVATE SECTOR PARTNER. JV AGREEMENTS ALSO ALLOW** the Private Sector

PARTNER to take over the ~~[undertaking of the projects in its entirety]~~ INFRASTRUCTURE OR DEVELOPMENT PROJECT UNDERTAKEN FOR A SINGLE AND SPECIFIC GOAL, after the Government divests itself of any interest in the JV, PROVIDED THAT SUCH DIVESTMENT BY GOVERNMENT ENTITY IS ALLOWED UNDER EXISTING RULES AND REGULATIONS;

2.8. SPLITTING OF GOVERNMENT CONTRACTS, OR DIVISION/BREAKING UP OF GOVERNMENT CONTRACTS INTO SMALLER QUANTITIES AND AMOUNTS, OR DIVIDING CONTRACT IMPLEMENTATION INTO ARTIFICIAL PHASES OR SUB-CONTRACTS, SHALL NOT BE ALLOWED;

2.9. Accountability for the JV ~~[project ultimately devolves on]~~ LIES WITH the Head of Government Entity involved in the EXECUTION OF THE JV Agreements and the implementation of the JV. The private ENTITIES ~~[parties]~~ dealing with the Government ENTITY are similarly held accountable for all their actions relative thereto; AND,

2.10. A JV AGREEMENT SHALL NOT BE ENTERED INTO UNDER THESE GUIDELINES FOR THE PURPOSE OF CIRCUMVENTING PROCUREMENT METHODS AND CERTAIN PROCESSES AND RULES UNDER GPRA AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR), BOT LAW AND ITS IRR, AND OTHER APPLICABLE LAWS, RULES AND REGULATIONS.

2.11. IN NO WAY SHOULD THE MAJORITY OF THE ASSETS OF THE GOVERNMENT ENTITY BE CONTRIBUTED.

2.12. IN NO INSTANCE MAY THE GOVERNMENT ENTITY TRANSFER OR DIVEST ITS ENTIRE OPERATIONS, WHETHER DIRECTLY OR INDIRECTLY, TO THE PRIVATE SECTOR PARTNER THROUGH THE JV TO THE EXTENT THAT IT WILL PREVENT THE GOVERNMENT ENTITY FROM OPERATING INDEPENDENTLY OF THE JV AND HAMPER ITS CAPABILITY OF RENDERING DIRECTLY ITS MANDATE. JVS SHALL NOT IN ANY WAY BE MADE A VEHICLE TO ALLOW FOR DE FACTO PRIVATIZATIONS OF GOVERNMENT-OWNED AND/OR -CONTROLLED CORPORATIONS (GOCCS).

2.13. DURING THE LIFE AND IMPLEMENTATION OF THE JV AGREEMENT, THE GOVERNMENT ENTITY SHALL CONTINUE TO ADHERE TO ITS REGULAR STATUTORY, OVERSIGHT, AND REGULATORY REQUIREMENTS PURSUANT TO EXISTING LAWS, RULES AND REGULATIONS, IF ANY.

2.14. IN CASE OF AMBIGUITY, THE TERMS IN THE JV AGREEMENT SHALL BE LIBERALLY CONSTRUED IN FAVOR OF GENERAL PUBLIC WELFARE.

3.0. **Purpose.** These Guidelines are being formulated to meet the following objectives:

3.1. To prescribe the rules, guidelines, and procedures forging THE JV Agreements between A Government ENTITY ~~[corporations]~~ as defined under Section 5.7 ~~[4.0]~~, and A Private Entity ~~[entities]~~;

3.2. To encourage pooling of resources and expertise between Government and Private ~~[sector]~~ Entities through JVs as a viable, efficient and practical alternative in pursuing development goals of the Government; and,

- 3.3. To ensure that all JV Agreements are entered into under the policy that all government contracts shall be awarded through a transparent **AND COMPETITIVE** process.

4.0. Coverage.

- 4.1. These Guidelines shall apply to all ~~{government-owned-and/or-controlled-corporations- (GOCCs)}~~, government corporate entities/government instrumentalities with corporate powers (**GCEs/GICPs**), government financial institutions (GFIs), state universities and colleges (SUCs), as defined under Section 5.7 ~~{5.0}~~.

- 4.2. These Guidelines shall not apply to the following:

- a. Transactions of GFIs in the ordinary course of business as part of their normal and ordinary banking, financial or portfolio management operations;
- b. JVS ~~{activities}~~ of government entities in the exercise of their primary mandate to dispose government assets or properties;
- c. JVS ~~{activities or undertakings}~~ of Local Government Units (LGUs); **AND,**
- d. **JVS OF GOVERNMENT ENTITIES IN THE EXERCISE OF THEIR PRIMARY MANDATE TO UNDERTAKE EXPLORATION OF ENERGY RESOURCES, SUCH AS OIL AND GAS RESERVES.**

5.0. Definition of Terms.

- 5.1. **APPROVING AUTHORITY. THE APPROVING AUTHORITY SHALL REFER TO:**

- A. **THE NEDA BOARD-INVESTMENT COORDINATION COMMITTEE (ICC): FOR JV PROJECTS COVERED UNDER SECTION 7.2.b**
- B. **THE HEAD OF THE GOVERNMENT ENTITY: FOR JVS NOT COVERED UNDER ITEM A**

- 5.2. **Competitive Challenge.** An alternative selection process (**PROVIDED UNDER ANNEX "B" HEREOF**) wherein third parties shall be invited to submit comparative proposals to a negotiated JV either initiated by a Private **ENTITY** ~~{sector proponent}~~ or, by the Government in case it has failed to identify an eligible Private **ENTITY** ~~{sector partner}~~ for a desired activity after subjecting the same to a competitive selection as provided under Section VIII.9 of Annex "A" hereof. ~~{Accordingly, the private sector entity that submitted the negotiated proposal is accorded the right to outbid, through a superior financial bid, any comparative financial offers given by comparative private sector participants who have met the eligibility requirements and have passed the technical qualification process.}~~

- 5.3. **Competitive Selection.** Refers to a process of selection by a Government Entity of a JV **PRIVATE Partner** ~~{(s)}~~ **WHICH MAY BE CONDUCTED IN A SINGLE-STAGE OR TWO-STAGE PROCESS**, based on transparent criteria, which should not constrain or limit competition, and is open to participation by any interested and qualified Private Entity.

- 151 5.4. **Contractual JV.** A legal and binding Agreement under which the JV Partners **OR PARTIES**
 152 shall perform the functions and obligations under the JV Agreement without forming a JV
 153 Company.
 154
- 155 5.5. **CONTRIBUTION.** REFERS TO CASH, PROPERTY, TANGIBLE OR INTANGIBLE,
 156 INCLUDING SHARES OF STOCK,¹ AS WELL AS LABOR PERFORMED FOR OR
 157 SERVICES/ASSISTANCE ACTUALLY RENDERED TO THE JV CAPABLE OF PECUNIARY
 158 VALUATION, OR A COMBINATION OF ANY OR ALL OF THE FOREGOING POOLED
 159 TOGETHER TO UNDERTAKE AN INVESTMENT ACTIVITY FOR THE DURATION OF THE
 160 JV. SUCH CONTRIBUTIONS BY BOTH THE GOVERNMENT ENTITY AND THE PRIVATE
 161 ENTITY SHALL BE INDICATED IN THE SELECTION/TENDER DOCUMENTS AND THE JV
 162 AGREEMENT IN PRESENT VALUE, WITH DISCOUNT RATE AS PRESCRIBED BY THE
 163 APPROPRIATE APPROVING AUTHORITY.
 164
- 165 5.6. **DIVESTMENT.** REFERS TO THE TRANSFER OF OWNERSHIP OF GOVERNMENT ASSETS
 166 OR PROPERTIES TO A PRIVATE SECTOR PARTNER OR A PRIVATE ENTITY.
 167 DIVESTMENT IS DISCRETIONARY UPON THE HEAD OF THE GOVERNMENT ENTITY AND
 168 SHALL NOT DIMINISH THE PRIMARY FUNCTION/MANDATE OF THE GOVERNMENT
 169 ENTITY. DIVESTMENT MAY BE MADE PARTIALLY OR FULLY AND SHALL BE SUBJECT
 170 TO NECESSARY GOVERNMENT APPROVALS.
 171
- 172 5.7. **Government Entity.** Refers to GOCCs, GCEs/GICPs, SUCs, and GFIs, created by law **AND**
 173 executive issuances. ~~[or pursuant to Batas Pambansa Bilang 68, otherwise known as the~~
 174 ~~Corporation Code of the Philippines, as amended, and]~~ **GOCCs, GCEs/GICPs AND GFIs**
 175 **SHALL BE AS** defined under Republic Act (RA) No. 10149, otherwise known as the GOCC
 176 Governance Act of 2011. ~~[among others.]~~
 177
- 178 5.8. **GOVERNMENT UNDERTAKING.** REFERS TO ANY FORM OF SUPPORT OR
 179 CONTRIBUTION OF A GOVERNMENT ENTITY TO THE JV MENTIONED UNDER SECTION
 180 5.5. IT SHALL BE 50 PERCENT (50%) OR LESS OF THE PROJECT COST IN THE CASE
 181 OF CONTRACTUAL JVS, OR 50% OR LESS OF THE OUTSTANDING CAPITAL STOCK OF
 182 THE JV COMPANY. FURTHERMORE, GOVERNMENT ENTITIES MAY ONLY CONTRIBUTE
 183 SUCH AMOUNT OF ASSETS THAT WILL NOT IMPAIR THE MAIN
 184 FUNCTIONS/OPERATIONS OF THE GOVERNMENT ENTITY AND SHOULD NOT EXCEED
 185 50% OF ITS ENTIRE ASSETS.
 186
- 187 5.9. **Head of Government Entity.** Refers to the governing board or its duly authorized official for
 188 GOCCs, GCEs/GICPs, SUCs, and GFIs.
 189
- 190 5.10. **Infrastructure or Development Projects.** ~~[Include, but not limited to, power plants, highways,~~
 191 ~~ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications,~~

¹ **Revised Corporation Code.** SEC. 61. Consideration for Stocks. – Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the issuance of stock may be: (a) Actual cash paid to the corporation; (b) Property, tangible or intangible, actually received by the corporation and necessary or convenient for its use and lawful purposes at a fair valuation equal to the par or issued value of the stock issued; (c) Labor performed for or services actually rendered to the corporation; (d) Previously incurred indebtedness of the corporation; (e) Amounts transferred from unrestricted retained earnings to stated capital; (f) Outstanding shares exchanged for stocks in the event of reclassification or conversion; (g) Shares of stock in another corporation; and/or (h) Other generally accepted form of consideration. Where the consideration is other than actual cash, or consists of intangible property such as patents or copyrights, the valuation thereof shall initially be determined by the stockholders or the board of directors, subject to the approval of the Commission.

~~railroad and railways, transport systems, land reclamation projects, industrial estates or townships, commercial/real estates, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging]~~ REFER TO INVESTMENTS IN THE FOLLOWING SECTORS – TRANSPORT (ROADS AND TRAFFIC MANAGEMENT, RAIL, AIRPORTS AND PORTS, AMONG OTHERS); ENERGY (POWER PLANTS, BIOFUEL OR FOSSIL FUEL PRODUCTION, AMONG OTHERS); WATER AND SANITATION (BULK WATER SUPPLY, WATER TRANSMISSION STRUCTURES, SEWERAGE, SEPTAGE MANAGEMENT SYSTEMS, IRRIGATION AND FLOOD MANAGEMENT FACILITIES, RAW WATER TREATMENT PLANTS, AMONG OTHERS); INFORMATION AND COMMUNICATIONS TECHNOLOGY (TELECOMMUNICATIONS, NETWORK AND DATABASES, AMONG OTHERS); SOCIAL INFRASTRUCTURE (HEALTH, EDUCATION, HOUSING AND SOLID WASTE MANAGEMENT FACILITIES, AMONG OTHERS); and other infrastructure and development projects as may be authorized by the Government Entity pursuant to these Guidelines AND OTHER EXISTING RULES AND REGULATIONS.

- 5.11. **Joint Venture (JV).** An arrangement whereby a Private ~~[sector]~~ Entity or a group of Private ~~[sector]~~ Entities on one hand, and a Government Entity or a group of Government Entities on the other hand, ~~[contribute money/capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing]~~ **PROVIDE CONTRIBUTION** to undertake ~~[an]~~ **A TIME-BOUND** investment activity. ~~[The]~~ **SUCH** investment activity **OR UNDERTAKING** shall be for the purpose of accomplishing a **SINGLE AND** specific goal/**ACTIVITY** with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transfer the activity to either the Private ~~[sector]~~ **ENTITY** under competitive market conditions or to the Government. The JV involves a community or pooling of interests in the performance/**IMPLEMENTATION** of the investment activity, and each Party shall have the right to direct and govern the policies in connection therewith with the intention to share both profits and, risks and losses subject to agreement by the parties. A JV may be **THROUGH** a Contractual JV or a ~~[Corporate (JV Company)]~~.
- 5.12. **JV AGREEMENT.** REFERS TO THE CONTRACT BETWEEN THE JV PARTNERS WHICH SHALL CONTAIN THE TERMS AND CONDITIONS THAT SHALL GOVERN THE JV AND THE RELATIONSHIPS OF THE PARTIES, AND OTHER MATTERS WHICH MAY BE REQUIRED UNDER THESE GUIDELINES. ALL RELEVANT LAWS, RULES, AND REGULATIONS, INCLUDING THESE GUIDELINES, SHALL BE DEEMED WRITTEN INTO ALL JV AGREEMENTS ENTERED.
- 5.13. **JV Company.** A stock corporation incorporated and registered **BY THE JV PARTNERS, PURSUANT TO THE GOVERNMENT ENTITY'S LEGAL MANDATE AND** in accordance with the provisions of ~~[Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, as amended, and based on the prevailing]~~ **THE CORPORATION LAWS OF THE PHILIPPINES AND ALL APPLICABLE** rules and regulations, ~~[of the Securities and Exchange Commission (SEC)]~~ of which 50 percent or less of the outstanding capital stock is owned by the Government. ~~[The JV Company]~~ **IT** ~~[shall be registered by the JV partners that]~~ shall perform the primary functions and obligations of the JV as stipulated under the JV Agreement **AND** ~~[The JV Company shall]~~ possess the characteristics stipulated under these Guidelines.
- 5.14. **JV PARTNERS.** REFER TO THE GOVERNMENT ENTITY/IES AND THE PRIVATE SECTOR PARTNER/S THAT WILL UNDERTAKE A JV IN ACCORDANCE WITH THESE GUIDELINES.

- 243 5.15. **JV PROPOSAL.** REFERS TO THE FORMAL PROPOSAL OF EITHER THE GOVERNMENT
244 ENTITY OR THE PRIVATE ENTITY TO UNDERTAKE A JV. ALL JV PROPOSALS SHALL
245 COMPLY WITH THE REQUIREMENTS AND BE PROCESSED/APPROVED IN
246 ACCORDANCE WITH THESE GUIDELINES. IT SHALL CONTAIN, AMONG OTHERS, A
247 FEASIBILITY STUDY AND DRAFT JV AGREEMENT. JV PROPOSALS RECEIVED FROM
248 OR INITIATED BY PRIVATE ENTITIES SHALL BE PROCESSED AS NEGOTIATED JVS.
249
- 250 5.16. **Negotiated JV.** Refers to a proposal initiated by a Private ENTITY ~~[sector proponent]~~, or, by the
251 Government ENTITY in case it has failed to identify an eligible Private ENTITY ~~[sector partner]~~,
252 for a desired activity after subjecting the same to a Competitive Selection as provided under
253 Section VIII.9 of Annex "A" hereof. The procedure for negotiated proposals is provided under
254 Annex "B" of these Guidelines.
255
- 256 5.17. **PRIVATE ENTITY.** REFERS TO ANY ENTITY OTHER THAN THE GOVERNMENT ENTITY
257 AND THE POTENTIAL PRIVATE SECTOR PARTNER TO THE JV UNDERTAKING PRIOR
258 TO AWARD/EXECUTION OF A JV AGREEMENT.
259
- 260 5.18. **PRIVATE SECTOR PARTNER.** REFERS TO THE PRIVATE ENTITY AWARDED WITH THE
261 JV AGREEMENT, WITH SUFFICIENT TECHNICAL AND FINANCIAL CAPABILITY WHICH
262 SHALL HAVE CONTRACTUAL RESPONSIBILITY AS THE JV PARTNER FOR EITHER A
263 CONTRACTUAL JV OR THROUGH A FORMATION OF A JV COMPANY.
264
- 265 5.19. ~~[Cost of JV Activity/Project. Refers to the total amount of the contributions of the parties to
266 the JV activity/project in present value with discount rate as prescribed by the appropriate
267 Approving Authority.]~~
268 **PROJECT COST.** REFERS TO THE ESTIMATED COST TO UNDERTAKE THE JV PROJECT
269 BASED ON THE ARRANGEMENT AND PROJECT SCOPE WHICH SHALL INCLUDE,
270 AMONG OTHERS, COST OF DEVELOPMENT, FEASIBILITY STUDIES, ENGINEERING AND
271 DESIGN, CONSTRUCTION, EQUIPMENT, SUPPLY AND INSTALLATION OF PROJECT
272 COMPONENTS, REHABILITATION OF EXISTING STRUCTURES, RIGHT-OF-WAY, OTHER
273 PRE-OPERATION CAPITAL INVESTMENTS AND TAXES IMPOSED ON SAID COSTS.
274 PROJECTS WITHOUT CAPITAL EXPENDITURES, SUCH AS PURELY OPERATION AND
275 MAINTENANCE CONTRACTS, SHALL BE CONSIDERED AS MANAGEMENT CONTRACTS
276 AND SHALL FOLLOW THE PROCUREMENT PROCEDURES UNDER RA 9184 OR THE
277 GPRA.
278
- 279 5.20. **Public Utility Projects.** Refers to projects or facilities that provide public services as defined
280 under the Commonwealth Act No. 146 (Public Service Law), as amended, and for which a
281 franchise is required.
282
- 283 5.21. **REGULATORY BODY.** REFERS TO ANY GOVERNMENT AGENCY OR AUTHORITY, BODY,
284 COMMISSION, OR OTHER INSTRUMENTALITY MANDATED UNDER APPLICABLE LAWS,
285 RULES AND REGULATIONS TO MONITOR, REGULATE, OR OTHERWISE EXERCISE
286 AUTHORITY OVER THE JV ACTIVITY.
287
- 288
289 IN THE ABSENCE OF A REGULATORY BODY MANDATED BY LAW, THE APPROPRIATE
290 REGULATORY BODY SHALL REFER TO THE MOTHER AGENCY OR SECTOR
291 OVERSIGHT AGENCY OF THE GOVERNMENT ENTITY.
292
- 293 5.22. **SIMILAR OR RELATED CONTRACTS.** FOR THE PURPOSE OF THESE GUIDELINES,
294 SIMILAR OR RELATED CONTRACTS REFER TO ALL ONGOING OR COMPLETED

GOVERNMENT AND PRIVATE CONTRACTS, JV OR OTHERWISE, INVOLVING SCOPE OF WORKS OR SERVICES WHICH ARE RELATED TO OR SIMILAR TO THE PROJECT BEING SUBJECTED TO COMPETITIVE SELECTION/CHALLENGE. THE GOVERNMENT ENTITY MAY ADOPT OR OTHERWISE PROVIDE MORE DETAILS OF THIS DEFINITION IN THE SELECTION/TENDER DOCUMENTS.

6.0. General Guidelines.

6.1. ~~Modes of [Selecting a JV Partner]~~ UNDERTAKING A JV SHOULD EITHER BE BY:

- a. Competitive Selection – The process for the conduct of Competitive Selection, contract award and approval shall be stipulated under Annex “A” of these Guidelines. In the conduct of the Competitive Selection process, the Government Entity shall ensure the following:
 - i. All activities during the Competitive Selection, award, and approval are conducted in a transparent and competitive process that promotes accountability and efficiency; and,
 - ii. The Competitive Selection parameters are clearly defined and shall include the parameters as approved by the Approving Authority.²
- b. Negotiated JVs – Negotiated JVs may be entered under the circumstances stated under Annex “B” of these Guidelines.

6.2. JV Agreements entered into by the Government Entity ~~[concerned]~~ with the Private Sector Partner, whether through contractual ~~[agreement]~~ JV or through the formation of a JV Company ~~[(Corporate JV)]~~ as provided in these Guidelines, should be clear in its intent to undertake a specific activity that is responsive to national development goals and objectives.

6.3. THE GOVERNMENT AND PRIVATE ENTITIES SHALL ENTER INTO A JV AGREEMENT UNDER THE FOLLOWING PARAMETERS, AS APPLICABLE:

- a. Ownership and nationality requirements under the Constitution and other pertinent laws should be complied with; provided, that the Government ~~UNDERTAKING [Entity's equity contribution]~~ in the JV ~~[Company]~~ shall be fifty percent (50%) or less of the ~~[outstanding capital stock of the]~~ PROJECT COST FOR CONTRACTUAL JVS, OR 50% OR LESS OF THE OUTSTANDING CAPITAL STOCK OF THE JV COMPANY ~~[latter]~~.

Government ~~[s-contribution]~~ UNDERTAKING may be through ~~[assets (including money, equipment, land, intellectual property or anything of value) which shall be subject to a third-party independent valuation]~~ ANY OF THE FORMS MENTIONED UNDER SECTION 5.5 ABOVE AND AS DEFINED UNDER SECTION 5.8 ABOVE. THE CONTRIBUTION OF THE JV PARTNERS SHALL BE SUBJECT TO AN INDEPENDENT VALUATION³ BY A THIRD-PARTY VALUATOR TO BE ENGAGED

² APPROVING AUTHORITIES BEING REFERRED ARE THOSE AGENCIES DEFINED AND INDICATED UNDER SECTIONS 5.1 AND 7.2 OF THESE GUIDELINES.

³ THE PHILIPPINE VALUATION STANDARDS (PVS) OF DEPARTMENT OF FINANCE (DOF) MAY BE USED AS A REFERENCE AND GUIDANCE IN ESTABLISHING MORE ACCURATE BASIS FOR VALUATION OF GOVERNMENT ENTITY'S CONTRIBUTION.

BY THE GOVERNMENT ENTITY AND CONFIRMED BY THE APPROPRIATE REGULATORY BODY PRIOR TO ENGAGEMENT THEREOF.

~~[For as long as the Government Entity is involved in the JV, undertaking.] The JV [private sector party shall not] MAY sell [/], transfer, MORTGAGE, ENCUMBER, OR USE AS COLLATERAL THE ASSETS CONTRIBUTED TO THE JV AND WHATSOEVER RIGHTS OVER THESE ASSETS, SUBJECT TO THE CONSENT OF THE HEAD OF THE GOVERNMENT ENTITY AND EXISTING LAWS, RULES, AND REGULATIONS. ; [its interest in the JV Company without the express written consent of the Government Entity];~~

- b. The ~~[JV Company]~~ JV PARTNERS shall be permitted to derive income from the NET PROFIT OF THE JV ITSELF OR activities authorized under the JV Agreement during the term thereof. ~~[The Government Entity and the private sector partner shall be entitled to receive dividends each year from the net profits that would constitute portion of the unrestricted retained earnings of the company in each year in accordance with the JV Agreement];~~
- c. THE JV SHALL BE UNDERTAKEN FOR A FIXED PERIOD, THAT IS, WITH A SPECIFIED START AND END PERIOD/DATE AS EXPLICITLY STIPULATED/DEFINED IN THE JV AGREEMENT;
- d. THE INTERESTS OF THE PARTIES IN AND TO ANY PROFITS, LOSSES, ASSETS ACQUIRED, CONSTRUCTED, AND OTHERWISE DERIVED IN CONNECTION WITH THE JV PROJECT SHALL BE PROPORTIONATE TO THEIR RESPECTIVE CONTRIBUTIONS TO THE JV. SAID SHARING SHALL BE INDICATED IN THE SELECTION/TENDER DOCUMENTS AND INCLUDED IN THE JV AGREEMENT;
- e. A JV ~~[activity]~~ shall be subject to ~~[audit examination under existing]~~ THE RELEVANT AND APPLICABLE BUDGETING, ACCOUNTING, AUDITING AND OTHER PERTINENT laws, rules and regulations, and other legal issuances;
- f. A JV ~~[activity]~~ may be entitled to investment incentives PURSUANT TO THE CREATE LAW AND OTHER EXISTING, RELEVANT LAWS AND REGULATIONS. ~~[as may be approved by the Board of Investments (BOI) as provided for under EO 226, otherwise known as "The Omnibus Investment Code of 1987". As may be applicable, a JV [activity] may also be entitled to investment incentives under other existing laws.]~~
- g. In drafting the JV AGREEMENT AND OTHER ~~[incorporation]~~ documents ~~[of the JV Company and other contracts]~~ governing the relationship between the Government Entity and the Private Sector Participant, the Parties should consider the following guidelines, among others:
 - i. clearly defined business objectives;
 - ii. specified degree of participation and the management roles of each Party in the JV ~~[activity];~~
 - i. defined AND SPECIFIED contribution TO THE JV AND of capital and ownership rights to property AND OVER THE JV PROJECT;
 - ii. specified division of the profits, risks and losses;
 - iii. identified dispute mechanism to avoid management impasses that may produce deadlock or litigation;
 - iv. specified termination/liquidation of the JV and indicate buy-out provisions;

- v. specified confidentiality terms; and,
- vi. stipulated indemnification mechanisms.

6.4. THE JV AGREEMENT SHALL EXPLICITLY PROVIDE FOR WELL-DEFINED MINIMUM DESIGN AND SPECIFICATIONS, PERFORMANCE STANDARDS, AND OTHER SERVICE REQUIREMENTS OF THE JV. THESE REQUIREMENTS SHALL TAKE INTO CONSIDERATION THE TECHNICAL, SOCIO-ECONOMIC, ENVIRONMENTAL, AND OTHER ASPECTS OF THE JV. NEDA MAY ISSUE AND PUBLISH STANDARD FORM/MODEL JV AGREEMENTS WHICH SHALL BE USED IN ALL COVERED JVS.

6.5. The JV ~~[Company]~~ AGREEMENT should stipulate a fixed period for term of existence not to exceed a maximum of fifty (50) years ~~pursuant to the Corporation Code of the Philippines, as amended,~~ for the participation of the Government Entity as determined by the attainment of the Government Entity's objective in pursuing the investment, upon which the Government Entity may divest its interest in the JV ~~[Company]~~ based on existing laws, rules and regulations. ~~[Further, the]~~ PROVIDED THAT FOR JV COMPANIES, withdrawal of the Government Entity's capital contribution before the expiration of said period is likewise ~~[encouraged;]~~ ALLOWED. ~~[provided, that the]~~ Divestment BY THE GOVERNMENT ENTITY SHALL BE ~~[is]~~ made through Competitive Selection, initial public offering (IPO), AS APPLICABLE, or any other means that promote competition, fairness and transparency; ~~[and]~~

6.6. ~~[As may be applicable,]~~ The procurement activities OF THE JV, WHETHER PARTIALLY OR FULLY financed by the Government Entity or Government of the Philippines (GOP) regardless of source of funds, whether local or foreign, shall comply with APPLICABLE PROVISIONS OF ~~[RA No. 9184, otherwise known as the]~~ GPRA and its Revised ~~[Implementing Rules and Regulations (IRR)]~~ AND ALL ~~[The JV activity shall also comply with]~~ other ~~[laws, rules and regulations,]~~ guidelines ~~[,]~~ and ~~[legal]~~ issuances on procurement ~~[, as may be applicable].~~

6.7. For JVs involving government assets or properties, the JV ~~[contract]~~ agreement may be terminated ~~[,]~~ OR rescinded, if the private sector partner fails to deliver or perform any major obligation/s prescribed in the JV ~~[contract]~~ agreement, e.g., construction of the proposed building/s within the period specified in the JV ~~[contract]~~ agreement. In such cases, the Government Entity ~~[concerned]~~ may likewise forfeit the performance security of the private sector partner.

6.8. FOR JVS INVOLVING THE FORMATION OF A ~~[The]~~ JV Company, AS DEFINED UNDER SECTION 5.13 OF THESE GUIDELINES, THE JV PARTIES shall be ~~[formed by the Government Entity and the private sector entity under]~~ FURTHER GUIDED BY the following parameters:

~~[a. The JV Company shall be incorporated and registered as a stock corporation in accordance with the provisions of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, as amended, and the prevailing and applicable rules and regulations promulgated by the SEC]~~

a. The Government Entity shall be represented in the Board of the JV Company in proportion to its investment; AND;

b. ~~[The JV Company shall be permitted to derive income from the activities authorized under the JV Agreement during the term thereof.]~~ The Government Entity and the Private Sector Partner shall be entitled to receive dividends ~~[each year]~~ from the net profits that would constitute portion of the unrestricted retained earnings of the JV Company in each year in accordance with the JV Agreement, PROVIDED THAT THE DIVIDENDS TO BE

ISSUED IN FAVOR OF THE GOVERNMENT ENTITY SHALL BE HELD IN TRUST FOR ITS EXCLUSIVE BENEFIT

6.9. If the formation of a JV Company is not the best mode to implement a JV ~~[activity]~~ as determined by the Government Entity, it may opt to implement the JV ~~[project]~~ through a contractual agreement. ~~[Prior to entering into a Contractual JV, the parameters similar to those governing JV Companies under Section 6.2.f herein are to be observed.]~~ **A CONTRACTUAL JV MAY BE MORE APPROPRIATE FOR GOVERNMENT ENTITY UNDERTAKINGS OF LIMITED SCOPE AND DURATION.**

6.10. The ownership of the JV project/facility may be transferred to either the Government Entity or the Private Sector Partner after the expiration of the JV Agreement depending on the terms stated therein; provided that, pursuant to Section 7.2.a. of these Guidelines, JVS ~~[projects]~~ which involve ~~[full]~~ divestment or transfer of ownership of government assets or properties to a Private Sector Partner ~~[for a private sector/entity]~~ shall be approved/cleared by the Privatization Council (PrC), and ~~[JV projects which involve divestment of government equity that is not in the form of asset or property be approved/cleared]~~ by the GCG, **AS APPLICABLE⁴. PURSUANT TO SECTION 6.5 OF THESE GUIDELINES, SUCH DIVESTMENT SHALL BE MADE THROUGH COMPETITIVE SELECTION, INITIAL PUBLIC OFFERING (IPO), AS APPLICABLE, OR ANY OTHER MEANS THAT PROMOTE COMPETITION, FAIRNESS AND TRANSPARENCY.**

PROVIDED, FURTHER, THAT THE PROCEDURE FOR THE TRANSFER OR DIVESTMENT OF GOVERNMENT ASSETS OR PROPERTIES TO A PRIVATE SECTOR PARTNER SHALL BE STIPULATED IN THE JV PROPOSAL AND AGREEMENT AND SHALL CONTAIN SUFFICIENT SAFEGUARDS FOR THE PROTECTION OF THE GOVERNMENT ENTITY, SUBJECT TO THE RELEVANT LAWS, RULES, AND REGULATIONS. PROVIDED, FURTHERMORE, THAT A JV AGREEMENT SHALL BE DEEMED INCOMPLETE SHOULD THERE BE AN ABSENCE OF ANY PROCEDURE OR OTHER STIPULATIONS ON TRANSFER/DIVESTMENT OF THE PROJECT/FACILITY.

6.11. ~~[Consistent with EO No. 79 dated 06 July 2012.]~~ JVS under the mining sector shall be undertaken through Competitive Public Bidding.

6.12. **A JV SHALL REMAIN SUBJECT TO REGULATION BY THE APPROPRIATE REGULATORY BODY, AS PROVIDED BY LAW, UNTIL FULL DIVESTMENT OF THE GOVERNMENT ENTITY'S OWNERSHIP/INTEREST TO THE JV HAS BEEN MADE. THE JV AGREEMENT SHALL EXPLICITLY PROVIDE THE SPECIFIC REGULATORY BODY/IES AS DEFINED IN SECTIONS 5.21 AND 2.13 OF THESE GUIDELINES FOR THE UNDERTAKING.**

6.13. **DURING THE EXISTENCE OF THE JV, THE GOVERNMENT ENTITY SHALL CONTINUE TO CARRY OUT ITS POWERS AND FUNCTIONS AND RETAIN ITS ORGANIZATIONAL STRUCTURE AND PLANTILLA POSITIONS THAT ARE EXISTING PRIOR TO THE FORMATION OF THE JV, AND NECESSARY TO IMPLEMENT AND FULFILL ITS MANDATE.**

THE JV SHALL, IN NO WAY, AFFECT THE TENURE OF INCUMBENT POSITIONS INVOLVED NOR CONSTITUTE A DEMOTION OR REDUCTION IN RANK, STATUS, AND SALARY.

⁴ GCG COVERAGE EXCLUDES THE BANGKO SENTRAL NG PILIPINAS, STATE UNIVERSITIES AND COLLEGES, COOPERATIVES, LOCAL WATER DISTRICTS, ECONOMIC ZONE AUTHORITIES AND RESEARCH INSTITUTIONS. (SECTION 4 OF RA 10149).

- 6.14. EVERY JV UNDERTAKEN UNDER THE PROVISIONS OF THESE GUIDELINES SHALL BE IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS, STANDARDS, AND COST APPROVED BY THE APPROPRIATE APPROVING AUTHORITY AS PROVIDED UNDER SECTION 7.2 OF THESE GUIDELINES, AND SHALL BE UNDER THE SUPERVISION AND/OR REGULATION OF THE GOVERNMENT REGULATORY ENTITY/IES PURSUANT TO EXISTING LAWS.

7.0. Process for Entering into JV Agreements

- 7.1. Requirements/Conditions for JV Proposals. JV Proposals shall comply with the following requirements/conditions:

- a. The JV ~~[activity]~~ is within the mandate and charter of the Government Entity ~~[concerned]~~;
- b. The JV ~~[activity]~~ is responsive in meeting ~~[national or]~~ specific development goals and objectives;
- c. The JV Proposal clearly describes the proposed investment, including its total cost, activities, objectives, sources of funding, extent and nature of the proposed participation of the Government Entity ~~[concerned]~~, and the relevant terms and conditions;
- d. The JV Proposal establishes all the components in determining the over-all feasibility of the JV Proposal which include, among others, the technical, financial, **SOCIO-economic, ENVIRONMENTAL**, and legal aspects; ~~[and]~~
- e. **THE JV PROPOSAL EXPLICITLY SPECIFIES THE OBLIGATIONS OF THE PARTIES ON THE PAYMENT OF ALL TAXES, INCLUDING VALUE-ADDED TAX (VAT), FRANCHISE TAX AND OTHER TAXES PURSUANT TO EXISTING LAWS, RULES AND REGULATIONS. SUCH OBLIGATIONS SHALL ALSO BE DULY REFLECTED IN THE JV AGREEMENT;**
- f. The terms and conditions of the approval of the PrC **AND GCG**, if applicable; **AND**,
- g. **ALL THE NECESSARY CLEARANCES, CERTIFICATIONS OR AUTHORIZATIONS FROM ALL CONCERNED OVERSIGHT/SUPERVISORY/REGULATORY BODIES ARE SECURED PURSUANT TO EXISTING LAWS, RULES AND REGULATIONS.**

- 7.2. Approval of JV Proposals. The approval of JV Proposals shall be in accordance with the following:

- a. Prior to submission of a JV Proposal to the Approving Authority as indicated in this Section, ~~[approval from concerned entities]~~ **THE FOLLOWING** shall be secured ~~[as indicated below]~~:
 - i. **JV PROPOSALS ~~[Projects]~~ which involve divestment OF GOVERNMENT CONTRIBUTION or transfer of government assets or properties to the Private Entity ~~[sector partner]~~ shall be required to secure approval/clearance from the PrC pursuant to EO 12 dated 14 August 1998, as amended by EO 323, dated 06 December 2000, AND/OR FROM THE GCG, AS APPLICABLE, PURSUANT TO**

RA NO. 10149, OTHERWISE KNOWN AS THE GOCC GOVERNANCE ACT OF 2011;

~~Projects which involve the formation of a JV company shall be required to secure approval from GCG pursuant to RA No. 10149, otherwise known as the GOCC Governance Act of 2011; and~~

~~Projects which involve divestment of government equity that is not in the form of asset or property shall be required to secure approval from GCG pursuant to RA No. 10149, otherwise known as the GOCC Governance Act of 2011;]~~

ii. **THE GOVERNMENT ENTITY SHALL ENSURE DUE DILIGENCE AND BE RESPONSIBLE FOR THE INITIAL EVALUATION OF THE PROPOSAL;**

iii. **THE GOVERNMENT ENTITY SHALL ESTABLISH AND CERTIFY THAT THE JV PROPOSAL TAKES THE FORM / NATURE OF A JV IN ACCORDANCE WITH THESE GUIDELINES PARTICULARLY SECTIONS 5.11 AND 6.13. SUCH CERTIFICATION SHALL BE SUBMITTED TO THE APPROPRIATE APPROVING AUTHORITY ALONG WITH THE REPORT ON THE RESULT OF THE INITIAL EVALUATION CONDUCTED AND OTHER DOCUMENTS PURSUANT TO SECTION 7.2 OF THESE GUIDELINES; AND**

iv. **IMMEDIATELY UPON RECEIVING A JV PROPOSAL, THE HEAD OF GOVERNMENT ENTITY SHALL SUBMIT TO THE APPROPRIATE REGULATORY BODY A COMPLETE COPY OF THE PROPOSAL AND OTHER PERTINENT DOCUMENTS FOR ITS APPROPRIATE ACTION.**

b. For the following ~~[projects,]~~ **JVs WITH PROJECT COST OF AT LEAST 2.5 BILLION PESOS OR GOVERNMENT CONTRIBUTION OF AT LEAST 150 MILLION PESOS,** the Approving Authority shall be the NEDA Board ~~[Investment Coordination Committee (ICC)]:~~

i. Infrastructure **OR DEVELOPMENT** projects as defined under Section 5.10 of these Guidelines ~~[with government contribution amounting One Hundred Fifty Million Pesos (PhP 150 Million) and above];~~

ii. ~~[Projects]~~ **JVs**, as defined under Section 5.20 of these Guidelines, that are public utilities ~~[with government contribution amounting One Hundred Fifty Million Pesos (PhP 150 Million) and above];~~

iii. Negotiated JVs that are initiated by a Private **ENTITY** ~~[sector proponent with government contribution amounting One Hundred Fifty Million Pesos (PhP 150 Million) and above];~~ and,

iv. ~~[Projects]~~ **JVs** that are not related to primary ~~[corporate]~~ mandate ~~[with government contribution amounting One Hundred Fifty Million Pesos (PhP 150 Million) and above];~~

c. For the following ~~[projects]~~ **JVs**, the Approving Authority shall be the Head of Government Entity ~~[concerned]:~~

- i. Projects that are related to primary mandate and not involving infrastructure projects as defined under Section 5.10 of these Guidelines; and,
 - ii. Projects not covered under Section 7.2.b of these Guidelines.
- d. ~~[Project]~~ **JV** Proposals that shall be submitted to NEDA ICC for approval as indicated in this Section should include the following:
- i. endorsement **AND CERTIFICATION** ~~[of the JV proposal]~~ by the Head of the Government Entity **THAT THE JV AGREEMENT IS COMPLIANT WITH THE JV GUIDELINES AND OTHER EXISTING LAWS** ~~[concerned;]~~
 - ii. **FOR NEGOTIATED JVS THAT ARE INITIATED BY THE PRIVATE ENTITY, EVALUATION REPORT BY THE HEAD OF GOVERNMENT ENTITY ON THE JV PROPOSAL;**
 - iii. ~~[project details]~~ **FEASIBILITY STUDY;**
 - iv. draft JV Agreement; ~~[and]~~
 - v. **RISK ALLOCATION MATRIX AND LIST OF CONTINGENT LIABILITIES;**
 - vi. **VALUATION OF GOVERNMENT CONTRIBUTION BY A THIRD PARTY VALUATOR; AND,**
 - vii. Other documents and requirements as may be determined by the NEDA-ICC pursuant to its guidelines.
- ~~[The Government Entity concerned shall furnish the Department of Finance (DOF) all the documents submitted to the NEDA ICC for the approval of a JV proposal;]~~
- e. **THE APPROVING AUTHORITY SHALL REVIEW/EVALUATE THE SPECIFIC JV PROPOSAL WITH RESPECT TO TECHNICAL, FINANCIAL, SOCIO-ECONOMIC, ENVIRONMENTAL FEASIBILITY/VIABILITY, AND INSTITUTIONAL DEVELOPMENT. THE JV PROPOSAL SHALL ALSO BE REVIEWED/EVALUATED IN RELATION TO SECTORAL PLANS AND GEOGRAPHICAL STRATEGIES, AMONG OTHERS.**
 - f. **THE APPROVING AUTHORITY SHALL PRESCRIBE THE DETAILED GUIDELINES ON THE PROCESS AND PROCEDURES FOR THE APPROVAL OF JV PROPOSALS, AS WELL AS THE REQUIREMENTS TO BE SUBMITTED IN SUPPORT THEREOF, PROVIDED THAT THE SAME ARE CONSISTENT WITH THESE GUIDELINES.**
 - g. **THE SUBMITTED JV PROPOSAL SHALL BE CHECKED BASED ON ITS COMPLETENESS WITHIN SEVEN (7) WORKING DAYS UPON THE APPROVING AUTHORITY'S RECEIPT OF THE SUBMISSION. IN CASE OF INCOMPLETE SUBMISSION, THE APPROVING AUTHORITY SHALL FORMALLY INFORM THE GOVERNMENT ENTITY ON THE DEFICIENCIES AND RETURN THE INCOMPLETE DOCUMENTS. THEREAFTER, the** ~~[Approving Authority shall act on the]~~ **JV proposal SHALL BE ACTED UPON WITHIN A PERIOD OF THIRTY (30)** ~~[calendar]~~ **WORKING days upon submission of complete documents AS REQUIRED BY THE APPROVING AUTHORITY. FOR JV PROPOSALS COVERED UNDER SECTION 7.2.C ABOVE, THE HEAD OF GOVERNMENT ENTITY SHALL, UPON APPROVAL OF THE JV**

PROPOSAL, CERTIFY THAT THE JV GUIDELINES ARE ADOPTED AS THE LEGAL FRAMEWORK TO UNDERTAKE THE JV AND THAT THE PROPOSED JV IS TECHNICALLY, FINANCIALLY AND ECONOMICALLY FEASIBLE. WITHIN SEVEN (7) WORKING DAYS UPON ISSUANCE OF THE CERTIFICATION, THE HEAD OF GOVERNMENT ENTITY SHALL SUBMIT TO THE APPROPRIATE REGULATORY BODY THE CERTIFICATION AND OTHER PERTINENT DOCUMENTS FOR REVIEW.

- h. THE INVITATION TO APPLY FOR ELIGIBILITY AND TO SUBMIT A PROPOSAL (IAESP) SHALL BE ISSUED/PUBLISHED ONLY UPON RECEIPT BY THE GOVERNMENT ENTITY/HEAD OF GOVERNMENT ENTITY OF APPROVAL BY NEDA-ICC AND UPON SECURING ALL THE NECESSARY CERTIFICATIONS OR OTHER PRE-REQUISITE DOCUMENTS FROM RELEVANT AGENCIES.

7.3. Clearance/Approval of Department of Finance (DOF) and Department of Budget and Management (DBM). For JV Activities that will require National Government undertakings, subsidies or guarantees, clearance/approval of the DOF and/or the DBM, as the case may be, shall be secured.

7.4. REVIEW AND Approval of the DRAFT JV Agreement. Upon approval of the JV proposal PURSUANT TO SECTION 7.2.B ABOVE by the NEDA Board-ICC ~~[Approving Authority]~~, THE GOVERNMENT ENTITY SHALL SUBMIT TO THE APPROPRIATE STATUTORY COUNSEL A COPY OF THE DRAFT JV AGREEMENT, INSTRUCTIONS TO PRIVATE SECTOR PARTICIPANTS, FOR ITS REVIEW TO DETERMINE AND ENSURE COMPLIANCE WITH RESPECT TO THESE GUIDELINES AS WELL AS EXISTING AND APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS. THE APPROPRIATE STATUTORY COUNSEL SHALL RESPOND TO THE GOVERNMENT ENTITY WITHIN 20 WORKING DAYS UPON RECEIPT OF THE DRAFT JV AGREEMENT. THEREAFTER, the Head of the Government Entity ~~[concerned]~~ shall approve the draft ~~[contract or]~~ JV Agreement. The Head of the Government Entity ~~[concerned]~~ shall be responsible for ensuring the consistency of the tender/bid parameters and the draft contract or JV agreement with the parameters, terms and conditions set forth by the Approving Authority.

7.5. Approval for Registration of JV Company. ~~[All JV proposals which involve the pursuit of the project through a JV Company shall be submitted to the GCG]~~ UPON FAVORABLE ENDORSEMENT OF THE JV AGREEMENT BY THE APPROPRIATE STATUTORY COUNSEL PURSUANT TO SECTION 7.4 HEREIN, THE GOVERNMENT ENTITY SHALL SUBMIT TO THE GCG, AS APPLICABLE, DOCUMENTS PERTAINING TO THE JV PROPOSAL INCLUDING THE STATUTORY COUNSEL REVIEW OF THE JV AGREEMENT, for INFORMATION. ~~[review and recommendation to the President of the Philippines for approval before registering the same with the SEC pursuant to Section 27 of RA 10149.]~~

7.6. Deviations and Amendments to the JV Agreement. The ~~[concerned]~~ Government Entity shall not proceed with the award and signing of the ~~[contract]~~ JV AGREEMENT if there are material deviations from the parameters and terms and conditions set forth in the proposal/tender documents that tend to increase the financial exposure, liabilities and risks of Government or any other factors that would cause disadvantage to Government and any deviation that will cause prejudice to losing Private Sector Participants. Said material deviations and amendments shall be subjected to the approval requirements under Sections 7.2, 7.3, ~~[and]~~ 7.4 and 7.5 hereof. The Head of Government Entity ~~[concerned]~~ shall be responsible for compliance with this policy. Violation of this provision shall render the award and/or the signed JV Agreement invalid.

Any amendment to a JV Agreement, **INCLUDING INCREASES IN PROJECT COST**, after award and signing of ~~{contract}~~ **THE JV AGREEMENT** shall undergo **NOTATION**/approval by the appropriate Approving Authority as provided in Sections 7.2, 7.3, ~~{and}~~ 7.4 AND 7.5 of these Guidelines **AND IN ACCORDANCE WITH THE EXISTING GUIDELINES OF THE APPROVING AUTHORITY**. Noncompliance with the corresponding **NOTATION**/approval process stated shall render the amendment null and void. **AN INCREASE OF AT MOST 10% IN COST WOULD BE SUBMITTED TO THE APPROVING AUTHORITY FOR NOTATION. ANY COST INCREASE BEYOND 10% SHALL REQUIRE APPROVAL ANEW. ANY AMENDMENT TO THE JV AGREEMENT THAT WOULD INCREASE GOVERNMENT CONTRIBUTION, OR DIMINISH THE RETURN TO GOVERNMENT AND/OR THE PROJECT SERVICE LEVELS AS REFLECTED BY KEY PERFORMANCE INDICATORS, WOULD ALSO REQUIRE APPROVAL ANEW. ANY ADDITION TO THE SCOPE OF THE PROJECT THAT IS SEPARABLE FROM THE EXISTING SCOPE AND COSTS MORE THAN 10% OF THE ORIGINAL PROJECT COST SHALL BE TREATED AS A NEW PROJECT AND WOULD BE SUBJECT TO THE APPROVAL AND TENDERING PROCESS UNDER THE GUIDELINES.**

- 8.0. **TOLLS, FEES, RENTALS, TARIFFS AND CHARGES.** THE TOLLS, FEES, RENTALS, TARIFFS, AND CHARGES THAT A JV MAY CHARGE FOR THE USE/AVAILMENT OF THE FACILITY/SERVICE SHALL BE SUBJECT TO THE APPROVAL OF THE APPROPRIATE REGULATORY BODY OR AS PROVIDED BY LAW.

THE APPROPRIATE REGULATORY BODY FOR THE PROJECT SHALL RETAIN THE POWER TO APPROVE OR DISAPPROVE ADJUSTMENTS TO TOLLS/FEES/RENTALS/CHARGES, AND OTHER TARIFFS BASED ON PREVAILING ECONOMIC CONDITIONS, OTHER FACTORS CONSISTENT WITH THE REGULATORY FRAMEWORK FOR THE PROJECT, AND THE ACTUAL FINANCIAL PERFORMANCE OF THE PROJECT. THE ADJUSTMENT OF TOLLS/FEES/RENTALS/CHARGES SHALL BE BASED ON THE FORMULA OR ADJUSTMENT SCHEDULE APPROVED BY THE APPROVING AUTHORITY AND THE APPROPRIATE REGULATORY BODY TO BE INCORPORATED IN THE SELECTION/TENDER DOCUMENTS AND THE JV AGREEMENT. ANY ADJUSTMENTS SHALL REQUIRE THE CONDUCT OF STAKEHOLDER CONSULTATIONS PRIOR TO ITS IMPLEMENTATION CONSISTENT WITH EXISTING RULES/GUIDELINES/ REQUIREMENTS OF THE APPROPRIATE REGULATORY BODY.

IN NO CASE SHALL THE JV AGREEMENT CONTAIN PROVISIONS AUTOMATICALLY ENTITLING THE JV TO ITS PROPOSED TOLLS/FEES/RENTALS/CHARGES TO BE IMPOSED UPON THE USERS OF THE PROJECT. WHILE THE TOLLS/FEES/RENTALS/CHARGES AND ADJUSTMENT MAY BE STIPULATED IN THE JV AGREEMENT, THE JV SHALL NOT BE AUTOMATICALLY ENTITLED TO AN INCREASE IN THE TOLLS/FEES/RENTALS/CHARGES, UNLESS DULY AUTHORIZED AND APPROVED BY THE APPROPRIATE REGULATORY BODY. THE GOVERNMENT ENTITY SHALL NOT BE LIABLE FOR THE NON-APPROVAL BY THE REGULATORY BODY OF ANY APPLICATION OF INCREASE OR ADJUSTMENT OF THE TOLLS/FEES/RENTALS/CHARGES.

- 9.0. **CHANGE IN CONTROL OR COMPOSITION OF THE PRIVATE SECTOR PARTNER.** ANY CHANGE IN CONTROL OF THE PRIVATE SECTOR PARTNER/COMPOSITION OF THE CONSORTIUM AT ANY TIME SHALL BE SUBJECT TO THE APPROVAL OF THE GOVERNMENT ENTITY. THE NEW PRIVATE SECTOR PARTNER SHALL BE EVALUATED USING THE SAME QUALIFICATION CRITERIA TO DETERMINE IF IT HAS EQUAL OR BETTER QUALIFICATIONS AS WITH THE PREVIOUS PRIVATE SECTOR PARTNER, PROVIDED, THAT THE FORMER SHOULD COMPLY

WITH NATIONALITY REQUIREMENTS UNDER THE CONSTITUTION AND OTHER PERTINENT LAWS AND IN ACCORDANCE WITH SECTION 6.3 HEREIN AND SECTION IV.2.A OF ANNEX “A” OF THESE GUIDELINES.

ANY CHANGE IN THE OWNERSHIP OF THE PRIVATE SECTOR PARTNER THAT WILL INVOLVE CHANGES IN THE JV SHALL BE SUBJECT TO APPROVAL BY THE APPROPRIATE APPROVING AUTHORITY PROVIDED IN SECTION 7.2 OF THE GUIDELINES.

- 10.0. **Reporting Requirement.** The Heads of Government Entities as defined in Section 5.9 of these Guidelines, shall submit to OP, NEDA, DOF, GCG, DBM, PUBLIC-PRIVATE PARTNERSHIP (PPP) CENTER, THE APPROPRIATE STATUTORY COUNSEL AND REGULATORY BODY the salient features and a copy of JV Agreements together with all documents required thereto **WITHIN FIFTEEN (15) DAYS FROM THE EXECUTION OF THE JV AGREEMENT**, for monitoring of compliance with relevant policies, procedures and conditions for approval of the JV ~~[undertaking]~~.

During the course of implementation of the JV Agreement, the ~~[concerned]~~ Government Entity shall submit an annual report on the **PROJECT** status of its implementation during a current year to **NEDA, THE APPROPRIATE REGULATORY BODY, PPP CENTER, DOF, ~~[and]~~ GCG, AND DBM**, for monitoring purposes. The annual report shall be submitted within the first quarter of the succeeding year and may be in any format, electronic/digital copy or hard copy, as may be required by **THE APPROPRIATE REGULATORY BODY, DOF, ~~[and]~~ GCG, AS APPLICABLE⁵, AND DBM**. The report shall use current standards in the production of ~~[corporate]~~ annual reports and shall include the audited financial statements of the JV. In addition, the report shall also contain the JV's work program for a period as specified and required by DOF starting from the year the annual report is issued.

ASIDE FROM AN ANNUAL REPORT, THE APPROPRIATE REGULATORY BODY, DOF, GCG AND DBM, MAY REQUEST A STATUS REPORT AT ANY TIME, AS MAY BE DEEMED NECESSARY.

- 11.0. **COMPLIANCE WITH THE SPECIFIC PROVISIONS OF THESE GUIDELINES.** ALL PROSPECTIVE JV PARTIES ARE ENJOINED TO STRICTLY ADHERE TO THE PROVISIONS OF THESE GUIDELINES. A JV AGREEMENT SHALL BE DEEMED VOID AND WITHOUT EFFECT IF IT IS ENTERED INTO BY THE PARTIES IN VIOLATION OF ANY OF THE PROVISIONS OF THESE GUIDELINES AND OTHER LAWS, RULES AND REGULATIONS RELATIVE THERETO. VOID JV AGREEMENTS SHALL BE DEEMED AS NOT HAVING BEEN ENTERED AT ALL AND SHALL VEST NO RIGHTS, BENEFITS, OR PRIVILEGES.

THE DECLARATION OF JV AGREEMENTS AS VOID SHALL BE AT ANY TIME AFTER THE DISCOVERY OF SUCH VIOLATION AND SHALL SERVE AS A GROUND TO RESTORE THE PARTIES' STATUS QUO AT THE EXPENSE OF THOSE PERSONS LIABLE. THIS SHALL BE WITHOUT PREJUDICE TO THE FILING OF THE APPROPRIATE ADMINISTRATIVE, CIVIL, AND/OR CRIMINAL CASE AGAINST THE PUBLIC OFFICER/S, EMPLOYEE/S, AND/OR PRIVATE INDIVIDUAL/S LIABLE OR IN VIOLATION THEREFOR.

- 12.0. **Amendments AND ADDENDA.** ~~[These Guidelines may be amended and/or modified from time to time by]~~ THE NEDA, through its **SECRETARY ~~[Director-General]~~**, MAY AMEND AND/OR MODIFY THESE GUIDELINES, in consultation with the GPPB, the OGCC, ~~[and]~~ the GCG AND OTHER GOVERNMENT AGENCIES AS MAY BE DEEMED RELEVANT BY NEDA. PUBLIC CONSULTATION SHALL BE HELD BEFORE ANY APPROVAL OF THE AMENDMENT OR REVISION OF THE GUIDELINES.

⁵ GCG COVERAGE EXCLUDES THE BANGKO SENTRAL NG PILIPINAS, STATE UNIVERSITIES AND COLLEGES, COOPERATIVES, LOCAL WATER DISTRICTS, ECONOMIC ZONE AUTHORITIES AND RESEARCH INSTITUTIONS. (SECTION 4 OF RA 10149).

FURTHERMORE, THE NEDA, THROUGH ITS SECRETARY, AND IN CONSULTATION WITH THE AFOREMENTIONED AGENCIES, MAY ISSUE SUPPLEMENTAL GUIDELINES IN THE FORM OF ADDENDA OR ANNEXES TO CLARIFY SPECIFIC PROVISIONS/REQUIREMENTS OF THESE GUIDELINES AS MAY BE NECESSARY. THE PUBLICATION AND NOTICES FOR THE SUPPLEMENTAL GUIDELINES (ADDENDA/ANNEXES) SHALL BE MADE IN THE NEDA WEBSITE.

13.0. **Separability.** If any provision of these Guidelines is held or declared void or unenforceable by final judgment of a court of competent jurisdiction, the other provisions unaffected thereby shall remain in full force and effect.

14.0. **Effectivity.** These Revised Guidelines and any subsequent amendment or modification shall take effect fifteen (15) calendar days from the date of its publication (IN PRINT OR THROUGH OTHER ELECTRONIC/ONLINE MEANS) in ~~any~~ ANY newspaper of general circulation or the Official Gazette. ~~for other modes legally acceptable, and~~ A copy of THE REVISED GUIDELINES AND ANY SUBSEQUENT AMENDMENT OR MODIFICATION ~~it~~ shall be submitted to the Office of the National Administrative Registry (ONAR) and the University of the Philippines (UP) Law Center.

15.0. **Transitory Provision.** ~~The following shall be governed by the old Guidelines (2008 JV Guidelines)~~ THESE GUIDELINES SHALL APPLY TO ALL JVS, EXCEPT FOR ~~[- (a) All negotiated]~~ JVs wherein a JV ~~contract~~ Agreement between the winning Private Sector Participant and the Government Entity ~~concerned~~ has been executed prior to effectivity of the SE Revised JV Guidelines. ~~[- and, (b) All JVs undertaken through competitive selection wherein the bid/s have already been opened prior to the effectivity of these Revised JV Guidelines.]~~

~~[For JVs not covered under items (a) and (b) above, these Revised JV Guidelines shall govern, provided that the Revised Guidelines shall not, in any manner, operate to impair vested rights already accruing to a party.]~~

THESE REVISED JV GUIDELINES SHALL NOT, IN ANY MANNER, OPERATE TO IMPAIR VESTED RIGHTS ALREADY ACCRUING TO THE PRIVATE SECTOR PARTICIPANT PRIOR TO THE EFFECTIVITY OF THESE GUIDELINES. SUCH VESTED RIGHTS SHALL REFER TO:

- a. (FOR JVS UNDERTAKEN THROUGH COMPETITIVE SELECTION UNDER EXISTING RULES), THE ISSUANCE OF NOTICE OF AWARD (NOA) BY THE HEAD OF THE GOVERNMENT ENTITY PRIOR TO THE EFFECTIVITY OF THESE REVISED JV GUIDELINES; OR
- b. (FOR NEGOTIATED JVS UNDERTAKEN UNDER EXISTING RULES), THE CONFERMENT OF THE ORIGINAL PROPONENT STATUS (OPS) BY THE HEAD OF THE GOVERNMENT ENTITY PRIOR TO THE EFFECTIVITY OF THESE REVISED JV GUIDELINES. FOR THESE NEGOTIATED JVS, THE GOVERNMENT ENTITY THROUGH ITS JV-SC MAY OPT TO APPLY THE MODIFIED COMPETITIVE CHALLENGE AS PROVIDED UNDER ITEM 10 OF STAGE THREE (ANNEX "B").

IN THE EVENT WHERE THE NOA OR THE OPS, AS APPLICABLE, HAD ALREADY BEEN ISSUED PRIOR TO THE EFFECTIVITY OF THESE GUIDELINES, THE PROCEDURES UNDER THESE GUIDELINES FOR THE STAGES SUBSEQUENT TO SUCH ISSUANCE OF NOA OR OPS SHALL BE FOLLOWED.

KARL KENDRICK T. CHUA
Socioeconomic Planning Secretary

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ANNEX A

DETAILED GUIDELINES AND PROCEDURES FOR COMPETITIVE SELECTION FOR PUBLIC-PRIVATE JOINT VENTURES

I. The Joint Venture Selection Committee (JV-SC)

1. **Composition.** The Head of ~~the~~ Government Entity shall create a JV-SC for purposes of selecting a Private Sector Partner for a proposed JV. The JV-SC shall be composed of the following:

Regular Members (voting):

- a. Chairman – At least a third ranking officer of the Government Entity;
- b. Secretary – Any legal officer of the ~~concerned~~ Government Entity;
- c. One (1) officer knowledgeable in finance;
- d. One (1) officer knowledgeable in management/operation of the JV; and,
- e. One (1) officer knowledgeable with the technical aspects or requirements of the project, duly designated by the Head of ~~the~~ Government Entity ~~concerned~~ on a project-to-project basis.

Provisional Members (non-voting):

- f. One (1) technical officer from a concerned regulatory body, when applicable, knowledgeable with the project at hand, to be invited by the Government Entity ~~concerned~~ on a project-to-project basis; and
- g. Observers:
 - (i) One (1) representative from the Government Entity's statutory counsel (OGCC or the Office of the Solicitor-General [OSG] or as designated by the Department of Justice [DOJ]);
 - (ii) Two (2) representatives from the private sector – one (1) representative from a duly recognized association related to the project at hand, and one (1) representative from either the facility users, if applicable, or duly recognized accounting associations; and,
 - (iii) One (1) representative from the Commission on Audit (COA).

Observers will be notified at least two (2) calendar days before the following stages: pre-selection conference, opening of technical and financial proposals, evaluation of technical and financial proposals, ~~contract~~ award **OF JV AGREEMENT**, and special meetings of the JV-SC. The absence of observers will not nullify the JV-SC proceedings, provided that they have been duly invited in writing.

2. **Responsibilities.** The JV-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the ~~preparation~~ **APPROVAL** of the selection/tender documents, publication of the invitation to apply for eligibility and to submit a proposal, pre-qualification of prospective private sector participants, conduct of pre-selection conferences and issuance of supplemental notices, interpretation of the rules regarding the selection process, the conduct of the selection process, evaluation of the financial and technical proposals, resolution of disputes between private sector participants, and recommendation for the acceptance of the proposal and/or for the award of the ~~contract~~ **JV AGREEMENT**.
3. **Quorum.** A quorum of the JV-SC shall be composed of a simple majority of all voting members. The Chairman shall vote only in case of a tie.

II. Selection/Tender Documents

1. **Selection/Tender Documents.** The Government Entity ~~[concerned]~~ shall prepare the selection/tender documents which shall include the following:

- a. Instructions to Private Sector Participants;
- b. Minimum Design, Performance Standards/Specifications, **KEY PERFORMANCE INDICATORS (KPIs), BUSINESS EFFICIENCY MEASURES (BEMs)** and other Financial and Economic Parameters, where applicable, among others;
- c. Feasibility Study ~~[or a Business Case/Pre-feasibility Study]~~ of the Project;
- d. Draft ~~[Contract]~~ **JV AGREEMENT** ~~[as approved]~~ in accordance with Section **S 6.3, 6.4, 6.5, 6.10, 6.12 AND 7.5** of these Guidelines, **AND SECTION II.5 OF THIS ANNEX** reflecting the terms and conditions in undertaking the JV ~~[activity]~~ including, among others, the ~~[contractual]~~ obligations of the ~~[contracting]~~ JV parties and the ownership of the JV ~~[activity, project,]~~ or property after the termination of the JV Agreement;
- e. Selection Form reflecting the required information to properly evaluate the technical and financial proposal;
- f. Forms of technical and financial proposals and performance securities; and
- g. Other documents as may be required by the Government Entity ~~[concerned]~~ and other requirements of concerned regulatory **BODIES** ~~[agencies]~~ as may be pertinent or applicable to the JV ~~[activity]~~.

The documents enumerated above are ~~[just for guidance/reference]~~ **MINIMUM DOCUMENTARY REQUIREMENTS THAT NEED TO BE PREPARED BY THE GOVERNMENT ENTITY. HOWEVER**, the Government Entity ~~[concerned]~~ is given ~~[full]~~ discretion to ~~[select the]~~ **ADD** appropriate provisions as they may deem suitable for a particular ~~[contract/]~~ project.

TO PROVIDE THE PROSPECTIVE PRIVATE SECTOR PARTICIPANTS AMPLE TIME TO EXAMINE THE SELECTION/TENDER DOCUMENTS AND TO PREPARE THEIR JV PROPOSALS, THE CONCERNED JV-SC SHALL MAKE THE SELECTION/TENDER DOCUMENTS AVAILABLE FROM THE TIME THE INVITATION TO APPLY FOR ELIGIBILITY AND TO SUBMIT A PROPOSAL (IAESP) IS FIRST ADVERTISED/POSTED UNTIL THE DEADLINE FOR THE SUBMISSION AND RECEIPT OF PROPOSALS.

THE PROSPECTIVE PRIVATE SECTOR PARTICIPANTS MAY BE ASKED TO PAY A FEE TO RECOVER THE COST FOR THE PREPARATION AND DEVELOPMENT OF SELECTION/TENDER DOCUMENTS PURSUANT TO THE GUIDELINES ON THE SALE OF SELECTION/TENDER DOCUMENTS PRESCRIBED IN THESE GUIDELINES.

2. **Instructions to Private Sector Participants.** The instructions to private sector participants, which establish the rules of the selection process, shall be clear, comprehensive and fair to all private sector participants and shall, as far as necessary and practicable, include the following information:

- a. General description ~~[and objectives]~~ of the JV ~~[activity]~~ **WHICH SHALL INCLUDE THE GOALS AND OBJECTIVES OF THE JV, THE PROBLEMS THAT NEED TO BE ADDRESSED AND POTENTIAL CHALLENGES FORESEEN, AMONG OTHERS;**
- b. Proposal submission procedures and requirements, which shall include information on the manner of proposal submission, the number of copies of the technical and financial proposal to be submitted, where the proposals are to be submitted, the deadline for the submission of proposals, permissible mode of transmission of technical and financial proposals, etc.;
- c. **COST OF SELECTION/TENDER DOCUMENTS WHICH SHALL NOT BE HIGHER THAN THE COST PRESCRIBED UNDER THESE GUIDELINES;**
- d. Amount and form of proposal security, proposal security validity period **AS WELL AS GROUNDS FOR THE FORFEITURE OF PROPOSAL SECURITY;**
- e. Milestones;
- f. Method, parameters and criteria for the evaluation of the proposals;
- g. Minimum amount of equity of the prospective JV Partner;
- h. Requirements of concerned regulatory bodies/agencies as may be pertinent or applicable to the JV ~~[activity]~~ ;
- i. Revenue sharing arrangement, if any; ~~[and]~~
- j. Nationality and ownership requirements as required by law; **AND**
- k. **GROUNDS FOR REVOCATION OF AWARD.**

3. **Minimum Design~~[s]~~, Performance Standards/Specifications, and FINANCIAL AND Economic Parameters.** Minimum design and performance standards/specifications, including **KEY PERFORMANCE INDICATORS (KPIs) AND BUSINESS EFFICIENCY MEASURES (BEMS)**, appropriate environmental standards by the Department of Environment and Natural Resources (DENR), and standards by concerned regulatory **BODIES ~~[agencies]~~**, as may be pertinent or applicable to the JV ~~[activity]~~, shall be clearly defined and shall refer more to the desired quantity and quality of the outputs of the JV ~~[activity]~~, and should state that non-conformity with any of these minimum requirements shall render the proposals as non-responsive. **THE CONCERNED REGULATORY BODY MAY FURTHER PRESCRIBE A STANDARD MINIMUM DESIGN, PERFORMANCE STANDARDS/SPECIFICATIONS PERTINENT TO THE SECTOR IN ORDER TO GUIDE THE GOVERNMENT ENTITIES IN DRAFTING THE MINIMUM DESIGN, PERFORMANCE STANDARDS/SPECIFICATIONS OF THEIR JVs.** Likewise, for the purpose of evaluating proposals, the following financial and economic parameters, among others and where applicable, shall be prescribed:

- a. Discount rate, foreign exchange rate and inflation factor;
- b. Maximum period of project construction;
- c. Fixed term and price indices to be used in the adjustments of tolls/fees/rentals/charges, if applicable; and
- d. Minimum period of repayment, if applicable.

THE JV PARTIES SHALL ADHERE TO THE KEY PERFORMANCE INDICATORS AND BUSINESS EFFICIENCY MEASURES AND OTHER EQUIVALENT STANDARDS PRESCRIBED BY THE APPROPRIATE REGULATORY BODY.

4. **FEASIBILITY STUDY.** THE FEASIBILITY STUDY SHALL CLEARLY ESTABLISH WHETHER THE PROPOSED JV IS TECHNICALLY, FINANCIALLY AND ECONOMICALLY FEASIBLE AND DETERMINE THE OPERATIONAL IMPACT OF THE PROPOSED JV INCLUDING THE ADVANTAGES AND DISADVANTAGES OF ITS IMPLEMENTATION. SPECIFICALLY, THE FEASIBILITY STUDY SHALL INCLUDE THE FOLLOWING INFORMATION:

- A. OBJECTIVE AND SCOPE OF THE STUDY;
- B. ANALYSIS OF THE PRESENT CONDITION;
- C. APPROACH AND METHODOLOGY;
- D. DEMAND AND SUPPLY / MARKET ANALYSIS;
- E. TECHNICAL ANALYSIS;
- F. FINANCIAL ANALYSIS (INCLUDING INFORMATION ON FINANCING SCHEME, TOTAL PROJECT COST, COST SHARING SCHEME, ESTIMATION OF THE NET PRESENT VALUE AND RATE OF RETURN, AND PROJECTED SCHEDULE OF DISBURSEMENTS, INCREMENTAL RETURNS TO GOVERNMENT, DETERMINATION / ANALYSIS OF JV ARRANGEMENT, AMONG OTHERS);
- G. ECONOMIC ANALYSIS;
- H. SOCIAL AND ENVIRONMENTAL ANALYSIS;
- I. LEGAL AND INSTITUTIONAL ANALYSIS;
- J. IMPLEMENTATION PLAN OF THE RECOMMENDED SCHEME BASED ON THE ALTERNATIVES/CONFIGURATIONS/TECHNOLOGIES CONSIDERED;
- K. MANPOWER AND ADMINISTRATIVE SUPPORT REQUIREMENTS; AND
- L. OTHER RELEVANT INFORMATION AS MAY BE REQUIRED BY THE APPROVING AUTHORITY.

5. **Draft ~~[Contract]~~ JV AGREEMENT.** The draft ~~[contract]~~ JV AGREEMENT should clearly define the basic and legal relationship between the parties and their rights and responsibilities including specific Government Undertakings to be provided by the Government Entity relative to the JV ~~[activity]~~, if any. Specifically, the draft ~~[contract]~~ JV AGREEMENT shall also contain provisions on the following matters, as far as practicable:

- a. The date on which the agreement is established, executed, and considered effective;
- b. The names, addresses and identification of the parties, including the type of business of each member of the JV;
- c. The name under which the JV will do business;
- d. The principal place of business of the JV;
- e. Clearly defined purpose and objective/s, contractual / agreement mode (whether JV Company ~~[/Corporate JV]~~ or contractual JV), term and scope of the JV. The term should be a fixed period not to exceed a maximum of fifty (50) years for the participation of the eligible entity as determined by the attainment of the eligible entity's objective in pursuing the investment;
- f. Total cost of the JV ~~[activity]~~, project specifications and features;
- G. **MINIMUM DESIGN, PERFORMANCE STANDARDS/SPECIFICATIONS, KPIS, BEMs AND OTHER FINANCIAL AND ECONOMIC PARAMETERS, WHERE APPLICABLE, AMONG OTHERS;**
- H. The relationship between the parties, management roles of each party in the JV ~~[activity]~~, and a statement that the parties are actually co-venturers for the project, whether or not the ~~[contract]~~ JV AGREEMENT is in the name of all members;
- I. **A WRITTEN AND SIGNED AGREEMENT BY THE JV PARTNERS TO BE JOINTLY AND SEVERALLY LIABLE FOR THE OBLIGATIONS SPECIFIED UNDER THE JV AGREEMENT;**
- J. The establishment of a fund by the parties to finance the work, together with the amount, type (cash, assets, etc.), and valuation of committed contributions of each party and when such contributions will be made, with the fund being deposited in a special bank account under dual control and all progress payments and other revenues being deposited in such account. If the equity/contribution of the private sector is to be borrowed, a statement that there shall be no government guarantee for said loan;

- K. Procedure for additional capital infusions, if required, and a statement that there shall be no government guarantee for loans to be incurred by the private sector in case the additional contribution of the private sector is to be borrowed;
- L. A declaration of the participation of the parties and percentage in which profits and losses are shared, in proportion to the contributions of the party to the working fund. The amount of contribution of funds by the parties can be increased or decreased, depending on the contributions of equipment or expertise;
- M. Specified termination/liquidation of the JV Company, buy-out provisions, and details on the transfer of ownership of the JV ~~[activity/]~~ facility pursuant to Section 6.10 of these Guidelines including provisions on what happens to the JV's assets after the expiration of the JV Agreement or end of the JV period. If ~~[equity]~~ **PROPERTY** other than cash is to be contributed, a statement as to how the property will be valued and the ownership of the property during and after the effectivity of the JV Agreement;
- N. Designation of one of the parties as general manager of the project, with authority to bind the JV Company/ Partnership/ Parties; or, in the alternative, the constitution of a management committee, with a provision for remuneration. Management duties, other duties of the co-venturers and procedures to be followed in dealing with unusual situations or problems that may develop should be specified;
- O. Implementation milestones, regular meeting schedules, financial and periodic JV and progress reporting procedure;
- P. Establishment of a JV bank account, and the appointment of a chartered accountant and lawyer;
- Q. ~~[Provide]~~ **PROVISION** for the acquisition of licenses in the name of the JV or each co-venturer, as required;
- R. Type of insurance carried by the JV and clearly defined liabilities to be insured against by each participant. **WITH RESPECT TO ITS CONTRIBUTION TO THE JV, THE GOVERNMENT ENTITY IS REQUIRED TO SECURE INSURANCE FROM THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) PURSUANT TO PROPERTY INSURANCE LAW AND ADMINISTRATIVE ORDER NO. 141 (S.1994);**
- S. Definition of items which are to be considered as costs to the JV for the purpose of determining profit or loss and a description of items which are not reimbursable to members of the JV and specified division of the profits ~~[and,]~~ risks, and losses;
- T. Confidentiality of trade information passed between the co-venturers;
- U. Ownership or retention of patents, technology, and consultant reports;
- V. Performance security requirements **FOR THE ENTIRE PROJECT COVERING THE CONSTRUCTION AND OPERATIONS STAGES OF THE JV**, and the bonding obligations of the co-venturers;
- W. Undivided pro-rata interests held by the co-venturers on all assets of the JV;
- X. Restriction regarding assignment of private sector participant's undivided pro-rata interests in assets of the JV;
- Y. Cost recovery scheme, including payment to the government of royalties/rights, the form/description and amount of earnings (cash, asset, etc.), whether it is in absolute amounts or variable, and the period and timing such earnings or payment shall be received. In case of non-cash payment or payment in form of asset, a statement/provision on how it will be valued, the minimum value of the asset, and the determination/selection of asset such as how and who will determine/select the asset;
- Z. Indemnification and liquidated damages;
- AA. Performance and warranty bonds;
- BB. Minimum insurance coverage;
- CC. Acceptance tests and procedures;
- DD. Validity of the performance security, warranty period and procedures;

- EE. Grounds for and effects of contract termination/default including modes for settling disputes, procedure for handling guarantees, defects and insurance after termination, and threshold (in terms of amount, time/period, or both) for which non-payment or delay in payment and delay in starting the project/s shall be grounds for termination/rescission of the JV agreement;
- FF. The manner and procedures for the resolution of warranty against corruption;
- GG. Compliance with all other laws, rules and regulations;
- HH. Procedure and/or period for withdrawal by the Government Entity of its contribution to the JV, or exit divestment by the Government Entity of its interest in the JV, and Substitution or addition of parties;
- II. Payout of funds;
- JJ. **SOCIAL AND ENVIRONMENTAL SAFEGUARDS;**
- KK. Alternative Dispute Resolution (ADR) mechanisms pursuant to EO No. 78 dated 04 July 2012 to avoid management impasses that may produce deadlock or litigation; and,
- LL. Dispute~~[s]~~ Arbitration Clause

NEDA MAY ISSUE AND PUBLISH STANDARD FORM/MODEL JV AGREEMENTS WHICH SHALL BE USED IN ALL COVERED JVS.

III. Publication of Invitation to Apply for Eligibility and to Submit a Proposal (IAESP)

1. Prior to issuance/publication of the IAESP, the Government Entity ~~[concerned]~~ shall ~~[submit a copy of the draft JV agreement, instructions to private sector participants, and minimum designs, performance standards/specifications and economic parameters to NEDA, DOF and GCG for information]~~ **COMPLY WITH THE REQUIREMENTS STIPULATED UNDER SECTION 7.0 OF THESE GUIDELINES AND SHALL DULY INFORM THE STAKEHOLDERS INCLUDING ITS EMPLOYEES OF THE SALIENT FEATURES OF THE JV THROUGH A PUBLIC CONSULTATION**
2. The IAESPs shall be **PUBLISHED** ~~[advertised]~~ once in a newspaper of general nationwide circulation, and posted continuously for a period of **AT LEAST** seven (7) calendar days, starting on date of advertisement, at the following:
 - a. Website of the Government Entity ~~[concerned]~~, if available;
 - b. Website of the Government Entity's service provider, if any; and
 - c. Any conspicuous place within the premises of the **GOVERNMENT ENTITY** ~~[procuring entity]~~.
3. Private sector participants shall be given at least thirty (30) calendar days from the last date of publication of the IAESP to apply for eligibility ~~[and to submit a proposal]~~. **HOWEVER, IN CASE OF SINGLE STAGE QUALIFICATION/SELECTION PROCESS, PRIVATE SECTOR PARTICIPANTS SHALL BE GIVEN AT LEAST SIXTY (60) CALENDAR DAYS FROM THE LAST DATE OF PUBLICATION OF THE IAESP TO APPLY FOR ELIGIBILITY AND TO SUBMIT TECHNICAL AND FINANCIAL PROPOSALS.** Notwithstanding, the Government Entity ~~[concerned]~~ may ~~[adjust]~~ **EXTEND** said period as may be appropriate for the nature, scope, size and complexity of the proposed JV~~[activity]~~. Provided, that the principles of transparency, competition and accountability are observed. **IN ANY EVENT, THE DEADLINE FOR SUBMISSION OF ELIGIBILITY REQUIREMENTS AND PROPOSAL SHALL BE INDICATED IN THE PUBLISHED IAESP.**

THE SELECTION/TENDER DOCUMENTS SHALL BE POSTED IN THE WEBSITE OF THE GOVERNMENT ENTITY AND MADE AVAILABLE FOR PURCHASE FROM THE DATE OF PUBLICATION OF THE IAESP UP TO THE DEADLINE FOR:

- A. SUBMISSION OF PROPOSALS FOR ELIGIBLE PRIVATE SECTOR PARTICIPANTS; OR,
- B. SIMULTANEOUS SUBMISSION OF ELIGIBILITY DOCUMENTS AND PROPOSALS, IN CASE OF SINGLE STAGE QUALIFICATION / SELECTION PROCESS;

PROVIDED, THAT FOR NEGOTIATED JVS UNDER ANNEX "B", SELECTION/TENDER DOCUMENTS WHICH SHALL BE POSTED IN THE WEBSITE OF THE GOVERNMENT ENTITY SHALL NOT INCLUDE THE DRAFT JV AGREEMENT AND THE FEASIBILITY STUDY OF THE PROJECT WHICH MAY INVOLVE PROPRIETARY INFORMATION.

4. THE COST OF ACQUISITION OF THE SELECTION/TENDER DOCUMENTS MUST BE INCLUDED IN THE IAESP.

THE JV-SC SHALL ISSUE THE SELECTION/TENDER DOCUMENTS TO THE PROSPECTIVE PRIVATE SECTOR PARTICIPANTS UPON PAYMENT OF THE CORRESPONDING COST THEREOF TO THE COLLECTING/DISBURSING OFFICER OF THE GOVERNMENT ENTITY.

THE COST OF A COMPLETE SET OF SELECTION/TENDER DOCUMENTS WHICH INCLUDE THE ELIGIBILITY DOCUMENTS AS WELL AS THE TECHNICAL AND FINANCIAL DOCUMENTS, SHALL CORRESPOND TO THE ESTIMATED TOTAL PROJECT COST RANGE AS INDICATED IN THE TABLE BELOW⁶. THIS SHALL BE THE MAXIMUM AMOUNT OF FEE THAT GOVERNMENT ENTITIES CAN SET FOR THE ACQUISITION OF SELECTION/TENDER DOCUMENTS.

ESTIMATED TOTAL PROJECT COST (IN PHILIPPINE PESO)	MAXIMUM COST OF SELECTION / TENDER DOCUMENTS (IN PHILIPPINE PESO)
1 BILLION PESOS AND BELOW	50,000.00
MORE THAN 1 BILLION PESOS UP TO 2 BILLION PESOS	75,000.00
MORE THAN 2 BILLION PESOS UP TO 5 BILLION PESOS	150,000.00
MORE THAN 5 BILLION PESOS UP TO 10 BILLION PESOS	200,000.00
MORE THAN 10 BILLION PESOS	250,000.00

ONLY THOSE WHO HAVE PURCHASED THE COMPLETE SET OF SELECTION/TENDER DOCUMENTS SHALL BE ALLOWED TO PARTICIPATE IN THE SUBMISSION OF PROPOSALS.

IV. Qualification of Private Sector Participants

⁶ Based on cost of bidding documents of existing PPP Projects as provided by PPP Center (i.e., 0.002% - 0.005% of the project cost)

1. **Who may participate.** Any individual, partnership, corporation or firm, or consortium, whether local or foreign, subject to the limits set herein.

2. **Eligibility Requirements**

- a. Legal Requirements. If the JV ~~[activity]~~ requires a public utility franchise, the private sector participant must be duly registered with the SEC and be at least sixty percent (60%) Filipino-owned. For projects other than these, prospective private sector participant shall comply with nationality and ownership requirements under the Constitution and other applicable laws and issuances, **INCLUDING APPLICABLE EXECUTIVE ORDERS PRESCRIBING THE FOREIGN INVESTMENT NEGATIVE LIST.**

For JVS ~~[activities]~~ to be operated by the prospective JV Partner or a facility operator where operation of the facility does not require a public utility franchise, the JV partner or facility operator ~~[for concessionaire]~~ may be Filipino or foreign-owned, as may be allowed under applicable laws, rules, and regulations, **INCLUDING EXECUTIVE ORDERS PRESCRIBING THE FOREIGN INVESTMENT NEGATIVE LIST.**

PROSPECTIVE PRIVATE PARTICIPANTS MAY BE REQUIRED TO SUBMIT TO THE GOVERNMENT ENTITY A CERTIFICATION UNDER OATH INDICATING THAT THE PROSPECTIVE PRIVATE SECTOR PARTICIPANT HAS NO PENDING CASE/S FILED BY IT AGAINST THE GOVERNMENT OR FILED AGAINST IT BY THE GOVERNMENT. THE PRIVATE SECTOR PARTICIPANTS MAY BE REQUIRED TO SUBMIT FULL DISCLOSURE OF ITS PENDING CASES, WHETHER FILED BY IT AGAINST THE GOVERNMENT OR FILED AGAINST IT BY THE GOVERNMENT.

- b. Technical Requirements. The prospective JV Partner must have completed a **T LEAST ONE (1)** project similar or related to the JV ~~[activity]~~ whose value, adjusted to current prices using the **PHILIPPINE STATISTICS AUTHORITY (PSA)** ~~[National Statistics Office (NSO)]~~ Consumer Price Index (CPI), must be at least fifty percent (50%) of the cost of the JV ~~[activity]~~ subject of the selection process within the relevant period as determined by the Government Entity. The prospective JV Partner shall submit a statement of all its ongoing and completed government and private contracts similar or related to the JV ~~[activity]~~ subject of the selection process, including contracts awarded but not yet started, if any.
- c. Financial Capability. The Government Entity shall determine before evaluation of eligibility, the minimum amount of equity needed for the JV ~~[activity]~~.

The following documents shall be submitted by the prospective JV Partner:

- i. Audited financial statements for the past three (3) calendar years. If the prospective JV Partner is ~~[Filipino]~~ **REQUIRED TO SUBMIT AUDITED FINANCIAL STATEMENTS UNDER THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, OR ANY OTHER PHILIPPINE TAX LAW, RULE OR REGULATION,** the audited financial statements to be submitted must be ~~[stamped "received"]~~ **RECEIVED** by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions **IN ACCORDANCE WITH THEIR EXISTING RULES AND REGULATIONS;** and
- ii. Latest **THREE (3) INCOME AND BUSINESS** tax returns **AND TAX CLEARANCE PURSUANT TO EXECUTIVE ORDER NO. 398, S.2005,** if the JV Partner is ~~[Filipino]~~ **SUBJECT TO PHILIPPINE TAXATION.**

Financial capability shall be measured in terms of:

- i. Proof of ability of the prospective JV Partner to provide a minimum amount of equity to the JV ~~[activity]~~, measured in terms of the net worth of the company, or a deposit equivalent to the minimum equity required set aside or ear-marked for the proposed JV ~~[activity]~~; and
 - ii. A letter from a domestic universal/commercial bank, or an international bank with a subsidiary/branch in the Philippines, or any international bank recognized by the Bangko Sentral ng Pilipinas (BSP),⁷ attesting that the prospective JV Partner is one of its current clients, and is in good financial standing **AND/OR IS QUALIFIED TO OBTAIN CREDIT ACCOMMODATIONS FROM SUCH BANKS TO FINANCE THE JV.**
- d. In case of consortia, all ~~[member entities of the prospective JV Partner shall also submit]~~ the above legal, technical and financial eligibility requirements **INCLUDING A COPY OF THE CONSORTIUM AGREEMENT WHICH SHALL INCLUDE THE FOLLOWING INFORMATION, SHALL BE SUBMITTED BY THE CONSORTIUM** to determine ~~[the]~~ **ITS** overall capability ~~[of the consortia]~~ for the JV undertaking:
- i. **BRIEF DESCRIPTION OF THE CONSORTIUM, THE INDIVIDUAL MEMBERS OF THE CONSORTIUM, AND THE NATURE AND EXTENT OF THE PARTICIPATION (CAPITAL OF EACH MEMBER IN RELATION TO THE WHOLE CAPITAL);**
 - ii. **THE LEAD MEMBER OF THE CONSORTIUM WHO IS AUTHORIZED BY ALL THE MEMBERS TO REPRESENT AND SIGN ANY AND ALL DOCUMENTS RELATED TO THIS SELECTION INCLUDING THE JV AGREEMENT WITH THE GOVERNMENT ENTITY; AND,**
 - iii. **WRITTEN AND SIGNED AGREEMENT OF ALL MEMBERS OF THE CONSORTIUM TO BE JOINTLY AND SEVERALLY LIABLE FOR THE OBLIGATIONS OF THE CONSORTIUM PRIOR TO AWARD OF THE JV AGREEMENT.**
- e. Acceptance of Criteria and Waiver of Rights to Enjoin JV ~~[Activity]~~. In addition to the above, all prospective private sector participants shall be required to submit, as part of their qualification documents, a statement stipulating that the private sector participant: (i) has accepted the qualification criteria established by the JV-SC of the Government Entity ~~[concerned]~~; and (ii) waives any right it may have to seek and obtain a writ of

⁷ THE PROSPECTIVE JV PARTNER SHALL COMPLY WITH POLICIES OF BSP ON FOREIGN INVESTMENTS AND FOREIGN CURRENCY LOANS/BORROWINGS AS STIPULATED IN THE MANUAL OF REGULATIONS ON FOREIGN EXCHANGE TRANSACTIONS (FX MANUAL).

injunction or prohibition or restraining order against the ~~concerned~~ Government Entity or its JV-SC to prevent or restrain the qualification proceedings related thereto, the award of the ~~contract~~ **JV AGREEMENT** to a successful private sector participant, and the carrying out of the awarded ~~contract~~ **JV AGREEMENT**. Such waiver shall, however, be without prejudice to the right of a disqualified or losing private sector participant to question the lawfulness of its disqualification or the rejection of its proposal by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

f. **ALL OTHER REQUIREMENTS UNDER APPLICABLE LAWS, RULES, AND REGULATIONS.**

3. **Eligible and Ineligible PRIVATE SECTOR PARTICIPANTS.** The Government Entity, through its JV-SC, shall within a period of fifteen (15) calendar days after the deadline set for the submission of the eligibility documents, complete the evaluation of the eligibility documents of the prospective ~~JV Partners~~ **PRIVATE SECTOR PARTICIPANTS**, and determine which among them are “eligible” and “ineligible”. Accordingly, the JV-SC shall duly inform the eligible ~~JV Partners~~ **PRIVATE SECTOR PARTICIPANTS** within seven (7) calendar days after approval thereof. Ineligible private sector participants shall be similarly given notice of such ineligibility, stating therein the grounds for ineligibility within the same period.

Those ineligible may appeal their ineligibility to the Head of ~~the~~ Government Entity or ~~his~~ **ITS** authorized representative, within seven (7) calendar days from receipt of the notice of ineligibility. The selection process will be suspended for a maximum period of thirty (30) calendar days while the appeal is being evaluated. The Head of ~~the~~ Government Entity or ~~his~~ **ITS** authorized representative shall act on the appeal within the thirty (30)-calendar day period of suspension of the selection process. The decision of the Head of ~~the~~ Government Entity, or ~~his~~ **ITS** authorized representative, on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied, and the selection process will proceed.

AS MAY BE AUTHORIZED BY THE APPROPRIATE APPROVING AUTHORITY, THE GOVERNMENT ENTITY MAY OPT TO DO A SIMULTANEOUS QUALIFICATION AND SELECTION AS PROVIDED UNDER SECTION VII.6 OF ANNEX “A” OF THESE GUIDELINES.

THE GOVERNMENT ENTITY, THROUGH ITS JV-SC, SHALL COMPLETE THE EVALUATION OF THE ELIGIBILITY DOCUMENTS AND PROPOSALS SUBMITTED BY THE PRIVATE SECTOR PARTICIPANTS, WITHIN FORTY-FIVE (45) CALENDAR DAYS FROM THE DEADLINE SET FOR THE SUBMISSION OF THE ELIGIBILITY DOCUMENTS AND PROPOSALS.

4. **Issuance of Tender Documents.** The Government Entity ~~concerned~~ shall make available the related competitive selection documents to all eligible private sector participants as soon as practicable **UP TO THE DEADLINE FOR SUBMISSION OF PROPOSALS** to provide respective private sector participants ample time to examine the same and to prepare their respective proposals prior to the date of opening of the proposals. The ~~time~~ period ~~from the last day of the issuance of tender documents to the date of opening of the proposal shall not exceed~~ **FOR SUBMISSION OF PROPOSALS SHALL BE AT LEAST THIRTY (30) BUT NOT MORE THAN sixty (60) calendar days** ~~for JV facility/project costing Five Hundred Million Pesos (PhP 500 Million) and above, and thirty (30) calendar days for JV facility/project costing less than Five Hundred Million Pesos (PhP 500 Million)~~ **FROM THE FIRST DAY OF THE ISSUANCE OF**

TENDER DOCUMENTS, TAKING INTO ACCOUNT THE NATURE, SCOPE, SIZE, AND COMPLEXITY OF THE PROPOSED JV.

The proposal parameters for the proposed JV ~~[activity]~~ should be transparent and fair. It should not, in any way, ~~[be tailor-made for or meant to]~~ favor or give advantage to a particular private sector participant.

V. Supplemental Competitive Selection Bulletins and Pre-Selection Conferences

1. **Responsibility of the Private Sector Participant.** The prospective private sector participant shall ~~[be solely responsible for having taken]~~ **TAKE** all the necessary steps to carefully examine and acquaint himself with the requirements and terms and conditions of the selection documents with respect to the cost, duration and execution/ operation of the project as it affects the preparation and submission of its proposal. The Government Entity ~~[concerned]~~ shall not ~~[assume any responsibility regarding]~~ **BE RESPONSIBLE IN ANY WAY FOR THE PROSPECTIVE PRIVATE SECTOR PARTICIPANT'S** erroneous interpretations ~~[or conclusions by the prospective private sector participant out]~~ of **ANY** data furnished or indicated in the competitive selection documents.

2. **Supplemental Notices.** A prospective private sector participant may submit a written request to the Government Entity ~~[concerned]~~ on or before the pre-selection conference as to the meaning of any data or requirements or any part of the selection documents. Any substantive interpretation given by the ~~[concerned]~~ Government Entity shall be issued in the form of a Supplemental Notice, and furnished to all prospective private sector participants. **ANY** ~~[The Government Entity concerned may also issue]~~ Supplemental Notice[s] **SHALL BE ISSUED BY THE GOVERNMENT ENTITY** to all prospective private sector participants at ~~[anytime]~~ **LEAST SEVEN (7) CALENDAR DAYS BEFORE THE DEADLINE FOR THE SUBMISSION AND RECEIPT OF ELIGIBILITY DOCUMENTS OR SIMULTANEOUS SUBMISSION OF ELIGIBILITY DOCUMENTS AND PROPOSALS, AS APPLICABLE,** for purposes of clarifying any provisions of the selection documents ~~[,provided that the same are issued within a reasonable period to allow all private sector participants to consider the same in the preparation of their proposals]~~. Receipt of all Supplemental Notices shall be duly acknowledged by each private sector participant[s] prior to the submission of his proposal and shall be so indicated in the proposal.

ANY SUPPLEMENTAL BULLETIN SHALL ALSO BE POSTED IN THE WEBSITE OF THE GOVERNMENT ENTITY, IF AVAILABLE, AND AT ANY CONSPICUOUS PLACE WITHIN THE PREMISES OF THE GOVERNMENT ENTITY.

3. **Pre-Selection Conference.** For JVs ~~[activities]~~ with facility/project cost amounting ~~[to]~~ less than Five Hundred Million Pesos (PhP 500 Million), pre-selection conference shall be conducted by the Government Entity at least fifteen (15) calendar days before the deadline for the submission of proposals **(OR SIMULTANEOUS SUBMISSION OF ELIGIBILITY DOCUMENTS AND PROPOSALS IN THE CASE OF SINGLE STAGE QUALIFICATION / SELECTION PROCESS)**. For JVs ~~[activities]~~ with facility/project cost amounting ~~[to]~~ Five Hundred Million Pesos (PhP 500 Million) and above, the pre-selection conference shall be conducted at least thirty (30) calendar days before the deadline for the submission of proposals **(OR SIMULTANEOUS SUBMISSION OF ELIGIBILITY DOCUMENTS AND PROPOSALS IN THE CASE OF SINGLE STAGE QUALIFICATION / SELECTION PROCESS)**. Notwithstanding, the Government Entity ~~[concerned]~~ may adjust said period ~~[as may be appropriate for]~~ **TO SUIT** the nature, scope, size, and complexity of the proposed JV, ~~[activity. Provided, that]~~ **PROVIDED**

THE GOVERNMENT ENTITY OBSERVES the principles of transparency, competition and accountability ~~[are observed]~~.

VI. Submission and Receipt of Proposals

1. **Requirements for Submission of Proposals.** ELIGIBLE Private sector participants shall be required to submit their proposals on or before the deadline stipulated in the "Instructions to PRIVATE SECTOR Participants". ~~[For eligible participants, proposals]~~ THEY shall ~~[be submitted in]~~ **SUBMIT** two (2) separate sealed envelopes, ~~[the first being]~~ **ONE CONTAINING** the technical proposal and ~~[the second]~~ **ANOTHER** the financial proposal.

a. The technical proposal shall contain the following, as applicable:

- i. Compliance statements with regard to the technical parameters as stated in the tender documents;
- ii. Operational feasibility;
- iii. Technical soundness, including proposed project timeline;
- iv. Preliminary environmental assessment;
- v. Cost and financing plan of the JV;
- vi. Proposal security ~~[in the form as required by the government entity concerned]~~ 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 ~~[Government Service Insurance System (GSIS)]~~ or an entity duly registered and recognized by the Office of the Insurance Commissioner **ACCEPTABLE TO THE GOVERNMENT ENTITY**, or any combination thereof payable to the Government Entity ~~[concerned]~~ in accordance with the following schedule⁸:

[Total Contribution of the Private Sector Participant As Estimated by the Government Entity] PROJECT COST (AS ESTIMATED BY THE GOVERNMENT ENTITY OR PROPOSED BY THE PRIVATE SECTOR PARTICIPANT)	Required Proposal Security
Less than PhP 5.0 Billion	2.0% of the [private sector participant's contribution as estimated by the Government Entity] PROJECT COST
PhP 5.0 Billion to less than PhP 10.0 Billion	1.5% of the [private sector participant's contribution as estimated by the Government Entity] PROJECT COST OR PHP100 MILLION, WHICHEVER IS HIGHER
PhP 10.0 Billion and more	1.0% of the [private sector participant's contribution as estimated by the Government]

⁸ Consistent with the 2012 BOT Law IRR.

Entity PROJECT COST OR PHP150 MILLION, WHICHEVER IS HIGHER
--

vii. Other documents to support the private sector participant's technical proposal, as may be required by the ~~concerned~~ Government Entity.

b. The financial proposal shall contain the following, as the case may be:

- i. Compliance statements with regard to the financial parameters stated in the tender documents;
- ii. Proposed cost of the JV~~activity~~, operation and maintenance cost, the amount of equity to be infused and debt to be obtained for the project, sources of financing, and all other related costs; and
- iii. Financial proposal corresponding to the parameters set by the ~~concerned~~ Government Entity.

Fifty percent (50%) of the equity to be provided by the private ~~sector~~ entity should ~~[as much as possible]~~ come from its own resources and ~~[not borrowed]~~ **SHOULD NOT COME FROM LOANS.**

The Government Entity ~~concerned~~ is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific JV~~activity~~.

c. Submission of late proposals. Proposals submitted after the deadline for submission prescribed in the "Instructions to Private Sector Participants" shall be considered late and shall be returned unopened.

VII. Opening and Evaluation of Proposals

1. **Opening of the envelope for the technical proposal.** At the date and time of the proposal opening stipulated in the "Instructions to Private Sector Participants", the JV-SC shall open only the first envelope containing technical proposal and ascertain: (a) whether the same is complete in terms of the data/information required under Section VI.1 (a) above; and (b) whether the same is accompanied by the required proposal security in the prescribed form, amount, and period of validity. All private sector participants, or their representatives, present at the opening of the envelopes containing the technical proposal shall sign a register of the proposal opening.
2. **Evaluation of the technical proposal.** The evaluation of the first envelope containing the technical proposal shall involve the assessment of the technical, operational, environmental, and financing viability of the proposal, vis-à-vis the prescribed requirements and criteria/minimum standards, and basic parameters prescribed in the competitive selection documents.

FOR PRIVATE ENTITIES FORMING A CONSORTIUM, THE OVERALL / COLLECTIVE CAPABILITY / QUALIFICATION OF THE CONSORTIUM WILL BE CONSIDERED IN THE TECHNICAL EVALUATION.

The JV-SC of the Government Entity ~~concerned~~ shall complete the evaluation of the technical proposal within thirty (30) calendar days from the date the proposals are opened. ~~[Only those proposals that have been determined to have positively passed the evaluation of the technical~~

~~proposal shall be qualified and considered for the evaluation of the financial proposal~~ THE JV-SC SHALL NEXT EVALUATE ONLY THE FINANCIAL PROPOSAL OF PRIVATE SECTOR PARTICIPANTS WHOSE TECHNICAL PROPOSAL HAS PASSED THEIR EVALUATION.

3. **Opening of the envelope for the financial proposal.** Only the financial proposals of private sector participants who passed the evaluation described under Section VII.2 hereof, shall be opened for further evaluation. The financial proposals tendered by private sector participants who failed the technical proposal evaluation under Section VII.2 hereof, shall not be considered further, and shall be returned unopened, together with a notice stating the reasons for disqualification from further consideration.

WITHIN THE DAY OF COMPLETION OF THE TECHNICAL PROPOSAL'S EVALUATION, the JV-SC shall notify the private sector participants qualifying for the second stage of evaluation of the date, time and place of the opening of the envelopes for the financial proposal. The opening thereof shall follow the same procedure prescribed for the opening of the envelopes containing technical proposals.

4. **Evaluation of the financial proposal.** The evaluation of the financial proposal shall involve the assessment and comparison of the financial proposals against the financial parameters stated in the tender documents and proposal parameters set by the Government Entity ~~[concerned]~~. The proposed financing plan must show that the same adequately meets the costs relative to the JV ~~[activity]~~. The evaluation of financial proposals shall be completed by the JV-SC of the ~~[concerned]~~ Government Entity within fifteen (15) calendar days **FROM THE DATE OF COMPLETION OF THE TECHNICAL PROPOSAL'S EVALUATION.**

FOR PRIVATE ENTITIES FORMING A CONSORTIUM, THE OVERALL / COLLECTIVE CAPABILITY / QUALIFICATION OF THE CONSORTIUM WILL BE CONSIDERED IN THE FINANCIAL EVALUATION.

5. **SIMULTANEOUS OR SINGLE-STAGE QUALIFICATION AND SELECTION.** AS MAY BE AUTHORIZED BY THE APPROPRIATE APPROVING AUTHORITY, THE GOVERNMENT ENTITY MAY OPT TO DO A SIMULTANEOUS QUALIFICATION AND SELECTION WHEREIN PROSPECTIVE PRIVATE SECTOR PARTICIPANTS SHALL BE ASKED TO SIMULTANEOUSLY SUBMIT ITS ELIGIBILITY DOCUMENTS CORRESPONDING TO THE REQUIREMENTS SO STATED IN SECTION IV.2 HEREIN; THE TECHNICAL PROPOSAL; AND THE FINANCIAL PROPOSAL. THE REQUIREMENTS FOR SUBMISSION OF PROPOSALS ARE COVERED UNDER SECTION VI OF ANNEX "A" OF THESE GUIDELINES. THE PERIOD FOR THE PREPARATION OF ELIGIBILITY DOCUMENTS SHALL BE SUBSUMED UNDER THE TIME ALLOTTED FOR THE PREPARATION OF PROPOSALS.

THE GOVERNMENT ENTITY, THROUGH ITS JV-SC, SHALL COMPLETE THE EVALUATION OF THE ELIGIBILITY DOCUMENTS AND PROPOSALS SUBMITTED BY THE PRIVATE SECTOR PARTICIPANTS, WITHIN FORTY-FIVE (45) CALENDAR DAYS FROM THE DATE OF OPENING OF THE ELIGIBILITY DOCUMENTS AND PROPOSALS.

6. **Simultaneous evaluation of the technical and financial proposals.** Subject to the determination of the Head of ~~[the]~~ Government Entity wherein the nature of the JV ~~[activity]~~ 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 proposal documents. Simultaneous evaluation of the technical and financial proposals shall be

completed within ~~thirty (30)~~ **FORTY-FIVE (45)** calendar days from the date the proposals are opened.

7. **Prescriptive periods.** The periods stated for the evaluation of the technical and financial proposals are prescriptive. The Government Entity ~~concerned~~ may adjust said periods ~~as may be appropriate for~~ **TO SUIT** the nature, scope, size, and complexity of the proposed JV ~~activity~~, provided **THE GOVERNMENT ENTITY** ~~that~~ **OBSERVES** the principles of transparency, competition and accountability ~~are observed~~.
8. **Rejection of proposals.** Non-compliance to the information required on either the first or second envelope shall be grounds for rejection of proposals.
9. **Withdrawal and/or modification of proposals.** Withdrawal and/or modification of proposals may be allowed upon written notice by the private sector participant concerned, to the Government Entity prior to the time and date set for the opening of the envelope containing the technical proposal as specified in the "Instructions to Private Sector Participants". No proposals shall thereafter be modified or withdrawn. Proposal modifications received after said period shall be considered late and will be returned unopened. Withdrawal of proposals after the proposal opening date shall cause the forfeiture of the private sector participant's proposal security.
10. ~~**[Right to Reject All Proposals]**~~ **RESERVATION CLAUSE.** The **HEAD OF** Government Entity ~~concerned~~ reserves the right to reject any or all proposals, ~~waive any minor defects therein and accept the offer it deems most advantageous to the government~~ **DECLARE A FAILURE OF SELECTION, OR NOT AWARD THE JV AGREEMENT IN THE FOLLOWING SITUATIONS:**
 - A. IF THERE IS *PRIMA FACIE* EVIDENCE OF COLLUSION BETWEEN OFFICERS OR EMPLOYEES OF THE GOVERNMENT ENTITY, OR BETWEEN THE JV-SC OR ANY OF ITS MEMBERS AND ANY OF THE PRIVATE SECTOR PARTICIPANTS, OR BETWEEN THE PRIVATE SECTOR PARTICIPANTS, OR BETWEEN A PRIVATE SECTOR PARTICIPANT AND A THIRD PARTY, WHICH RESTRICTS, SUPPRESSES OR NULLIFIES OR TENDS TO RESTRICT, SUPPRESS OR NULLIFY COMPETITION;
 - B. IF THE JV-SC IS FOUND TO HAVE FAILED IN FOLLOWING THE PRESCRIBED SELECTION PROCEDURES UNDER THE GUIDELINES; OR
 - C. FOR ANY JUSTIFIABLE AND REASONABLE GROUND WHERE THE AWARD OF THE JV AGREEMENT WILL NOT REDOUND TO THE BENEFIT OF THE GOP, SUCH AS: (I) IF THE PHYSICAL AND ECONOMIC CONDITIONS HAVE SIGNIFICANTLY CHANGED SO AS TO RENDER THE PROJECT NO LONGER ECONOMICALLY, FINANCIALLY, OR TECHNICALLY FEASIBLE, AS DETERMINED BY THE HEAD OF GOVERNMENT ENTITY; (II) IF THE PROJECT IS NO LONGER NECESSARY AS DETERMINED BY THE HEAD OF GOVERNMENT ENTITY; OR (III) IF THE SOURCE OF FUNDS FOR THE PROJECT HAS BEEN WITHHELD OR REDUCED THROUGH NO FAULT OF THE GOVERNMENT ENTITY.
11. **Breaking Tie [Bids] PROPOSALS.** In case tie ~~bids~~ **PROPOSALS** occur under competitive selection or ~~competitive~~ challenge, the ~~procedure for breaking~~ tie ~~bids~~ shall be ~~done through~~ **BROKEN BY THE** drawing of lots or **BY** similar ~~methods that are~~ non-discretionary and non-discriminatory **METHODS WHERE RESULTS ARE** ~~such that it is~~ based on sheer luck or chance.

VIII. Award and Approval of ~~[Contract]~~ JV AGREEMENT

1. **Recommendation to Award.** Within seven (7) calendar days from the date **OF COMPLETION** OF the evaluation ~~[procedure adopted is completed]~~, the JV-SC shall submit the recommendation ~~[of]~~ **TO** award to the Head of ~~[the]~~ Government Entity ~~[concerned]~~. The JV-SC shall include ~~[as part of]~~ **IN** its recommendation a detailed evaluation/assessment report ~~[on its decision regarding the evaluation of the proposals, and explain in]~~ **WITH A** clear ~~[terms]~~ **EXPLANATION OF** the basis of its recommendations.

2. **Decision to Award.** Within seven (7) calendar days from the submission by JV-SC of the recommendation to award, the Head of ~~[the]~~ Government Entity shall approve or reject the same. The approval shall be manifested by signing and issuing the "Notice of Award" to the winning private sector participant within seven (7) calendar days from approval thereof.

All participating private sector participants shall be informed of the award in writing. Such decision shall be made available to the public upon request.

3. **Notice of Award.** The "Notice of Award" to be issued by the Head of Government Entity ~~[concerned]~~, shall contain among others, an instruction to the winning private sector participant to comply with conditions precedent for the execution of the JV Agreement and to submit compliance statements with regard thereto, within thirty (30) calendar days from receipt of the "Notice of Award" unless otherwise specified or extended by the appropriate Approving Authority.

Conditions precedent for the execution of the ~~[contract]~~ **JV AGREEMENT** shall include among others the posting of a performance security in favor of the Government Entity ~~[concerned]~~. The Government Entity ~~[concerned]~~ shall determine which form of performance security it will require which may be in the form of cash, bank draft or guarantee confirmed by a local bank (in the case of foreign ~~[bidders]~~ **PRIVATE SECTOR PARTICIPANTS** bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand issued by ~~[Government Service Insurance System]~~ ~~[GSIS]~~ or by a surety or insurance companies duly accredited by the Office of the Insurance Commissioner **ACCEPTABLE TO THE GOVERNMENT ENTITY**, or a combination thereof.

THE PERFORMANCE SECURITY MAY BE MADE IN THE SAME FORM AS THAT OF THE PROPOSAL SECURITY UNDER SECTION VI.1 AND in accordance with the following schedules⁹:

- a. Cash, manager's check, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the private sector participant's contribution to the JV ~~[activity]~~.
- b. Bank Guarantee – a minimum of five percent (5%) of the private sector participant's contribution to the JV ~~[activity]~~.
- c. Surety Bond – a minimum of ten percent (10%) of the private sector participant's contribution to the JV ~~[activity]~~.

Failure to comply with the conditions precedent for the execution of the ~~[contract]~~ **JV AGREEMENT** within the prescribed thirty (30)-calendar day period or as specified or extended by the appropriate Approving Authority will result in ~~[confiscation]~~ **FORFEITURE** of the proposal security **AND REVOCATION OF NOTICE OF AWARD**. Within seven (7) calendar days from receipt of the compliance statements from the winning private sector participant, the Head of

⁹ Consistent with Section 12.8 of the BOT Law IRR.

~~the~~ Government Entity shall determine the sufficiency of the same, and notify the winning private sector participant accordingly.

4. **Validity and Return of Proposal and Performance Securities.** The execution of the JV Agreement shall be made within the period of the validity of the proposal security. The required proposal security shall be valid for a reasonable period, but in no case beyond one hundred eighty (180) calendar days following the opening of the proposals. Proposal securities shall be returned to the winning ~~bidder~~ **PRIVATE SECTOR PARTICIPANT** and unsuccessful private sector participants upon signing of the JV Agreement by the winning private sector participant.

The performance security shall be valid ~~within the period of~~ **FOR** one (1) year ~~after~~ **FROM** the expiration of the JV agreement or ~~end~~ **THE LAST DAY** of the JV period, or **FROM THE PRE-TERMINATION CAUSED BY THE PRIVATE SECTOR** as may be stipulated in the JV agreement. **IN CASE OF PRE-TERMINATION CAUSED BY GOVERNMENT, THE PERFORMANCE SECURITY MAY BE RELEASED IMMEDIATELY.** Upon certification by the Head of Government Entity ~~concerned~~ that there are no claims filed against the private sector partner after the expiration of the JV agreement or end of the JV period, the performance security shall be released by the former. As may be agreed upon in the JV agreement, a portion of the performance security ~~shall~~ **MAY** be released upon compliance with corresponding milestones.

5. **Extension of Validity of Proposals.** When **THE HEAD OF THE GOVERNMENT ENTITY CONSIDERS** an extension of validity of proposals ~~is considered~~ **TO BE** necessary, those who submitted proposals shall be **INSTRUCTED** ~~requested~~ in writing, to extend the validity of their proposals before the expiration date of the same. However, private sector participants shall not be allowed to modify or revise the price or other substantial aspect of their proposals.

~~Private sector participants shall have the right to refuse such an extension without forfeiting their proposal security.~~ As a condition of the extension of the validity of their proposals, participating private sector participants must correspondingly extend the validity of their proposal security. **PRIVATE SECTOR PARTICIPANTS SHALL NOT REFUSE SUCH INSTRUCTION FOR EXTENSION EXCEPT ON THE FOLLOWING GROUNDS: (1) LOSS OF INTEREST IN THE PROJECT, AND (2) UNFORESEEN FINANCIAL MELTDOWN/CRISIS. PRIVATE SECTOR PARTICIPANTS WHO REFUSE THE INSTRUCTION BASED ON THESE GROUNDS SHALL NOT FORFEIT THEIR PROPOSAL SECURITY; PROVIDED THAT, IN CASE OF REFUSAL BASED ON UNFORESEEN FINANCIAL MELTDOWN/CRISIS, PRIVATE SECTOR PARTICIPANT MUST SUBMIT AN AFFIDAVIT ATTESTING TO THE FACTS ALLEGED, AND OTHER SPECIFIC DOCUMENTS PROVING THE SAME.**

6. **Single Responsive ~~Bid~~ PROPOSAL.** A single and responsive ~~bid~~ **PROPOSAL** shall be considered for award if it falls under any of the following circumstances:

- a. If after advertisement, only a single party submits eligibility documents within the deadline stipulated in the IAESP, and it meets the eligibility requirements, after which it submits a ~~bid~~ **PROPOSAL** which is responsive to the technical and financial requirements;
- b. If after advertisement, more than one private sector participant ~~for prospective bidder~~ submits eligibility documents in accordance with the provisions of these Guidelines, but only one ~~bidder~~ **PRIVATE SECTOR PARTICIPANT** meets the eligibility requirements, after which it submits a ~~bid~~ **PROPOSAL** which is responsive to the technical and financial requirements;
- c. If after the eligibility check, more than one ~~bidder~~ **PRIVATE SECTOR PARTICIPANT** meets the eligibility requirements but only one ~~bidder~~ **PRIVATE SECTOR**

- 1677 PARTICIPANT submits a ~~[bid]~~ PROPOSAL, and its ~~[bid]~~ PROPOSAL is found to be
 1678 responsive to the technical and financial requirements; or
 1679 d. If after qualification/evaluation of proposals, only one ~~[bidder]~~ PRIVATE SECTOR
 1680 PARTICIPANT meets the technical requirements but is not able to comply with financial
 1681 requirements, after which a negotiation on the financial terms/proposal in accordance
 1682 with Section 8 hereof is conducted and is successful.
 1683

- 1684 7. **Prospective ~~[Bidder/s]~~ PRIVATE SECTOR PARTICIPANT/S Compliant with the Technical**
 1685 **Requirements.** ~~[In case of]~~ WHEN a single technically qualified prospective ~~[bidder]~~ PRIVATE
 1686 SECTOR PARTICIPANT OR TECHNICALLY QUALIFIED PROSPECTIVE PRIVATE
 1687 SECTOR PARTICIPANTS ~~[but is not able]~~ ARE UNABLE to comply with financial requirements
 1688 ~~[or, in case of technically qualified prospective bidders but are not able to comply with financial~~
 1689 ~~requirements.]~~ the ~~[concerned]~~ Government Entity may ~~[conduct negotiation on]~~ NEGOTIATE
 1690 the financial terms/proposal WITH THEM in accordance with Section 8 hereof.
 1691

- 1692 8. **Negotiation on the Financial Terms/Proposal under the Competitive Selection Process.**
 1693 In case ALL ~~[the]~~ TECHNICALLY QUALIFIED private sector participants ~~[or prospective~~
 1694 ~~bidders, whose technical proposals are rated "passed"]~~, are ~~[not]~~ UNable to comply with the
 1695 financial requirements, the ~~[concerned]~~ Government Entity, THROUGH THE JV-SC, shall
 1696 ~~[request]~~ INVITE said ~~[prospective bidders]~~ PRIVATE SECTOR PARTICIPANTS to submit
 1697 ~~[their]~~ new financial proposals WITHIN SEVEN (7) CALENDAR DAYS FROM THE DATE OF
 1698 INVITATION. Thereafter, WITHIN SEVEN (7) CALENDAR DAYS FROM END OF THE SEVEN
 1699 (7) DAY INVITATION PERIOD, THE ~~[concerned]~~ Government Entity shall OPEN THE NEW
 1700 FINANCIAL PROPOSALS, RANK THE PROPOSALS FROM THE MOST TO THE LEAST
 1701 ADVANTAGEOUS, AND notify THE PROPONENT OF THE MOST ADVANTAGEOUS
 1702 FINANCIAL PROPOSAL FOR NEGOTIATIONS. ~~[and]~~ WITHIN THIRTY (30) CALENDAR
 1703 DAYS FROM THE DATE OF NOTICE, THE GOVERNMENT ENTITY SHALL negotiate THE
 1704 FINANCIAL TERMS with the proponent ~~[on the financial proposal/terms with the]~~ OF THE most
 1705 advantageous financial proposal. The technical proposal shall remain valid and binding. In the
 1706 event the ~~[concerned]~~ Government Entity fails to successfully negotiate with said proponent
 1707 within THE thirty (30) calendar day[s] PERIOD, ~~[reckoned from the date of notification.]~~ the
 1708 Government Entity shall negotiate with the PROPONENT OF THE next ~~[ranked most]~~
 1709 advantageous financial proposal, and so on and so forth, until a successful negotiation ~~[has~~
 1710 ~~been]~~ IS concluded.
 1711

1712 In case of a single technically qualified ~~[prospective bidder]~~ PRIVATE SECTOR PARTICIPANT,
 1713 UPON OPENING ITS FINANCIAL PROPOSAL, THE ~~[concerned]~~ Government Entity SHALL
 1714 NOTIFY SAID PRIVATE SECTOR PARTICIPANT FOR NEGOTIATION OF ~~[may conduct~~
 1715 ~~negotiation on]~~ the financial terms or ~~[on the financial]~~ proposal. ~~[and]~~ THE GOVERNMENT
 1716 ENTITY shall conclude said negotiation within thirty (30) calendar days FROM THE DATE OF
 1717 NOTICE. The technical proposal shall remain valid and binding. In the event that there is no
 1718 successful negotiation, the ~~[concerned]~~ Government Entity shall conduct another competitive
 1719 selection. In case of second failure of competitive selection, the ~~[concerned]~~ Government Entity
 1720 may resort to negotiated JV pursuant to Annex "B" of these Guidelines.
 1721

- 1722 9. **Failure of Competitive Selection.** There shall be a failure of competitive selection in any of the
 1723 following instances:
 1724
 1725 a. No prospective ~~[bidder/s]~~ PRIVATE SECTOR PARTICIPANT/s is/are eligible;
 1726 b. No ~~[bid]~~ proposals are received;
 1727 c. No prospective ~~[bidder/s]~~ PRIVATE SECTOR PARTICIPANT/s is/are able to comply with
 1728 technical requirements;

- d. No successful negotiation on the financial terms/proposal as provided under Section 8 hereof; and
- e. **IN THE EVENT OF REFUSAL, INABILITY OR FAILURE OF THE WINNING PRIVATE SECTOR PARTICIPANT TO ENTER INTO A JV AGREEMENT WITH THE GOVERNMENT ENTITY WITHIN THE SEVEN (7) DAY PERIOD PROVIDED IN SECTION VIII.10 OF THESE GUIDELINES.**

In the event of a failed competitive selection brought about by instances stipulated above, the ~~concerned~~ Government Entity shall review the Terms of Reference (TOR)/~~bidding~~ **SELECTION/TENDER** documents and conduct another competitive selection. In case of second failure of competitive selection, the ~~concerned~~ Government Entity may resort to negotiated JV pursuant to Annex "B" of these Guidelines.

10. **Execution/Approval of the JV Agreement.** The authorized signatory(ies) of the winning private sector participant and the Government Entity ~~concerned~~, shall execute and sign the JV Agreement, within seven (7) calendar days after the Head of ~~the~~ Government Entity notifies the winning private sector participant of its compliance to the conditions or requirements precedent to the execution of the ~~contract~~ **JV AGREEMENT** as referred to in Section VIII.3 above. Consistent with Article 1159 of the New Civil Code, said JV Agreement is considered the law between the parties, and the parties shall perform their respective prestations, obligations, and undertakings thereunder with utmost good faith, with a view to attaining the objective thereof. **WITHIN FIFTEEN (15) CALENDAR DAYS FROM EXECUTION OF THE JV AGREEMENT**, an original signed **AND NOTARIZED** copy of the ~~contract~~ **JV AGREEMENT AND ELECTRONIC COPY OF THE SAME** shall be submitted **BY THE HEAD OF GOVERNMENT ENTITY** to:

- a. The Office of the President (OP);
- b. NEDA;
- c. **PPP CENTER;**
- d. **GCG (AS APPLICABLE);**
- e. Statutory Counsel; ~~and~~
- f. **APPROPRIATE REGULATORY BODY;**
- g. DOF; ~~in case of GOCCs and GFIs, and DBM in case of other entities; AND~~
- h. DBM.

In the event of refusal, inability or failure of the winning private sector participant to enter into ~~contract~~ **A JV AGREEMENT** with the Government Entity ~~concerned~~, within the time provided therefore, said Government Entity shall forfeit its proposal security. In such event, the Government Entity ~~concerned~~ shall consider the private sector participant with the next ranked complying proposal as the winning private sector participant, and notify said private sector participant accordingly. If the next ranked complying private sector participant shall likewise refuse or fail to enter into ~~contract~~ **JV AGREEMENT** with the Government, its proposal security shall likewise be forfeited and the Government Entity ~~concerned~~ shall consider the next ranked complying proposal, and so on, until a ~~contract~~ **JV AGREEMENT** shall have been entered into. In the event that the ~~concerned~~ Government Entity is unable to execute the ~~contract~~ **JV AGREEMENT** with any of the complying private sector participants, a failure of competitive selection will be declared and the JV may be subjected to a competitive selection again.

11. **Other Approvals for ~~Contract~~ THE JV AGREEMENT.** The entity tasked under the JV Agreement shall, as may be required under existing laws, rules and regulations, secure any and all other approvals for the ~~contract~~ **JV AGREEMENT**, or the implementation thereof, from

government agencies or bodies including the regulator, in the case of public utility projects. This includes securing the necessary and appropriate environmental clearances from the DENR prior to actual project implementation. The DENR shall act on the environmental clearance of the JV ~~[activity]~~ within the time frame prescribed and following the guidelines of the DENR Administrative Order No. 96-37 and subsequent guidelines as may be issued from time to time. The Government Entity may provide the necessary assistance to its JV Partner in securing all the required clearances. The ~~[contract]~~ **JV AGREEMENT** shall provide milestones in securing such other approvals required for the implementation of the ~~[contract]~~ **JV AGREEMENT**.

~~[Prior to the execution of the JV Agreement, the OGCC, DOJ, or other entity prescribed by law/issuances as the statutory counsel of GOCCs, GCEs and GICPs, shall issue the corresponding Counsel's Opinion.]~~

12. **Presidential Approval, When Required.** Subject to the charter of the Government Entity ~~[concerned]~~, no further higher approval is necessary, unless the same is required by law to be acted upon by the President of the Philippines. In which case, as deemed applicable, the provisions of existing laws, guidelines, rules and regulations shall be followed and adhered to by the Government Entity ~~[concerned]~~.

13. **~~[Contract]~~ Effectivity OF THE JV AGREEMENT/ISSUANCE OF THE NOTICE TO PROCEED.** The ~~[contract]~~ **JV AGREEMENT** shall be effective ~~[upon signing thereof by the Head of Government Entity unless another date is stipulated therein]~~ **ONLY UPON RECEIPT BY THE WINNING PRIVATE SECTOR PARTICIPANT OF THE NOTICE TO PROCEED TOGETHER WITH A COPY OR COPIES OF THE APPROVED JV AGREEMENT WHICH SHALL BE ISSUED BY THE HEAD OF GOVERNMENT ENTITY JV-SC WITHIN SEVEN (7) CALENDAR DAYS UPON EXECUTION OF THE JV AGREEMENT.**

IX. Appeals Mechanism

Decisions of the JV-SC with respect to conduct of the competitive selection process may be appealed in writing to the Head of ~~[the]~~ Government Entity ~~[concerned]~~. Provided, however, that a prior motion for reconsideration should have been filed by the party concerned **WITHIN THREE (3) CALENDAR DAYS UPON RECEIPT OF WRITTEN NOTICE**, and the same has been resolved by the JV-SC. The appeal must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the JV-SC denying its motion for reconsideration. An appeal may be made by filing a verified position paper with the Head of ~~[the]~~ Government Entity ~~[concerned]~~, accompanied by the payment of a non-refundable appeal fee. The non-refundable appeal fee shall be in an amount equivalent to no less than ~~[one-half (1/2) of one percent (1%) of the project cost]~~ **0.5 PERCENT OF THE PROJECT COST.**

**TIMELINES FOR THE CONDUCT OF COMPETITIVE SELECTION
FOR PUBLIC-PRIVATE JOINT VENTURES**

[TO BE FORMULATED ONCE FINALIZED]

TIMELINES FOR THE CONDUCT OF SINGLE STAGE QUALIFICATION / SELECTION PROCESS

[TO BE FORMULATED ONCE FINALIZED]

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ANNEX B

DETAILED GUIDELINES FOR NEGOTIATED JV AND COMPETITIVE CHALLENGE FOR PUBLIC-PRIVATE JOINT VENTURES

I. Negotiated JVs – Any Government Entity may directly negotiate a JV *[activity]* with a private *[sector]* entity under any of the following circumstances:

- a. When a Government Entity receives a proposal from **A** *[the]* private **ENTITY** *[sector]* for a project; or
- b. When after a failed competitive selection as provided under Section VIII.9 of Annex “A” hereof, the *[concerned]* Government Entity conducts another competitive selection which again fails. In this case, the *[concerned]* Government Entity may seek out a JV Partner and request the latter to submit a proposal for the JV *[activity]* manifestly advantageous to government, provided that negotiations must be concluded within one (1) year from date of submission of bids for which there was a second failure of competitive selection, and that negotiation shall only be on the financial terms or aspect.

II. Competitive Challenge Procedure - In all cases where the Government Entity directly negotiates with a private sector participant for a proposed JV *[undertaking]*, the negotiated terms shall be subjected to a competitive challenge wherein other private sector entities shall be invited to submit comparative proposals, to ensure that JV Agreements are entered into under a transparent and competitive process that promotes accountability in government transactions.

III. Three-Stage Framework – Negotiated JVS shall be subjected to a three-stage process summarized as follows:

Stage One –Initial Evaluation of Proposals by *[Concerned]* Government Entity

The initial evaluation shall be completed by the *[concerned]* Government Entity within sixty (60) calendar days, **SUBJECT TO AN EXTENSION FOR JUSTIFIABLE CAUSES APPROVED BY THE HEAD OF GOVERNMENT ENTITY FOR UP TO A MAXIMUM PERIOD OF ONE HUNDRED TWENTY (120) CALENDAR DAYS**, upon submission of complete documents by the private *[sector]* entity/ies including the eligibility requirements as provided under Section IV of Annex “A” of these Guidelines. Upon completion of the initial evaluation **OF THE ELIGIBILITY AND MERITS OF THE PROJECT AND THE QUALIFICATION OF THE PRIVATE PROPONENT**, the Head of *[the]* Government Entity *[shall either issue a letter of acceptance or non-acceptance of the proposal]* **MAY ACCEPT, OR REJECT THE JV PROPOSAL AND SHALL ISSUE A LETTER OF ITS ACCEPTANCE/REJECTION.**

THE HEAD OF GOVERNMENT ENTITY’S LETTER OF *[An]* acceptance shall **EXPLICITLY STATE THAT SUCH ACCEPTANCE DOES** not bind the Government Entity to enter into the JV *[activity]*, but, shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV *[activity]*. In case of non-acceptance, the private *[sector]* entity shall be informed of the reasons/grounds for non-acceptance.

Stage Two – Conduct of Negotiation between *[Concerned]* Government Entity and Private *[Sector]* Entity/ies, Conferment of Original Proponent Status, and Evaluation by the Approving Authority

The parties shall negotiate on the terms and conditions of the JV *[activity]*. The following rules shall be adhered to in the conduct of detailed negotiations, and evaluation by the Approving Authority in case of successful negotiations:

1. Both parties shall negotiate on the terms and conditions, scope, as well as all legal, technical, and financial aspects of the JV ~~[activity]~~.
2. The negotiation shall be completed within thirty (30) calendar days upon acceptance by the Government Entity ~~[concerned]~~ of the proposal as provided in Stage One above; **PROVIDED, THAT A LONGER PERIOD MAY BE ALLOWED AS DETERMINED BY THE GOVERNMENT ENTITY CONSIDERING THE COMPLEXITY OF THE PROJECT BUT SHALL IN NO CASE EXCEED A MAXIMUM PERIOD OF NINETY (90) CALENDAR DAYS FROM THE TIME OF ACCEPTANCE OF PROPOSAL BY THE GOVERNMENT ENTITY.**
3. Negotiations shall comply with the process, requirements and conditions as stipulated under Sections 6 (General Guidelines) and ~~[7 (Process for Entering into JV Agreements)]~~ **7.1 (REQUIREMENTS/CONDITIONS FOR JV PROPOSALS)** of these Guidelines.
4. In case similar proposals are received prior to acceptance of the proposal as the original proponent, the Government Entity may reject all such proposals or instead, subject it to competitive selection pursuant to Annex "A" of these Guidelines. Otherwise, the Government Entity shall evaluate the proposals using a first-in-time approach. Under this approach, the first complete proposal is evaluated and decided upon. The second complete proposal will only be entertained if the first one is rejected. Otherwise, the second proposal will be considered only if there is a failure in the negotiation of the first proposal, or when the proponent of the second proposal applies for eligibility and submits its comparative proposal based on the selection/tender documents during the invitation to apply for eligibility and to submit a comparative proposal as provided in Stage Three below.

Under the first-in-time approach, the Head of Government Entity ~~[concerned]~~ shall acknowledge the submission of other Private Sector ProponentS for the same or similar project concept, and advise the proponent on existence of similar project concept and its rank/position based on date of submission of the proposals. If a ~~[contract]~~ **JV AGREEMENT** is awarded to a Private Sector Proponent, the unopened envelope/s shall be returned to the respective proponents.

The Government Entity shall conduct an initial evaluation of the proposal as provided in Stage One above and negotiate with the respective proponent. However, should negotiations not result to an agreement acceptable to both parties, the Government Entity shall have the option to reject the proposal by informing the private sector participant in writing stating the grounds for rejection and thereafter may accept a new proposal from private sector participants, or decide to pursue the proposed activity through alternative routes other than JV.
5. Within seven (7) calendar days after the successful negotiation, **THE GOVERNMENT ENTITY SHALL CONDUCT PUBLIC CONSULTATIONS TO INFORM THE STAKEHOLDERS OF THE SALIENT FEATURES OF THE JV AND THE PROPOSED TERMS AND CONDITIONS BETWEEN THE GOVERNMENT ENTITY AND THE PRIVATE SECTOR ENTITY. IF NO OBJECTION IS RECEIVED FROM THE STAKEHOLDERS WITHIN A PERIOD OF THIRTY (30) CALENDAR DAYS FROM THE CONDUCT OF THE PUBLIC CONSULTATION**, the Head of Government Entity and the authorized representative of the private ~~[sector]~~ entity shall issue a signed certification that an agreement has been reached by both parties and both agree to submit the proposal to competitive challenge. Said certification shall also state that the Government Entity has found the private sector participant eligible to enter into the proposed JV and shall confer to the proponent the OPS ~~[Original Proponent Status (OPS)]~~. **IF OTHERWISE, THE GOVERNMENT ENTITY SHALL ENDEAVOR TO TAKE APPROPRIATE ACTION ON THE COMMENTS/REACTIONS RECEIVED RELATIVE TO THE PROPOSED JV.**

THE OPS SHALL EXPIRE AT THE END OF THE VALIDITY PERIOD OF THE APPROVAL BY THE APPROPRIATE APPROVING AUTHORITY OF THE NEGOTIATED JV PROPOSAL AND THE DRAFT JV AGREEMENT.¹⁰

6. After conferment of the ~~[original proponent status]~~ OPS, the ~~[concerned]~~ Government Entity shall endorse the JV proposal and submit pertinent documentation to the appropriate Entity and Approving Authority pursuant to Section 7.2 of these Guidelines for approval. For projects wherein the Approving Authority is the Head of ~~[the]~~ Government Entity ~~[concerned]~~ pursuant to Section 7.2.c of these Guidelines, conferment of the ~~[original proponent status]~~ OPS shall be deemed an approval of the project proposal subject to compliance of the proposal with the conditions stated in Section 7 of these Guidelines **AND SHALL ISSUE A CERTIFICATION PURSUANT TO SECTION 7.2.G. THE APPROVAL BY THE APPROPRIATE APPROVING AUTHORITY OF THE NEGOTIATED JV PROPOSAL UNDER THIS SECTION SHALL BE VALID FOR A PERIOD OF NINE (9) MONTHS FROM THE ISSUANCE OF THE APPROVAL UNLESS THE INVITATION FOR COMPARATIVE PROPOSALS HAS BEEN ISSUED.**
7. ~~[For projects wherein the Approving Authority is the NEDA Board ICC pursuant to Section 7.2.b of these Guidelines.]~~ In case the JV proposal is disapproved by the ~~[NEDA Board ICC]~~ **APPROPRIATE APPROVING AUTHORITY**, the ~~[concerned]~~ Government Entity shall inform the original proponent of such disapproval and that the ~~[original proponent status]~~ OPS shall be withdrawn. The ~~[concerned]~~ Government Entity may accept other proposals.
- ~~{8- After approval by the Approving Authority, the draft contract including the selection documents for the competitive challenge are prepared.}~~

Stage Three – Competitive Challenge

Once the JV proposal is approved by the Approving Authority, the JV ~~[activity]~~ shall be subjected to a competitive challenge as follows:

1. The Government Entity shall prepare the tender documents **AND UPDATE THE DRAFT JV AGREEMENT** consistent with the terms and conditions approved by the Approving Authority and pursuant to Section II (Selection/Tender Documents) of Annex “A” of these Guidelines.
2. The Head of Government Entity, through the JV-SC, shall approve all tender documents including the draft ~~[contract]~~ **JV AGREEMENT** before the publication of the invitation to apply for eligibility and to submit a comparative proposal.
3. **FOR PROJECTS COVERED UNDER SECTION 7.2 B OF THESE GUIDELINES, THE JV-SC SHALL**, within seven (7) calendar days upon approval by the Approving Authority of the JV proposal as referred to in Stage Two above, ~~[the JV-SC shall]~~ publish the invitation to apply for eligibility and to submit a comparative proposal in accordance with the procedures under Section III of Annex “A” of these Guidelines.

¹⁰ 2005 ICC GUIDELINES AND PROCEDURE, ITEM IV.M. “TO AVOID THE PROBLEMS ASSOCIATED WITH DELAYED IMPLEMENTATION AND TO ENCOURAGE AGENCIES TO PRESENT WELL-PREPARED PROJECT PROPOSALS, THE **CURRENT ICC REVIEW AND APPROVAL OF A PROGRAM/PROJECT HAS AN APPLICATION OF 18 MONTHS.** SHOULD THE PROGRAM/PROJECT NOT BE IMPLEMENTED WITHIN THIS PERIOD, IT WILL NEED ICC REVIEW ANEW”.

4. **FOR PROJECTS COVERED UNDER SECTION 7.2.C AND 7.3 OF THESE GUIDELINES, THE INVITATION TO APPLY FOR ELIGIBILITY AND TO SUBMIT A COMPARATIVE PROPOSAL SHALL BE PUBLISHED ONLY UPON RECEIPT OF WRITTEN FORMAL CONFIRMATION FROM THE DOF AND DBM ON THE APPROVAL OF THE JV PROPOSAL BY THE HEAD OF GOVERNMENT ENTITY IN ACCORDANCE WITH SECTION III OF ANNEX "A" OF THESE GUIDELINES, AND CLEARANCE FROM DOF AND DBM FOR JV ACTIVITIES REQUIRING NATIONAL GOVERNMENT UNDERTAKINGS, SUBSIDIES OR GUARANTEES, AS APPLICABLE.**
5. Interested private proponents shall be qualified in accordance with Section IV.2 (Eligibility Requirements) under Annex "A" of these Guidelines. The tender documents which shall be prepared by the Government Entity shall only be issued to eligible private proponents.
6. Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.
7. The original proponent shall post the proposal security at the date of the first day of the publication of the invitation to apply for eligibility and to submit a comparative proposal in the amount and form stated in the tender documents **AS PROVIDED UNDER SECTION VIII.3 OF ANNEX "A"**.
8. Prospective comparative private sector participants or challengers shall be given at least one hundred ~~twenty (120)~~ **EIGHTY (180)** calendar days **UP TO A MAXIMUM PERIOD AS MAY BE DETERMINED AND APPROVED BY THE APPROPRIATE APPROVING AUTHORITY** ~~for as may be approved by the appropriate Approving Authority from the issuance of tender/bidding documents to develop and submit comparative proposals]~~ from the issuance of tender/bidding documents to develop and submit comparative proposals. If no comparative proposal is received by the Government Entity, the JV ~~activity~~ shall be immediately awarded to the original proponent.
9. The procedure for the determination of eligibility of comparative proponents/private sector participants, issuance of supplemental competitive selection bulletins and pre-selection conferences, submission and receipt of proposals, opening and evaluation of proposals shall follow the procedure stipulated under Annex "A" of these Guidelines. In the evaluation of the financial proposals, ~~the modified competitive challenge procedure]~~ **THE BEST AND FINAL OFFER (BAFO METHOD)** as defined hereunder shall be applied. **FOR NEGOTIATED JVS WHEREIN OPS HAS BEEN CONFERRED PRIOR TO EFFECTIVITY OF THESE GUIDELINES, THE JV-SC MAY OPT TO APPLY EITHER THE MODIFIED COMPETITIVE CHALLENGE OR THE BAFO METHOD AS DEFINED HEREUNDER. IF BAFO IS NOT THE BEST METHOD TO EVALUATE THE FINANCIAL PROPOSALS AS DETERMINED BY THE GOVERNMENT ENTITY, IT MAY OPT TO APPLY THE MODIFIED COMPETITIVE CHALLENGE PROCEDURE, PROVIDED, THAT OTHER PROCEDURES OR REQUIREMENTS STIPULATED UNDER THESE REVISED GUIDELINES SHALL STILL BE ADHERED TO. THE EVALUATION OF FINANCIAL PROPOSALS SHALL BE COMPLETED BY THE JV-SC OF THE GOVERNMENT ENTITY WITHIN FIFTEEN (15) CALENDAR DAYS.**
10. Under the modified competitive challenge, the original proponent may opt to submit on or before the date of the opening of financial proposals its second financial proposal. The financial proposal(s) of the comparative private sector participant(s) or the challenger(s) who have been determined to have passed the technical evaluation and the second financial proposal, if

applicable, of the original proponent shall be opened at the same time during the scheduled opening of financial proposals.

If the Government Entity, upon recommendation of the JV-SC, determines that an offer made by the challenger is superior or more advantageous to the government than the financial proposal of the original proponent, the JV ~~[contract]~~ **AGREEMENT** shall be awarded to the challenger offering the most advantageous price.

In case the challenger(s) fail(s) to outbid the financial proposal of the original proponent or in case there is/are no challenger/s, the JV ~~[contract]~~ **AGREEMENT** shall be awarded to the original proponent.

11. **PURSUANT TO THE TRANSITORY PROVISIONS AND ITEM 9 OF STAGE THREE ABOVE, THE BAFO METHOD SHALL BE CONDUCTED BY THE JV-SC IN THE EVALUATION OF FINANCIAL PROPOSAL/S FOLLOWING THE PROCEDURE STIPULATED HEREIN. IN THE EVENT A CHALLENGER'S FINANCIAL PROPOSAL IS FOUND TO BE MORE ADVANTAGEOUS THAN THE FINANCIAL PROPOSAL OF THE ORIGINAL PROPONENT, THE JV-SC SHALL INVITE ALL PRIVATE SECTOR PARTICIPANTS INCLUDING THE ORIGINAL PROPONENT TO SUBMIT THEIR BEST AND FINAL OFFER OR THE SECOND FINANCIAL PROPOSAL USING THE SAME PARAMETERS AS IN THE TENDER DOCUMENTS ISSUED BY THE GOVERNMENT ENTITY. ALL SECOND FINANCIAL PROPOSALS SHALL BE SUBMITTED WITHIN SEVEN (7) CALENDAR DAYS FROM THE DATE OF THE INVITATION. IF THE CHALLENGER(S) AND/OR THE ORIGINAL PROPONENT DECIDE NOT TO SUBMIT A SECOND FINANCIAL PROPOSAL, THE JV-SC SHALL CONSIDER THEIR FIRST FINANCIAL PROPOSAL IN THE EVALUATION OF THE SECOND FINANCIAL PROPOSALS. THE SECOND FINANCIAL EVALUATION SHALL BE COMPLETED BY THE JV-SC OF THE GOVERNMENT ENTITY WITHIN FIFTEEN (15) CALENDAR DAYS.**

IF, AGAIN, THE GOVERNMENT ENTITY, UPON RECOMMENDATION OF THE JV-SC, DETERMINES THAT A FINAL OFFER MADE BY THE CHALLENGER IS SUPERIOR OR MORE ADVANTAGEOUS TO THE GOVERNMENT THAN THE FINANCIAL PROPOSAL OF THE ORIGINAL PROPONENT, THE JV CONTRACT SHALL BE AWARDED TO THE CHALLENGER OFFERING THE MOST ADVANTAGEOUS PROPOSAL. THE WINNING CHALLENGER WILL BE REQUIRED TO REIMBURSE THE ORIGINAL PROPONENT OF THE COST INCURRED FROM PRODUCING THE JV PROPOSAL. SAID REIMBURSEMENT SHALL BE BASED ON DOCUMENTED COST AS SUBMITTED BY THE ORIGINAL PROPONENT AND CONFIRMED BY THE GOVERNMENT ENTITY.

IN CASE THE GOVERNMENT ENTITY DETERMINES THE FINANCIAL PROPOSAL OF THE ORIGINAL PROPONENT TO BE SUPERIOR OR MORE ADVANTAGEOUS OR IN CASE THERE IS NO CHALLENGER, THE JV CONTRACT SHALL BE AWARDED TO THE ORIGINAL PROPONENT.

12. In case tie ~~[bids]~~ **PROPOSALS** occur between the original proponent and challenger(s), the JV ~~[contract]~~ **AGREEMENT** shall be awarded to the original proponent.
13. In case tie ~~[bids]~~ **PROPOSALS** occur between the challengers offering better financial proposals than the second financial proposal of the original proponent, the procedure for breaking tie ~~[bids]~~ **PROPOSALS** shall be done through drawing of lots or similar methods that are non-discretionary and non-discriminatory such that it is based on sheer luck or chance.

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14. **THE AWARD AND APPROVAL OF THE JV AGREEMENT SHALL BE IN ACCORDANCE WITH THE PROCEDURES UNDER SECTION VIII OF ANNEX “A” OF THESE GUIDELINES. APPEALS MECHANISM SHALL BE IN ACCORDANCE WITH THE PROCEDURES UNDER SECTION IX OF ANNEX “A” OF THESE GUIDELINES.**

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**TIMELINES FOR THE CONDUCT OF NEGOTIATED JV AND COMPETITIVE CHALLENGE
FOR PUBLIC-PRIVATE JOINT VENTURES**

[TO BE FORMULATED ONCE FINALIZED]

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