



CHAMBER OF REAL ESTATE &
BUILDERS' ASSOCIATIONS INC
Online Library
www.ecreba.com

**IMPLEMENTING RULES AND REGULATIONS OF R.A.
NO. 6957, AS AMENDED BY R.A. NO. 7718, "AN ACT
AUTHORIZING THE FINANCING, CONSTRUCTION,
OPERATION AND MAINTENANCE OF
INFRASTRUCTURE PROJECTS BY THE PRIVATE
SECTOR AND FOR OTHER PURPOSES"**

INTRODUCTION

Pursuant to Section 11 of RA No. 6957 as amended by RA No. 7718, the following Implementing Rules and Regulations are hereby prescribed to carry out the provisions of said Act.

RULE 1
PRELIMINARY PROVISIONS

Sec. 1.1. *Policy.* ~ It is the policy of the State to encourage the private sector as the nation's main engine for growth and development to engage in or undertake the financing, construction, operation and maintenance of private sector infrastructure and development projects, as hereunder defined. Towards this end, the Government shall provide appropriate incentives, such as, but not limited to, financial incentives as provided by law, a climate of minimum regulations and procedures, and specific government undertakings in support of the private sector.

Sec. 1.2. *Coverage.* ~ These Implementing Rules and Regulations shall cover all private sector infrastructure or development projects, as hereunder defined, undertaken by Agencies or Local Government Units in accordance with such contractual arrangement or scheme authorized under and pursuant to RA No. 6957 as amended by RA No. 7718.

For Local Government Unit projects, concerned Local Government Units may formulate additional guidelines/procedures not in conflict with this Act and these Implementing Rules and Regulations and pertinent provisions of RA No. 7160 (Local Government code of 1991) and its implementing rules and regulations.

Sec. 1.3. *Definition of Terms.* ~ For purposes of these Implementing Rules and Regulations, the terms and phrases hereunder shall be understood as follows:

a. *Act.* ~ shall mean RA No. 6957 as amended by RA No. 7718.

b. *Agency/Agencies.* – Refers to any department, bureau, office, commission, authority or agency of the national government, including government-owned or -controlled corporations, authorized by law or their respective charters to contract for or undertake infrastructure or development projects.

c. *Contractual Arrangements.* – Refer to any of the following contractual arrangements or schemes, as well as other variations thereof as may be approved/authorized by the

President, by which infrastructure and/or development projects may be undertaken pursuant to the provisions of these IRR:

i. *Build-and-transfer (BT)*. ~ A contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the government agency or local government unit concerned, which shall pay the proponent on an agreed schedule its total investment expended on the project, plus a reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure or development projects, including critical facilities which, for security or strategic reasons, must be operated directly by the Government.

ii. *Build-lease-and-transfer (BLT)* ~ A contractual arrangement whereby a project proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the government agency or local government unit concerned on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the government agency or local government unit concerned.

iii. *Build-operate-and-transfer (BOT)* ~ A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term that shall not exceed fifty (50) years. This shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.

iv. *Build-own-and-operate (BOO)* ~ A contractual arrangement whereby a project proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users. Under this project, the proponent who owns the assets of the facility may assign its operation and maintenance to a facility operator.

v. *Build-transfer-and-operate (BTO)* ~ A contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private entity such that the contractor builds the facility on a turn-key basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the implementing agency. The private entity however operates the facility on behalf of the implementing agency under an agreement.

vi. *Contract-add-and-operate (CAO)* ~ A contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the Government and operates the expanded project over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the project proponent.

vii. *Develop-operate-and-transfer (DOT)* ~ A contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a private project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.

viii. *Rehabilitate-operate-and-transfer (ROT)* ~ A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the Government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.

ix. *Rehabilitate-own-and-operate (ROO)* ~ A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.

d. *Construction* ~ Refers to new construction, rehabilitation, improvement, expansion, alteration, and related works and activities including the necessary supply of equipment, materials, labor and services and related items needed to build or rehabilitate an infrastructure or development facility.

e. *Contractor* ~ Refers to any entity accredited under Philippine laws, or that should be accredited under Philippine laws in accordance with Section 5.4 a letter v. hereof, which may or may not be the project proponent and which shall undertake the actual construction and/or supply of equipment for the project.

f. *Development Program* ~ Refers to national, regional or local government plans or programs included in, but not limited to, the Medium-Term Philippine Development Plan (MTPDP), the Regional Development Plans and Local Development Plans.

g. *Direct government guarantee* ~ Refers to an agreement whereby the Government or any of its agencies or local government units assume responsibility for the repayment of debt directly incurred by the project proponent in implementing the project in case of a loan default.

h. *Facility operator* ~ Refers to a company registered with the Securities and Exchange Commission (SEC), which may or may not be the project proponent, and which is responsible for all aspects of operation and maintenance of the infrastructure or development facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users.

i. *Government Undertakings* – Refer to any form of contribution and/or support provided under Rule 13 of these IRR which the Government may extend to the project proponents under any of the contractual arrangements authorized under these IRR.

j. *Head of Agency* ~ Shall refer to the authorized approving authority of the Agency or, in the case of Government-Owned or-Controlled Corporations (GOCCs), the GOCC Governing Board.

k. *ICC* ~ Refers to the Investment Coordination Committee of the National Economic and Development Authority (NEDA) Board.

l. *IRR* ~ Shall mean these Implementing Rules and Regulations.

m. *List of Priority Projects* ~ Refers to the list of private sector infrastructure or development projects approved in accordance with Sections 2.3, 2.7, 2.8 and 2.11

n. *Local Government Units (LGU)* – Refer to provincial, city, municipal and/or barangay government entities.

o. *Negotiated Contracts* – Refer to contracts entered into by the Government for convenience even if broader tendering would have been possible. This type of contract may be resorted to only in cases prescribed under Rule 9.

p. *Private sector infrastructure or development projects* ~ The general description of infrastructure or development projects normally financed, and operated by the public sector but which will now be wholly or partly financed, constructed and operated by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may otherwise be authorized by the appropriate agency. Such projects shall be undertaken through contractual arrangements as defined herein, including such other variations as may be approved by the President of the Philippines.

q. *Project Cost* – Refers to the total cost to be expended by the proponent to plan, develop and construct the project to completion stage including but not limited to such costs as feasibility studies engineering and design, construction, equipment, land and right of way.

r. *Project Loan* – Refers to all loans and/or credit facilities extended by financial institutions; multi-lateral lenders; export credit agencies, and all other third party lenders, to the project company and/or proponent for the development and/or operation of the project.

s. *Project Proponent* – Refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate financial base to implement the said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project.

t. *Public Utility Projects* – Refer to projects including public roads and thoroughfares, railways and urban rail mass transit, electricity and gas distribution systems, city and municipal water distribution and sewerage systems, and telecommunication systems serving the general public, and such other public services as defined under the Public Services Act, as amended.

u. *Reasonable rate of return on investment* ~ Shall have the meaning ascribed to it in ICC Guidelines attached hereto as Annex B.

v. *Unsolicited Proposals* – Refer to project proposals submitted by the private sector to undertake infrastructure or development projects which may be entered into by Agency/LGU subject to the requirements/conditions prescribed under Rule 10.

RULE 2 GENERAL PROVISIONS

Sec. 2.1. *Authorized Contracting Government Agencies/Units.* ~ The following are authorized to enter into contractual arrangements under this Act and these IRR:

a. All concerned government agencies, including government-owned or controlled corporations, authorized by law or by their respective charters to undertake infrastructure and/or development projects.

b. LGUs authorized by law or by their charters to undertake infrastructure and/or development projects within their respective jurisdiction.

Sec. 2.2. Eligible Types of Projects. – The construction, rehabilitation, improvement, betterment, expansion, modernization, operation, financing and maintenance, of the following types of projects which are normally financed and operated by the public sector which will now be wholly or partly financed, constructed and operated by the private sector, including other infrastructure and development projects as may be authorized by the appropriate agencies, may be prosecuted under the provisions of the Act and these IRR, provided however that such projects have a cost recovery component which covers at least 50% of the project cost:

- a. Highways, including expressway, roads, bridges, interchanges, tunnels, and related facilities;
- b. Railways or rail-based projects packaged with commercial development opportunities;
- c. Non-rail based mass transit facilities, navigable inland waterways and related facilities;
- d. Port infrastructures like piers, wharves, quays, storage, handling, ferry services and related facilities;
- e. Airports, air navigations, and related facilities;
- f. Power generation, transmission, sub-transmission , distribution, and related facilities;
- g. Telecommunications, backbone network, terrestrial and satellite facilities and related service facilities;
- h. Information technology and data base infrastructure;
- i. Irrigation and related facilities;
- j. Water supply, sewerage, drainage, and related facilities;
- k. Education and health infrastructure;
- l. Land reclamation, dredging and other related development facilities;
- m. Industrial and tourism estates or townships, including related infrastructure facilities and utilities;
- n. Government buildings, housing projects;
- o. Markets, slaughterhouses, and related facilities;
- p. Warehouses and post-harvest facilities;
- q. Public fishports and fishponds, including storage and processing facilities; and
- r. Environmental and solid waste management related facilities such as collection equipment, composting plants, incinerators, landfill and tidal barriers, among others.

Sec. 2.3. List of Priority Projects. ~ Concerned Agencies/LGUs are tasked to prepare their infrastructure/development programs and to identify specific priority projects that may be financed, constructed, operated and maintained by the private sector through the contractual arrangements or schemes authorized under these IRR.

The projects require the approval of either the NEDA Board, ICC or Local Development Councils (LDCs) and respective Sanggunians as specified in Section 2.7. Such requisite approval shall be applied for and should be secured by the Head of Agency/LGU prior to the call for bids for the project. For this purpose, the Head of Agency/LGU may submit projects for inclusion in the list, for approval by the appropriate approving authority, as often as is necessary. Approved projects shall constitute the List of Priority Projects.

Sec. 2.4. Publication and Notice. ~ All Agencies/LGUs shall provide wide publicity of the list of priority projects proposed for implementation under the contractual arrangements or schemes

as authorized under the Act and these IRR to keep interested/concerned parties informed thereof. For this purpose, all Agencies/LGUs, upon approval by either the NEDA Board, ICC, or Local Development Council (LDC) and Sanggunians of said list of priority projects, shall cause the same to be published at least once every six (6) months in a national newspaper of general circulation.

Sec. 2.5. Registration of Project Proponents. ~ Project proponents may register with the Agency/LGU, indicating which projects are of interest to them, and for this purpose submit its company profile in the form prescribed under Annex A. Duly registered project proponents shall be officially notified and furnished by the Agency/LGU a copy of the list of their respective priority projects and corresponding project updates at least once every six (6) months.

Sec. 2.6. Allowable Modes of Implementation. ~ Projects may be implemented through public bidding or direct negotiation. The direct negotiation mode is subject to conditions specified in Rules 9 and 10 hereof.

Sec. 2.7. Approval of Priority Projects. ~ The approval of projects prosecuted under this Act shall be in accordance with the following:

National Priority Projects. ~ The projects must be part of the Agency's development programs, and shall be approved as follows:

- (i) projects costing up to P300 million, shall be submitted to the ICC for approval;
- (ii) projects costing more than P300 million, shall be submitted to the NEDA Board for approval upon the recommendation of the ICC; and
- (iii) negotiated projects shall be submitted to the ICC for it to prescribe the reasonable rate of return prior to negotiation and/or call for comparative proposals.

Local Priority Projects. ~ For local projects to be implemented by the LGUs, these shall be submitted by the concerned LGU for confirmation, as follows:

- (i) to the municipal development council for projects costing up to P20 million;
- (ii) to the provincial development council for those costing above P20 million up to P50 million;
- (iii) to the city development council for those costing up to P50 million;
to the regional development council or, in the case of Metro Manila projects, the Metro Manila Development Council (MMDC), for those costing above P50 million up to P200 million; and
- (iv) to the ICC of the NEDA Board for those costing above P200 million.

Final approval of projects classified under b) i. to b) iv. of this section is vested on the Local Sanggunians per provision of the Local Government Code.

Sec. 2.8. ICC Approval of Projects. ~ The review and approval of projects by ICC, as indicated above, including those proposed for BOO implementation, shall be in accordance with the guidelines of the ICC, attached hereto as Annex B.

For publicly-bid projects, the ICC approval of the project should be secured prior to bidding and for unsolicited proposals prior to negotiation with the original proponent.

Sec. 2.9. ICC/Local Sanggunian Clearance of the Contract Prior to Award. ~ ICC/Local Sanggunian clearance of contracts shall likewise be required only for projects requiring national government undertakings. ICC clearance of the contract shall be secured prior to award in the

case of publicly bid projects or prior to solicitation of comparative proposals for unsolicited proposals.

The concerned Agency/LGU shall, prior to the schedule of submission of bids, submit the draft contract to the ICC for clearance on a no-objection basis. The agency shall submit the contract to ICC anytime from finalization of the bid terms of reference to bid preparation. The agency may opt to submit the contract after the pre-bid conference to consider any comments or suggestions that the bidders may have on the contract. Annex B of these IRR provides the guidelines of ICC for contract review. ICC shall act on the final draft contract within fifteen (15) working days upon submission of complete documentation. Unless otherwise previously notified in writing by the ICC, failure to act within this prescribed period shall mean that the concerned Agency/LGU may proceed with contract award. If the draft contract includes government undertakings within the scope of an earlier ICC approval, then the submission will only be for the information of the ICC. However, should it include additional government undertakings over and above the original scope then the draft contract will have to be reviewed by the ICC.

However, failure on the part of the agency to submit the contract or if submitted, to comply with the requirements of the ICC shall render the Notice of Award and/or contract invalid.

Sec. 2.10. Presidential Approval, When Required. ~ Projects undertaken through the BOO scheme shall require Presidential approval. For this purpose, the Head of Agency/LGU shall submit the proposed project to ICC, which shall evaluate the proposal and forward the same to the Office of the President with its recommendations. Projects which will be undertaken through contractual arrangements or schemes other than those defined under Section 1.3.c of these IRR shall also require approval by the President. Following ICC contract approval, all BOO contracts are presented to the President, through the NEDA Board, for approval. Since the President chairs the NEDA Board, NEDA Board approval already carries with it the President's approval.

Sec. 2.11. Deadline for Approval of Projects. ~ The ICC or the concerned Local Development Council (LDC) and concerned Sanggunian shall act on the projects within thirty (30) working days upon satisfactory compliance by the concerned Agency/LGU of the requirements. Unless otherwise notified in writing by the ICC or LDC, failure of the ICC or LDC and its Sanggunian to act on the projects within the specified period shall mean that the project is deemed approved and that the concerned Agency/LGU may proceed with the solicitation of proposals.

RULE 3

THE PREQUALIFICATION, BIDS, AND AWARDS COMMITTEE

Sec. 3.1. Composition. ~ The Head of the concerned Agency/LGU shall create Pre-qualification, Bids and Awards Committee (PBAC) composed of the following:

a. For National Government Agencies:

- i. Chairman ~ At least a third ranking officer of the Agency.
- ii. Member-Secretary ~ A legal officer.
- iii. Member ~ One (1) technical officer knowledgeable with the (provisional) technical aspects or requirements of the project, duly designated by the Head of Agency concerned on a project-to-project basis.
- iv. Member ~ One (1) technical officer knowledgeable with aspects (provisional and or requirements of the project non-voting) from a concerned regulatory body,

when applicable, to be invited by the agency concerned on a project-to-project basis.

v. Member ~ An officer knowledgeable in finance.

vi. Member ~ An officer knowledgeable in management/operation of the project.

vii. Observers ~ Two (2) representatives from the private sector: one from (non-voting) duly recognized contractors associations, and the other from either the facility users, or duly recognized accounting associations.

viii. Observer ~ A representative from the Commission on Audit. (non-voting)

ix. Observer ~ One (1) representative from the CCPSP to be invited on a case to case basis. (non-voting)

b. For LGUs, the PBAC shall be composed and organized in the manner provided under Republic Act No. 7160 (Local Government Code of 1991). In addition to the membership therein, a DILG representative from the regional or provincial office shall be invited as observer/non-voting member. This is to enable DILG to more effectively carry out its role as appeal body for disqualified bidders.

Sec. 3.2. Responsibility of the PBAC. ~ The PBAC herein created shall be responsible for all aspects of the pre-bidding and bidding process, including, among others, the preparation of the bidding/tender documents, publication of the invitation to pre-qualify and bid, pre-qualification of prospective bidders, conduct of pre-bid conferences and issuance of supplemental notices, interpretation of the rules regarding the bidding, the conduct of bidding, evaluation of bids, resolution of disputes between bidders, and recommendation for the acceptance of the bid and/or for the award of the project.

Sec. 3.3. Quorum. ~ A quorum of the PBAC shall be composed of a simple majority of all voting members of the Committee. The Chairman shall vote only in case of a tie.

Sec. 3.4. Technical Assistance to the PBAC. ~ To aid the PBAC herein created in the performance of their responsibilities, Agencies/LGUs concerned may solicit the services of consultants with extensive and appropriate experience in undertaking similar/related projects authorized under these IRR. The consultants shall be selected in accordance with existing laws, rules and regulations, including the NEDA Board-approved Guidelines on the Procurement of Consulting Services for Government Projects (Implementing Rules and Regulations).

RULE 4 BID/TENDER DOCUMENTS

Sec. 4.1. Bid/Tender Documents. ~ The Agency/LGU concerned shall prepare the bid/tender documents which shall include the following:

- a. Instructions to Bidders;
- b. Minimum Design and Performance Standards and Specifications, and Economic Parameters such as discount rate, inflation factor and foreign exchange rate, among others;
- c. Draft Contract reflecting the contractual arrangement under which the project shall be undertaken, and the respective undertakings of the contracting parties, among others;
- d. Bid Form reflecting the required information to properly evaluate the bid proposal;
- e. Forms of Bid and Performance Securities; and
- f. Other documents as may be deemed necessary by the Agency/LGU concerned.

Sec. 4.2. *Instructions to Bidders.*~ The instructions to bidders, which establishes the rules of the bidding, shall be clear, comprehensive and fair to all bidders and shall, as far as necessary and practicable include the following information:

a. General description and objectives of the project, including a statement that the project shall be prosecuted under Republic Act No. 6957 as amended by Republic Act No. 7718;

b. Contractual arrangement under which the project shall be undertaken;

c. Bid submission procedures and requirements, which shall include information on the manner of bid submission, the number of copies of bid proposal to be submitted, where the bids are to be submitted, the deadline for the submission of bids, permissible mode of transmission of bid proposals, etc.;

d. Government undertakings such as provision of right of way, access to ODA and/or direct government appropriations, among others, and investment incentives as stipulated under Rule 13 of these IRR to be provided by the concerned Agency/LGU;

e. Bid security and bid security validity period;

f. Milestone bonding;

g. Method and criteria (including the minimum amount of equity) for the evaluation of the technical and financial components of the bids;

As a general rule, the method and criteria for the evaluation of financial proposals shall be in accordance with Section 8.2.a, 8.2.b or 8.2.c hereof. However, for projects which are not public utilities and where the Agency/LGU requires payments to be made by the project proponent to the government, the Agency/LGU concerned may opt to adopt the method and criteria for the evaluation of financial proposals prescribed under Section 8.2.d hereof.

h. Formula and appropriate indices to be used in the adjustments of tolls/fees/rentals/charges, when applicable. Said formula shall take into account the reasonableness of the same to users of the project/facility under bidding;

i. Requirements of concerned regulatory bodies, such as, but not limited to, the Department of Environment and Natural Resources (DENR) for the issuance of an Environmental Compliance Certificate, National Water Resources Board (NWRB) for the issuance of the Water Permit, the Philippine Contractors Accreditation Board (PCAB) for the registration requirements of contractors, the Toll Regulatory Board (TRB) for the review of toll rates and adjustment formula for negotiated contracts.

j. Current rules and regulations of the monetary authority;

k. Revenue sharing arrangements, if any;

l. Expected commissioning date; and

m. Required ownership structure and nationality requirements as required by law.

Sec. 4.3. *Minimum Designs, Performance Standards and Economic Parameters.* ~ Minimum design and performance standards/specifications, including appropriate environmental standards as prescribed by the DENR, shall be clearly defined and shall refer more to the desired quantity and quality of the outputs of the facility and should state that non-conformity with any of these minimum requirements shall render the bids as non-responsive. Likewise, the following economic parameters, among others, shall be prescribed:

a. Discount rate, foreign exchange rate and inflation factor as prescribed by the ICC.

b. Maximum period of project construction.

c. Fixed term for project operation and collection of tolls/fees/rentals/charges in the case of BOT, BOO, CAO, DOT, ROT, ROO and other variations thereof authorized/approved by the President.

d. Formula and price indices to be used in adjustments to tolls/fees/rentals/charges, in the case of BOT, BOO, CAO, DOT, ROT, ROO and other variations thereof authorized/approved by the President.

e. Minimum period of repayment, in the case of BT, BLT, BTO and other variations thereof authorized/ approved by the President.

f. Revenue Share of the Implementing Agency/Local Government Unit.

Sec. 4.4. *Draft Contract.* ~ The draft contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities. Where applicable, stipulation providing for the following matters, among others, shall be included: bonds; guarantees; insurance; liquidated damages; taxes and duties; project completion date; schedule and amounts of milestone bonding; price indices to be used; governing laws; force majeure; the effect of changes in circumstances which may be brought about by, among others, the enactment of new laws or regulations or the change in existing government policies which will materially affect the financial viability of the project; contract termination; and the manner and procedures for the resolution of disputes including arbitration procedures.

RULE 5 QUALIFICATION OF BIDDERS

Sec. 5.1. *Who May Participate.* ~ Any individual, partnership, corporation or firm, whether local or foreign, including joint venture or consortia of local, foreign or local and foreign firms, subject to the limits herein set, may participate or apply for pre or simultaneous qualification for projects covered under the provisions of the Act and these IRR.

Sec. 5.2. *Publication of Invitation to Pre-qualify and Bid.* ~ The Head of the Agency/LGU concerned shall, upon the approval of the priority projects ready for implementation under the provisions of these IRR, forthwith cause to be published, once every week for three (3) consecutive weeks, in at least two (2) newspaper of general circulation and in at least one (1) local newspaper of general circulation in the region, province, city or municipality in which the projects are to be implemented, a notice inviting all prospective infrastructure or development project proponents to pre-qualify and bid for the projects so approved. Likewise, the Agency/LGU concerned shall issue official notification of the same to project proponents registered with them.

The published Invitation to Pre-qualify and Bid shall contain information, among others, whether the contractor to be employed to undertake the construction works needs to be pre-identified for pre-qualification purposes or not.

Sec. 5.3. *Period to Prepare Pre-qualification Documents.* ~ The Agency/LGU concerned shall allow prospective bidders at least thirty (30) calendar days from the last date of publication of the Invitation to Pre-qualify and Bid to prepare their respective pre-qualification documents. For projects costing at least P300 million, the period of preparation shall at least be forty-five (45) calendar days from the last date of publication of the Invitation to Pre-qualify and Bid. In any event, the deadline for submission of pre-qualification statements shall be indicated in the published Invitation to Pre-qualify and Bid.

Sec. 5.4. *Pre-qualification Requirements.* ~ To pre-qualify, a project proponent must comply with the following requirements:

a. Legal Requirements:

i. For projects to be implemented under the BOT scheme whose operations require a public utility franchise, the project proponent and the facility operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos.

ii. For projects to be implemented through a scheme other than the BOT and requiring a public utility franchise, the facility operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos.

Consistent with existing laws, the proponent may be the operator but it may be allowed to enter into a management contract with another entity, who may be 100% foreign owned, for the day to day operation of the facility, provided that the proponent will assume all attendant liabilities of an operator.

iii. In case the project proponent is a joint venture or consortium, the members or participants shall submit a sworn statement undertaking that if awarded the contract, they shall bind themselves to be jointly severally and solidarily liable for the obligations of the project proponent under the contract. However, if members of the joint venture or consortium organize themselves as a corporation registered under Philippine laws, the liabilities of such members under the contract shall be in accordance with said laws.

iv. For projects to be operated by the project proponent itself or owned by the proponent but operated through a facility operator where operation of the facility does not require a public utility franchise, the project proponent or the facility operator may be Filipino or foreign-owned.

v. If the contractor to be engaged by the project proponent to undertake the construction works of the project under bidding needs to be pre-identified as prescribed in the published Invitation to Pre-qualify and Bid and is a Filipino, it must be duly licensed and accredited by the Philippine Contractors Accreditation Board (PCAB). However, if the contractor is a foreigner, PCAB registration will not be required at pre-qualification stage, rather it will be one of the contract milestones.

b. Experience or Track Record: The proponent-applicant must possess adequate experience in terms of the following:

c. Firm Experience: By itself or through the member-firms in case of a joint venture/consortium or through a contractor(s) which the project proponent may have engaged for the project, the project proponent and/or its contractor(s) must have successfully undertaken a project(s) similar or related to the subject infrastructure/development project to be bid. The individual firms and/or their contractor(s) may individually specialize on any or several phases of the project(s). A joint venture/consortium proponent shall be evaluated based on the individual or collective experience of the member-firms of the joint venture/consortium and of the contractor(s) that it has engaged for the project.

For purposes of the above, joint ventures/consortia shall submit as part of its pre-qualification statement a business plan which shall, among others, identify its members and its contractor(s), if the experience of its contractor(s) are necessary for the determination of the capacity of the joint venture/consortium to undertake the project and the description of the respective roles said members and contractors, if necessary, shall play or undertake in the project. If undecided on a specific contractor, the proponent may submit a short list of contractors from among which it will select the final contractor. Short listed contractors are

required to submit a statement indicating willingness to participate in the project and capacity to undertake the requirements of the project. The business plan shall disclose which of the members of the joint venture/consortium shall be the lead member the financing arm, and/or facility operator(s), and the contractor(s) if required to be pre-identified as prescribed in the published Invitation to Pre-qualify and Bid or if the qualifications/experience of their contractor(s) are necessary for the determination of the capacity of the joint venture/consortium to undertake the project.

d. *Key Personnel Experience*: The key personnel of the proponent and/or its contractor(s) must have sufficient experience in the relevant aspect of schemes similar or related to the subject project, as specified by the Agency/LGU.

e. *Financial Capability*: The project proponent must have adequate capability to sustain the financing requirements for the detailed engineering design, construction and/or operation and maintenance phases of the project, as the case may be. For purposes of pre-qualification, this capability shall be measured in terms of:

(i) proof of the ability of the project proponent and/or the consortium to provide a minimum amount of equity to the project measured in terms of the net worth of the company or in the case of joint ventures or consortia the combined net worth of members or a set-aside deposit equivalent to the minimum equity required, and

(ii) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, and that they are in good financial standing. The government Agency/LGU concerned shall determine on a project-to-project basis, and before pre-qualification, the minimum amount of equity needed. In addition, the Agency/LGU will inform the proponents of the minimum debt-equity ratio required by the monetary authority for projects to be financed by foreign loans.

The Implementing Agency through its PBAC shall complete the evaluation of the pre-qualification documents of the proponents within thirty (30) calendar days.

Sec. 5.5. Pre-qualified and Disqualified Proponents. ~ After undertaking the above process, the PBAC shall mark the pre-qualification documents of each prospective proponent as either "Pre-qualified" or "Disqualified", as the case may be, countersigned by the Chairman, for review and approval by the Head of the Agency/LGU concerned. Accordingly, the PBAC shall duly inform the prospective proponents who have been pre-qualified within seven (7) calendar days after approval thereof. Disqualified proponents shall likewise be informed stating therein the grounds for their disqualification. They may appeal the disqualification to the Head of Agency in the case of national projects, or the DILG in the case of local projects within fifteen (15) working days from receipt of the notice of disqualification.

The bidding process will be suspended while the appeal is being evaluated. The Head of Agency or the LGU, as the case may be, shall act on the appeal within forty-five (45) calendar days from receipt of the appeal. The decision of the Head of Agency or LGU on the appeal shall be final and immediately executory.

Sec. 5.6. Issuance of Tender Documents. ~ The Agency/LGU concerned shall make available the related bid documents to all pre-qualified bidders as soon as practicable to provide respective bidders ample time to examine the same and to prepare their respective bids prior to the date of opening of bids.

Sec. 5.7. Simultaneous Qualification. ~ In the exigency of service, the Agency/LGU Head may opt to do a simultaneous qualification instead of a pre-qualification of proponents. In case of

simultaneous qualification, the publication of the invitation following the requirements in Section 5.2, shall be for the submission of qualification requirements and bid proposals. The bidders shall be asked to submit their proposal in three envelopes, the first being the qualification documents corresponding to the requirements so stated in Section 5.4 herein, the second the technical proposal and the third the financial proposal. The requirements for bid submission are covered under Rule 7 of these IRR. The period for the preparation of the qualification documents shall be subsumed under the time allotted for bid preparation.

Sec. 5.8. Acceptance of Criteria and Waiver of Rights to Enjoin Project. ~ All prospective bidders shall be required to submit, as part of their qualification documents, a statement stipulating that the bidder (i) has accepted the qualification criteria established by the PBAC of the Agency/LGU concerned, and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the concerned Agency/LGU or its PBAC to prevent or restrain the qualification process or any proceedings related thereto, the holding of a bidding or any proceedings related thereto, the negotiation of and award of the contract to a successful bidder, and the carrying out of the awarded contract. Such waiver shall, however, be without prejudice to the right of a disqualified or losing bidder to question the lawfulness of its disqualification or the rejection of its bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

RULE 6

SUPPLEMENTAL NOTICES AND PRE-BID CONFERENCES

Sec. 6.1. Responsibility of Bidder. ~ The prospective bidder shall be solely responsible for having taken all the necessary steps to carefully examine and acquaint himself with the requirements, terms, and conditions of the bidding documents with respect to the cost, duration, and execution/operation of the project as it affects the preparation and submission of his bid. The Agency/LGU concerned shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective bidder out of data furnished or indicated in the bidding documents.

Sec. 6.2. Supplemental Notices. ~ If a bidder is in doubt as to the meaning of any data or requirements or any part of the bidding documents, written request may be submitted to the Agency/LGU concerned for an interpretation of the same, allowing sufficient time for the concerned Agency/LGU to reply before the submission of his/her bid. Any substantive interpretation given by the concerned Agency/LGU shall be issued in the form of a Supplemental Notice, and furnished to all prospective bidders. The Agency/LGU concerned may also issue Supplemental Notices to all prospective bidders at any time for purposes of clarifying any provisions of the bidding documents provided that the same is issued within a reasonable period to allow all bidders to consider the same in the preparation of their bids. Receipt of all Supplemental Notices shall be duly acknowledged by each bidder prior to the submission of his bid and shall be so indicated in the bid.

Sec. 6.3. Pre-bid Conference. ~ For projects costing less than P300 million, a pre-bid conference shall also be conducted by the concerned Agency/LGU at least thirty (30) days before the deadline for the submission of bids to clarify any provisions, requirements and/or terms and conditions of the bidding documents and/or any other matter that the prospective bidders may raise. For projects costing P300 million and above, the pre-bid conference shall be conducted ninety (90) to one hundred-twenty (120) days before the submission of bids.

Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions of the bidding documents unless such is made as a written amendment thereto by the concerned Agency/LGU. Any amendments shall be issued by the Agency/LGU concerned to all bidders within a reasonable time to allow them to consider the same in the preparation of

their bids and shall be duly acknowledged by each bidder prior to the submission of his bid and shall be so indicated in his bid. A summary of the pre-bid conference proceedings shall also be issued to all prospective bidders by the Agency/LGU concerned. Attendance to the pre-bid conference by prospective bidders shall not be mandatory.

**RULE 7
SUBMISSION, RECEIPT AND OPENING OF BIDS**

Sec. 7.1. Requirements for Bid Submission. – Bidders shall be required to submit their bids on or before the deadline stipulated in the Instructions to Bidders. For pre-qualified bidders, their bids shall be submitted in two (2) separate sealed envelopes, the first being the technical proposal and the second the financial proposal. In case of simultaneous qualification, three envelopes shall be submitted. The first envelope shall be the qualification requirements, the second the technical proposal and the third the financial proposal. All envelopes shall bear the name of the bidder and project to be bid out in capital letters and addressed to the PBAC of the concerned Agency/LGU. They shall be marked "Do Not Open Before (date and time of opening of bids)". The envelopes shall be appropriately labeled as Qualification Requirements, Technical Proposal and Financial Proposal.

a. The envelope for qualification of the bidder shall contain requirements as stated in Section 5.4

b. The "Technical Proposal" shall contain the following:

i. Operational feasibility of the project, which shall indicate the proposed organization, methods and procedures for the operation and maintenance of the project under bidding;

ii. Technical soundness/preliminary engineering design, including proposed project timeline;

iii. Preliminary environmental assessment, which shall indicate the probable adverse effects of the project on the environment and the corresponding mitigating measures to be adopted;

iv. Project cost including operating and maintenance cost requirements and proposed financing plan (proposed equity contribution, debt, etc.);

v. Bid security in the form of 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 and acceptable to the Agency/LGU, or any combination thereof payable to the Agency/LGU concerned in accordance with the following schedules:

Required Bid Security	Estimated Cost of Construction
not less than 2.0%	of less than P5.0 B
not less than 1.5%	of P5.0 B to P10.0 B but at least P100 million
not less than 1.0% of P10.0 B and above the	

million	
---------	--

In case the bid security is issued by a foreign bank, said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the Bangko Sentral ng Pilipinas (BSP).

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

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

vi. Other documents as may be required by the concerned Agency/LGU to support the bidder's technical proposal.

c. The "*Financial Proposal*" shall contain the following, as the case may be:

i. For BOT, BOO, CAO, DOT, ROT, ROO and similar variants:

Proposed user tolls/fees/rentals/other charges; and

Present worth of the proposed user tolls/fees/rentals/other charges over the fixed term based on the discounting rate and foreign exchange rate prescribed in the bidding documents in accordance with Section 4.3.a hereof.

ii. For BT, BLT, and similar variants:

Proposed amortization payments and repayment period; and present worth of proposed amortization payments based on the discounting rate and foreign exchange rate prescribed in the bidding documents in accordance with Section 4.3.a hereof.

iii. For BTO and similar variants, either:

Proposed user tolls/fees/rentals/other charges; and

Present worth of the proposed user tolls/fees/ rentals/other charges over the fixed term based on the discounting rate and foreign exchange rate prescribed in the bidding documents in accordance with Section 4.3.a hereof; or

Proposed amortization payments and repayment period; and

Present worth of proposed amortization payments based on the discounting rate and foreign exchange rate prescribed in the bidding documents in accordance with Section 4.3.a hereof.

The choice between user fees and amortization payments shall depend on the method and criteria for the evaluation of the financial proposal so stated in the Instructions to Bidders.

iv. For projects which are not public utilities, where the Agency/LGU requires payments to be made by the project proponent to the government and where the

Agency/LGU opts to adopt the method and criteria for financial evaluation as prescribed under Section 8.2.d.:

Proposed payments schedule;

Present worth of proposed payments based on the discounting rate and foreign exchange rate prescribed in the bidding documents in accordance with Section 4.3.a hereof.

v. For other contractual arrangements which have been approved/authorized by the President of the Philippines:

Any of the above or any combination thereof, provided such is consistent with the contractual arrangement which has been approved/authorized by the President of the Philippines, upon recommendation of the ICC.

vi. The project financing scheme, including the amount of the equity and debts to be obtained for the project and the probable source of financing.

Sec. 7.2. Submission of Late Bids. ~ Bids submitted after the deadline for submission prescribed in the Instructions to Bidders shall be considered late and shall be returned unopened.

Sec 7.3. Opening of the Envelope for Qualification of Bidder. – At the date and time stipulated in the Instructions to Bidders, the PBAC shall open the envelope and ascertain whether the same is complete in terms of the information required under Section 5.4. Such information shall be recorded at the time, including the names and addresses of required witnesses. All bidders or their representatives present at the opening of the first envelopes shall sign a register of the opening of the qualification envelope.

Sec. 7.4. Evaluation of Qualification Requirements. ~ The qualification documents will first be evaluated prior to the opening of the technical proposal. The Agency/LGU shall inform bidders whether they are qualified or disqualified, and for the latter the reasons for disqualification, within fifteen (15) calendar days. Only qualified bidders shall be allowed to participate in the bid evaluation. Disqualified bidders shall be informed of the grounds of disqualification and their technical and financial proposals returned unopened.

Sec. 7.5. Rejection of Bids. ~ Incomplete information on any of the envelopes and/or non-compliance with the bid security requirements prescribed in Section 7.1b shall be grounds for automatic rejection of bids.

Sec. 7.6. Opening of the Envelope for the Technical Proposal. ~ At the date and time of bid opening, as stipulated in the Instructions to Bidders, the PBAC shall open only the technical proposal and ascertain whether the same is complete in terms of the data/information required under Section 7.1.b above and whether the same is accompanied by the required bid security in the prescribed form, amount and period of validity. Such information shall be recorded at the time, including the names and addresses of required witnesses. All bidders or their representatives present at the opening of the first envelopes shall sign a register of the bid opening.

Sec. 7.7. Opening of the Envelope for the Financial Proposal. ~ Only those bidders whose technical proposal passed the evaluation criteria as prescribed under Section 8.1 hereof shall have their financial proposal opened for further evaluation. Those who failed the evaluation of the technical proposal shall not be considered further and the PBAC shall return their financial proposals unopened together with the reasons for their disqualification from the bidding.

Once the bidders who have qualified for the evaluation of the financial proposal have been determined, the PBAC shall notify said bidders of the date, time and place of the opening of the envelopes for the financial proposal. The opening thereof shall follow the same procedures prescribed for the opening of the previous envelopes.

Sec. 7.8. Withdrawal and/or Modification of Bids. ~ Withdrawal and/or modification of bids may be allowed upon written notice by the bidder concerned to the Agency/LGU prior to the time and date set for the opening of bids (opening of first envelopes) as specified in the Instructions to Bidders. No bids shall be modified or withdrawn after the time prescribed to open bids. Bid modifications received after said period shall be considered late and will be returned unopened. Withdrawal of bids after the bid opening date shall cause the forfeiture of the bidder's bid security.

RULE 8 EVALUATION OF BIDS

Sec. 8.1. The First Stage Evaluation. ~ The evaluation of bids shall be undertaken in two (2) stages in accordance with the procedures described below.

The first stage evaluation shall involve the assessment of the technical, operational, environmental, and financing viability of the proposal as contained in the bidders' first envelopes vis-a-vis the prescribed requirements and criteria/minimum standards and basic parameters prescribed in the bidding documents. Only those bids that have been determined to have positively passed the first stage of evaluation shall be qualified and considered for the second stage of evaluation.

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

a. *Technical soundness (preliminary engineering design):* The basic engineering design of the project should conform to the minimum design and performance standards and specifications set by the Agency/LGU concerned as prescribed in the bidding documents. The engineering surveys, plans and estimates should be undertaken within +/- 20% of the final quantities. The construction methods and schedules should also be presented and shown to be feasible or "doable".

b. *Operational feasibility:* The proposed organization, methods, and procedures for operating and maintaining the completed facility must be well defined, should conform to the prescribed performance standards, and should be shown to be workable. Where feasible, it should provide for the transfer of technology used in every phase of the project.

c. *Environmental Standards:* The proposed design and the technology of the project to be used must be in accordance with the environmental standards set forth by the Department of Environment and Natural Resources (DENR) as indicated in the bid documents. Any adverse effects on the environment as a consequence of the project as proposed by the project proponent must be properly identified, including the corresponding corrective/mitigating measures to be adopted.

d. *Project Financing:* The proposed financing plan should positively show that the same could adequately meet the construction cost and operating and maintenance costs requirements of the project. The Agency/LGU concerned shall assess the financing proposals of the bidders if the same matches and adequately meets the cost requirements of the project under bidding.

e. *Enhancements:* Other terms which the project proponent may offer to the government to make the proposals more attractive, such as, but not limited to, provisions allowing the

government to share in revenues; less government guarantees or reduction in the level of government undertakings or support.

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

Sec. 8.2. The Second Stage Evaluation. ~ The second stage evaluation shall involve the assessment and comparison of the financial proposals of the bidders:

a. For BOT, BOO, CAO, DOT, ROT, ROO and other similar schemes that may be approved/authorized by the President, assessment and comparison of the financial proposals of bidders shall be based on the lowest present value of the proposed tolls, fees, rentals and other charges over a fixed term for the facility to be constructed, rehabilitated, operated and maintained according to the prescribed minimum design and performance standards, plans and specifications.

b. For BT, BLT, and other similar schemes that may be approved/authorized by the President, assessment and comparison of the financial proposals of the bidders shall be based on the present value of the proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans and specifications.

c. For BTO and other similar schemes that may be approved/authorized by the President, assessment and comparison of the financial proposals of bidders shall be based on either the lowest present value of the proposed tolls, fees, rentals and other charges over a fixed term for the facility to be constructed, operated and maintained, or the present value of the proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans and specifications.

The evaluation criteria for a BTO shall be stated in the Instructions to Bidders.

The Agency/LGU concerned shall award the contract to the bidder whose proposed tolls/fees/rentals/charges in case of BOT, BOO, CAO, DOT, ROT, ROO, BTO, and other similar schemes, or proposed schedule of amortization payments in case of BT, BLT, BTO, and other similar schemes, are determined to have the lowest present value. However, in the case of BT, BLT and BTO schemes, a Filipino project proponent who submits an equally advantageous bid with exactly the same price and technical specifications as that of a foreign project proponent shall be given preference.

d. For other contractual arrangements which are a combination of any of the above and/or which have been approved by the President of the Philippines, assessment and comparison of the financial proposal of the bidders shall be based upon the present value of the amortization payments and/or present value of the proposed toll fees, and other charges and/or other types of payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans and specifications, as recommended by the ICC and approved/authorized by the President of the Philippines.

e. For projects that are not public utilities where the Agency/LGU concerned requires payments to be made by the project proponent to the government, the assessment and comparison of the financial proposals of bidders may be based on the present value of proposed payments. The Agency/LGU concerned shall award the contract to the bidder whose proposed payments are determined to have the highest present value.

The second stage evaluation shall be completed by the PBAC of the concerned Agency/LGU within fifteen (15) calendar days from the date the first stage evaluation shall have been completed.

Sec. 8.3. *Right to Reject All Bids.* ~ The Agency/LGU concerned reserves the right to reject any or all bids, waive any minor defects therein and accept the offer most advantageous to the government.

RULE 9 NEGOTIATED CONTRACT

Sec. 9.1. *Direct Negotiation.* ~ Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:

a. If, after advertisement, only one project proponent applies for pre-qualification and it meets the pre-qualification requirements, after which it is required to submit a bid/proposal which is subsequently found by the Agency/LGU to be complying;

b. If, after advertisement, more than one project proponent applied for pre-qualification but only one meets the pre-qualification requirements, after which it submits a bid proposal that is found by the Agency/LGU to be complying;

c. If, after pre-qualification of more than one project proponent, only one submits a bid which is found by the Agency/LGU to be complying;

d. If, after pre-qualification, more than one project proponent submit bids but only one is found by the Agency/LGU to be complying;

In such events however, any disqualified bidder may appeal the decision of the concerned Agency/LGU to the Head of Agency in case of national projects, or to the Department of Interior and Local Government (DILG) in case of local projects within fifteen (15) working days from receipt of the notice of disqualification. The Agency/LGU concerned shall act on the appeal within forty-five (45) working days from receipt thereof. The decision of the Agency concerned or the DILG, as the case may be, shall be final and immediately executory.

Sec. 9.2. *Unsolicited Proposals.* ~ Unsolicited proposals may likewise, subject to the conditions provided under Rule 10, be accepted by an Agency/LGU on a negotiated basis.

Sec. 9.3. *Conditions for Negotiated Projects.* ~ In addition to the above requisites for negotiated projects, ICC must prescribe the reasonable rate of return prior to negotiation and/or call for comparative proposals. The appropriate government regulatory body must approve the rates and the adjustment formula therefor incorporated in the contract, prior to award. In the absence of a regulatory body, ICC approval shall suffice.

Sec. 9.4. *Financial and Technical Evaluation of Negotiated Contracts.* ~ In so far as applicable, the same rules provided for the evaluation of the technical and financial aspects of bid proposals shall be applied in the evaluation of negotiated contracts authorized in the Act and these IRR.

RULE 10 UNSOLICITED PROPOSALS

Sec. 10.1. *Requisites for Unsolicited Proposals.* – Any Agency/LGU may accept unsolicited proposals on a negotiated basis provided that all the following conditions are met:

a. the project involves a new concept or technology and/or is not part of the list of priority projects;

b. no direct government guarantee, subsidy or equity is required; and

c. the Agency/LGU concerned has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty (60) working days. In the event that another project proponent submits a price proposal lower than that submitted by the original proponent, the latter shall have the right to match said price proposal within thirty (30) working days. Should the original project proponent fail to match the lower price proposal submitted within the specified period, the contract shall be awarded to the tenderer of the lowest price. On the other hand, if the original project proponent matches the submitted lowest price within the specified period, he shall immediately be awarded the project.

Sec. 10.2. *New Technology.* ~ The project proponent proposing a project involving a new concept or technology shall incorporate in its proposal information regarding said new concept or technology which it should have directly, or through any of its key members, successfully implemented at a scale similar to the proposed project. The information disclosed must be in sufficient detail so as to allow the Agency/LGU to properly evaluate the new concept or technology. Additionally, the new technology must possess at least one of the following attributes:

a. A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/economic disturbances or disruptions during either the project implementation/ construction phase or the operation phase; or

b. A process for which the project proponent or any member of the proponent joint venture/consortium possesses exclusive rights, either world-wide or regionally; or

c. A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights.

Sec. 10.3. *Projects Ineligible for Unsolicited Proposals.* ~ Projects included in the List of Priority Projects, as defined under Section 2.3 shall not be eligible for unsolicited proposals, unless involving a new concept or technology. Additionally, any component of an approved solicited project shall not be eligible for any unsolicited proposal. For projects, which are not part of the List, the Agency/LGU has the discretion to determine which may be opened to unsolicited proposals or publicly bid out.

Sec. 10.4. *Government Undertakings for Unsolicited Proposals.* ~ As a general rule, unsolicited proposals can avail of the different forms of government support as enumerated under Rule 13, Section 13.2 b (ii), except for direct government guarantees, direct government subsidy or government equity. The ICC shall determine the scope and specific forms of government undertaking as defined in Section 13.2 b that an unsolicited proposal may be granted.

The sale or lease of government assets, including among others, right of way, to project proponents shall not be considered as subsidy or equity.

Sec. 10.5. *Submission of a Complete Proposal.* ~ For a proposal to be considered by the Agency/LGU, the proponent has to submit a complete proposal which shall include a feasibility study, company profile as outlined in Annex A, and the basic contractual terms and conditions on the obligations of the proponent and the government. The Agency/LGU shall acknowledge receipt of the proposal and advise the proponent whether the proposal is complete or incomplete. If incomplete, it shall indicate what information is lacking or necessary.

Sec. 10.6. *Evaluation of Unsolicited Proposals.* ~ The Agency/LGU is tasked with the initial evaluation of the proposal. The Agency/LGU shall: 1) appraise the merits of the project; 2) evaluate the qualification of the proponent; and 3) assess the appropriateness of the contractual arrangement and reasonableness of the risk allocation. The Agency/LGU is given sixty (60) days to evaluate the proposal from the date of submission of the complete proposal. Within this 60-day period the Agency/LGU, shall advise the proponent in writing whether it accepts or rejects the proposal. Acceptance means commitment of the Agency/LGU to pursue the project and recognition of the proponent as the "original proponent". At this point, the Agency/LGU will no longer entertain other similar proposals until the solicitation of comparative proposals. The implementation of the project, however, is still contingent primarily on the approval of the appropriate approving authorities consistent with Section 2.7 of these IRR, the agreement between the original proponent and the Agency/LGU of the contract terms, and the approval of the contract by the ICC or Local Sanggunian.

Sec. 10.7. *Treatment of More than one Proposal for the Same or Similar Project.* ~ The Implementing Agency reserves its option to reject all proposals and bid out the project instead. However, if the Agency/LGU opts to implement the project via the unsolicited mode, it should evaluate 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 during the invitation for comparative proposals as defined under Section 10.11

Sec. 10.8. *ICC/Local Sanggunian Clearance of Unsolicited Proposals.* – The Head of Agency/LGU shall secure ICC/Sanggunian clearance of the unsolicited proposal prior to negotiation with the original proponent. An unsolicited proposal shall be submitted to the ICC/Sanggunian only upon official endorsement by the Head of the concerned Agency/LGU stating that the project is part of or consistent with the Agency/LGU development programs and may be prosecuted under any of the contractual arrangements authorized under these IRR. ICC/Local Sanggunian shall approve the project in accordance with the guidelines hereto attached as Annex B, set the negotiating parameters and prescribe the reasonable rate of return for the project, including the reasonable internal rate of return on equity.

Sec. 10.9. *Negotiation With the Original Proponent.* ~ Immediately after ICC/Local Sanggunian's clearance of the project, the Agency/LGU shall proceed with the in- depth negotiation of the project scope, implementation arrangements and concession agreement, all of which will be used in the Terms of Reference for the solicitation of comparative proposals. The Agency/LGU and the proponent are given ninety (90) days upon receipt of ICC's approval of the project to conclude negotiations. The Agency/LGU and the original proponent shall negotiate in good faith. However should there be unresolvable differences during the negotiations, the Agency/LGU shall have the option to reject the proposal and bid out the project. On the other hand, if the negotiation is successfully concluded, the original proponent shall then be required to reformat and resubmit its proposal in accordance with the requirements of the Terms of Reference to facilitate comparison with the comparative proposals. The Agency/LGU shall validate the reformatted proposal if it meets the requirements of the TOR prior to the issuance of the invitation for comparative proposals.

Sec. 10.10. *Tender Documents.* ~ The qualification and tender documents shall be prepared along the lines specified under Rules 4 and 5 hereof. The concession agreement that will be part of the tender documents will be considered final and non-negotiable by the challengers. Proprietary information shall, however, be respected, protected and treated with utmost confidentiality. As such, it shall not form part of the bidding/tender and related documents.

Sec. 10.11. *Invitation for Comparative Proposals.* ~ The Agency/LGU shall publish the invitation for comparative or competitive proposals only after ICC/Local Sanggunian issues a no objection clearance of the draft contract. The invitation for comparative or competitive proposals should be published at least once every week for three (3) weeks in at least one (1) newspaper of general circulation. It shall indicate the time, which should not be earlier than the last date of publication, and place where tender/bidding documents could be obtained. It shall likewise explicitly specify a time of sixty (60) working days reckoned from the date of issuance of the tender/bidding documents upon which proposals shall be received. Beyond said deadline, no proposals shall be accepted. A pre-bid conference shall be conducted ten (10) working days after the issuance of the tender/bidding documents.

Sec. 10.12. *Posting of Bid Bond by Original Proponent.* ~ The original proponent shall be required at the date of the first date of the publication of the invitation for comparative proposals to submit a bid bond equal to the amount and in the form required of the challengers.

Sec. 10.13. *Simultaneous Qualification of the Original Proponent.* ~ The Agency/LGU shall qualify the original proponent based on the provisions of Rule 5 hereof, within thirty (30) days from start of negotiation. For consistency, the evaluation criteria used for qualifying the original proponent should be the same criteria used in the Terms of Reference for the challengers.

Sec. 10.14. *Submission of Proposal.* ~ The bidders are required to submit the proposal in three envelopes at the time and place specified in the Tender Documents. The first envelope shall contain the qualification documents, the second envelope the technical proposal as required under Sec. 7.1. (b), and the third envelope the financial proposal as required under Sec. 7.1. (c).

Sec. 10.15. *Evaluation of Proposals.* ~ In terms of procedure, the evaluation will be in three stages: Stage 1 is the evaluation of qualification documents; Stage 2, the technical proposal; and Stage 3, the financial proposal. Only those bids which passed the first stage will be considered for the second stage and similarly, only those which pass the second stage will be considered for the third stage evaluation. The Agency/LGU will return to the disqualified bidders the remaining envelopes unopened, together with a letter explaining why they were disqualified. The criteria for evaluation will follow Rule 5 for the qualification of bidders and Rule 8 for the technical and financial proposals. The time frames under Rules 5 and 8 shall likewise be followed.

Sec. 10.16. *Disclosure of the Price Proposal.* ~ The disclosure of the price proposal of the original proponent in the Tender Documents will be left to the discretion of the Agency/LGU. However, if it was not disclosed in the Tender Documents, the original proponent's price proposal should be revealed upon the opening of the financial proposals of the challengers. The right of the original proponent to match the best proposal within thirty (30) working days starts upon official notification by the Agency/LGU of the most advantageous financial proposal.

RULE 11

AWARD AND SIGNING OF CONTRACT

Sec. 11.1. *Recommendation to Award.* ~ Within seven (7) calendar days from the date the financial evaluation shall have been completed, the Agency/LGU PBAC will submit a recommendation of award to the Head of Agency/LGU. The PBAC will prepare and submit a detailed evaluation/assessment report on its decision regarding the evaluation of the bids and explain in clear terms the basis of its recommendations.

Sec. 11.2. *Decision to Award.* – Within seven (7) calendar days from the submission by PBAC of the recommendation to award, the Agency/LGU Head shall decide on the award. The approval shall be manifested by signing and issuing the Notice of Award to the awardee within seven (7) calendar days from approval thereof.

Sec. 11.3. *Notice of Award* ~ The Notice of Award shall indicate, among others, that the awardee must submit within thirty (30) calendar days from official receipt of the Notice of Award the following:

- a. prescribed performance security;
- b. proof of commitment of equity contribution as specified by the Agency/LGU and subject to current monetary rules and regulations, and indications of financing resources;
- c. in the case of a joint venture/consortium, the agreement indicating that the members are jointly, severally and solidarily liable for the obligations of the project proponent under the contract; or
- d. in case a project company is formed, proof of registration in accordance with Philippine laws.
- e. For negotiated contracts and for projects which have been granted a natural monopoly or where the public has no access to alternative facilities, approval by the concerned regulatory bodies of the proposed tolls/fees/rentals/charges. In the absence of a regulatory agency for the project, ICC/Local Sanggunian clearance will suffice.
- f. Such other conditions imposed by the Agency/LGU.

In turn, within seven (7) calendar days upon receipt of the foregoing requirements for award, the Agency/LGU will advise the awardee whether or not its submission is satisfactory. Failure to meet the requirements within the prescribed 30-day period will result in confiscation of the bid security.

Sec. 11.4. *Withdrawal of a Member*. ~ The withdrawal of any member of the joint venture or consortium, or its pre-qualified contractors could be a ground for disqualification or cancellation of the contract respectively, and forfeiture of the proponent's bid or performance security. The concerned Agency/LGU may, however, proceed with the award of the contract or the implementation of the project if, upon its determination, it finds that the other members of the joint venture or consortium or its contractors are still capable of successfully carrying out the project or that they have provided a suitable and acceptable substitute with equal or better qualifications.

Sec. 11.5. *Validity of Bids*. ~ The award of contract shall be made within the period of the validity of the bids. The required bid security shall be valid for a reasonable period but in no case beyond one hundred eighty (180) calendar days following the opening of the bids. Bid securities shall be returned to the unsuccessful bidders as soon as the contract with the successful bidder has been approved by the Head of Agency/LGU concerned in accordance with Sections 11.3., 11.7. and 12.1. hereof.

Sec. 11.6. *Extension of Validity of Bids*. ~ When an extension of validity of bids is considered necessary, those who submitted bids shall be requested in writing to extend the validity of their bids before the expiration date. However, bidders shall not be allowed to modify or revise the price or other substance of their bids.

Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bids should be required to provide a suitable extension of bid security.

Sec. 11.7. *Conditions for Approval of Contract*. ~ The Head of Agency/LGU shall ensure that all of the following conditions have been complied with before approving the contract:

- a. Submission of the required performance security as prescribed under Section 12.7 hereof;

b. Proof of sufficient equity from the investors and firm commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project;

c. ICC clearance of the contract on a no-objection basis.

Failure by the winning project proponent to submit the requirements prescribed under items a, b and c above within the time period specified by the concerned Agency/LGU in the Notice of Award or failure to execute the contract within the specified time shall result in the disqualification of the bidder, as well as the forfeiture of the bid security of the bidder.

Sec. 11.8. *Execution of the Contract.* ~ The successful bidder should sign the contract within seven (7) calendar days from receipt of the advice of the Agency/LGU that all requirements for award, as provided for in Section 11.3. are fully complied with.

In the event of refusal, inability or failure of the bidder with the lowest complying evaluated bid to make good his bid by entering into contract with the Government within the time provided therefor, the Agency/LGU concerned shall forfeit its bid security. In such an event the Agency/LGU concerned shall consider the next complying and qualified lowest evaluated bid for award. If the same shall likewise refuse or fail to enter into contract with the government, his/her bid security shall likewise be forfeited and the Agency/LGU concerned shall consider the next complying and qualified lowest evaluated bid, and so on until a contract shall have been entered into. In the event that the concerned Agency/LGU is unable to execute the contract with any of the complying and qualified bidders due to the refusal of the latter, a failure of bidding will be declared and subject the project to a rebidding.

Each unsuccessful bidder shall also be notified of the award through official notices/communications. Notices of Award shall be made available to the public when requested.

Sec. 11.9. *Failure of Bidding.* ~ When no complying bids are received or in case of failure to execute the contract with a qualified and contracting bidder due to the refusal of the latter, the bidding shall be declared a failure. In such cases, the project shall be subjected to a rebidding.

RULE 12 CONTRACT APPROVAL AND IMPLEMENTATION

Sec. 12.1. *Period to Approve Contract.* ~ The Head of Agency/LGU concerned shall approve/disapprove the contract within fifteen (15) calendar days from the date that the winning project proponent has signed the contract. Approval of the contract shall be without prejudice to the obligation of the Agency/LGU concerned and the winning project proponent from securing such other government approvals as may be required under existing laws, rules and regulations. Among others, the winning project proponent shall be responsible for securing the necessary and appropriate environmental clearances from the DENR prior to actual project construction in accordance with existing laws, rules and regulations. The DENR shall act on the environmental clearance of the project within the time frame prescribed and following the guidelines of DENR Administrative Order No. 96-37 and subsequent guidelines as may be issued from time to time. The Agency/LGU may provide the necessary assistance to the project proponent in securing all the required clearances.

Sec. 12.2. *Grant of Franchise.* ~ In case of a project requiring a utility franchise, the winning project proponent shall automatically be granted by the appropriate Agency/LGU the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals, and other charges in accordance with the schedules stipulated in the approved contract. The original franchise period as stipulated in the contract agreement may be extended, as may be

authorized by the concerned authority, provided that the total franchise period shall not exceed fifty (50) years. Provided further that the extension and the new terms and conditions of the contract will be subject to ICC's no objection clearance.

Sec. 12.3. *Contract Effectivity.* ~ The contract shall be effective upon approval thereof by the Head of Agency/LGU and upon compliance with all conditions precedent as specified in the agreement. The contract shall specify the form or proof of compliance therewith.

Sec. 12.4. *Notice of Contract Effectivity.* ~ The concerned Agency/LGU shall issue the Notice of Contract Effectivity to implement the project to the awardee not later than seven (7) calendar days from the date of the approval of the contract by the Head of Agency/LGU and compliance of conditions precedent to contract effectivity, as applicable.

Sec. 12.5. *Preparation and Approval of Detailed Engineering Design.* ~ The winning project proponent shall be responsible for the preparation of the detailed engineering designs and plans based on the prescribed minimum design and performance standards and specifications and shall submit the same to the Agency/LGU concerned. The Agency/LGU concerned shall review the detailed engineering designs and plans prepared by the project proponent in terms of its compliance with the prescribed standards and specifications, and if found acceptable, shall approve the same prior to actual project construction. This approval by the Agency/LGU concerned notwithstanding, the project proponent shall be solely responsible for the integrity of its detailed engineering designs and plans. The approval thereof by the Agency/LGU concerned does not diminish this responsibility, nor does it transfer any part of such responsibility to the Agency/LGU concerned. In the case of local projects, the LGU concerned shall ensure that the technical designs, plans, specifications, and related aspects necessary for the project's construction, operation and maintenance shall be based on relevant local and national policies, standards and guidelines. Moreover, the LGU shall consult with appropriate national regulatory bodies regarding national policies, standards, and guidelines in granting the necessary franchise.

Sec. 12.6. *Project Construction.* ~ The project proponent shall build the facility in accordance with the design and performance standards and specifications prescribed in the approved detailed engineering design. For this construction stage, the project proponent may engage the services of foreign and/or Filipino contractors that comply with the legal requirements as prescribed under Section 5.4.a. In the case of foreign contractors, Filipino labor shall be employed in the different phases of the construction works where Filipino skills are available. Hiring of labor shall be subject to existing labor laws, rules and regulations.

Sec. 12.7. *Performance Guarantee for Construction Works.* ~ To guarantee the faithful performance by the project proponent of its obligations under the contract including the prosecution of the construction works related to the project, the project proponent shall post in favor of the Agency/LGU concerned, within the time and under the terms prescribed under the project contract, a performance security in the form of cash, manager's check, cashier's check, bank draft or guarantee confirmed by a local bank (in the case of foreign bidders bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand issued by the Government Service Insurance System (GSIS) or by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:

- a. *Cash, manager's check, cashier's check, irrevocable letter of credit, bank draft* – a minimum of two percent (2%) of the total Project Cost.
- b. *Bank Guarantee* – a minimum of five percent (5%) of the total Project Cost.
- c. *Surety Bond* – a minimum of ten percent (10%) of the total Project Cost.

Sec. 12.8. *Performance Guarantee for Operation.* ~ For projects where the proponent or other third parties shall operate the project, the Agency/LGU shall determine whether the project proponent or project company will post an Operating Security, prior to the release of the Performance Security. The Operating Security will be issued to guarantee the operation of the project in accordance with the operating parameters and specifications under the contract. The Agency/LGU shall determine the amount and form thereof.

Sec. 12.9. *Supervision of Project Construction, Operation and Maintenance.* ~ The Agency/LGU concerned shall exercise technical supervision over the project activities of the project proponent. The Agency/LGU concerned shall inspect and check whether the project is constructed, operated and maintained in accordance with the approved plans, specifications, standards and costs. In the event that the Agency/LGU concerned shall find any deviation from or non-compliance with the approved plans, specifications and standards, it shall bring the same to the attention of the project proponent for the necessary corrective actions. Failure of the project proponent to correct the deviation within the time prescribed by the implementing agency may be a ground for the rescission/ termination of the contract in accordance with Section 12.19b of these IRR. Such technical supervision by the Agency/LGU concerned shall not diminish the singular responsibility of the project proponent for the proper construction, operation, and maintenance of the facility, nor does it transfer any part of that responsibility to the Agency/LGU.

Sec. 12.10. *Contract Re-opener.* ~ Where it is necessary that the contract/project has to be revised due to conditions beyond the control of the parties involved and in times of extreme and unforeseeable conditions, then such a contract re-opener may be entertained subject to the clearance on a no-objection basis by the ICC. The parties to the contract will agree on the specific conditions that will necessitate or result in a re-negotiation and modification of some or all of the substantial provisions of the contract. In case the amendments in the contract involve an increase in the amount or a change in the form of government undertakings or ICC prescribed parameters or contractual provisions, then such changes and/or amendments will require ICC clearance. Similarly for negotiated contracts, approval of the appropriate regulatory body should be secured for any changes in base rates and/or parametric rate adjustment formula. Failure to secure ICC clearance shall render the revisions to the contract invalid. If there is no increase in the amount or change in form of government undertakings and ICC-prescribed parameters or contractual provisions, then the revised contract will be submitted to ICC for information only.

Sec. 12.11. *Milestone Bonding.* ~ The project proponent shall execute the project in accordance with predetermined milestones. As may be agreed upon in the contract, a portion of the performance security shall be released upon compliance with corresponding milestones. Failure by the project proponent to comply with these milestones may result to contract rescission and forfeiture of the performance security of the proponent in accordance with Section 12.19b hereof.

Sec. 12.12. *Release of Performance Security.* ~ (a) Construction Security. The Construction Security may be released by the Agency/LGU concerned after the issuance of the "Certificate of Completion and Acceptance" of the construction works and the acceptance by the Agency/LGU of the project as completed in accordance with the agreed standards and specifications, provided that there are no claims filed against the contractor or the surety company. (b) Operating Security. The Operating Security shall be released by the Agency/LGU concerned on the transfer date of the facility provided that it is free from any lien, charge or encumbrance.

Sec. 12.13. *Liquidated Damages.* ~ Where the project proponent of a project fails to satisfactorily complete the work within the construction period prescribed in the contract,

including any extension or grace period duly granted, and is thereby in default under the contract, the project proponent shall pay the Agency/LGU concerned liquidated damages, as may be agreed upon under the contract by the parties. The parties shall agree on the amount and schedule of payment of the liquidated damages. The performance security may be forfeited to answer for any liquidated damages due to the Agency/LGU. The amount of liquidated damages due for every calendar day of delay will be determined by the Agency/LGU. In no case however shall the delay exceed twenty percent (20%) of the approved construction time stipulated in the contract plus any time extension duly granted. In such an event the Agency/LGU concerned shall rescind the contract, forfeit the proponent's performance security and proceed with the procedures prescribed under Section 12.19. b.

Sec. 12.14. Repair and Maintenance Costs. ~ The project proponent shall, within the franchise period granted, undertake the necessary and appropriate repair and maintenance of the project in accordance with the design and performance standards prescribed in the approved contract in order to ensure that the facility operates at the desired level of service. For this purpose, and where applicable, a portion of the project's revenues equivalent to the cost of the project's repair and maintenance, as indicated in the project proponent's bid proposal shall be set aside and reserved exclusively for repair and maintenance costs of the project. For facility, an escrow account may be established for the purpose.

Sec. 12.15. Repayment Schemes. ~

12.15.1 General Classification. ~ The repayment schemes for the projects shall depend on the contractual arrangement used therefor, which shall be generally classified as follows:

a. Arrangements where the project proponent operates the facility for a fixed term and thereafter, transfers the facility to the Agency or LGU concerned (BOT, CAO, DOT, ROT);

b. Arrangements where the project proponent is allowed to own and operate the facility (BOO, ROO);

c. Arrangements where the project proponent builds and transfers the facility to the Agency or LGU concerned, but operates the facility on behalf of said Agency or LGU (BTO) through a management contract;

d. Arrangements where the project proponent does not operate the facility (BT, BLT).

For projects undertaken through arrangements described in (a) and (b) above, the project proponents shall be repaid by authorizing it to collect reasonable tolls, fees, and charges for a fixed term. In the case of arrangements described in (a), such term shall in no case exceed fifty (50) years. However, for arrangements described in (b), the project proponent, upon renewal of its franchise or contract with the Agency or LGU, may be allowed to continue collecting toll, fees, charges and rentals for the operation of the facility or the provision of the service.

Projects undertaken through arrangements described in letter (c) above, may be repaid by either of the following two options. Under the first option, the Agency/LGU provides amortization payments as may be appropriate and reasonable. Toll, fees, rentals and charges that the project proponent may collect while operating the facility on behalf of the agency may be applied directly to the amortization payments. Moreover, the facility operator may be repaid by the Agency/LGU through a management fee as may be incorporated in the management contract entered between the Agency/LGU and the project proponent. Under the second option, the proponent may be allowed to directly collect tolls, fees, rentals and charges for a fixed term. Projects undertaken through arrangements in (d) above may be repaid by the Agency/LGU through amortization payments as may be appropriate and reasonable. Where applicable, the

proponent may likewise be repaid in the form of a share in the revenue of the project or other non-monetary payments, such as, but not limited to the grant of commercial development rights or the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirement that only Filipino citizens or in the case of a corporation only those with at least 60% Filipino equity will be allowed to own land.

e. Arrangements which are variations of the foregoing and/or which have been approved /authorized by the President of the Philippines upon the recommendation of the ICC.

Projects undertaken through arrangements prescribed under (e) may be repaid through any schemes as recommended by the ICC and approved/authorized by the President of the Philippines.

12.15.2. *Tolls, fees, rentals and charges.* ~

a. *General.* ~ The tolls, fees, charges and rentals that a project proponent may generally charge for the use of the facility shall be those incorporated in the contract and, if required by existing laws, approved by the appropriate government regulatory bodies. The proposed tolls, fees, and charges shall be considered by the Agency or LGU in the evaluation of the bid, taking into account the reasonableness thereof to the end-users of the facility.

Exception. ~ For negotiated contracts, or for projects that are considered a natural monopoly or where the public has no access to alternative facilities, the tolls, fees, charges and rentals incorporated in the contract shall be made subject to the approval of the appropriate government regulatory bodies. In the absence of a regulatory body for the project, ICC approval shall suffice. Said regulatory bodies or the ICC shall approve tolls, fees, or charges based on a reasonable rate of return to be based on the total project cost. In case of negotiated contracts, the rate of return shall be determined by the ICC prior to the negotiation or call for proposals for the project. For negotiated contract for public utility projects that are natural monopolies (hereinafter referred to as public utility monopolies), the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve percentum (12%). ICC shall determine whether or not a project or an activity that is part of a project is a public utility monopoly.

In case the project is negotiated and composed of both public utility monopoly and non-public utility components, the twelve percent (12%) cap on the return on rate base shall be imposed only on the public utility monopoly component. The concerned regulatory agency shall set the guidelines and rules to be applied in determining which amounts of the project cost and operating expenses relate to the public utility monopoly function of the project.

12.15.3. The right of foreign contractors/investors under BOT, BT, BOO, BLT and other similar schemes to convert its peso earnings into foreign currency and to remit the same to its home country shall be governed by existing monetary rules and regulations. The Agency/LGU concerned shall therefore include as part of the bid documents pertinent monetary rules and regulations that may be applicable to said right of foreign contractor/investor to serve as a guide to prospective contractors/investors. However, the prospective project proponent who may call on the assistance of the concerned government agency is encouraged to confer with the Philippine monetary authorities as to the financial implications of said rules and regulations.

Sec. 12.16. *Revenue Sharing.* ~ The Agency/LGU concerned may share in the revenue from the operation of the project proponent in the form of either a fixed fee or a certain percentage of the gross revenue or a combination of both, provided that the same is indicated in the bidding documents and included in the contract.

Sec. 12.17. *Adjustments of tolls/fees/rentals/charges.* ~ The tolls, fees, rentals and charges may be subject to adjustment during the life of the contract, based on the predetermined formula and official price indices prescribed in the Instructions to Bidders and the approved contract. As provided under Section 4.2.h of these IRR, such formula shall take into account the reasonableness of the same to the end-users by the concerned Agency/LGU. For this purpose, the concerned Agency/LGU may consult with the proper regulatory body or undertake such other activities to ensure the reasonableness of such formula. The monitoring of the consistency of the proposed adjustments of tolls, fees, rentals and charges with the prescribed rate of return, if any, shall be undertaken by the appropriate regulatory body or Implementing Agency/LGU.

Price indices shall be based on the official issuances by the National Statistics Office (NSO), Bangko Sentral ng Pilipinas (BSP), Department of Labor and Employment (DOLE) and other sources authorized by the Agency/LGU concerned prior to bidding.

Sec. 12.18. *Audit of Collections.* ~ All revenues and receipts pertaining to or accruing to the government derived from any project prosecuted under the Act and these IRR, including expenditures or use of funds and property, owned or held in trust by, or pertaining to the government, shall be subject to examination audit by the Commission on Audit (COA). Moreover, in order to ensure that the mandated return on rate base is complied with, COA shall audit the financial statements of projects, which are negotiated, and public utility monopoly.

Sec. 12.19. *Contract Termination/Rescission.* ~ The contract may be terminated/rescinded in the following events:

a. If the Agency/LGU concerned fails to comply with any major obligation prescribed in the approved contract and such failure is not remediable or if remediable shall remain unremedied for an unreasonable length of time, the project proponent may, with prior notice to the concerned Agency/LGU specifying the turn-over date, terminate the contract. In such an event, the project proponent shall be reasonably compensated by the government for equivalent or proportionate contract cost as defined in the contract.

b. If the project proponent refuses or fails to perform any of the provisions of the approved contract with such diligence as will ensure the project's completion, operation and maintenance in accordance with the prescribed technical and performance standards; otherwise fails to satisfy any of the contract provisions including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of the approved contract, the Agency/LGU shall notify the project proponent in writing of the same and if not corrected within the time specified, the Agency/LGU concerned may rescind the contract. In such an event, the Agency/LGU concerned may either:

- i. Take over the facility and assume all attendant liabilities thereof; or
- ii. Allow the project proponent's lenders/creditors/banks to assign the project to another.

In case the default occurred during the project construction stage, the Agency/LGU concerned shall likewise forfeit the performance security of the erring project proponent.

c. In the event that the project/contract is revoked, cancelled, or terminated by the Government through no fault of the project proponent or by mutual agreement, in which case the Government shall compensate the said project proponent for its actual expenses incurred in the project plus a reasonable rate of return thereon not exceeding that stated in the contract as of the date of contract termination, provided that the interest of the Government in these instances shall be duly insured with the Government Service Insurance System (GSIS) or any other insurance entity duly accredited by the Office of the Insurance Commissioner, provided

further that the cost of the insurance coverage shall be included in the terms and conditions of the approved contract.

For contract rescission under Section 12.19. b above, the concerned Agency/LGU shall indicate, prior to bidding, whether it intends to take over the facility and assume all attendant liabilities thereof or allow the concerned project lenders/creditors/banks to assign the same to another, provided that the assignee is acceptable to the government, by stipulating the same in the bidding documents, specifically in the draft contract.

Sec. 12.20. *Venue for Litigation.* ~ The venue for the resolution of disputes, arbitration or litigation shall be as mutually agreed upon by the parties to the contract. In default thereof, the venue shall be in the Philippines.

Sec. 12.21. *Transfer of the Facility.* ~ Under contractual arrangements involving transfer of the facility to the Agency/LGU such as BOT, BT, BLT, BTO, CAO, DOT, and ROT, the transfer or turnover will necessarily include the transfer of full legal ownership over the project in favor of the government, subject to any existing liens as may be agreed upon in the project agreement.

RULE 13 INVESTMENT INCENTIVES

Sec. 13.1. *Sources of Financing.* ~ In the construction of projects authorized under the Act and these IRR, the project proponent may obtain the required financing for the construction of the project from foreign and/or domestic sources.

For projects which have difficulties in sourcing funds, the same may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign government or institutions not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent.

Sec. 13.2. *Investment Incentives.* ~ The following incentives will be made available to project proponents:

a. Fiscal Incentives.

i. Projects undertaken through contractual arrangements authorized under these IRR costing more than P1 billion shall, upon registration with the Board of Investments (BOI) be entitled to incentives as provided for under the Omnibus Investment Code.

ii. Projects undertaken through contractual arrangements authorized under these IRR, costing P1 billion or less may, upon registration with BOI avail themselves of incentives provided for under the Omnibus Investment Code subject to inclusion of the project activity or sector in the current Investment Priorities Plan of the Board of Investments (BOI).

iii. Projects undertaken through contractual arrangements authorized under these IRR shall also be entitled to other incentives as provided under existing laws, such as, but not limited to incentives under P.D. 535 (1974), otherwise known as the "Tourism Incentives Program of 1974," and R.A. 7156, otherwise known as the "Mini-Hydroelectric Power Incentives Act".

iv. LGUs may provide for additional tax incentives, exemptions, or reliefs subject to the provisions of the Local Government Code of 1991 and other pertinent laws.

b. Government Undertakings. Government may provide any form of direct or indirect support or contribution such as but not limited to the following, subject to the conditions for unsolicited proposals as specified under Section 10.1. hereof:

i. *Cost Sharing*. This shall refer to the Agency/LGU concerned bearing a portion of capital expenses associated with the establishment of an infrastructure development facility such as the provision of access infrastructure, right-of-way, and any partial financing of the project, subject to Section 13.1 above.

ii. *Credit Enhancements*. This shall refer to direct and indirect support to a development facility by the project proponent and/or Agency/LGU concerned, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the contract. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements may include but are not limited to government guarantees on the performance or the obligation of the Agency/LGU under its contract with the proponent, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the Government or any of its agencies or local government units assumes full or partial responsibility for or assists in maintaining the financial standing of the project proponent or project company in order that the project company/proponent avoids defaulting on the project loans, subject to fulfillment of the project proponent/company of its undertakings and obligations under the project agreement.

iii. *Direct Government Subsidy*. This shall refer to an agreement whereby the Government, or any of its agencies or local government units will (a) defray, pay for or shoulder a portion of the project cost or the expenses and costs in operating the project, (b) condone or postpone any payments due from the proponent, or (c) contribute any property or assets to the project, all without receiving payment or value from the project company for such payment, contribution or support.

iv. *Government Equity*. This shall refer to the subscription by the Government or any of its agencies or local government units of shares of stock or other securities convertible to shares of stock of the project company, whether such subscription will be paid by the money or assets.

RULE 14 COORDINATION AND MONITORING OF PROJECTS

Sec. 14.1. *The Coordinating Council of the Philippine Assistance Program*. ~ The Coordinating Council of the Philippine Assistance Program (CCPAP) shall be responsible for the coordination and monitoring of projects implemented under contractual arrangements or schemes authorized under these IRR. Project monitoring will be undertaken to ensure that the project complies with these IRR including the proponent's required environmental clearances from the DENR. For this purpose, concerned government Agencies/LGUs shall periodically submit to the BOT Center of the CCPAP information on the status of projects implemented by them. In addition, all concerned government Agencies/LGUs shall submit to the BOT Center a copy of all unsolicited proposals that they receive and all other related documents. The BOT Center is also hereby mandated to guide the Agency/LGU in the preparation and development of the project.

At the end of every calendar year, the CCPAP shall report to the President and to Congress on the progress of all projects implemented under these IRR.

Sec. 14.2. *BOT Units*. ~ Each concerned Agency/LGU shall create a BOT Unit headed by a senior official of the Agency/LGU and shall designate a senior official as BOT Project Development Officer (PDO), who shall be responsible for monitoring projects authorized under the Act and these IRR. The PDO shall closely coordinate with the CCPAP.

Sec. 14.3. *Informing Congress.* ~ A report regarding the salient features or a copy of each contract involving a project entered into under the provisions of these IRR shall be submitted to Congress for its information.

RULE 15 FINAL PROVISIONS

Sec. 15.1. *IRR Committee.* ~ The Committee constituted pursuant to Section 11 of R.A. 6957, as amended by R.A. 7718, may be reconvened by its Chairman, at his instance or upon the recommendation of any members of the Committee, to formulate and prescribe amendments to these IRR consistent with the letter and spirit of the Act. No amendments to these IRR may be adopted and prescribed by the Committee without due public consultation/hearing and publication.

Sec. 15.2. *Effectivity of Amendments.* ~ Amendments to these IRR shall become effective fifteen (15) days after its complete publication in at least one (1) newspaper of general circulation, unless the Committee specifies otherwise. For projects advertised for bidding or for invitation for comparative or competitive proposals before the effectivity of the amendments to these IRR, the previous IRR shall be in force.

Annex A

COMPANY PROFILE

1. Name:
2. Business Address/Tel./Fax Nos./Cable Address:
3. Projects of interest:
4. No. of Years in Operation:
5. Description/History of the Company:
 - ~ organizational structure
 - ~ ownership structure
 - ~ field of specialization
6. Organizational Affiliation
7. Key Personnel in the Organization
 - ~ corporate officers/hierarchy/expertise
 - ~ staff members/experience
8. List of Completed Projects
 - ~ brief description
 - ~ types of services
 - ~ location
 - ~ cost of project/contract amount
 - ~ implementation period

~ client

9. Latest Financial Statements

~ Income Statement

~ Balance Sheet

Annex B

ICC Guidelines for the Review of Projects Proposed to be Financed Under the Various Private Sector Investment Schemes

1.0 Legal Basis

Republic Act No. 6957 entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes", as amended by Republic Act No. 7718, mandates the Investment Coordination Committee (ICC) of the NEDA Board:

1.1 To approve national Build-Operate-Transfer (BOT) projects costing up to P300 million and local BOT projects to be implemented by local government units (LGUs) costing above P200 million. NEDA Board approval is required for national BOT projects costing above P300 million, including NEDA Board confirmation of LGU projects costing above P200 million; and,

1.2 To determine the rate of return on investment for negotiated BOT projects, prior to negotiation and/or call for proposals.

2.0 Rationale for ICC Review and Approval. ICC review and approval of BOT projects and contracts is undertaken: (a) To determine the technical, financial, economic and social feasibility/viability of BOT projects; (b) To determine the appropriateness of the private sector financing scheme for the BOT projects; (d) To determine the appropriateness of the contractual arrangements for the BOT project; (e) To determine the acceptability of support arrangements from the national government and/or government-owned and controlled corporations (GOCCs), if any, to the BOT project; and (f) To ensure that provisions of the BOT contract are consistent with existing laws and ICC decisions.

3.0 ICC Review and Approval Process

3.1 ICC Review and Approval of BOT Projects

The ICC review and approval of BOT projects shall be based on a per project analysis. Solicited and unsolicited BOT project proposals shall be evaluated uniformly, regardless of the extent and magnitude of national government and/or GOCC support.

Where provided by the BOT Law and allowed by the ICC, government support may be extended to a project upon establishing that the project is economically viable and that without government support, such need or service may not or cannot be provided by the private sector. Government support shall refer to the provision of financial incentives (e.g., tax holidays, tax credit) as provided for in the Omnibus Investments Code and other incentives as provided under existing laws and/or credit enhancements which may come in the form of development rights, among other things.

Government support may also take the form of cost sharing such as the provision of project-related infrastructure or access infrastructure, direct government appropriations or equity contribution, among others. It may also include indirect government guarantees such as performance undertakings, minimum revenue guarantees, among other things, and direct government guarantees.

A BOT project will be presented to the ICC-Technical Board only after the Department of Finance (DOF) has given its written clearance that the BOT sponsor agency, GOCC or LGU has made representations regarding the provision of national government exposure, if any, to the project.

3.1.1 Scope. The scope of the review/approval of BOT projects shall focus on the following:

a. Inclusion of the BOT project in the lists of development programs of the concerned Agency/LGU. The ICC shall look at the BOT project's role in furthering the implementation of a current master plan or contributing to the achievement of investment targets of the sector.

b. Economic viability of the BOT project. The economic viability indicators of the BOT project shall be evaluated against a hurdle rate officially adopted by the ICC.

c. Financial viability of the BOT project. The analysis of the financial indicators shall be the basis of the ICC decision on the appropriateness of the BOT financing scheme for the project. The present value (PV) of the project's net cash flow and the financial internal rate of return (FIRR) of the project on the equity involved and to the government, where government support is involved, shall be computed.

d. Risk/sensitivity analyses of the financial indicators. A sensitivity analyses shall be undertaken to determine whether the BOT project will remain financially viable if changes in the assumptions used in the projections were to take place. The sensitivity analyses should, at the least, consider the following scenarios: (i) increase in projected costs by 10 and 20 percent; (ii) decrease in projected revenues by 10 and 20 percent; and (iii) a combination of (i) and (ii).

e. Indication of preparedness, including public acceptability, of the BOT project. Project preparedness shall be assessed against potential right-of-way problems, availability of relocation plans, any potential legal and technical issues, among other things. A report on public consultations as may be conducted by the concerned Agency/LGU, as part of its project preparation activities may be submitted to the ICC for information and reference.

f. Justification on the choice of contractual arrangement as defined in Section 2(a) of RA 7718, when such information is available.

The ICC evaluation on the appropriate contractual arrangements for the BOT project shall be guided by (i) legal concerns such as Constitutional limitations or franchise issues which might affect the BOT project's ability to be implemented under this Act, and (ii) the advantages and disadvantages of implementing the BOT project under different contractual arrangements.

3.1.2 The ICC approval shall mean the appropriateness of private sector financing for the BOT project and the acceptability of the national government and/or GOCC support being requested.

3.1.3 Applicability and Documentation Requirement. Submission of BOT proposals to the ICC for evaluation/approval shall include the following:

a. Feasibility study, which should also include:

A matrix that outlines the distribution of the risks (political, commercial, legal, development, construction, and operations and management) among the government (proponent agency/GOCC, national government oversight agencies, local government) and the private sector (constructor and financier);

An indication of the nature and magnitude of the support arrangement being requested by the BOT proponent to be provided by the national government/GOCC to the BOT project, if any; and,

A cash flow which reflects the foreign exchange inflows and outflows of the BOT project throughout the whole construction and cooperation periods.

b. Accomplished ICC Project Evaluation Form for BOT Projects;

c. Endorsements by the Regional Development Councils (RDCs) for region-based BOT proposals, including memoranda of agreement (MOA) between and among the BOT proponents, LGUs, the sponsoring agencies and other involved agencies, if any;

d. Endorsement from the DOF Corporate Affairs Group (DOF-CAG) for GOCC-sponsored BOT projects;

e. Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources – Environment Management Bureau (DENR-EMB) for the BOT project (initiation of the process of ECC application prior to ICC approval and submission of the actual ECC prior to implementation); and,

f. Location map (when applicable). The following additional documents are required for submission to other ICC member agencies:

g. Submission to the Department of Budget and Management (DBM) of the projected budgetary support requirements of the BOT project during the entire construction and cooperation periods, if any;

h. Submission to the Bangko Sentral ng Pilipinas (BSP) – Management of External Debt Department of the projected foreign exchange inflows and outflows of the BOT project during the entire construction and cooperation periods; and,

i. Submission to the DOF International Finance Group (DOF-IFG) of proposed government support arrangements for the BOT project, if any. Relatedly, the agency will have to secure the DOF-IFG's written concurrence on proposed support arrangements.

3.1.4 Evaluation Period. In accordance with Section 4 of RA 7718, the ICC and/or the NEDA Board, as appropriate, shall act on the BOT projects within 30 working days upon satisfactory compliance by the concerned Agency/LGU of the requirements. Failure to act on the BOT projects shall mean that the concerned Agency/LGU may proceed with the solicitation of proposals unless otherwise previously notified in writing by ICC.

3.1.5 All Build-Own-Operate (BOO) projects require Presidential approval. Following ICC project approval, all BOO projects are presented to the President, through the NEDA Board, for

approval. Since the President chairs the NEDA Board, NEDA Board approval already carries with it the President's approval.

3.2 ICC Review and Approval of BOT Contracts

3.2.1 ICC review of the contract will be focused on the acceptability of national government and/or GOCC support arrangements and consistency with ICC conditionalities set during the project approval stage.

3.2.2 If the final draft contract includes government support within the scope of an earlier ICC project approval and ICC conditionalities are addressed in the BOT contract, then the submission will be for the information of the ICC. Should it include provisions in addition to or different from the original ICC project approval, then the draft BOT contract will have to be reviewed by the ICC. The Department of Finance will convene and chair the ICC Technical Working Group to conduct the contract reviews.

3.2.3 The concerned Agency/LGU shall submit the final draft BOT contract to the ICC for clearance on a "no objection" basis. The ICC can approve the contract on a "no objection" basis provided that its recommendations are adopted. Otherwise, the ICC shall withhold the extension of government support/clearances to the project, until after these recommendations are sufficiently and satisfactorily addressed. This will apply to both solicited and unsolicited proposals.

3.2.4 The ICC shall act on the final draft BOT contract within fifteen working days upon submission of complete documentation. Failure to act within the prescribed period shall mean that the concerned Agency/LGU may proceed with contract signing, unless otherwise notified in writing by ICC.

3.2.5 All BOO contracts require Presidential approval. Following ICC contract approval, all BOO contracts are presented to the President, through the NEDA Board, for approval. Since the President chairs the NEDA Board, NEDA Board approval already carries with it the President's approval.

4.0 Unsolicited BOT Proposals

4.1 An unsolicited BOT proposal shall be submitted by the BOT project sponsor to the ICC. The official endorsement shall include a certification from the Head of the Agency/Sanggunian that it accepts the terms and conditions of the BOT proposal. The ICC review shall commence only upon the submission or availability of the said official endorsement.

4.2 The concerned Agency/LGU shall seek ICC approval of the project scope and the reasonable rate of return prior to a price challenge. The ICC, following guidelines described in item 5.0 below, shall determine the reasonable rate of return on investment.

4.3 The review process for unsolicited BOT proposals shall be guided by the procedures described in Section 3.

5.0 Reasonable Rate of Return

5.1 A reasonable rate of return on investment shall be determined by the ICC for negotiated BOT contracts prior to negotiation and/or call for proposals by the concerned Agency/LGU. In setting the rate, the ICC shall consider the following information as may be gathered from the prospective BOT project proponent and/or prevailing in the international and domestic market/industry:

- a. debt/equity ratio;
- b. interest rate on bank lending; and,

c. return to shareholders, among other things.

For negotiated contracts of public utility BOT projects that are monopolies, the reasonable rate of return on rate base should not exceed 12 percent.

Annex C

PROJECT EVALUATION FORMS AND GUIDELINES FOR THEIR ACCOMPLISHMENT

Summary of Information

This set of guidelines directs project proponents on how to fill out ICC BOT Project Evaluation Forms 1 to 8. These forms should be submitted together with the project feasibility study. While designed to capture information relevant in the evaluation of the project, these forms can never replace the value of a well-prepared feasibility study. The submission of these forms shall likewise include the diskettes containing, among other things, the economic and financial analysis of the project.

A. General Information. Refer to the Guidelines for Accomplishing ICC BOT PE Form No. 1

B. Market Information

The conditions of the market for a project's inputs and outputs can largely influence project performance. Market information regarding the (i) price and quantities of both supply and demand for project output as well as (ii) the supply and price of project inputs, therefore are required for the evaluation of the viability of the project.

In addition the proponent should also estimate the price elasticity of demand of the project output. Price elasticity of demand refers to the percentage change in demand for a one-percentage change in the price of the output. For example, in a toll road facility this will be the percentage decrease in the number of vehicles using the toll road for every percentage increase in toll per kilometer or entry into the facility.

C. Financial Analysis

1. Source of Financing – Refer to Guidelines for Accomplishing ICC BOT PE form No. 2.

2. Schedule of Investment Cost – Refer to guidelines for accomplishing ICC BOT PE Form No. 3.

3. Schedule of Operations and maintenance Cost – Refer to Guidelines for Accomplishing ICC BOT PE Form No. 3.

4. Schedule of Tariffs/Revenues – Refer to Guidelines for Accomplishing ICC BOT PE Form No. 5.

5. Loan Schedule – Provide a table indicating the amount of loan(s) and schedule of principal and interest amortization. State the terms of the loan, i.e. interest amortization. State the terms of the loan, i.e., interest and maturity period, including grace period, if any.

6. Provide the following: (i) income statement, (ii) balance sheet and (iii) cash flows statement. Indicate the annual tax liabilities of the project, whenever applicable. Also, provide the return on equity of the project.

7. Provide the cash flows analysis showing the financial net present value (NPV) and financial internal rate of return (FIRR) from the following perspectives: (i) total project approach, (ii) owner's perspective and (iii) government's budget perspective. State the assumptions used in the computations. A summary table may be provided.

The total project approach looks at the overall financial viability of a project, and accounts for all financial flows including subsidies received and taxes paid. From this perspective, analysis is made regardless of financing costs. As such, the cash flow items exclude loan proceeds from the receipts side and debt servicing from the expenditure side.

The analysis from the owner's perspective deviates from the total project approach in that the loan proceeds are considered an inflow from the owner's perspective and loan payments are considered outflows. The project "owner" can be a government agency, a GOCC, or private company or consortium. In the case of BOT projects where the private proponent resorts to commercial financing, it is important to obtain a realistic estimate of the commercial financing terms to be able to assess the project from the BOT proponent's perspective.

The government's budget perspective is helpful in assessing the budgetary impacts of projects. This is important in government programming and budgeting procedures. The analysis captures the sponsoring agency's, GOCC's or LGU's share in project revenues during the entire concession period. These inflows include but are not limited to (i) revenue shares, (ii) lease payment, (iii) share of assets (i.e., land, building), etc.

D. Economic Analysis

1. The analysis should use the ICC-prescribed shadow prices for labor, foreign exchange and cost of capital (hurdle rate).

2. Provide the estimated economic costs and benefits of the project. Show the unit values, whenever applicable.

3. Refer to Guidelines for Accomplishing ICC BOT PE Form No. 6.

4. Provide the cash flows statement for the economic analysis showing the economic NPV and EIRR of the project.

E. Risk Analysis

1. Project proponents shall conduct a risk analysis as it will enable them and the evaluator to predict the sensitivity of the project's viability to certain risk variables like demands for project outputs, price of input, movements in commercial interest rates and foreign exchange rates. Risk analysis is conducted to determine whether the project will remain feasible if changes in the assumption used in the calculation/projections were to take place. At the minimum, risk analysis should be conducted through a sensitivity analysis. However, project analysts are encouraged and enjoined to perform a more in-depth risk analysis through probabilistic simulations that are made possible through various computer application software.

2. Sensitivity analysis should be conducted using three scenarios: (i) increase in projected costs by 10% to 20%, (ii) decrease in revenues by 10% and 20%, and (iii) combination of the above cases. The proponent may include additional scenarios to account for the impact of risky variables other than costs and revenues on the project.

The sensitivity parameters above shall likewise be applied in the economic evaluation of projects.

3. Probabilistic simulation allows project analysts to determine the simultaneous impact of multiple risk variables on project outcomes. Computer simulations may be performed using various risk analysis software.

F. Risk Allocation Matrix. Refer to guidelines for Accomplishing ICC BOT PE Form No. 7

G. Investment Incentives. Refer to guidelines for Accomplishing ICC BOT PE Form No. 8.