NATIONAL ADMINISTRATIVE REGISTER · JULY 4, 1994

IMPLEMENTING RULES AND REGULATIONS OF RA NO. 6957, “AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR AN...

NEDA, July 04, 1994

Read online (full-text search, related cases, audio case brief): https://batas.org/library/441d96903552/

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

RULE 1

PRELIMINARY PROVISIONS

SECTION 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.
SECTION 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 R .A. No. 6957, as amended by R.A. No. 7718.

For purely Local Government Unit projects, concerned Local Government Units may formulate their own guidelines/procedures in line with the law and these Implementing Rules and Regulations.
SECTION 1.3 Definition of Terms. — For purposed of these Implementing Rules and Regulations, the terms and phrases hereunder shall be understood as follows:

a. Act — shall mean Republic Act No. 6957, as amended by Republic Act No. 7718.

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

c. Contractual Arrangements — Refers 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

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

employed in the construction of any infrastructure or development projects, including critical facilities which, for security or strategic reason, 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 charged facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years. This shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipments 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, in which the proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return by collecting tolls, fees, rentals or other charges from facility users. Under this project, the proponent which 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 an Agency/LGU 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, titled 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 as regards 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 to be built by the project proponent are integrated into the arrangement by giving the same 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 facility is turned over to the Government. The term is also used to described 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

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

needed to build to rehabilitate an infrastructure or development facility.

e. Contractor — Refers to any entity accredited under Philippine laws which may or may not be the project proponent and which shall undertake the actual construction and/or supply of equipment for the project.

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, the Regional Development Plans and Local Development Plans.

g. Direct government guarantee — Refers to an agreement whereby the Government or any of its Agencies/LGUs or 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, 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. 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.

j. Government Undertakings — refers 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.

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 2.6 and 2.7.

n. Local Government Units (LGU) — Refers to provincial, city and/or municipal government entities.

o. Negotiated Contracts — Refers 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 10.

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 implemented 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 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 said project consisting of equity and firm

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project.

r. Public Utility Projects — Refers 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.

s. Reasonable rate of return on investment and operating and maintenance cost — shall have the meaning ascribed to it in the ICC Guidelines attached hereto as Annex B.

t. Unsolicited Proposals — refers to such private sector infrastructure or development projects which may be entered into by an Agency/LGU subject to the requirements/conditions prescribed in Rule 11.

RULE 2

GENERAL PROVISION

SECTION 2.1 Authorized Contracting Government Agencies/Units. — The following are authorized to enter into contractual arrangements authorized under the Act and these IRR:

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

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

SECTION 2.2 Eligible Types of Projects. — The construction, rehabilitation, improvement, betterment, expansion, modernization, operation, financing and maintenance, of the following types of projects, 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:

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 infrastructure like piers, wharves, quays, storage, handling, ferry services and related facilities;

e. Airports, air navigation, and related facilities;

f. Power generation, 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;

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

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.

SECTION 2.3 List of Priority Projects. — Concerned Agencies/LGUs are tasked to prepare their infrastructure/development programs and to include therein a list of 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 list of priority projects require the approval of either the NEDA Board, ICC or local development councils as specified in Sections 2.6 and 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 the list of projects to the appropriate approving authority for its consideration/approval as often as is necessary.

SECTION 2.4 Publication and Notice. — All Agencies/LGUs shall provide wide publicity to 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 the approval by either the NEDA Board, ICC, or Local Development Council (LDC) of said list of priority projects, shall cause the same to be published once every six (6) months in a national newspaper of general circulation. At the discretion of the Agency/LGU concerned, the list may be published in an international newspaper of general circulation.

SECTION 2.5 Registration of Project Proponents. — Project proponents may register with the Agency/LGU, 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 at least once every six (6) months.

SECTION 2.6 Approval of National Priority Projects. — The list of national projects must be part of the Agency's development programs, and shall be approved as follows:

(a) for projects costing up to 300 million, said list shall be submitted to the ICC of the NEDA Board for approval; and

(b) more than 300 million, said list shall be submitted to the NEDA Board for approval upon the recommendation of the ICC.

The review and approval of the list of national projects, including those proposed for BOO implementation, shall be in accordance with the guidelines of the ICC, attached hereto as Annex B.

SECTION 2.7 Approval of Local Priority Projects. — For local projects to be implemented by the LGUs, the lists shall be submitted by the concerned LGU for confirmation, as follows:

(a) to the municipal development council for projects costing up to 20 million;

(b) to the provincial development council for those costing 20 up to 50 million;

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

(c) to the city development council for those costing up to 50 million ;

(d) to the regional development council or, in the case of Metro Manila projects, the Metro Manila Authority, for those costing above 50 up to 200 million; and
(e) to the ICC of the NEDA Board for those costing above 200 million.SECTION 2.8 Presidential Approval, When Required. — BOO projects 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.

SECTION 2.9 Deadline for Approval of List. — The ICC and the concerned Local Development Council (LDC) shall act on the lists of projects within 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 to act on the lists shall mean that the concerned Agency/LGU may proceed with the solicitation of proposals.

RULE 3

THE PREQUALIFICATION, BIDS, AND AWARDS COMMITTEE

SECTION 3.1 Composition. — The Head of the concerned Agency/LGU shall create for the infrastructure of development projects to be bid a Prequalification, Bids and Awards Committee (PBAC) composed as follows:

a. For Agencies:

i. At least a third ranking officer of the Agency

Chairman

ii. A legal officer

Member-Secretary

iii. One (1) technical officer knowledgeable with the technical aspects or requirements of the project, duly assigned by the Head of Agency concerned on a project-to-project basis.

Member (provisional)

iv. One (1) technical officer knowledgeable with aspects or requirements of the project from a concerned regulatory body, when applicable, to be invited by the Agency concerned on a project-to-project basis.

Member (provisional and non-voting)

v. An officer knowledgeable in finance

Member

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

Member

vii. Two (2) representatives from the private sector: one from duly recognized contractors association, and the other from either the facility users, or duly recognized accounting association.

Observers (non-voting)

viii. A representative from the Commission on Audit

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

Observer (non-voting)

ix. One (1) representative from the CCAP to be invited on a case to case basis

Observer (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).
Section 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 prequalify and bid, prequalification 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 award of the project.

SECTION 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.

SECTION 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

SECTION 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 Designs and Performance Standards and Specifications, and Economic Parameters

c. Draft Contract

d. Bid Form

e. Forms of Bid and Performance Securities

f. Other documents as may be deemed by the Agency/LGU concerned

SECTION 4.2 Instruction to Bidders. — The instruction 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 the 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 submitted , the deadline for the

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

submission of bids, permissible mode of transmission of bid proposals, etc.

d. Government undertakings such as 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 and bid security validity period.

f. Milestone bonding.

g. Method and criteria (including the minimum amount of equity) for 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 or 8.2.b 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.c hereof.

h. Formulas 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, if any.

j. Monetary rules and regulations governing foreign exchange remittances.

k Revenue sharing arrangements, if any.

l. Expected commissioning date.

SECTION 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 and foreign exchange rate 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.

SECTION 4.4 Draft Contract. — The draft contract should clearly define the basic and legal relationship between, and the rights and responsibilities of, the parties involved. Where applicable, stipulation provided for the following matters, among others, shall be included: bonds; guarantees; insurance; liquidated damages; taxes and duties; 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.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

RULE 5PREQUALIFICATION

SECTION 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 prequalification for projects covered under the provisions of the Act and these IRR.
SECTION 5.2 Publication of Invitation to Prequalify 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 project proponents to prequalify 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 Prequalify and Bid shall contain information on, among others, whether the contractor to be employed to undertake the construction work needs to be pre-identified for pre-identified for prequalification purposes or not.
SECTION 5.3 Period to Prepare Prequalification 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 Prequalify and Bid to prepare their respective prequalification 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 Prequalify and Bid. In any event, the deadline for submission of prequalification statements shall be indicated in the published Invitation to Prequalify and Bid.
SECTION 5.4 Prequalification Requirements. — To prequalify, 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 proponent and facility operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos.

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 and owned up to at least sixty percent (60%) by Filipinos.

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 jointly and severally responsible 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 Prequalify and Bid and is Filipino, it must be duly licensed and accredited by the Philippine Contractors Accreditation Board (PCAB). If the same is a foreign contractor, it must secure the necessary licenses from the PCAB required of foreign contractors

wishing to engage in construction works in the Philippines.

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

i. 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) which it has engaged for the project.

For purposes of the above, a joint venture/consortium shall submit as part of its prequalification statement a preliminary 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.

The business plan shall disclose which of the members of the joint venture/consortium shall be the lead member or corporation, the financing arm, the contractor(s) if required to be pre-identified as prescribed in the published Invitation to Prequalify 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, and/or the facility operator(s).

ii. 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.

c. 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 prequalification, 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, and (ii) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, that they are in good financial standing, and that they have adequate resources. The government Agency/LGU concerned shall determine on a project-to-project basis and before prequalification, the minimum amount of equity needed.
SECTION 5.5 Prequalified and Predisqualified Proponents. — After undertaking the above process, the PBAC shall mark the prequalification documents of each prospective proponent as either "Prequalified" or "Predisqualified", as the case maybe, 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 prequalified 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 decision to disqualify to the Head of Agency in the case of national projects, or to the Department of Interior and Local Government in the case of local projects within fifteen (15) working days from receipt of the notice of disqualification. The Head of Agency or the DILG, as the case may be, shall act on appeal within forty-five (45) working days from receipt of the appeal. The decision of the Head of Agency or DILG on the appeal shall be final and immediately executory.

SECTION 5.6 Acceptance of Criteria and Waiver of Rights to Enjoin Project. — All prospective bidders shall be

required to submit, as part of its prequalification documents, a statement stipulating that the bidder (i) has accepted the prequalification 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 prequalification process or any proceedings related thereto, the holding of a bidding or any proceedings related thereto, the negotiation of an 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.

SECTION 5.7 Issuance of Tender Documents. — The Agency/LGU concerned make available the related bid documents to all prequalified 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.

RULE 6

SUPPLEMENTAL NOTICES AND PRE-BID CONFERENCES

SECTION 6.1 Responsibility of Bidder. — The prospective bidder shall be solely responsible for taking all the necessary steps to carefully examine and acquaint himself with the requirements and 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.

SECTION 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 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.

SECTION 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 and 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.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

RULE 7SUBMISSION, RECEIPT AND OPENING OF BIDS

SECTION 7.1 Two-Envelope System. — Bidders shall be required to submit their bids on or before the deadline stipulated in the Instructions to Bidders in two (2) separate sealed envelopes, with 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)".

a. The first envelope shall be labeled "Technical Proposal" and 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 possible adverse effects of the project on the environment and the corresponding mitigating measures;

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 bank, or a surety bond callable on demand issued by 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 not less than 2.0% of the estimated cost of construction

Estimated Cost of Construction less than 5.0 B

not less than 1.5% of the estimated cost of construction but at least P100 million

5.0 B to 10.0 B

not less than 1.0% of the estimated cost of construction but at least P150 million

10.0 B and above

The posting of the bid security is for the purpose of guaranteeing that the proposed contract awardee shall within seven (7) calendar days from receipt of the Notice of Award enter into contract with the concerned Agency/LGU and furnish the required performance security within the time prescribed therefor.

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 bids.

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

b. The second envelope shall be labeled "Financial Proposal" and 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 under the bidding documents in accordance with Section 4.3.a hereof.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

ii. For BT, BLT, BTO 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 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.c.

— Proposed payments schedule; and

— 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.

SECTION 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.

SECTION 7.3 Opening the First Envelope. — At the date and time of bid opening as stipulated in the Instructions to Bidders, the PBAC shall open only the first envelope and ascertain whether the same is complete in terms of the data/information required under Section 7.1.a 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 for the first envelopes shall sign a register of the bid opening.

SECTION 7.4 Automatic Rejection of Bids. — The first envelope of bids determined at the bid opening date to have incomplete submissions/data vis-a-vis the requirements prescribed in Section 7.1.a and/or not accompanied by the required bid security in the form, amount and period of validity prescribed shall automatically be rejected and their second envelopes shall be returned unopened.

SECTION 7.5 Opening the Second Envelope. — Only those bidders who passed the first stage of evaluation as prescribed under Section 8.1 hereof shall have their second envelopes opened for further evaluation. Those who failed the first stage of evaluation shall not be considered further and the PBAC shall return their second envelopes unopened together with the reasons for their disqualification from the bidding.

Once the bidders who have qualified for the second stage of evaluation have been determined, PBAC shall notify said bidders of the date, time and place of the opening of the second envelopes. The opening of the bidders' second envelopes shall follow the same procedures prescribed for the opening of the first envelopes.

SECTION 7.6 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 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

SECTION 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 bidder's first envelopes vis-a-vis the prescribed requirements and criteria/minimum standards and basic parameters prescribed in the bidding documents. Only those bids which 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. Environment 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 Agency/LGU concerned under the related bidding documents and acceptable to the Department Environment and Natural Resources (DENR). Any negative or 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.

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 match and adequately meet 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.
SECTION 8.2 The Second Stage Evaluation. — The second stage evaluation shall involved 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 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, BTO 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.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

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, and other similar schemes, or proposed schedule of amortizations 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.

c. For projects which 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 thirty (30) calendar days from the date the first stage evaluation shall have been completed.
SECTION 8.3 Right to Reject of Accept 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

AWARD OF CONTRACT

SECTION 9.1 Notice of Award. — Within thirty (30) calendar days from the date of the second stage evaluation shall have been completed, a decision on whether or not to award the contract shall be made. If the decision is to award the contract, the Head of Agency/LGU concerned or his duly authorized representative shall approve the Notice of Award within seven (7) calendar days from the date the decision to award shall have been made. The Notice to Award shall then be issued or transmitted to the awardee within seven (7) calendar days from approval thereof.
SECTION 9.2 ICC Clearance. — In case of projects involving substantial government undertakings as defined under the ICC guidelines hereto attached as Annex B, the concerned Agency/LGU shall, prior to the approval of the Notice of Awards, submit the draft contract to the ICC for clearance on a no-objection basis, specifically on the extent of the final government undertaking to be provided to the project, if any, within seven(7) calendar days from the date the decision to award the contract is made. 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 provisions or provisions different from the original scope of government undertakings, then the draft contract will have to be reviewed by the ICC.

In which case, the 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. The concerned Head of Agency/LGU shall approve the Notice of Award within seven (7) calendar days from the date the clearance by the ICC on a no-objection basis for the contract has been received. The Notice of Award shall then be issued within seven (7) calendar days from the approval thereof.

SECTION 9.3 Withdrawal of a Member. — The withdrawal of any member of the joint venture or consortium or the project proponent’s contractor(s) prior to the actual award and/or implementation of the project could be a ground for the cancellation of the contract and forfeiture of the proponent’s bid 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 are still capable of

successfully carrying out the project or that they have provided a suitable and acceptable substitute with equal or better qualifications.

SECTION 9.4 Evaluation Report. — The Agency/LGU PBAC responsible for the project shall prepare and submit a detailed evaluation/assessment report on its decision regarding the technical and financial proposal to the Head of Agency/LGU. This report shall be incorporated in the findings and final recommendations. The PBAC shall explain in clear terms the basis for its recommendations.

SECTION 9.5 Content of Notice of Award. — The Notice of Award shall indicate, among others, the time within which the proposed awardee shall submit the prescribed performance security, proof of commitment of equity contribution and indications of financing resources, and, in the case of a joint venture/consortium, the agreement indicating that the members are jointly and severally responsible for the obligations of the project proponent under the contract, as the case may be.

SECTION 9.6 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 12.1 and 12.2 hereof.

SECTION 9.7 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 bid should be required to provide a suitable extension of bid security.

SECTION 9.8 Execution of the Contract. — The successful bidder should execute the contract with the Agency/LGU concerned within seven (7) calendar days from receipt of the Notice of Award.

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 his 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, its 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, the project shall be subjected 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.

SECTION 9.9 Failure of Bidding. — When no complying bids are received, the bidding shall be declared a failure. In such cases, the project shall be subjected to a rebidding.

RULE 10

NEGOTIATED CONTRACT

SECTION 10.1 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 prequalification and it meets the prequalification

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

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 prequalification but only one meets the prequalification requirements, after which it submits a bid proposal which is found by the Agency/LGU to be complying.

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

d. If, after prequalification, 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.

SECTION 10.2 Unsolicited Proposals. — Unsolicited proposals may likewise, subject to the conditions provided in Rule 11, be accepted by an Agency/LGU on a negotiated basis, provided proponents meet all prequalification requirements prescribed under Rule 5 of these IRR.

SECTION 10.3 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. The appropriate rate of return for such contracts, however, shall be determined by the ICC in accordance with these IRR prior to negotiation and/or call for proposals.

RULE 11

UNSOLICITED PROPOSALS

SECTION 11.1 Requisites for Unsolicited Proposals. — An 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 lower price within the specified period, the original project proponent shall immediately be awarded the project.

SECTION 11.2 New Technology. — The project proponent of 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.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The information disclosed must be in sufficient detail 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 constructions 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 a member of the proponent joint venture/consortium possesses exclusive rights, either worldwide or regionally; or

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

SECTION 11.3 Government Undertakings for Unsolicited Proposals. — The presence of government support, other than direct government guarantees, subsidy or equity, shall not, as may be determined by the ICC, necessarily disqualify a proposal from being treated and accepted as an unsolicited proposal as described above.

The sale or lease of government assets to project proponents shall not be considered as subsidy or equity.

SECTION 11.4 ICC Clearance. — An unsolicited proposal shall be submitted to the ICC only upon official endorsement by the Head of the concerned Agency/LGU that it is part of or consistent with the Agency/LGUs development programs and may be prosecuted under any of the contractual arrangements authorized under these IRR. ICC shall approve the project scope in accordance with the guidelines hereto attached as Annex B*.

SECTION 11.5 Invitation for Comparative Proposals. — The invitation for comparative or competitive proposals should be published at least once every week for three (3) weeks in at lest one (1) newspaper of general circulation. It shall indicate the time and place where tender/bidding documents could be obtained and shall likewise explicitly specify a time of sixty (60) working days reckoned from the last date of publication during which proposals shall be received. Beyond said deadline, no proposals shall be accepted.

SECTION 11.6 Tender Documents. — The tender documents shall be prepared along the lines specified under Rule 4 hereof. 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.

SECTION 11.7 Requirement for Bid Security. — A bid security shall be required of all bidders in accordance with the form and amount prescribed under Section 7.1.a(v) of these IRR upon submission of their bids. For original proponent, it shall submit the required bid security on or before the prescribed sixty (60) days deadline for the submission by other interested proponents of comparative or competitive proposals.

RULE 12

CONTRACT APPROVAL AND IMPLEMENTATION

SECTION 12.1 Conditions for the Award. — Contracts for infrastructure and development projects to be implemented under the provisions of these IRR shall be approved by the Head of the concerned Agency/LGU subject to the following conditions:

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

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

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

c. In case of a joint venture/consortium, submission of a sworn undertaking that the members of the joint venture/consortium are jointly and severally responsible for the obligations of the project proponent under the contract.

d. Clearance from the ICC on a no-objection basis pursuant to Section 9.2.

e. For negotiated contracts and for projects which have been granted a natural monopoly of where the public has no access to alternative facilities, approval by the concerned regulatory bodies of the proposed tolls/fees/rentals/charges.

f. Such other conditions imposed by the Agency/LGU.

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 shall result in the disapproval of the contract or disqualification of the bidder, as well as the forfeiture of the bid security of the bidder.

SECTION 12.2 Period to Approve Award of Contract. — The Head of Agency/LGU concerned shall approve/disapprove the contact within fifteen (15) calendar days form the date that the winning project proponent shall have submitted the requirements prescribed under Section 12.1 above.

Approval of the contract shall be without prejudice to the obligation of the Agency/LGU concerned and 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 execution in accordance with existing laws, rules and regulations. The DENR shall act on all required environmental clearances within thirty (30) calendar days upon receipt of all necessary/required documents/information. The Agency/LGU may provide the necessary assistance to the project proponent in securing all the required clearances.

SECTION 12.3 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 tools, 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 appropriate Agency/LGU provided that the total franchise period shall not exceed fifty (50) years.

SECTION 12.4 Notice to Proceed. — The concerned Agency/LGU shall issue the Notice to Proceed to the successful bidder not later than fifteen (15) calendar days from the date of approval of the contract by the Head of Agency/LGU concerned.

SECTION 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 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 shall approve the same if found acceptable, 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 projects shall be based on relevant 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.

SECTION 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 constructions stage, the project proponent may engage the services of foreign and/or Filipino contractors which 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.

SECTION 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, where said project involves government undertakings the project proponent shall post in favor of the Agency (LGU) concerned, within the time prescribed by the concerned Agency/LGU, 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 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 — twenty percent (20%) of the total estimated cost of government undertaking.

b. Bank Guarantee — thirty percent (30%) of the total estimated cost of government undertaking.

c. Surety Bond — fifty percent (50%) of the total estimated cost of government undertaking.

SECTION 12.8 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 recession/termination of the contract in accordance with Section 12.17.b 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.

SECTION 12.9 Milestone Bonding. — The project proponent shall execute the project in accordance with predetermined 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 12.17.b hereof.

SECTION 12.10 Release of Performance Security. — The performance security may be released by the Agency/LGU concerned after the issuance of the "Certificate of Completion" of the construction works, provided that there are no claims filed against the contractor or the surety company.

SECTION 12.11 Liquidated Damages. — Where the project proponent of a project involving government undertakings fails to satisfactorily complete the work within the construction period prescribed in the contract,

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

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 agree upon by the parties, which shall in no case be less than an amount equal to one-tenth of one percent (0.1%) of the total project construction cost minus the value of the completed portions of the project certified by the Agency/LGU concerned as usable as of the expiration of the project construction time, for each calendar day of delay, until the work is completed and accepted or taken over by the Agency/LGU concerned. 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 12.7.b hereof.

For projects involving no government undertaking whatsoever, liquidated damages shall not be imposed in case the project proponent fails to complete the construction of the projects within the approved construction period. In case, however, that the delay exceeds twenty percent (20%) of the approved construction period, inclusive of the extension or grace period stipulated in the contract, the government shall terminate the contract and proceed with the procedures prescribed under Section 12.17.b.

SECTION 12.12 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 as the desired level of service. For this purpose and where applicable, a portion of the project's revenues equivalent to the cost of its 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, as escrow account may be established for the purpose.

SECTION 12.13 Repayment Schemes. —

12.13.1 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 projects proponent builds and transfers the facility to the Agency or LGU concerned, but operates the facility on behalf of said Agency/LGU (BTO) through a management contract;

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

For projects undertaken through arrangements described in (a) and (b) above, the project proponent 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/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 (c) and (d) above may be repaid by the Agency/LGU through such amortization payments as may be appropriate and reasonable, provided that , in the case of the arrangements described in (c), the tolls, fees, rentals and charges that the project proponent may collect while operating the facility on behalf of the Agency/LGU may be applied directly to the amortization payments. Moreover, in the case of (c), the facility operator may be repaid by the Agency/LGU through a management fee as

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

may be incorporated in the management contract entered between the Agency/LGU and the project proponent.

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.

12.13.2 Tolls, fees, 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 their reasonableness thereof to the end-users of the facility.

b. Exception. For negotiated contracts, and for projects which 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 subject to the approval of the appropriate government regulatory bodies. Said regulatory bodies 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 which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve per centum (12%).

The presence of monopoly or natural monopoly shall be determined by the ICC.

12.13.3 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 Agency/LGU is encouraged to confer with the Philippine monetary authorities as to the financial implications of said rules and regulations.

SECTION 12.14 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, provided at the same is indicated in the bidding documents and included in the contract.

SECTION 12.15 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 other such 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 National Statistics Office (NSO), Bangko Sentral ng Pilipinas (BSP), Department of Labor and Employment (DOLE) and other sources authorized by Agency/LGU concerned prior to bidding.

SECTION 12.16 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 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.

SECTION 12.17 Contract Termination/Rescission. — A contract may be terminated/rescinded in the following events;

a. If the Agency/LGU concerned is unable to comply with any major obligation prescribed in the approved contract and such inability 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, 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 thereto; 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 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 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 12.17.b above, the concerned Agency/LGU shall indicate, prior to bidding, whether it intends to take over the facility and assume all attendant liabilities thereto 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.

SECTION 12.18 Venue for Litigation. — The venue for the resolution of disputes, arbitration or litigation shall be as mutually agreed upon the parties to the contract. In default thereof, the venue shall be in the Philippines.

RULE 13 — INVESTMENT INCENTIVES

SECTION 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

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

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.
SECTION 13.2 Investment Incentives. — The following incentive will be made available to project proponents:

a. Fiscal Incentives.

i. Projects undertaken through contractual arrangements authorized under these IRR costing more that P1 billion shall, upon registration with the BOI, be entitled to incentives as provided under the Omnibus Investment Code.

ii. 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".

iii. LGUs may provide additional tax incentives, exemptions, or reliefs subject to the provisions of the Local Government Code of 1991.

b. Government Undertakings. Government may provide any form of direct or indirect support or contribution such as but not limited to the following:

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, or any partial financing of the project.

ii. Credit Enhancements. This shall refer to direct and indirect support to a project/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 a guarantee by the Government on the performance of the obligation of the agency/LGU under its contract with the proponent, subject to existing laws.

RULE 14

COORDINATION AND MONITORING OF PROJECTS

SECTION 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 authorized under these IRR, including monitoring the proponent's compliance with required environmental clearances from the DENR. For this purpose, concerned government Agencies/LGUs shall periodically submit to CCPAP information on the status of projects implemented by them.

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.
SECTION 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 Implementation Officer (PIO), who shall be responsible for monitoring projects authorized under the Act and these IRR. The PIO shall closely coordinate with the CCPAP.

SECTION 14.3 Informing Congress. — A copy or report containing the salient features of each contract involving a project entered into under the provisions of these IRR shall be submitted to Congress for information.

RULE 15

FINAL PROVISIONS

SECTION 15.1 The 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/her instance or upon the recommendation of any members of the Committee, at anytime after the effectivity of these IRR, 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.

SECTION 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 on Amendments specify otherwise.
SECTION 15.3 Effectivity of IRR. — These IRR shall take effect fifteen (15) days after its complete publication in at least one (1) newspaper of general circulation.

These IRR shall supersede the IRR for RA No. 6957 dated 3 April 1991, without prejudice to vested rights.

Adopted: 07 July 1994

(SGD.) CIELITO F. HABITO
Secretary of Socio Economic Planningand Director-General, NationalEconomic and Development AuthorityChairman, IRR Committee

(SGD.) ROBERTO F. DE OCAMPO
Secretary of Finance and Chairman, Coordinating Council for the Philippine Assistance Program Member
(SGD.) ROBERTO S. SEBASTIAN
Secretary of Agriculture Member

(SGD.) GREGORIO R. VIGILAR
Secretary of Public Works and Highways Member
(SGD.) RIZALINO S. NAVARRO
Secretary of Trade and Industry Member

(SGD.) DELFIN L. LAZARO
Secretary of EnergyMember

(SGD.) ANGEL A. ALCALA
Secretary of Environment and Natural ResourcesMember

(SGD.) RAFAEL A. ALUNAN III
Secretary of the Interior Local GovernmentMember

(SGD.) JESUS B. GARCIA, JR.
Secretary of Transportation and CommunicationsMember

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.