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IMPLEMENTING RULES AND REGULATIONS AUTHORIZING THE ESTABLISHMENT OF TOLL FACILITIES

TRB, February 24, 1998

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Introduction

Pursuant to Section 3(f) and (g) of Presidential Decree (P.D.) No. 1112, the following Implementing Rules and Regulations are hereby prescribed to carry out the powers and duties of the Toll Regulatory Board (TRB).

RULE 1 - Preliminary Provisions

SECTION 1.1 Policy — The huge financial requirements of the Government's development programs have made it necessary to seek out alternative sources of financing to ensure the prosecution of certain desirable infrastructure projects that complement the over-all national development effort. The potential resources of the private sector could be tapped to the maximum benefit by the government dispensing to a great extent the availment of additional domestic and foreign borrowings as well as the utilization of government guarantee or security.

In order to attract private sector investment in the government's infrastructure projects the collection of toll fees for the use of certain public improvements that would allow a reasonable rate of return on investments should be authorized, provided that the collection of toll fees and operation of toll facilities by the private sector should be closely supervised and regulated in the public interest.

SECTION 1.2 Coverage and Applicability — These Rules and Regulations shall apply to the construction, operation and maintenance by the private sector of toll facilities under a Toll Operation Certificate (TOC) or a Contract (termed a Toll Operation Agreement or TOA) as hereunder defined and authorized under and pursuant to P.D. 1112 and the turn-over of such facilities at no cost to the government upon the expiration of the TOC/TOA. Facilities to be turned over include all operation and maintenance equipment and facilities directly related to toll operations and maintenance.

TOA's and TOC's may be issued/entered into through public bidding or negotiations as prescribed in these rules and regulations.

SECTION 1.3 Definition of Terms

a. Toll Operation

Toll Operations involve the development, improvement, upgrading, expansion, rehabilitation, reconstruction, modernization and/or construction/building and operation and maintenance of toll facilities according to the requirements of the TRB pursuant to the exercise of its power and duty stated in Section 3.b of P.D. No. 1112.

b. Toll Facility

A Toll Facility includes but is not limited to national highways, roads, bridges and public thoroughfares direct users of which are charged tolls as authorized under P.D. No. 1112.

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c. Toll Operation Certificate (TOC)

The TOC is an authority granted to a person or persons, natural or juridical, to develop, improve, upgrade, expand, rehabilitate, reconstruct, modernize and/or construct/build and operate and maintain a toll facility. At the end of the franchise period the toll facility shall be turned over to the government without cost. The person or persons must be a citizen/s of the Philippines and/or is/are a corporation/s or an association/s qualified under the Constitution and authorized by law to engage in toll operations.

The TOC has a fixed term not to exceed fifty (50) years.

The TOC may be amended, modified or revoked whenever the public interest so requires by TRB subject to just compensation and/or Section 12.17 hereof.

d. Contract or Toll Operation Agreement (TOA)

Subject to the approval of the President of the Philippines, the TOA is a contractual arrangement entered into by TRB in behalf of the Republic of the Philippines with persons, natural or juridical, for the development, improvement, upgrading, expansion, rehabilitation, reconstruction, modernization and/or construction/building and operation and maintenance of toll facilities. At the end of the franchise period the tool facility shall be turned over to the government without cost. The person or persons must be a citizen/s of the Philippines and/or is/are a corporation/s or an association/s qualified under the constitution and authorized by law to engage in toll operations.

The TOA has a fixed term not to exceed fifty (50) years.

Subject to the approval of the President of the Philippines, the TOA may be amended upon agreement by the TOA signatories.

e. Toll Regulatory Board (TRB)

The TRB was created under P.D. No. 1112 for the regulation of toll facilities and for other purposes whose powers and duties aside from those invoked under these Rules and Regulations include the following:

1. Determine and decide the kind, type and nature of public improvement that will be constructed and/or operated as toll facilities;

2. Condemn private property for public use subject to the provisions of existing laws;

3. Issue, modify and promulgate from time to time the rates of toll that will be charged the direct users of toll facilities and upon notice and hearing, to approve or disapprove petitions for the increase thereof. Decisions of the board on petitions for the increase of toll rate shall be appealable to the Office of the President within ten (10) days from the promulgation thereof. Such appeal shall not suspend the imposition of the new rates, provided however, that pending the resolution of the appeal, the petitioner for increased rates in such case shall deposit in a trust fund such amounts as may be necessary to reimburse toll payers affected in case of a reversal of the decision.

4. To issue rules and regulations to carry out the purposes of this P.D. No. 1112.

RULE 2 - General Provisions

SECTION 2.1 Principal Provisions of a TOC/TOA — The TOC/TOA is granted to/entered into with a Grantee after compliance with these Rules and Regulations and whose provisions may include but are not limited to the following as required by the TRB:

a. construction and related works development program;

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b. operation and maintenance program;
c. toll rates and the procedures for toll rate adjustment;
d. indemnities to users arising from fault of Grantee;
e. amenities and other associated facilities such as rest areas, truck terminals, parking, expressway buses, temporary storage, and transfer facilities as the TRB may require in the interest of the public;
f. incentive package to the grantee such as commercial development operations which the TRB may provide depending on the viability of tollway projects; and
g. other conditions as shall be imposed by the Board including inter alia the following:

g.1 That the Grantee shall desist from collecting toll upon the expiration of the TOC/TOA.

g.2 That the entire facility operated as a toll system including all operation and maintenance equipment directly related thereto shall be turned over to the government immediately upon the expiration of the TOC/TOA.

g.3 That the Grantee shall not lease, transfer, grant the usufruct of, sell or assign the rights or privileges acquired under the TOC/TOA to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the prior approval of the President of the Philippines. Such transfer of rights or privileges shall be recommended by the TRB on the basis of compliance to prequalification requirements shown in Sec. 5.4 by the proposed transferee. In the event of any valid transfer of the TOC/TOA, the transferee shall be subject to all the conditions, terms, restrictions and limitations of P.D. No. 1112 as fully and completely and to the same extent as if the TOC/TOA has been granted to/entered into with the same person, firm, company, corporation or other commercial or legal entity.

g.4 That in time of war, rebellion, public peril, emergency, calamity, disaster or disturbance of peace and order, the President of the Philippines may cause the total or partial closing of the toll facility or order take over thereof by the Government without prejudice to the payment of just compensation.

g.5 That no guarantee, Certificate of Indebtedness, collateral, securities, or bonds shall be issued by any government agency or government owned or controlled corporation on any financing program of the Grantee in connection with his undertaking under the TOC/TOA.

g.6 That the TOC may be amended, modified or revoked whenever the public interest so requires.

SECTION 2.2 Operation and Maintenance Facilities — Among the operation and maintenance facilities of toll facilities which may form part of a TOC/TOA include the following as required by the TRB:

a. Operation

i. Toll Collection System;

ii. Traffic Control System;

iii. Tollroad Patrol and Vehicle Control with Communications System;

iv. Facilities for Assistance of Disabled Vehicles and in case of Emergencies;

v. Information Service/Message Sign Boards;

vi. Vehicle Regulation Facilities (e.g) weight, load height);

vii. Telephone and Lighting Facilities; and,

viii.Emergency Operations.

b. Maintenance

i. Patrolling and Inspection Facility;

ii. Road Cleaning and Obstruction Control;

iii. Electricity and Water Supply;

iv. Repavement Facilities, Steel Bridge Painting, Bridge Strengthening, Interchange Improvement, Parking Area Improvement, Slope Protection, Pavement Painting and the like;

v. Disaster Prevention and Reaction Facilities; and

vi. Environmental Enhancement and Protection.

SECTION 2.3 Issuing Authority of TOC — In accordance with Section 3 (e) of P.D. No. 1112, the Toll Regulatory Board (TRB) has the power and duty to issue a TOC.

SECTION 2.4 Authorized Government Contracting Agency for TOA — In accordance with Section 3 (a) of P.D. No. 1112, subject to the approval of the President of the Philippines, the TRB has the power and duty to enter into contracts in behalf of the Republic of the Philippines.

SECTION 2.5 Eligible Facilities for which a TOC may be Issued/TOA Entered Into — Toll facilities such as but not limited to national highways, roads, bridges and public thoroughfares that meet the provisions of these Rules and Regulations may be operated and maintained under a TOC/TOA

SECTION 2.6 List of Priority Projects — The TRB shall adopt a list of specific priority projects that may be developed under these Rules and Regulations. If a project requires government appropriations and/or credit enhancements the TRB shall first secure the approval of the ICC or the NEDA Board as described in Section 2.7 below before adopting said project for implementation under these Rules and Regulations.

Projects not requiring government appropriations and/or credit enhancements shall be submitted to the ICC for information/notation.

SECTION 2.7 Approval of Proposed Toll Facility Projects — In accordance with Section 3 (b) of P.D. No. 1112, the Toll Regulatory Board has the power and duty to determine and decide the kind, type and nature of public improvement that will be constructed and/or operated as toll facility.

In case government appropriations, and/or credit enhancements, as defined in Rule 13 of these Rules and Regulations, are to be provided in the construction and/or operation of toll facilities, the proposed toll facility projects shall be approved as follows:

a. for government appropriations and/or credit enhancements of less than P 300M, the proposed project shall be submitted to the ICC of the NEDA Board for approval; and

b. for governmental appropriations and/or credit enhancements reaching or exceeding P 300 million, each project shall be submitted to the NEDA Board for approval upon the recommendation of the ICC.

SECTION 2.8 Deadline for Approval of Proposed Toll Facility Projects — The ICC and the NEDA Board shall act on the proposed projects within thirty (30) working days upon satisfactory compliance by the TRB of requirements. Unless otherwise notified in writing by the ICC or the NEDA Board, failure to act within the prescribed period shall mean that the TRB may proceed with the solicitation of proposals.

SECTION 2.9 Publication and Notice — The TRB shall provide wide publicity to the list of priority projects proposed for implementation under these Implementing Rules and Regulations. For this purpose, the Toll Regulatory Board shall cause the individual approved projects to be published once every six (6) months in a

national newspaper of general circulation. The same list may, when applicable and at the discretion of the TRB, be published in an international newspaper.

RULE 3 — The Prequalification, Bids, and Awards Committee

SECTION 3.1 Composition — The TRB shall constitute a Prequalification, Bids and Awards Committee (PBAC) from the TRB Staff and DPWH for the projects to be bid composed as follows:

i. Executive Director------Chairman
ii. A Legal Officer---------Member-Secretary
iii.One (1) technical officer knowledgeable with the technical aspects or requirements of the project, duly designated on a project-to-project basis.----------Member
iv. An officer knowledgeable in finance----------Member
v. An officer knowledgeable in management/operation of the project, duly designated on a project-to-project basis---------Member
vi. Two (2) representatives from the private sector: one from a duly recognized contractors association, and the other from either the facility users, or duly recognized accounting association.---------- Observers (non-voting)
vii.A representative from then Commission on Audit----------Observer (non-voting)

SECTION 3.2 Responsibility of the PBAC — The PBAC herein created shall execute, subject to the approval of the Board, all the aspects of the prequalification, bid and award process, including, among others, the preparation of the bidding/tender documents, publications 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 its responsibilities, the TRB 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 TRB 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

c. Bid Form

d. Forms of Bid and Performance Securities

e. Other documents as may be deemed necessary by the TRB.

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

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information:

a. General description and objectives of the project, including a statement that the project shall be prosecuted under these Rules and Regulations.

b. Draft TOC/TOA including conditions 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. Investment incentives as stipulated under Rule 13 of these IRR.

e. Bid 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 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. Monetary rules and regulations governing foreign exchange, remittances.

j. Revenue sharing arrangements, if any.

k. 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 TRB.

b. Maximum period of project construction.

c. Fixed term for project operation and collection of tolls/fees/rentals/charges.

d. Formula and price indices to be used in adjustments of tolls/fees/rentals/charges.

SECTION 4.4 Draft TOC/TOA — The draft TOC/TOA will clearly define the obligations and authorities of the TOC/TOA Grantee and TRB. 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 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 — Prequalification

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SECTION 5.1 Who May Participate — Any individual, partnership, corporation or firm, whether local or regional, 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 P.D. No. 1112 and these IRR.

SECTION 5.2 Publication of Invitation to Prequalify and Bid — The TRB shall, upon the approval of the projects, forthwith cause to be published, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation, a notice inviting all prospective infrastructure or development project proponents to prequalify and bid for the projects so approved.

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

SECTION 5.3 Period to Prepare Prequalification Documents — The TRB 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 P 300 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: The following legal requirements shall be complied with:

> i. 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. 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 TOC/TOA, they shall bind themselves jointly and severally responsible for the obligations of the project proponent under the TOC/TOA. 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 TOC/TOA shall be in accordance with said laws.
>
> iii.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 a 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 to be bid. A joint venture/consortium proponent shall be evaluated based on the individual or collective experience of the member firms or of the joint venture/consortium and of the contractor(s) which it has engaged for the project.
>
> For the purposes of the above, joint ventures/consortia shall submit as part of its prequalification statement a business plan which shall, among others, identify their members and the description of the respective roles said

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members shall play or undertake in the project. The business plan shall therefore, 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, and/or the facility operator(s).

ii. Key Personnel Experience: The key personnel of the proponent must have sufficient experience in the relevant aspects of the project to be bid.

c. Financial Capability: The project proponent must have adequate capability to sustain the financing requirements for the engineering design, construction and/or operation and maintenance phases of the project. 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 for 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 TRB 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 may be, countersigned by the PBAC Chairman, for review and approval by the TRB. Accordingly, the PBAC shall duly inform the prospective proponents who have been prequalified with 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 TRB within fifteen (15) working days from receipt of the notice of disqualification. The TRB shall act on the appeal within forty-five (45) calendar days from receipt of the appeal. The decision of the TRB 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 TRB/PBAC, and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the TRB 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 award of the TOC/TOA to a successful bidder, and the carrying out of the TOC/TOA. 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 TRB shall make available the related bid documents to all prequalified bidders as soon as practicable to provide prospective bidders ample time to examine the same and to prepare their respective bids to the date of opening of bids.

RULE 6 — Supplemental Notices and Pre-Bid Conference

SECTION 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 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 TRB 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 bidding documents, he may submit a written request for an interpretation of the same, allowing sufficient

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time for the TRB to reply before the submission of his bid. Any substantive interpretation given shall be issued in the form of a Supplemental Notice, furnishing copies thereof to all prospective bidders. The TRB may also issue Supplemental Notices to all prospective bidders at any time for purposes of clarifying any provisions of the bidding documents provided 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 his bid.

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. Any amendments shall be issued 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. Attendance to the pre-bid conference by prospective bidders shall not be mandatory.

RULE 7 — Submission, 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 addressed to the PBAC of the TRB. 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 construction, 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 TRB, or any combination thereof payable to the TRB in accordance with the following schedules:

Required Bid Security Estimated Cost of Construction

not less than 2.0% of
the estimated cost of
construction less than P 5.0 B

not less than 1.5% of
the estimated cost of
construction but at
least P 100 million P 5.0 B to P 10.0 B

not less than 1.0% of
the estimated cost of
construction but at
least P 150 million P 10.0 B and above

The posting of the bid security is for the purpose of guaranteeing that the proposed TOC or TOA Grantee shall within seven (7) calendar days from receipt of the Notice of Award comply with the terms of the award and accept the TOC or sign the TOA with the TRB as the case may be and furnish the required performance security within the time prescribed therefor.

Bids and bid securities shall be valid for a period to be prescribed in the bidding documents but in no case beyond one hundred and eighty (180) calendar days from the date of opening of bids.

vi. Other documents as may be required to support the bidder's technical proposal.

b. The second envelope shall be labeled "Financial Proposal" and shall contain the following:

— 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.

SECTION 7.2 Submission of Late Bids — Bids submitted after the deadline for submission prescribed in the Instruction to Bidders shall be considered late and shall be returned unopened.

SECTION 7.3 Opening of 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 of bid opening, 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.

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 is/are not accompanied by the required bid security in the form, amount and period of validity prescribed shall automatically be rejected and the corresponding second envelopes returned unopened.

SECTION 7.5 Opening of 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 reason for their disqualification from the bidding.

Once the bidders who have qualified for the second stage of evaluation have been determined, the 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 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

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.

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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 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 TRB 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 TRB 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 constructing, 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 under the related bidding documents and acceptable to the Department of 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 cost requirements of the project. The TRB 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 or reduction in the level of government undertakings or support.

The PBAC of the TRB 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 involve the assessment and comparison of the financial proposals 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.

The TRB shall award the TOC/TOA to the bidder whose proposed tolls/fees/rentals/charges are determined to have the lowest present value.

The second stage evaluation shall be completed by the PBAC within thirty (30) calendar days from the date the first stage evaluation shall have been completed.

SECTION 8.3 Right to Reject All Bids — The TRB 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 TOC/TOA

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SECTION 9.1 Notice of Award — Within thirty (30) calendar days from the date the second stage evaluation shall have been completed, a decision on whether or not to award a TOC/TOA shall be made. If the decision is to award a TOC/TOA, the TRB shall approve the Notice of Award within seven (7) calendar days from the date the decision to award shall have been made. The Notice of Award shall then be issued or transmitted to the Grantee within seven (7) calendar days from approval thereof.

SECTION 9.2 ICC Clearance — In case of project involving government appropriations or credit enhancements of more than P 300 Million TRB shall, prior to the approval of Notice of Award, submit the draft TOC/TOA to the ICC for clearance on a no obligation basis, specifically on the extent of the government undertaking to be provided to the project, if any, within seven (7) calendar days from the date of decision to award the TOC/TOA is made. If the draft TOC/TOA 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 different from the original scope of government undertakings, then the draft TOC/TOA will have to be reviewed by the ICC.

In which case, the ICC shall act on the final draft TOC/TOA 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 TRB may proceed with the award. The TRB 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 TOC/TOA 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/Contractor — 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 award of TOC/TOA and forfeiture of the proponent’s bid security. The TRB may, however, proceed with the award of the TOC/TOA 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 PBAC shall prepare and submit a detailed evaluation/assessment report on its decision regarding the technical and financial proposal to the Board. 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 TOC/TOA Grantee 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 TOC/TOA, as the case may be.

SECTION 9.6 Validity of Bids — The award of TOC/TOA 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 TOC has been approved by the Board or the TOA has been approved by the President of the Philippines 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 substantial aspects 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 Acceptance of TOC/Execution of TOA — The successful bidder should comply with the terms of the award and accept the TOC or execute the TOA with TRB 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 complying with the terms of the Notice of Award, accepting the TOC or entering into a TOA within the time provided therefor, the TRB shall cancel the award and forfeit his bid security. In such an event the TRB shall cancel the next complying and qualified lowest evaluated bid for award. If the same shall likewise refuse or fail to comply, accept the TOC or enter into a TOA, his bid security shall likewise be forfeited and the TRB shall consider the next complying and qualified lowest evaluated bid, and so on until compliance to the Notice of Award is obtained, the TOC is accepted or a TOA entered into. In the event that the TRB is unable to obtain compliance with the terms of the Notice of Award from the bidders considered, the TOC accepted or the TOA executed due to the refusal of the said bidders, 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 TOC/TOA

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 project proponent applies for prequalification and it meets the prequalification requirements, after which it is required to submit a bid/proposal which is subsequently found to be complying.

b. If after advertisement, more than one project proponent applies for prequalification but only one meets the prequalification requirements, after which it submits a bid proposal which is found to be complying.

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

d. If after prequalification, more than one project proponent submit bids but only one is found to be complying.

In such events, however, any disqualified bidder may appeal the decision of the Board within fifteen (15) working days from receipt of the notice of disqualification. The TRB shall act on the appeal within forty-five (45) days from receipt thereof. The decision of the TRB 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 the TRB on a negotiated basis.

SECTION 10.3 Financial and Technical Evaluation of Proposals for Negotiated Issuance/Execution of TOC/TOA — 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 a negotiated TOC/TOA. The appropriate rate of return for such TOC/TOA, shall be determined as follows:

a. by the TRB in case no government appropriations and/or credit enhancements are required; and,

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b. by the ICC of the NEDA Board in case government appropriations and/or credit enhancements are required.

Government appropriations/credit enhancements are as defined in Rule 13.

RULE 11 — Unsolicited Proposals

SECTION 11.1 Requisites for Unsolicited Proposals — The TRB may accept unsolicited proposals on a negotiated basis provided that all following conditions are met:

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

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

c. the TRB has invited by publication once every week, 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 TOC/TOA 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.

d. assessment of the economic and financial viability of the proposed project to be undertaken by the proponent in the form of a pre-Feasibility Study. Acceptance by the TRB of the proposal does not diminish the responsibility of the proponent nor does it transfer any part of this responsibility to the TRB.

SECTION 11.2 Prequalification of Proponent — Proponent(s) under this Rule on Unsolicited Proposal(s) shall comply with the prequalification requirements stated in Sec. 5.4 before their proposals are considered.

SECTION 11.3 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 if its key members, successfully implemented and in a scale similar to the proposed project. The information disclosed must be in sufficient detail so as to allow the TRB 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 or 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 a member of the proponent consortium or association possesses exclusive rights, either world-wide or regionally; or

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

SECTION 11.4 Government Undertakings for Unsolicited Proposals — The presence of government support, other than direct government appropriations, 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.

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SECTION 11.5 ICC Clearance — An unsolicited proposal shall be submitted to the ICC only upon official endorsement of the TRB. ICC shall approve the project scope in accordance with the guidelines. Projects not requiring government support shall be submitted to the ICC for information.

SECTION 11.6 Invitation for Comparative Proposals — The invitation for comparative or competitive proposals should be published at least once every week for three (3) consecutive weeks in at least one (1) newspaper of general circulation. It shall indicate the time and place where tender/bidding documents may be obtained and shall likewise explicitly specify a time of sixty (60) calendar days reckoned from the last date of publication upon which proposals shall be received. Beyond said deadline, no proposals shall be accepted.

SECTION 11.7 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 11.8 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 the original proponent, it shall submit the required bid security on or before the described sixty (60) days deadline for the submission by other interested proponents of comparative or competitive proposals.

RULE 12 — TOC/TOA Approval and Implementation

SECTION 12.1 Conditions for Award (TOC) — TOC's for projects to be implemented under the provisions of these IRR shall be approved by the Board subject to the following conditions:

a. Submission of the required performance security as prescribed under Section 12.9 hereof;

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

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 TOC.

d. For negotiated TOC's approval by the TRB of the proposed tolls/fees rentals/charges.

e. Such other conditions imposed by the TRB.

Failure by the winning project proponent to submit the requirements prescribed under the terms of award particularly a, b and c above within the time period specified in the Notice of Award shall result in the cancellation of award or disqualification of the bidder, as well as the forfeiture of the bid security of the bidder.

SECTION 12.2 Conditions for Award (TOA) — The Board is authorized to enter into a TOA with the winning proponent subject to the following conditions:

a. Submission of the required performance security as prescribed under Section 12.9 hereof;

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

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 TOA.

d. For negotiated TOA's, approval by the TRB of the proposed tolls/fees/rentals/charges.

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e. Such other conditions imposed by the TRB.

Failure by the winning project proponent to submit the requirements prescribed under the terms of award particularly, a, b and c above within the time period specified in the Notice of Award shall result in the cancellation of award or disqualification of the bidder, as well as the forfeiture of the bid security of the bidder.

SECTION 12.3 Approval of TOA by the President of the Philippines — The TOA is subject to the approval of the President of the Philippines.

SECTION 12.4 Other Government Approvals — Approval of the TOC/TOA shall be without prejudice to the obligation of the TRB and the Grantee from securing such other government approvals as may be required under existing laws, rules and regulations. Among others, the Grantee 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 TRB may provide the necessary assistance to the project proponent in securing all the required clearances.

SECTION 12.5 Grant of Franchise — The approved TOC/TOA shall be the authority of the Grantee to construct, operate and maintain the toll facility, including the collection of tolls, fees, rentals, and other charges in accordance with the schedules stipulated in the approved TOC/TOA.

SECTION 12.6 Notice to Proceed — The TRB shall issue the Notice to Proceed to the successful bidder or TOC/TOA Grantee not later than fifteen (15) calendar days from the date of approval by the Board of the TOC or approval of the TOA by the President of the Philippines.

SECTION 12.7 Preparation and Approval of Detailed Engineering Design — The TOC/TOA Grantee 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 TRB.

The TRB shall review the detailed engineering designs and plans prepared by the Grantee 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 notwithstanding, the project proponent shall be solely responsible for the integrity of its detailed engineering designs and plans. The approval thereof by the TRB does not diminish this responsibility, nor does it transfer any part of such responsibility to the TRB.

SECTION 12.8 Project Construction — The TOC/TOA Grantee 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 a 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 12.9 Performance Guarantee for Construction Works — To guarantee the faithful performance by the TOC/TOA Grantee of its obligations including the prosecution of the construction works related to the project, where said project involves government appropriations and/or credit enhancements, the Grantee shall post in favor of the TRB, within the time prescribed, 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:

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a. Cash, manager's check, cashier's check, irrevocable letter of credit, bank draft - twenty percent (20%) of the total estimated government appropriations/credit enhancements.

b. Bank Guarantee — thirty percent (30%) of the total estimated government appropriations/credit enhancements.

c. Surety Bond — fifty percent (50%) of the total estimated government appropriations/credit enhancements.

SECTION 12.10 Supervision of Projects Construction, Operation and Maintenance — The TRB shall exercise technical supervision over the project activities of the project proponent. The TRB 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 TRB 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 TRB may be a ground for the rescission/termination of the contract in accordance with Section 12.18.b of these IRR. Such technical supervision by the TRB shall not diminish the singular responsibility of the Grantee for the proper construction, operation, and maintenance of the facility, nor does it transfer any part of that responsibility to the TRB.

SECTION 12.11 Milestone Bonding — The TOC/TOA Grantee shall execute the project in accordance with predetermined milestone. Failure by the project proponent to comply with these milestones may result to contract rescission in accordance with Section 12.18.b hereof and forfeiture of the performance security of the proponent.

SECTION 12.12 Release of Performance Security — The performance security may be released after the issuance of the "Certificate of Completion" of the construction and related required works, provided that there are no claims filed against the contractor or the surety company.

SECTION 12.13 Liquidated Damages — Where the TOC/TOA Grantee of a project involving government appropriations/credit enhancements, fails to satisfactorily complete the work within the construction period prescribed in the TOC/TOA, including any extension or grace period duly granted, and is thereby in default under the TOC/TOA, the Grantee shall pay the TRB liquidated damages, in an amount equal to one-tenth of one percent of the total cost of construction and related required works minus the value of the completed portions of the project certified by the TRB 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 TRB. In no case however shall the delay exceed twenty percent (20%) of the approved construction time stipulated in the TOC/TOA plus any time extension duly granted. In such an event the TRB shall rescind the TOC/TOA, forfeit the proponent's performance security and proceed with the procedures prescribed under Section 12.18.b hereof.

For projects involving no government appropriations/credit enhancements whatsoever, liquidated damages shall not be imposed in case the Grantee 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, the government shall terminate the TOC/TOA and proceed with the procedures prescribed under Section 12.18.b.

SECTION 12.14 Repair and Maintenance Costs — The TOC/TOA Grantee 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 TOC/TOA in order to ensure that the facility operates at the desired level of service. For this purpose, a portion of the project's revenues equivalent to the cost of the project's repair and maintenance, as indicated in the Grantee's 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

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the purpose.

SECTION 12.15 Repayment Schemes — The project proponent shall be repaid by authorizing it to collect reasonable tolls, fees, and charges for a fixed term not to exceed fifty (50) years.

The tolls, fees, charges and rentals that a Grantee may generally charge for the use of the facility shall be those incorporated in the TOC/TOA. The proposed tolls, fees, and charges shall be considered by the TRB in the evaluation of proposal, taking into account the reasonableness thereof to the end-users of the facility.

For negotiated TOC's/TOA's, the tolls, fees, charges and rentals incorporated in the TOC/TOA shall be based on a reasonable rate of return to be based on the total project cost. Such rate of return shall be determined in accordance with the conditions set in Section 10.3 prior to the negotiation or call for proposals for the project.

The right of foreign contractors/investors to convert its peso earnings into foreign currency and to remit the same to its home country shall be governed by monetary rules and regulations existing at the time of issuance of TOC/signing of TOA. The TRB 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 TRB is encouraged to confer with Philippine monetary authorities as to the financial implications of the said rules and regulations.

SECTION 12.16 Adjustments of tolls/fees/rentals/charges — The tolls, fees, rentals and charges on the facilities are subject to adjustments according to a formula that will be approved by the Toll Regulatory Board and incorporated in the TOC/TOA.

The TRB will issue, modify and promulgate from time to time the rates of toll based on the toll adjustment formula that will be charged the direct users of toll facilities in accordance with the administrative procedure that the Board shall approve and adopt and incorporate in the TOC/TOA.

SECTION 12.17 Audit of Collections — The collection of tolls/fees/rentals/charges for the use of the infrastructure facility by the public for the recovery of its cost plus reasonable rate of return on investment is considered to be of public interest. To ascertain that such tolls/fees/rentals/charges are properly collected and recorded according to pertinent rules, regulations and procedures established by TRB and accepted standards, the TRB shall audit the pertinent books and records of the Grantee in accordance with existing auditing rules and regulations for all toll facilities.

In case government appropriations/credit enhancements form part of the TOC/TOA, the Commission on Audit shall, together with the TRB, audit the pertinent books and records of the Grantee in accordance with existing auditing rules and regulations.

SECTION 12.18 TOC/TOA Termination/Rescission — The TOC/TOA may be terminated/rescinded in the following events:

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

b. If the project proponent refuses or fails to perform any of the provisions of the approved TOC/TOA with such diligence as will ensure the project's completion, operation and maintenance in accordance with the prescribed

technical and performance standards, and otherwise fails to satisfy any of the TOC/TOA provision including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of the approved TOC/TOA, the TRB shall notify the project proponent in writing of the same and if not corrected within the time specified, the TRB may rescind the TOC/TOA. In such an event, the TRB 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 occurs during the project construction stage, the TRB shall likewise forfeit the performance security of the erring TOC/TOA Grantee.

c. In the event that the TOC/TOA is revoked, cancelled, or terminated by the Government through no fault of the Grantee or by mutual agreement, the Government shall compensate the said project proponent for its actual expenses incurred in the project plus a reasonable rate of return thereon not exceeding that stated in the TOC/TOA as of the date of contract termination, provided that the interest of the Government in these instances shall be duly issued in 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 TOC/TOA.

For TOC/TOA rescission under Section 12.18.b above, the TRB 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 TOC/TOA.

SECTION 12.19 Venue for Litigation — The venue for the resolution of disputes, arbitration or litigation shall be in the Philippines.

RULE 13 — Investment Incentives

SECTION 13.1 Investment Incentives — the following incentives shall be made available to project proponents:

a. Fiscal Incentives —

Projects undertaken under these IRR may, upon registration with the BOI, be entitled to incentives as provided for under the Omnibus Investment Code.

b. Government Appropriations

Government may bear a portion of capital expenses associated with the establishment of a tollway such as the provision of access infrastructure, right-of-way, equity and partial financing of the project not exceeding fifty percent (50%) of total project cost.

c. Credit Enhancements —

This shall refer to indirect support to a project by the project proponent and/or TRB, the provision of which is contingent upon the occurence 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 assure the consequences of the risk involved. Credit enhancements may include a guarantee by the Government on the performance of the obligation of the TRB under the TOC/TOA subject to existing laws, rules and regulations.

Credit enhancements however shall not exceed fifty percent (50%) of project costs.

RULE 14 - Final Provisions

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SECTION 14.1 Amendment of Rules and Regulations — These Rules and Regulations may be amended by the TRB from time to time whenever public interest so requires.

SECTION 14.2 Effectivity — These Implementing Rules and Regulations shall take effect fifteen (15) days after the date of publication in a newspaper of general circulation.

APPROVED:

(SGD.) GREGORIO R. VIGILAR
Chairman

(SGD.) AUGUSTO B. SANTOS
Member

(SGD.) CESAR T. VALBUENA
Member

(SGD.) THELMA A. MARIANO
Member

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