

REPUBLIC OF THE PHILIPPINES
DEPARTMENT of FINANCE
DEPARTMENT of BUDGET and MANAGEMENT
NATIONAL ECONOMIC and DEVELOPMENT AUTHORITY
BUILD-OPERATE and TRANSFER CENTER

JOINT CIRCULAR No. 03-01
December 2003

FOR : ALL HEADS OF DEPARTMENTS/BUREAUS AND OFFICES OF NATIONAL GOVERNMENT AGENCIES INCLUDING THEIR REGIONAL OFFICES/OPERATING UNITS AND ALL OTHERS CONCERNED

SUBJECT : GUIDELINES IN THE PROCESSING OF RECEIPTS ARISING FROM BUILD-OPERATE-TRANSFER (BOT) TRANSACTION AND ITS VARIANT SCHEMES

BACKGROUND

In Build-Operate-Transfer (BOT) arrangements and its variants, the concession or grant of rights by the government sponsor to the private sector proponent generally consists of two (2) basic privileges: (1) the right to finance, design, construct, manage, operate and rehabilitate a specific infrastructure facility that the government agency would have normally implemented on its own, and (2) the right to collect fees, charges, tolls or tariffs from the end-users of the facility to allow the proponent to recover its investment and gain a reasonable rate of return. These bundled rights form the concession, franchise or privilege given to the private sector project proponent.

There are cases, however, when the project proponent is legally constrained from directly collecting from the toll fees, charges and other revenues due from the BOT project operation. In these cases, the implementing agency serves as the conduit for the project proponent/facility operator to get paid.

1.0 PURPOSE

- 1.1 To prescribe the rules, guidelines and procedures in the implementation of Section 6 of the General Provisions in RA 9206, FY 2003 General Appropriations Act (GAA) entitled "Receipts Arising from Build-Operate-Transfer Transactions and Its Variant Schemes".

"Sec.6. Receipts Arising from Build-Operate-Transfer Transactions and Its Variant Schemes". Notwithstanding the provision of Section 6, General Provisions of this Act, receipts, such as toll fees, charges and other revenues arising from public sector projects implemented through build-operate-transfer arrangement and other

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variants pursuant to R.A.No.6957, as amended by R.A.7718, collected by an office or agency of the National Government but which shall accrue to the proponent private companies or individuals in accordance with the contract entered into by said government office or agency and the projects proponent(s), shall be deposited with any authorized government depository bank and shall be utilized exclusively for the fulfillment of obligations as stipulated and prescribed under the contract: PROVIDED, that the government share out of the collections from said projects, if any, including interest earned thereon, shall accrue to the General Fund and shall be remitted to and deposited with the National Treasury.

The implementation of this Section shall be in accordance with the guidelines issued jointly by the Department of Finance (DOF), DBM, National Economic and Development Authority (NEDA) and the Coordinating Council for Private Sector Participation, in coordination with the Commission on Audit (COA)”

Specifically, this circular covers cases where the project Proponent is constrained from directly collecting the fees, charges, rentals and other receipts due from the operation of the facility.

- 1.2 To ensure prompt and efficient remittance of receipts due to the project proponent and the Government of the Philippines (GOP) from toll fees, charges and other revenues from the use of the facility as stipulated in their respective contracts.
- 1.3 To provide guidelines which LGUs and GOCCs may adopt in the remittance of receipts arising from the operation of their BOT projects.

2.0 DEFINITION OF TERMS

2.1 Contractual Arrangements – refer to any of the contractual arrangements or schemes enumerated under RA 7718 , 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 the BOT Law and its IRR but not limited to the following schemes:

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

- c. **Build-operate-and-transfer** – a contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses of the project.
- 2.2 **Agency** – refers to any of the various units of the Government, including department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein.
- 2.3 **Authorized Government Depository Bank (AGDB)** – refers to a government bank duly authorized to maintain deposits and cash balances of local government units, national implementing agencies and government-owned and controlled corporations as authorized by the Bangko Sentral ng Pilipinas.
- 2.4 **Billing Period** – refers to the interval period specified in the contract that the project Proponent shall receive payment for the use of the facility;
- 2.5 **Contract** – refers to the legal instrument awarded by the Agency/LGU whereby the Proponent shall undertake the financing, construction, operation and maintenance of the infrastructure or development project concerned. The contract defines the legal and basic relationship between the Principals and their rights and responsibilities;
- 2.6 **Escrow Account** – refers to the facility opened by the agency together with the facility operator in an AGDB that shall hold deposits representing the revenue funds of the infrastructure or development project to be remitted to the project proponent/facility operator and to the National Treasury, if any;
- 2.7 **Facility Operator** – refers to a company responsible for all aspects of operation and maintenance of the infrastructure or development facility, excluding the collection of tolls, fees, rentals or charges from facility users;
- 2.8 **Invoice** – refers to the billing statement from the project proponent/facility operator based on the number of transactions with the facility users of the infrastructure or development project during the corresponding Billing Period;
- 2.9 **Project Proponent** – refers to the private sector entity responsible for the construction of the project;
- 2.10 **Revenues** – refer to the tolls, fees, charges, rentals and other receipts arising from the use of the facility.

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3.0 GENERAL GUIDELINES

- 3.1 The tolls, fees, charges and/or rentals to be collected by an agency arising from the operation from the BOT transactions shall be in accordance with the applicable provisions of the contract.
- 3.2 The Agency and the facility operator shall open an Escrow account in an AGDB under the name of the BOT project.
- 3.3 All collections made by the head office including its operating units shall be deposited direct to the Escrow account opened for the purpose.
- 3.4 The share of the Government out of the operation of the facility shall be remitted by the Agency immediately first hour the next day by instructing the AGDB to credit the corresponding amount in favor of the National Treasury.
- 3.5 All operating units outside of Metro Manila shall submit reports of collection and deposit made to the Escrow account to its head office. The Agency shall devise a daily reporting format for easier reconciliation.
- 3.6 All interest earnings of the Escrow account shall be remitted by the AGDB to the National Treasury upon instruction of the Agency pursuant to the provision of Section 6, GAA
- 3.7 The Agency Head shall designate the responsible person/unit within the Agency who shall evaluate, verify and recommend payment on the submitted billing.
- 3.8 In case of disputes arising from the billing or remittance of the Facility Operator's share, the mechanism stipulated in the contract for its resolution shall be followed. Undisputed amount shall, however, continue to be remitted by the Agency to the Facility Operator.
- 3.9 The project proponent or the facility operator shall, as the case maybe, issue the invoice or billing statement. All payments to the facility operator shall be made through the preparation of a disbursement voucher and check.

4.0 SPECIFIC GUIDELINES

4.1 Opening of Escrow Account

- 4.1.1 The Agency and the project proponent shall appoint their authorized representatives to open and maintain an Escrow account in an AGDB under the name of the BOT project before the project starts commercial



operation/commissioning. Administrative expenses related to the opening and maintenance of the Escrow account shall be borne by the project proponent.

4.2 Deposit of Collection

- 4.2.1 All collections arising out of the facility operation shall be deposited within the same banking day by the Agency in the Escrow account.
- 4.2.2 Collections of the Agency made beyond banking hours shall be deposited first hour on the next banking day.

4.3 Remittance of Government Share

- 4.3.1 On a daily basis, the Agency shall establish the amount due to the government and instruct the AGDB to remit the same to the National Treasury through an automatic credit advice mechanism. A copy of the credit advice shall be furnished by the Agency to the National Treasury.

4.4 Submission of Billing

- 4.4.1 On a monthly basis, the facility operator shall submit invoices or billing statement based on the number of transactions with the facility users of the infrastructure facility to the Agency.
- 4.4.2 For initial payment to the facility operator, the following documents must be complied with: Proof of completion of construction of the facility and satisfactory compliance of the testing standard prior to operation; invoice or billing statement for the use of the infrastructure facility. Only invoice or billing statement shall be required for succeeding payments.

4.5 Review and Payment of Billing

- 4.5.1 The designated person/unit shall, after receipt of complete documents, review the submitted billings by the Facility Operator within five (5) working days.
- 4.5.2 Once verified, a disbursement voucher and check in the name of the facility operator shall be prepared by the Agency within five (5) working days for payment of the concerned billing.

4.6 Reporting Requirement

- 4.6.1 Fifteen days (15) after the last calendar day of the preceding month, the Agency shall submit a summary of revenue collections, disbursements and interest income earned from the Escrow Account to the National Treasury, DBM, DOF, NEDA and BOT Center.

5.0 APPLICABILITY

This Circular shall be adopted years thereafter and for as long as a similar provision is included in the GAA.

6.0 STRICT COMPLIANCE

Agency heads are enjoined to monitor the strict compliance of the established guidelines and to impose administrative sanction for any unauthorized deviation therefrom.


7.0 SEPARABILITY CLAUSE


If any part or provision of this Circular shall be held invalid, other provisions hereof which are not affected thereby, shall continue to be in full force and effect.


8.0 EFFECTIVITY

This Circular shall become effective fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.


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