

Guidelines on the Preparation, Review and Approval, and Implementation of Information and Communications Technology (ICT) Projects Proposed for Financing Under Republic Act (RA) No. 6957, as amended by R.A. No. 7718, otherwise known as the Build-Operate-Transfer (BOT) Law

1. Objectives

1.1 General Objective

This set of guidelines aims to speed up the use and application of Information and Communications Technology (ICT) to enhance overall governance by further encouraging wider and more active private sector participation in the development and implementation of government ICT projects pursuant to Republic Act (RA) No. 6957, as amended by R.A. No. 7718, otherwise known as the Build-Operate-Transfer (BOT) Law.

1.2 Specific Objectives

More specifically, this set of guidelines shall:

Supplement existing implementing rules and regulations on the BOT Law and Investment Coordination Committee (ICC) guidelines to further assist national government agencies (NGAs) and local government units (LGUs) in pursuing private sector-participated (PSP) ICT projects under the BOT Law;

Facilitate the processing of ICT projects through a clear, streamlined and more transparent project development, evaluation, approval and implementation process; and

Ensure the application of “best practices” and “lessons learned” from completed and/or on-going ICT projects under the BOT Law.

2. General Guiding Principles

- 2.1 The government shall further encourage private sector participation in the development and implementation of ICT projects pursued under the BOT Law, consistent with the declared policy of the government that the private sector is the driver and engine of growth, especially in the ICT sector;
- 2.2 Healthy competition and a level playing field among qualified private sector proponents shall be encouraged while facilitating the processing of PSP-ICT projects through streamlined and more transparent guidelines and procedures;
- 2.3 ICT shall be used not only as an instrument to promote greater transparency and efficiency in government operations, but also to help reduce, if not eliminate, graft and corruption in government transactions;
- 2.4 While the packaging and implementation of large-scale or “mega” projects shall not be prohibited, small-scale ICT projects with immediate realizable results shall be encouraged for greater manageability and accountability; and
- 2.5 All ICT projects shall always be in pursuance of or are consistent with the ICT plans of the country and the agency/LGU concerned.

3. Scope and Coverage

These guidelines shall govern and apply to all ICT projects of any department, bureau, office, commission, authority or agency of the national government, government-owned or-controlled corporations (GOCCs), local government units (LGUs) and government financial institutions (GFIs) pursued under any of the contractual arrangements or schemes authorized under and pursuant to the BOT Law.

The ICT projects that shall qualify under these guidelines are basically those that aim to:

- a. enhance the delivery of government frontline services and transactions pursuant to the Information Technology Action Agenda for the 21st Century (IT21), the Government Information Systems Plan (GISP), the Medium-Term Philippine Development Plan (MTPDP), and their successor plans;
- b. streamline internal and business processes to ensure greater transparency, efficiency and effectiveness in government operations; and
- c. allow wider public access to government information and services at low cost.

4. Definition of Terms

For purposes of these guidelines, the terms and phrases used herein shall be understood to mean as follows:

- 4.1 Agency – refers to any department, bureau, office, commission, authority, or instrumentality of the national government, including government-owned or-controlled corporations (GOCC), authorized by law or by their respective charters to contract for or undertake information and communications technology networks and databases, infrastructure or development projects. For purposes of these guidelines, the term “agency,” “government agency,” “national government agency,” shall be equivalent to and used interchangeably with “implementing agency.”
- 4.2 Build-Operate-Transfer (BOT) – refers to a contractual arrangement whereby the project proponent undertakes the development, setting up or provision, including the financing, of a given ICT facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term that shall not exceed fifty (50) years. The general terms and conditions as provided in this definition shall also apply to other BOT arrangements as defined or provided in Section 1.3 (c) of the Implementing Rules and Regulations (IRR) of the BOT Law.
- 4.3 Certificate of Acceptance of an ICT Facility (CAIF) – the certification issued by the implementing agency/LGU indicating the completion and acceptance of the ICT facility, process, program, standard, or procedure as agreed upon and clearly defined/specified in the project contract.
- 4.4 Concession Period – the cooperation period in terms of months or years between the project proponent and the government agency or the local government unit (LGU), that shall commence from the In-Service Date of the ICT project, unless renewed or extended, which shall in no case exceed a total period of fifty (50) years, unless earlier terminated.
- 4.5 Government Information Systems Plan (GISP) or Philippine Government Online – is a master plan that harnesses the potentials of ICT for good governance, and promotes transparency and accountability in government operations and transactions. It identifies and prioritizes key

government frontline services and common application systems for development and implementation.

- 4.6 ICC – refers to the Investment Coordination Committee of the National Economic and Development Authority (NEDA) Board. The ICC is composed of the Secretary of Finance, as chairman; the NEDA Director-General, as co-chairman; and the Executive Secretary, the Secretaries of Agriculture, Trade and Industry, Budget and Management, Energy and the Governor of the Bangko Sentral ng Pilipinas, as members.
- 4.7 Information and Communications Technology (ICT) – refers to the totality of means employed to systematically generate, send, receive, store or otherwise process electronic data messages or electronic documents, encompassing the use of computer technology and telecommunications as well as any information and communications technology that deals with the integrated use of modern applications of computers, networks and of telecommunications in the provision of information and value-added electronic services.
- 4.8 ICT Project – means all activities and services undertaken by the project proponent for the fulfillment of a contract or obligation, including but not limited to the financing of the project, systems design and development, installation, testing, commissioning and operation, data conversion and creation of databases, as well as systems maintenance and upgrading.
- 4.9 Information System – is a computer-based system which facilitates the storage, processing and retrieval of data for decision-making, planning, controlling/monitoring purposes.
- 4.10 Information Systems Strategic Plan (ISSP) or Information Systems Plan (ISP) – refers to a three to five year computerization framework of an agency/LGU which describes how the organization intends to strategically use ICT in pursuit of its mission and functions.
- 4.11 In-Service Date – shall mean the date of issuance of the final CAIF for the ICT Project; provided, that if an ICT Project is: (a) being undertaken under a Build-Operate-Own (BOO) scheme which does not transfer ownership of the ICT facilities to the implementing agency; and (b) divided into several phases or stages, then the In-Service Date shall mean the date a CAIF is issued for the applicable phase or stage of the ICT Project evidencing physical completion of any or substantially all of the ICT facilities as specified in the contract.
- 4.12 Key Performance Indicator (KPI) – refers to a pre-determined or desired performance benchmark/standard set to measure the efficiency and effectiveness of the installed system or service.
- 4.13 Local Government Units (LGUs) – refer to provincial, city, municipal and/or barangay government entities.
- 4.14 Medium-Term Philippine Development Plan (MTPDP) – the development blueprint of the government over the next 4 to 6 years. It embodies the vision and policy thrusts of the government and consists of a comprehensive set of social and economic policies that address the needs of the people coupled with institutionalized reform.
- 4.15 National Computer Center (NCC) – the primary agency in the government charged with the responsibility of directing IT use for national development and rationalizing computerization in the country.

- 4.16 Open System – A system with characteristics that comply with specified, publicly maintained, readily available standards and that therefore can be connected to other systems that comply with these same standards.
- 4.17 Private Sector Participation (PSP) – essentially a contractual arrangement entered into by a national government implementing agency (IA) or LGU to authorize a private sector entity to finance, construct, operate and maintain a facility and, in the process, to charge user fees or receive compensation from the government. The choice of the PSP mode may vary from any of the schemes authorized under the BOT Law and its IRR.
- 4.18 Project Proponent – refers to the private sector entity which shall be contractually responsible for the project and which shall have an adequate financial base to implement said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project. A project proponent may consist of a group or consortium of companies formed for the purpose of participating in the ICT project. The project proponent may contract out to a private contractor or entity the actual development of any component and installation and/or supply of equipment for the ICT project.
- 4.19 Request for Proposal (RFP) – details the work required in the project, the technical description and specifications of the project, the bidding procedures and instructions to bidders, evaluation methodology and criteria, minimum operational performance and contract terms and conditions.
- 4.20 Source Code – consists of readable programming statements/instructions written by a computer programmer.

5. Legal Basis

The legal basis for these guidelines is Republic Act No. 6957, entitled “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes”, as amended by Republic Act No. 7718.

6. Pre-Investment/Project Packaging Stage

- 6.1 As a matter of policy, all ICT projects shall fully take into account the technical considerations listed under Section 6.3 hereof regardless of whether the ICT project is a solicited or unsolicited proposal.
- 6.2 The acceptance by the agency or LGU of all unsolicited proposals shall be subject to the technical considerations listed under Section 6.3 hereof.
- 6.3 For solicited proposals, all ICT projects shall consider in its pre-investment/feasibility studies the following:
 - 6.3.1 Interconnectivity and Dynamism. All project proposals shall be required to identify an “open system” as a minimum standard requirement. The necessary connectivity infrastructure required to support a sustainable development network should be established, as well as the network management capacity to sustain the operations of the network.
 - 6.3.2 Data Capture, Conversion and Transfer of Technology. Project proposals shall include technical details on the conversion of manual records into a digital database, including the management of such conversion, database migration, training and capability to continue the project. The costs associated with these activities shall form part of the proposed total project cost.

- 6.3.3 Provision on Downtime. Project proposals shall include identification of maximum downtime inclusive of downtimes required to provide maintenance and repair services to ICT facilities.

Appropriate provisions shall be included in the contract on penalties to project proponent if there is downtime in excess of what was proposed in the bid or as agreed upon in the contract.

Project proposals shall also include a provision on back-up and recovery procedures or facilities to ensure the continuous operation of the project even during systems downtimes and breakdowns.

- 6.3.4 Ownership of Source Codes. Project proposals shall be required to provide a specific provision on the ownership of source codes, as well as a provision on the right to acquire source codes in the event the project proponent is declared in default. For application systems customized for the implementing agency, the source codes shall be turned over to the implementing agency immediately upon completion of the BOT contract. A provision on source code escrow may also be provided, but shall be mandatory for customized application systems.

For ICT projects which shall involve the transfer of ownership of the ICT facilities to the implementing agency, all third party-owned software licenses acquired, used and installed for use in the project shall be acquired for and in behalf of and accordingly transferred to the implementing agency during the turn-over of the project.

The ownership of the analysis, design, source codes and executable programs of all the application systems developed shall be turned over to the implementing agency at no additional cost.

For any hardware or software that has been configured or customized for the project, the settings, configuration, scripts, codes, or passwords used shall be fully documented and properly turned over to the implementing agency.

For ICT projects undertaken under a BOO scheme, which does not transfer ownership of the ICT facilities provided under the contract to the implementing agency, the project proponent shall provide reversion services and all reasonable assistance as agreed, at least twelve (12) months prior to the termination of the concession period, to ensure the orderly transfer of the services, functions and operations to the implementing agency or to another project proponent/service provider.

- 6.3.5 Underlying Intellectual Property. Project proposals shall be required to disclose the underlying licenses to software and hardware used or procured under the ICT project in case of turn-over or the exercise of step-in rights by the implementing agency.
- 6.3.6 Ownership of Data. Apart from data capture, project proposals shall clearly state that the data and metadata gathered and generated by the ICT project shall be owned by the implementing agency.
- 6.3.7 Obsolescence. Given the rapid pace of ICT development, project proposals shall take into consideration the obsolescence of the technology to be used in the ICT project.

6.3.8 Reengineering of Business Processes. Project proposals shall include discussions on how an existing process or procedure of government or of the agency submitting the proposal will be reengineered for, among others, shorter processing time, less paper requirements, nonrepetitive processes and input requirements.

6.3.9 Data Security and Integrity. All project proposals shall include provisions for ensuring the security and integrity of all data used and generated by the systems developed under the ICT project. Security and integrity shall also cover physical, network and system facilities.

7. ICC/Local Sanggunian Project (First Pass) Review and Approval Stage

The review and approval of PSP-ICT projects proposed to be implemented under the BOT Law shall be in accordance with Sections 2.7 to 2.11 of the IRR of the BOT Law.

7.1 NCC Certification

All agencies shall comply with Memorandum Order No. 237, series of 1989, requiring all government agencies and other entities to submit their ISSP/ISP to the Department of Budget and Management (DBM) for approval, upon the recommendation of the National Computer Center (NCC). In the case of LGUs, submission of their ISSPs/ISPs as approved/endorsed by their Local Sanggunian to the NCC shall be on their option as this is not mandatory under MO No. 237.

7.1.1 As part of the documentation of the ICT project proposal, the agency submitting the proposal shall obtain an NCC certification that the proposed ICT project is included in the agency's ISSP/ISP and consistent with the GISP and its successor plans. The certification shall also cover the appropriateness of the technology and design of the proposed ICT project, taking into consideration the functional requirements of the agency.

7.1.2 LGUs are encouraged to seek NCC certification to ensure that all LGU ICT projects are consistent with their ISSP, if any, and with the GISP and its successor plans and further, that these projects will not duplicate nor be inconsistent with other on-going or proposed activities of either government or the private sector.

7.2 Appropriateness of Scheme

The ICC/Local Sanggunian shall determine the appropriate scheme/contractual arrangement for each ICT project. ICC/Local Sanggunian approval shall also mean the appropriateness of private sector financing for the PSP-ICT project and the acceptability of the support being requested from the national government and/or a GOCC.

7.3 Documentation Requirement

Submission of PSP-ICT project proposals to the ICC for evaluation/approval shall include the ISSP/ISP approved by NCC, which shall, as necessary and practicable, contain the following information, and such other information as maybe required by NCC:

7.3.1 Organization

- a. Size of agency/LGU in terms of number of personnel and budget;
 - b. Mission statement which contains the goals of the agency/LGU based on its mandate;
 - c. Strategic thrust or programs of the agency/LGU stating its major undertakings to achieve goals;
 - d. Business systems that are pursued regularly for the implementation of the programs;
- and

- e. Strategic concerns for ICT use showing how the agency/LGU intends to apply ICT.

7.3.2 Information Systems Strategy

- a. Description of identified Information Systems (IS);
- b. Impact of the IS to the agency/LGU's thrusts, business operations, and strategic areas of governance;
- c. Information system linkages which shows the functional usage of the IS to a workgroup;
- d. Strategy to be used in the development of the identified IS; and
- e. Description of databases to be created.

7.3.3 Technology Strategy

- a. Technology option chosen which provides the computing scheme to be adopted;
- b. Technology establishment which shows the resources to be used for the agency/LGU's computerization;
- c. ICT organizational structure envisioned; and
- d. Technology chosen which must be sustainable over a reasonable period of time.

7.3.4 Implementation Strategy

- a. Prioritization of IS to be developed;
- b. Phasing of IS development activities is feasible and logical; and
- c. Cost estimation for the ICT investment and development program.

8. RFP Preparation Stage

- 8.1 The agency/LGU shall prepare and publish the preliminary bid specifications and terms and conditions of the ICT project. This shall provide a clear and complete definition of the functional requirements of the project, to include business process flow and data descriptions for the applications involved, and volume and size assumptions (e.g., number of users, types and volume of transactions, record sizes and volumes, etc.). For this purpose, the agency's ISSP shall provide the inputs to the RFP document.
- 8.2 Apart from the provisions of Rule 4 of the IRR of the BOT Law and the technical considerations listed in Section 6.3 hereof, the following shall be taken into consideration in the preparation of the RFP:
 - 8.2.1 Underlying Intellectual Property. The contract shall ensure that in case of turn-over or the exercise of step-in rights by the implementing agency, the underlying licenses to software and hardware are properly disclosed.
 - 8.2.2 Obsolescence. Given the rapid pace of ICT development, the obsolescence of the technology to be used shall be taken into consideration in the RFP. The KPI shall underline the choice of technology of the project proponent. As long as the system delivers and meets the required level of performance, the bid proposal shall be deemed responsive to the requirements of the project. A provision shall be included in the contract providing for the upgrading of software and hardware in case the technology used in the ICT project is no longer applicable.
 - 8.2.3 Technology Transfer Arrangements (TTA). The mandatory and prohibited provisions as stated in Sections 87 and 88 of RA 8293 or the Intellectual Property (IP) Code shall be

taken into consideration in providing for TTAs in the contract. However, the implementing agency may seek an exemption from these provisions under Section 91 of the IP Code.

9. Bidding/Procurement Stage

9.1. Pre-Qualification of Bidders/Qualification of Project Proponent

9.1.1 In addition to the pre-qualification requirements provided for under Section 5.4 of the IRR of the BOT Law, a project proponent shall comply with the following:

- a. **Membership of Consortium.** The project proponent shall clearly specify/list the names, business addresses, and other data/information required for membership in the consortium formed for the purpose. Any change or addition to the membership of a consortium is permissible, provided that the proposed new members/partners will have to be pre-qualified by the concerned agency/LGU prior to any such change or addition.

In case the project proponent intends to create a project company, the membership/composition of such project company shall be disclosed and prequalified.

An ICT company shall only be allowed to participate in one consortium in the bidding for a particular ICT project except where the ICT company is the exclusive source of a particular "solution" that is indispensable or necessary for the undertaking of the specific ICT project.

- b. **Absorptive Capacity.** Companies with ongoing or existing contracts with the government shall be required to disclose the staff complement, including the experts/consultants currently working on PSP-ICT government project(s). This is to ensure that the experts/consultants hired by the project proponent for the ICT project are capable and knowledgeable in their field of work.

9.2. Evaluation of Bids

9.2.1 The First Stage Evaluation (Technical Evaluation of Bids)

- a. **Technical Considerations.** The technical considerations listed in Section 6.3 hereof shall be considered, in addition to the criteria under Section 8.1 of the IRR of the BOT Law except its Paragraph a.
- b. **Functional Requirements and Technical Specifications.** Technical evaluation of ICT projects by the agency/LGU shall give greater weight to the functional requirements over technical specifications. The service standard/level of the project shall conform to the pre-identified KPI set by the concerned agency/LGU.
- c. **Benchmarking or Proof of Concept.** The implementing agency shall verify the proof of concept, benchmarking or prototype system of the solution proposed, to ensure that the process will work, especially in cases where a new technology will be used in the country.

9.2.2 The Second Stage Evaluation (Financial Evaluation of Bids)

- a. Financial Viability of the ICT Project. The assessment and comparison of the financial proposals of bidders shall be based on the ICC-approved parameters and any of the following indicators: (i) lowest present value of the user/transaction fees, rentals and other charges over a fixed term; (ii) the lowest present value of amortization payments for the facility to be constructed; or (iii) the highest present value of the share of and/or concession fee for the agency/LGU; provided that the user/transaction fees were based on the prescribed rates set by the agency/LGU.

The financial proposals of bidders shall include detailed financial feasibility study with complete cost breakdown and shall be considered as part of the financial evaluation.

For purposes of uniformity and to ensure that the bidders are using the same parameters, the ICC prescribed discount rate shall be used and clearly specified in the Request for Proposal (RFP)/Terms of Reference (TOR).

If the project proponent's main revenue will be derived from an increment to be charged or indexed on top of the agency's/LGU's transaction fee for a particular ICT service or all ICT services rendered by the project proponent, the assessment and comparison of the proposal of bidders shall be based on the lowest opening incremental rate to be charged or indexed on top of the agency's/LGU's transaction fee for a particular ICT service or all ICT services rendered, i.e., incremental rate on the first year of operation; provided, however, that bidders have submitted a single fixed incremental rate for the entire concession period. The agency/LGU shall prescribe a parametric formula to govern the adjustment of incremental rates over the concession period.

- b. Multiple Submissions of Financial Bids. The concerned agency/LGU may call for multiple submissions of financial bids corresponding to different lengths of concession periods, such periods being explicitly prescribed by the agency/LGU in the RFP, unless it is otherwise prescribed that the concession period is fixed for a single period. In which case, the agency/LGU shall open the financial envelopes of each bidder corresponding to the shortest concession period first and should decide if the financial bid is acceptable before opening the financial envelopes for the succeeding concession periods. Acceptability of bid is based on government budget estimate (e.g., subsidy estimate) or the willingness to pay of the general public, among others.

Example:

Concession Period	Proponent's Financial Bid
3 years	_____
5 years	_____
10 years	_____

- c. Posting of Bid Bonds for ICT Projects. Sec. 7.1.b.v of the IRR of the BOT Law requires that the bid security be a percentage of estimated cost of construction. In the case of ICT projects, construction cost shall be taken to refer to the total project cost. Total project cost includes hardware, software, application systems, peripherals and other appurtenances and building renovations, if any, among others.

In cases of multiple submission of financial bids, the project cost corresponding to the longest concession period shall be the basis of the amount of bid security.

10. Contract Award and Implementation Stage

- 10.1 **Winning Bidder.** The winning bidder, which may be an individual, partnership, corporation, or consortium, shall be the party to enter into a PSP-ICT contract or concession agreement with the implementing agency/LGU. However, this is without prejudice to the assignment of the implementation of the project to a project company or a special purpose company that has been formed for the purpose, and registered in accordance with Philippines laws. The project company will also undergo prequalification by the implementing agency.

In case where the winning bidder is a consortium, the consortium may form a project company or corporation, formed and duly registered under Philippine laws, which shall execute or implement the ICT project with the implementing agency; provided, that the consortium shall be jointly and solidarily liable with the project company or corporation for the fulfillment of the obligations under the ICT contract.

- 10.2 **Change in Membership of Consortium.** In general, any change or addition to the membership of a consortium before and/or after the contract award is discouraged. However, if the change or addition is inevitable and/or necessary due to unforeseen circumstances and the change shall be for a more suitable and acceptable substitute with equal or better qualifications, the same shall undergo the same procedures for the pre-qualification of new members or partners by the concerned agency/LGU prior to the approval of such change or addition. For this purpose, the prequalification requirements used in the bidding/procurement stage shall be complied with by the new members of the consortium.

However, as provided for in Sec. 11.4 of the IRR of the BOT Law, the withdrawal of any member of the consortium, or its prequalified contractors, could be a ground for disqualification or cancellation of the contract respectively and the forfeiture of the proponent's bid or performance security. The agency/LGU may proceed with the award of the contract or implementation of the project if, upon its determination, it finds that the other members of the consortium or its contractors are still capable of successfully carrying out the project.

Changes in the membership of the consortium, including the determination of the project proponent's capability to implement or continue the project, shall be approved by the head of the implementing agency, upon recommendation of the Project Technical/Monitoring Committee as provided in Section 10.3 of these guidelines.

- 10.3 **Project Technical/Monitoring Committee.** The head of the agency/LGU shall create within seven (7) calendar days from the date of issuance of the Notice of Award, a Project Technical/Monitoring Committee (PTMC), which shall be responsible for the monitoring of the construction, development and implementation of the ICT project, with all members coming from the IA/LGU. The Chairman of the PTMC shall, for the implementing agency, have the rank of at least a director, or for the LGU, have the rank of at least a local government department head.

The PTMC shall also monitor the technology, hardware, software and other peripherals to be installed for the ICT project and compare the actual costs with the financial proposal to avoid or minimize unexpected increase in the original project cost.

- 10.4 **Divestment of Shares.** The contract shall include a provision requiring prior agency/LGU approval of any divestment by any shareholder owning at least twenty (20) percent of the total shareholdings of the consortium or project company, as the case may be, at any point during the concession

period. The agency/LGU shall not withhold its consent to such divestment or reduction in shareholdings if the shares will be transferred to an entity with equal or better qualifications, as agreed upon by the agency/LGU and the consortium or project company.

- 10.5 Certificate of Acceptance of an ICT Facility (CAIF). The agency may issue a CAIF on a per module basis or per phase of system development, provided that acceptance of the CAIF will mark the start of concession period for each module or phase, and that the contractor cannot proceed with the implementation of the next module until the agency has issued the CAIF, where the modules or phases of the project are interrelated.

However, for ICT projects which have stand-alone modules or phases that are not required for the operation of other modules or phases, the agency may issue a CAIF for each independent module or phase to allow simultaneous implementation of said modules or phases. There may be as many CAIFs issued as there are phases/modules of the project. Moreover, a clear definition of the 'module' or 'phase' shall be provided in the contract.

The final CAIF shall be issued only after the final testing when all the systems are found to be complying with the performance standard set in the RFP.

- 10.6 Performance Guarantee for Development. In the case of ICT projects where development is divided into modules or phases where one phase or module maybe completed ahead of the other, a CAIF shall be issued for the completed phase or module. In this case, either of the following two options or both may be applied:

- i. A pro-rated structure according to the development cost of each phase or module whereby the development performance security diminishes and the performance security for operation increases as the development of a phase or module is completed and the operation starts. Once the development of a phase or module is completed, the development security for that particular phase or module is released and the project proponent will then post an operation performance security for that phase.
- ii. A performance security covering both the development and operation of the project but should specify the percentage based on the development cost of each phase or module. If the bond becomes callable for a certain phase or module of the project, whether that phase or module is still in the development stage or already in the operation stage, only the corresponding amount will be released or called upon. Only then when the final CAIF is issued that it would be renewed or posted entirely as an Operating Security.

The Operating Security shall be released by the agency/LGU concerned at the end of the concession period, provided it is free from any lien, charge or encumbrance.

- 10.7 Liquidated Damages Payable by the Project Proponent. Where the project proponent fails to satisfactorily complete the work within the development period or fail to comply with its deliverables as prescribed in the contract, including any extension or grace period duly granted, and is found to be in default under the contract, the project proponent shall pay the implementing agency/LGU liquidated damages, as may be agreed upon under the contract by both parties. The parties shall agree on the amount and schedule of payment of the liquidated damages. The liquidated damages may be chargeable against the performance security in the case of the project proponent or may extend the operation/concession period of the project if it is the implementing agency/LGU or the government which is in default.

- 10.8 Funds for Upgrading, Repair and Maintenance of Hardware, Software, Training of Personnel of the Implementing Agency and other Appurtenances. The project proponent shall set aside a fund for

the repair, maintenance, and upgrading of the computer hardware and software, including, but not limited to, the training of personnel of the implementing agency/LGU to ensure transfer of technology and the capability to maintain the system already in place, especially for PSP-ICT projects which involve the transfer of ownership of the ICT facilities to the implementing agency. The amount of the fund shall be agreed upon by both parties and be deposited in an escrow account separate from other accounts. The interest generated from the escrow account shall be made in favor of the project proponent.

- 10.9 Service Level Agreements (SLAs). Guaranteed minimum service levels for the ICT project shall be agreed upon by the implementing agency and the project proponent. The performance standards and the predetermined KPI shall provide the inputs to the SLA. In addition, the SLA shall provide for specific remedies in case of a dispute (e.g., failure to meet service levels) to prevent interruption of government services.

If the contract will involve multiple service providers, the project proponent shall disclose the names, complete addresses, and contact numbers of said service providers, while the implementing agency shall require the project proponent to map out the SLAs by and between those service providers in order to determine who shall be responsible for which specific aspect/component of the project.

- 10.10 Changes in Project Requiring ICC Approval. Change in the project cost which would entail an increase or decrease of more than 20% shall require approval by the ICC, pursuant to applicable ICC guidelines.

Implementing agencies/LGUs shall ensure that all proposed changes in the project, other than those requiring ICC approval, are reported to the ICC for its information.

For renegotiated contract, the implementing agency, with concurrence of the concerned department agency, shall endorse to the ICC through its Secretariat the documents detailing the new negotiated term. An extended summary shall be submitted together with a comparative presentation in matrix form of the renegotiated terms supported by all necessary documents including the financial model in order for the ICC Secretariat to validate the representation of the implementing agency. If necessary, other concerned agencies may be invited to participate in the validation process.

- 10.11 Change Order Procedure. Where the agency or the project proponent see the need for any change in scope and cost of the project, including changes in the system hardware, software, system interfaces, inputs, outputs, functionality or in the way the ICT project is implemented as described in the contract, provided it is not subject to the approval of the ICC in accordance with Section 10.10 hereof, the implementing agency or the project proponent may at any time request and recommend such change and propose an amendment to the contract in accordance with the following procedures:

10.11.1 The party which requests the change (the "Originator") shall forward to the other party (the "Recipient") a Change Request, which shall include, among other information, the following:

- a. Project identification;
- b. Originator's name and title;
- c. The date of the Change Request;
- d. A description of the proposed change; and
- e. The justification for the proposed change.

- 10.11.2 The Project Proponent shall assign a number to and log each Change Request received.
- 10.11.3 All Change Requests shall be categorized by the Originator as Priority 1 (urgent), Priority 2 (ordinary), or Priority 3 (post acceptance).
- 10.11.4 The Project Proponent shall make reasonable efforts to investigate the impact of the Change Request ("Impact Study") on the price, timetable, statement of work, specifications and relevant obligations under the ICT contract in accordance with the schedule set out in the ICT project plan for each priority category.
- 10.11.5 If the parties cannot agree on the impact, or on the results of the Impact Study, on the necessary amendments, the Change Order Request shall not be implemented.
- 10.11.6 Any change order request shall be acted upon by both parties, in writing, within twenty (20) working days from receipt of the request by either party, or within a reasonable period as may be agreed upon by both parties.
- 10.11.7 Final approval of all requests for changes shall be made by the head of the agency, upon recommendation of the Project Technical/Monitoring Committee, or similar body created for the purpose, as provided in Section 10.3 hereof.

11. Contractual Arrangements/Franchise Requirements

ICC evaluation on the appropriate contractual arrangements for the PSP-ICT project shall be guided by:

- a. legal concerns such as Constitutional limitations or franchise issues which might affect the PSP/BOT ICT project's ability to be implemented under the BOT Law; and
- b. the advantages and disadvantages of implementing the PSP/BOT ICT project under different contractual arrangements.

12. Receipts Arising from BOT Transactions and Its Variant Schemes

Receipts, such as toll fees, charges and other revenues arising from BOT projects, collected by the National Government but shall accrue to the proponent private companies, 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 and pursuant to applicable law and existing rules and regulations.

However, 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, consistent with the agency's/LGU's mandate and specific provisions of law and existing rules and regulations.

13. Coordination and Monitoring of PSP/BOT Projects

The Build-Operate-Transfer Center (BOT Center) of the Department of Trade and Industry shall be responsible for the coordination and monitoring of projects implemented under the contractual arrangements or schemes authorized by RA 7718 or the amended BOT Law. Concerned government agencies/LGUs shall periodically submit to BOT Center information on the status of projects implemented by them. Moreover, all concerned government agencies/LGUs shall furnish the BOT Center and the National Computer Center with a copy of all unsolicited ICT proposals and other related documents submitted to them. For this purpose, the BOT Center shall be the official repository of all PSP/BOT documents that will include requests for proposals, bid documents, contracts, BOT status reports, and other related documents. The documents

shall be submitted to BOT Center within thirty (30) days upon signing of the contract. BOT Center is also hereby mandated to guide the agency/LGU in the preparation and development of the projects.

14. Conflict Between the Provisions of the Guidelines and the BOT Law IRR

In case of inconsistency or conflict in interpretation between the provisions of these additional guidelines and the BOT Law and its IRR, the provisions of the BOT Law and its IRR shall prevail.

15. Applicability

These additional guidelines shall be applicable to all PSP-ICT projects to be implemented or approved upon its effectivity, including those approved by the ICC whose (a) Requests for Proposals (RFPs) have not yet been issued, in the case of solicited PSP-ICT projects; and (b) negotiations have not been concluded and/or ICC approval of the draft contract for the project has not been secured, in the case of unsolicited PSP-ICT projects.

16. Effectivity

These additional guidelines shall become effective fifteen (15) days after publication in at least one (1) newspaper of general circulation.

Adopted by the NEDA Board, through ad referendum, in its Resolution No. 10 (s. 2003).

Published by:

Information Technology and Electronic Commerce Council (ITECC)

11th Floor, PMS Building, Arlegui St., San Miguel, Manila

and

National Economic and Development Authority (NEDA)

12 St. J. Escrivá Drive, Ortigas Center, Pasig City

<http://www.neda.gov.ph>