

IMPLEMENTING GUIDELINES FOR THE SPECIAL PROVISION ON THE USE OF UNPROGRAMMED APPROPRIATIONS FOR THE RISK MANAGEMENT PROGRAM OF REPUBLIC ACT NO. 10924 (2017 GENERAL APPROPRIATIONS ACT)

To effectively carry out Special Provision No. 5 of Title XLII of Republic Act No. 10924, the Development Budget Coordination Committee (DBCC), pursuant to the powers vested in it under Executive Order No. 292, s. 1987, hereby promulgates the following guidelines to govern the use of Unprogrammed Appropriations for the Risk Management Program (RMP).

1. GENERAL STATEMENT

- 1.1 ***Rationale for the RMP.*** The RMP shall serve as a measure to manage the National Government's fiscal risks arising from Public-Private Partnership (PPP) Projects, to strengthen the country's credibility among the private sector, and to ensure timely compliance with the contractual obligations of Implementing Agencies.
- 1.2 ***General Policies on the Use of Unprogrammed Appropriations for the RMP.***
- i. Payments for obligations arising from events specified in a PPP Contract, whose occurrence, timing, and/or amount are certain shall be coursed through the standard appropriations process. The use of Unprogrammed Appropriations for the RMP shall be limited to payment for obligations defined in Section 3 of these Guidelines (Coverage).
 - ii. Disbursements from the Unprogrammed Appropriations for the RMP shall be approved by the DBCC, which, if circumstances warrant, may elevate the matter to the President for appropriate action.
 - iii. Disbursements from the Unprogrammed Appropriations for the RMP shall be subject to existing laws, rules, and regulations, including DBCC Resolution No. 2015-2, which approved the creation of the Technical Working Group on Contingent Liabilities (TWG-CL).

2. DEFINITION OF TERMS

The following definition of terms shall apply for purposes of these Guidelines:

Contingent Liability shall refer to an obligation that may or may not arise from events specified in a PPP Contract, the occurrence, timing, and/or amount of which are uncertain. These events are:

- i. Regulatory risks;
- ii. Force majeure;
- iii. Breach of government warranties; and
- iv. Material Adverse Government Action.

Contract Management and Risk Mitigation Plan or ***CMRMP*** shall refer to the summary of the National Government's risks in a PPP Project, and ways to mitigate such risks, as prescribed in the form hereto attached as "Annex A".

Implementing Agency or ***IA*** shall refer to National Government Agencies (NGA), Government-Owned or -Controlled Corporations (GOCC), Government Financial Institutions, and State Universities and Colleges authorized to undertake PPP Projects pursuant to R.A. No. 6957, as amended by R.A. No. 7718, and its Revised Implementing Rules and Regulations.

PPP Contract shall refer to the signed agreement between an IA and a private sector entity that was awarded a PPP Project or its successor-in-interest.

PPP Project shall mean any project implemented through Republic Act No. 6957, as amended.

3. COVERAGE

- 3.1 **Use of Unprogrammed Appropriations for the RMP.** Disbursements from the Unprogrammed Appropriations for the RMP may be allowed to pay for:
- i. Contingent Liabilities; and
 - ii. Subject to the existence of the conditions in Section 3.2, obligations which are not Contingent Liabilities but, due to exceptional and urgent circumstances, require payment in case of non-performance.
- 3.2 **Exceptional and Urgent Circumstances – Conditions.** By way of exception, disbursements from the Unprogrammed Appropriations for the RMP may be allowed in order to meet an IA's obligation that is not a Contingent Liability as defined in these Guidelines, subject to the following conditions:
- i. Non-performance of the obligations is highly likely to result in termination by the private sector entity due to the IA's default;
 - ii. There is no other option to avoid termination; and,
 - iii. Termination has substantial financial or other material consequences.
- 3.3 **Exclusions.** Notwithstanding Sections 3.1 and 3.2, Unprogrammed Appropriations for the RMP cannot be used in the following:
- i. PPP Projects of GOCCs, where the obligation in the PPP Contract is not guaranteed by a performance undertaking or a similar instrument issued by the National Government.
 - ii. PPP Projects of local government units.

4. PROCEDURE FOR AVAILING OF UNPROGRAMMED APPROPRIATIONS FOR THE RMP

- 4.1 **Conditions for Availment.** Unprogrammed Appropriations for the RMP may be availed only if the following conditions exist:
- i. The conditions for the use of Unprogrammed Appropriations under Special Provision No. 1 of Title XLII of Republic Act No. 10924 have occurred;
 - ii. There is a valid commitment and/or obligation in the PPP Contract, upon which a claim arises.
 - iii. Payment for the Contingent Liability was not covered by appropriation or any other funding source, because the events and circumstances from which the obligation arose were unknown or could not have reasonably been foreseen during the budget preparation process. This requirement is waived in the case of payments for obligations described in Section 3.1 (ii).

4.2 **Request for Availment.** The Head of the IA or, in case of PPP projects with co-grantorship, the grantor that has the primary responsibility on the financial aspect of the project, must submit to the DBCC, through the TWG-CL Secretariat, a written request for funds from the Unprogrammed Appropriations for the RMP and certify the following:

- i. The claim arises from a valid commitment and/obligation in the PPP Contract.
- ii. An updated CMRMP was submitted in accordance with Section 6.3.
- iii. The conditions under Section 4.1 have been met.

The request shall include all details of any options to defer or delay payment and the consequences of such deferral or delay. The TWG-CL and the DBCC shall use the information to evaluate the merits of the use of Unprogrammed Appropriations for the RMP to avoid interest penalties or otherwise.

The foregoing requirements must also be submitted for requests for obligations under Section 3.2 of these Guidelines.

4.3 **Supporting Documents.** In addition to the letter, the IA shall submit the following documents:

- i. Private sector entity's notice of demand;
- ii. Certified true copy of the resolution approving the PPP Project by the National Economic and Development Authority Board or the Investment Coordination Committee, in accordance with RA No. 6957, as amended by RA No. 7718;
- iii. IA's budget strategy for the obligations in the PPP Contract;
- iv. IA's summary of the PPP Project's term sheet, which must include technical, economic, financial, social and environmental appraisal of the PPP Project.

The TWG-CL may require such other relevant documents and information as may be necessary for the evaluation of the request.

4.4 **Certification from the Bureau of the Treasury (BTr).** Upon request of the IA, the BTr shall certify whether funds for the use of Unprogrammed Appropriations for the RMP are available, in compliance with existing laws, rules, and regulations.

4.5 **TWG-CL Evaluation.** Within thirty (30) business days from a complete submission of documents, the TWG-CL shall review the IA's request and submit its recommendation to the DBCC. If a recommendation is not submitted within the 30-day period, the TWG-CL Secretariat shall automatically elevate the request to the DBCC for resolution.

4.6 **DBCC Resolution.** The DBCC shall decide on the request and, if circumstances warrant, may refer the matter to the President. The decision of the DBCC shall be documented in a signed resolution, which shall state:

- i. Its action on the IA's request (i.e. approved, disapproved, or referred to the President); and

- ii. The amount that may be disbursed from the Unprogrammed Appropriations for the RMP.

The TWG-CL Secretariat shall promptly furnish the IA with a copy of the DBCC's resolution.

- 4.7 **Disbursement.** If the IA's request is approved by the DBCC or the President, the IA shall submit a Special Budget Request, together with the DBCC's resolution and the BTR's certification to the Department of Budget and Management (DBM), furnishing copies thereof to the members of the TWG-CL, for the release of the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA).

Upon receipt of the Special Budget Request, the DBCC's resolution, and the BTR's certification, the DBM shall release the SARO and Advice of Notice of Cash Allocation Issued (ANCAI) to the IA, and the NCA to the authorized government depository bank concerned. The ANCAI shall include instructions to the IA to immediately settle the claims covered by the SARO and NCA.

The IA shall observe the pertinent budgeting, accounting, and auditing rules and regulations in the disbursement of funds.

- 4.8 **Confirmation of Payment.** The IA shall furnish the TWG-CL and DBCC with a copy of the proof of payment to the private sector entity within five (5) business days from the date of payment.

5. ACCOUNTABILITY MEASURES AND DISCLOSURE

- 5.1 **Responsibility to Report to Congress and Other Hearings.** To ensure accountability, when an IA has used Unprogrammed Appropriations for the RMP, regardless of whether claims arising from Contingent Liabilities were due to the fault or negligence of the IA, the IA shall be required to explain the circumstances and reasons leading to the use of Unprogrammed Appropriations for the RMP and/or prepare reports for Congressional inquiries, hearings or other meetings for similar purposes.
- 5.2 **Disclosure Requirements.** The DBCC shall include a disclosure of IAs that have used Unprogrammed Appropriations for the RMP in its budget submission to Congress. The DBCC shall cause the inclusion of relevant details on expected disbursements from the Unprogrammed Appropriations for the RMP in the annual Fiscal Risk Statement.
- 5.3 **Actions Against Erring Officials or Employees.** Sections 5.1 and 5.2 of these Guidelines shall apply without prejudice to any administrative, civil, or criminal charges that may be filed against erring officials or employees.

6. REPORTING AND MONITORING

- 6.1 **Duty to Submit Documents; Recording.** Upon the execution of a PPP Contract, the IA shall submit to the TWG-CL Secretariat certified true copies of such PPP Contract, the CMRMP, and other relevant documents, including guarantee agreements or performance undertakings, as may be applicable. The TWG-CL Secretariat shall check the completeness of the IA's submission, and maintain a complete record of all submitted documents, including copies of reports on material changes and updated CMRMPs required in Sections 6.2 and 6.3.

- 6.2 ***Duty to Report Material Changes.*** If, at any time, the IA becomes aware of a material change in circumstances or an event that significantly increases the likelihood of claims arising from Contingent Liabilities, the IA shall promptly submit to the TWG-CL Secretariat a report detailing the change in circumstances or event, the estimated cost of the Contingent Liabilities, and details of all remedial and mitigating actions that were taken by the IA. The TWG-CL Secretariat shall furnish copies of the report to the members of the TWG-CL.
- 6.3 ***Duty to Update CMRMP.*** Within ten (10) business days from the close of every quarter, the IA shall submit an updated CMRMP to the PPP Center for each of its PPP Projects. The updated CMRMP must include information on the PPP Project's status, likelihood of claims arising from Contingent Liabilities (i.e., low, medium, or high), and estimated amounts based on the computations set for this purpose. Within fifteen (15) business days from the close of every quarter, the PPP Center shall furnish copies of the updated CMRMPs to the TWG-CL Secretariat and submit to all members of the TWG-CL a list of PPP Projects which do not have updated CMRMPs.
- 6.4 ***Duty to Estimate Contingent Liabilities.*** The TWG-CL Secretariat shall periodically calculate the estimated cost of Contingent Liabilities. As may be necessary, it may require additional information on Contingent Liabilities from an IA.

7. FINAL PROVISIONS

- 7.1 ***Resolution of Related Issues.*** Any clarification as to the applicability of these Guidelines shall be referred to the DBCC, through the TWG-CL.
- 7.2 ***Revisions.*** The DBCC may revise these Guidelines as it deems necessary for the implementation of the RMP, and after consultation by the TWG-CL with affected stakeholders.
- 7.3 ***Separability Clause.*** If any provision of these Guidelines is declared unconstitutional, the same shall not affect the validity or legality of the other provisions.
- 7.4 ***Effectivity.*** These Guidelines shall take effect immediately.