Tourism Infrastructure and Enterprise Zone Authority

JOINT VENTURE GUIDELINES
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I
RATIONALE AND MANDATE

Section 8 of Executive Order No. 423 dated 30 April 2005 mandates the National Economic and Development Authority to issue guidelines to govern Joint Venture Agreements (JVAs) with private entities with the objective of promoting transparency, competitiveness, and accountability in government transactions, and where applicable, complying with the requirements of an open and competitive bidding. In compliance, NEDA issued the Guidelines and Procedures for entering into Joint Venture Agreements between the government and private entities (NEDA JV Guidelines) in 2008.

On 03 May 2013, the NEDA JV Guidelines was revised. Section 4.2 (b) thereof exempts from its coverage joint venture (JV) activities of government corporate entities in the exercise of their primary mandate to dispose government assets or properties.

Republic Act No. 9593 (RA 9593) or “The Tourism Act of 2009” reorganized the Philippine Tourism Authority (PTA) to what is now known as the Tourism Infrastructure and Enterprise Zone Authority (TIEZA), a government corporate body mandated to designate, regulate and supervise the Tourism Enterprise Zones established under said law, as well as develop, manage and supervise tourism infrastructure projects in the country. Under RA 9593, TIEZA shall be deemed a government infrastructure corporation under the provisions of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

A Board of Directors (“TIEZA Board”) governs and exercises the powers of TIEZA. Section 69 of Republic Act No. 9593 grants the TIEZA Board, among others, the power to:

a. develop policies, plans and programs in coordination with the Department for the development and operation of TEZs and adopt rules and regulations necessary for the implementation of the provisions of this Act;
b. enter into, make, perform and carry out contracts of every class, kind and description which are necessary or incidental to the realization of its purposes with any person, firm or corporation, private or public, and with foreign government entities;
c. construct, own or lease, operate and maintain infrastructure facilities or enter into JVs; and
d. exercise the general powers of a corporation.

Furthermore, TIEZA is mandated under Section 64 of RA 9593 to continue to exercise functions previously exercised by the PTA under Presidential Decree No. 564, which consist of planning and development of tourism projects, acquisition and disposition of lands and other assets for tourist zone purposes, infrastructure development for tourist purposes, zone administration and control, project and investment promotions, and, among others, to:
a. undertake for its own account or in JV with the private sector the operation and maintenance of essential tourist facilities which private enterprise alone is not prepared or willing to undertake;
b. enter into contracts of any kind and description to enable it to discharge its functions and powers under this Decree;
c. acquire, lease, own or possess such personal and/or real property as it deems necessary or convenient in the transaction of its business and/or in relation with the carrying out of its purposes, functions and objectives under this Decree; and to lease, mortgage, sell, alienate, or otherwise encumber or dispose of any such personal and real property held by it;
d. make, adopt, promulgate, and enforce such rules and regulations as are necessary to execute the powers, duties and functions vested in it by this Decree and by Presidential Decree No. 535, or to implement the policies and programs of the Department of Tourism, subject to the programs, policies and guidelines prescribed by the Department of Tourism;
e. do any and all acts and things necessary, convenient and expedient to be done to carry out the purposes for which the Authority is created and organized and not repugnant to law, it being expressly provided that the enumeration herein of specific purposes, objects, business, powers, rights, and privileges shall not be construed as limiting or restricting in any way the general purposes, powers, rights, and privileges to be possessed and exercised by the Authority.

In addition, Section 54 of Republic Act No. 9593 authorizes TIEZA to privatize such assets that TIEZA and the Department of Tourism determine should be put up for sale or lease.

The Office of the Government Corporate Counsel, in Opinion No. 021 Series of 2018, affirmed that TIEZA has the power and authority to adopt its own rules and procedures for entering into JVs and management contracts and for the disposition/privatization of its assets. Accordingly, TIEZA hereby issues these guidelines and procedures in establishing JV partnerships with the private sector with the aim of accelerating the development and enhancement of the facilities and services of TIEZA owned and/or controlled assets, contributing to tourism infrastructure developments, establishing TEZs, and undertaking other future tourism-related projects.

These JV Guidelines, however, do not preclude TIEZA from disposing or privatizing its assets, properties and facilities through other means.
II
DEFINITION OF TERMS

A. Competitive Challenge. A selection process wherein third parties are invited to submit comparative proposals to an unsolicited proposal and other direct negotiations. Accordingly, the party that submitted the unsolicited proposal is accorded the right to outbid any superior offer given by a comparative private sector participant.

B. Competitive Selection. Process of selection for solicited proposals wherein TIEZA shall prepare the terms of the JV activity and the selection/tender documents. This is considered as open bidding.

C. Contractual Joint Venture (Contractual JV). Otherwise known as "Unincorporated JV", pertains to a legal and binding agreement under which the JV partners shall perform the primary functions and obligations under the JV Agreement without forming a JV Company.

D. Eligibility Document Kit (ED Kit). Document indicating the procedures in applying for and acquiring eligibility to participate in the competitive selection/competitive challenge.

E. Eligible Proponent. An Interested Proponent that has submitted all the pre-qualification requirements provided in the ED Kit and has been declared "Eligible" by the JVSC.

F. Interested Proponent. Proponent who may or may not have submitted initial documents, but is interested in the JV activity. Proponent has not been declared eligible yet.

G. Joint Venture. An association of persons or companies jointly undertaking some commercial enterprise — generally, all contribute assets and share risks. It requires a community of interests in the performance of the subject matter, a right to direct and govern the policy connected therewith, and duty, which may be altered by agreement to share both in profit and losses.

H. Joint Venture Company (JV Company). Otherwise known as "Incorporated JV", refers to an entity registered with the Securities and Exchange Commission by the JV partners that shall perform the primary functions and obligations of the JV as stipulated under the JV Agreement.

I. Joint Venture Activity. Commercial undertaking of TIEZA through JV.

J. Local Government Unit. The municipality or city with jurisdiction over the location of a TIEZA asset/project.
K. **Negotiated Joint Venture.** Selection procedure for a JV partner resulting from two failed competitive selection, unsolicited proposals, and other direct negotiations with private sector proponents.

L. **Proposal Security.** Posted to guarantee that a Bidder shall comply with all of the terms of the Bid Documents, and if declared the Winning Bidder, that it shall comply with the conditions and requirements specified in the Notice of Award and Post-Award Requirements, and execute the JVA.

M. **Solicited Proposal.** TIEZA's initiative to seek partners for a JV activity.

N. **Tourism Infrastructure Support.** A voluntary and discretionary share, at a maximum of one percent (1%) of the net revenue, to be given by the JV partners to the local government unit annually should the partners agree on setting aside the fund.

O. **Unsolicited Proposal.** Project proposal submitted by a private sector proponent that is not in response to a formal solicitation or request by TIEZA.

P. **Winning Proponent.** An eligible proponent who was evaluated to have submitted the best proposal based on a set of criteria issued by TIEZA, and was declared by the TIEZA Chief Operating Officer (TIEZA COO) and the TIEZA Board as the "Winning Proponent".
III
PRINCIPLES

TIEZA may enter into a JV arrangement consistent with the following principles:

1. The JV activity shall be consistent with the mandate and authority of TIEZA under RA 9593, and those functions previously exercised by PTA under PD 564, and other relevant laws, Executive Orders, and rules and regulation, to the extent applicable.

2. Acquisition of goods, services, consultancy, and infrastructure projects shall not be subject to a JVA, if they are more properly executed as procurement under Republic Act No. 9184 (RA 9184).

3. Divestment of properties or assets is covered by the JV Guidelines only insofar as they form part of the contribution of TIEZA to the joint undertaking or business. Divestment per se is covered by other relevant laws.

4. Proposals or activities that are covered by Republic Act No. (RA 7718) or the Build-Operate-Transfer Law and its Implementing Rules and Regulations (IRR) shall be recognized and treated in accordance with RA 7718 and its IRR.

5. The cost of producing the particular product, activity, or service should be efficient or potentially efficient towards maximizing the value of TIEZA Assets earning potential profits for TIEZA and the market player/private sector partner.

6. The role of TIEZA as regulator of the business of the JV should be clearly and explicitly delineated from its role as implementer of the business to avoid conflicts of interest.

7. The JV activity may allow take-over by the private sector partner of TIEZA’s share in the JV activity subject to pertinent divestment laws, rules, regulations, procedures, and guidelines. Thus, JV projects which involve full divestment or transfer of government assets or properties to a private sector partner or a private sector/entity shall be approved/cleared by the Privatization Council (PC), and JV projects which involve divestment of government equity that is not in the form of asset or property shall be approved/cleared by the GCG.

8. The creation of the JV does not prevent the private sector proponent from profitably entering into a business venture.

9. TIEZA, in entering into a JVA with a private entity, shall at all times be guided by the principles of fairness, transparency, accountability, and competitiveness.
IV

OBJECTIVES

These Guidelines are issued for the following objectives:

1. prescribe the rules, guidelines and procedures in entering into JVAs with private entities consistent with our mandate;

2. encourage participation of private entities possessing expertise and technical capabilities in property, facility, and project development, and in operations and management, to enter into JVAs with TIEZA;

3. maximize utilization of TIEZA Assets, while contributing to national tourism goals through gainful and advantageous business arrangements and well-constructed tourism infrastructures; and

4. make TIEZA's partnership with the private sector a viable, efficient, and practical alternative in pursuing its mandate and development goals.

V

COVERAGE

These Guidelines shall apply to all bona fide JVAs for the development, operation, management, and disposition of TIEZA properties and facilities, whether owned, administered or controlled; development, operation, and management of tourism infrastructure projects, tourism zones, and flagship tourism enterprise zones subject to the execution of pertinent agreement with landowners and TEZ operators; privatization and assignment of TIEZA's other vested rights and development projects pursuant to bona fide JVs, and JVAs co-granted by TIEZA and the Local Government Unit.
VI
JOINT VENTURE SELECTION COMMITTEE

A. **JVSC Members.** TIEZA shall create a Joint Venture Selection Committee (JVSC), which shall have five (5) members composed of the following:

1. Chairperson, who is at least a third ranking officer of TIEZA;
2. one (1) Officer from the TIEZA Legal Department;
3. one (1) Officer knowledgeable in Finance;
4. one (1) Officer knowledgeable in Project or Business Management and Operations; and
5. one (1) Officer knowledgeable with the Technical Aspects/Requirements of the Project/ Business Undertaking, duly designated by the TIEZA COO and may be on a project-to-project basis.

B. **Provisional Member (Non-Voting):** One (1) technical officer from a concerned regulatory body, when applicable, knowledgeable with the project at hand, will be invited by TIEZA on a project-to-project basis.

C. **Observers.** The following observers will be notified at least two (2) calendar days before the following stages: pre-selection conference, opening of technical and financial proposals, evaluation of technical and financial proposals, contract award, and special meetings of the JVSC:

1. one (1) representative from the Office of the Government Corporate Counsel; and
2. one (1) representative from the Commission on Audit (COA).

The absence of observers will not nullify the JVSC proceedings, provided that they have been duly invited in writing.

D. **Quorum.** The quorum in meetings of the JVSC members shall consist of three (3) members. Each member is entitled to one (1) vote.

E. **Functions of the JVSC.** The JVSC shall be responsible for all aspects of the selection process, including the preparation of selection/tender documents, publication of the invitation to apply for eligibility and to submit a proposal, pre-qualification of Eligible Proponents, conduct of pre-selection conferences and issuance of supplemental notices, interpretation of rules regarding the selection process, conduct of the selection process, evaluation of financial and technical proposals, resolution of disputes between Eligible Proponents, and recommendation for the acceptance of the proposal and the award of the contract. The JVSC shall also be responsible for the processing of unsolicited proposals, from the receipt of proposals, the initial evaluation, and all other steps until rejection or contract award.
The JVSC reserves the right to consider and decide on matters brought to its attention or such issues which will arise during the submission/opening of the EDs and the Proposals, provided that the principles of fairness, transparency, competition and accountability are observed.

F. Technical Assistance. The JVSC may procure or require technical assistance from transaction advisors/ independent consultants, who may be part of the government or from the private sector, in order to set the parameters and technical requirements, and/or to evaluate the same for both competitive selection and negotiated contracts (including the subsequent competitive challenge), without violating the principles of fairness, transparency and competitiveness.

G. JVSC-TWG. The JVSC shall have a Technical Working Group (JVSC-TWG), which consists of three (3) to five (5) members, who shall come from a pool of TIEZA personnel with technical, financial, and/or legal knowledge or expertise on the JV activity and its selection process. The JVSC may consider technical experts outside TIEZA to assist the TWG. It shall exercise the following functions:

1. assist the JVSC in eligibility screening, evaluation of bids, evaluation of unsolicited proposals, and evaluation of conditions precedent, and make the appropriate recommendation;
2. verify, validate, and ascertain statements made and documents submitted by the proponent; and
3. submit a report to the JVSC after every evaluation.

The JVSC-TWG shall also observe a quorum, consisting of either 2 or 3 members depending on whether the JVSC-TWG is composed of 3 or 5 members, respectively. If a quorum could not be mustered with the absence of members, the JVSC should be properly informed for issuance of appropriate designations to facilitate the process.

The quorum in meetings of the JVSC members shall consist of three (3) members. Each member is entitled to one (1) vote.

H. Secretariat. The JVSC Secretariat shall be composed of two (2) to three (3) members, and shall be responsible for the following:

1. filing and sorting of documents;
2. taking of notes and minutes of meetings;
3. drafting of letters;
4. monitoring of communications sent by/to or to be sent/by the JVSC; and
5. performance of other clerical, coordination, and administrative functions.

I. Remuneration. The JVSC and the JVSC-TWG shall be allowed remuneration subject to government accounting and auditing rules and regulations.
VII
GENERAL GUIDELINES

A. Additional Information. Additional information on procedures and other requirements shall be provided in the Eligibility Documents Kit (ED KIT) and Terms of Reference (TOR) depending on the complexity and size of the project.

B. Authority to Adjust Period. TIEZA may adjust the period provided for the submission of Eligibility Documents (EDs), pre-selection conference, submission of proposals, evaluation of technical and financial proposals, compliance with conditions precedent, among others, as it may deem necessary, taking into account the nature, scope, size, cost, and complexity of the proposed JV activity; provided that the principles of transparency, fairness, competition and accountability are observed. The adjusted period shall be indicated in the ED Kit and in the TOR. Bid bulletins or supplemental notices during conduct of competitive selection/competitive challenge/negotiations shall also be issued in cases where dates and time need to be changed due to factors beyond control of the JVSC. The reason for the change shall be indicated in the bid bulletin/supplemental notice.

C. Form of JV. TIEZA may opt to enter into a contractual JV or form a separate JV Company depending on which JV mode will provide the most efficient and viable financial arrangement for the JV partners. In either case, the JV agreement should clearly state TIEZA’s intent to undertake a specific activity that is responsive to national development goals and objectives, as well as consistent with TIEZA’s mandate under its charter, and in compliance with applicable laws, rules, regulations, guidelines, and other government issuances.

D. Incorporated JV. In case of an incorporated JV, the Corporation shall be formed by TIEZA and the private sector partner under the following parameters:

1. The JV Company shall be incorporated and registered as a stock corporation in accordance with the provisions of Republic Act No. 11232, otherwise known as the “Revised Corporation Code of the Philippines” and the prevailing and applicable rules and regulations promulgated by the Securities and Exchange Commission.

2. Ownership and nationality requirements under the Constitution and other pertinent laws shall be complied with; provided, that TIEZA’s equity contribution in the JV Company, ideally, be no more than fifty percent (50%) of the outstanding capital stock of the JV Company unless the best interests of TIEZA and/or the government necessitate the contribution of more than 50%.

3. TIEZA’s contribution may be through assets (including equipment, land, utility franchise, development rights, leasehold rights, intellectual property, cash or anything of value), which shall be subject to a third party independent valuation. For as long as TIEZA is involved in the JV undertaking,
the private sector partner shall not sell or transfer its interest in the JV Company without the express written consent of TIEZA.

4. TIEZA shall be represented in the Board of the JV Company, regardless of its equity. The representation, depending on the size of the share, shall be reflected in the TOR.

5. The JV Company shall be permitted to derive income from activities authorized under the JV Agreement during the term thereof. TIEZA and the private sector partner shall be entitled to receive dividends from the net profits that would constitute portion of the unrestricted retained earnings of the company in each year in accordance with the JV Agreement.

6. The corporate term may be up to a fixed term of existence of fifty (50) years, which may be extended for another fifty (50) years by an amendment of the articles of incorporation, pursuant to the Revised Corporation Code of the Philippines. The franchise period shall be governed by the applicable laws and regulation at the time the project is entered into.

6.1 TIEZA's continued participation in the JV Company shall be determined by the attainment of TIEZA's objective in pursuing the investment. After attaining such objectives, TIEZA may divest its interest in the JV Company based on existing laws, rules and regulations. Furthermore, the withdrawal of TIEZA's capital contribution before the expiration of the said period is likewise encouraged; provided, that the divestment is made through competitive selection, initial public offering, or any other means that promote competition, fairness and transparency.

6.2 TIEZA may also seek full ownership of the JV activities or may take over the operations upon termination of the JV Company. TIEZA may also enter into a new JV agreement or seek new JV partners.

7. In drafting the incorporation documents of the JV Company and other contracts governing the relationship between the TIEZA and the Eligible Proponent, the parties should consider the following guidelines, among others: (1) clearly defined business objectives; (2) specified degree of participation and the management roles of each party in the JV activity; (3) defined contribution of capital and ownership rights to property; (4) specified division of profits, risks and losses; (5) identified dispute mechanism to avoid management impasses that may produce deadlock or litigation; (6) specified termination/liquidation of the JV Company and indicate buy-out provisions; (7) specified confidentiality terms; and (8) stipulated indemnification mechanisms.

E. **Divestment.** In all cases, full divestment shall be undertaken in accordance with pertinent laws, rules and regulations, guidelines, legal issuances, as may be applicable to disposition of government assets and properties.
F. Other Requirements. TIEZA is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific JV activity.

G. Period. Days referred to or mentioned in these JV Guidelines and its Annexes pertain to "calendar days" unless specifically indicated as "working days".

H. Prescriptive Periods. The periods stated in these Guidelines and its Annexes are prescriptive.

I. Selection. TIEZA may select JV partners through either solicited or unsolicited mode. In either case, it must ensure that the process of selection, award, and approval are conducted in a transparent and competitive process that promotes accountability and efficiency through publication of the relevant terms and conditions of the competitive challenge/selection.

J. Sharing of Revenues and Risk Management. The specific terms and conditions with regard to sharing of revenues and risk management shall be provided in the TOR.

K. TIEZA Employees and Hires. The following Guidelines shall apply with regard to the hiring and retention of employees:

1. The retention, termination, or transfer of permanent TIEZA employees (e.g. transfer as part of the monitoring team, or transfer to other entities/offices) shall be in accordance with the rules or guidelines issued by the Authority, subject to applicable laws, rules, regulations, guidelines, and other issuances of the Governance Commission on Government-Owned and Controlled Corporations (GOCCs), the Commission on Audit (COA), and the Civil Service Commission (CSC).

2. Subject to applicable COA rules, and labor laws and issuances, existing employees who opt to transfer to the new management shall be given priority in recruitment and hiring. They shall, however, be subject to an evaluation period, the length of which shall be provided in the TOR, to determine their merit, fitness, and qualification for the position.

L. Tourism Infrastructure Support. As a recognition on the importance of the support of the municipality or city which has jurisdiction over the property subject of the JV and the community where the development shall belong, a Tourism Infrastructure Support (TIS) may be given subject to the following terms and conditions:

1. A maximum of one percent (1%) of net revenue of the JV before distribution to the partners may be set aside for a fund which may be created in trust for the municipality/city. In the event that the site is located in two or more municipalities/cities, the sharing shall be based on the agreement of the local government units concerned. In the absence of or in case no such agreement
has yet been executed between them, an escrow account shall be created where the TIS fund shall be deposited. The TIS Fund shall be released once the local government units concerned arrive at an agreement, and the TIS Fund shall be distributed in accordance with the terms of the agreement, of the local government units concerned.

2. The fund created shall be used for the municipality or city’s projects on:

a. tourism infrastructure, including both construction and maintenance works;
b. capacity building for tourism stakeholders and workers; or
c. any other tourism, environmental and climate change mitigation project that would create positive impact on the community and contribute to national tourism goals.

3. The share provided for in this section shall be voluntary, to be given annually after closing of books for the year, and taking into consideration the nature, scope, and size of the project, and the projected revenues.

4. Mechanisms for the disbursement and monitoring of the trust fund shall be created by TIEZA.

5. The TIS shall not apply to JVAs where the TIEZA and the Local Government Unit are co-grantors.

M. Reservation Clause. TIEZA reserves the right to reject any and all proposals, declare a failure of competitive selections/competitive challenge at any time prior to the award, or not award the contract, or cancel an awarded contract, without incurring any liability, and makes no assurance that a contract shall be entered into as a result of the process if the following circumstances are present:

1. there is a collusion between or among the Proponents or between a Proponent and a third-party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;

2. TIEZA’s JVSC is found to have lapsed in following the prescribed bidding procedures;

3. there are justifiable and reasonable grounds where the Award of the Contract shall not redound to the benefit of TIEZA, and the government in general:

   a. if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible as determined by the TIEZA COO or the TIEZA Board;
   b. if the source of funds or the source of equity of TIEZA has been withheld or reduced through no fault on its part.
In cases where collusion is discovered after the contract has been awarded, TIEZA may cancel the contract, file action for damages, and/or avail of other remedies provided by applicable laws.

N. **Review.** JV contracts entered into by TIEZA shall be subject to review by the Office of the Government Corporate Counsel.

O. **Unincorporated JV.** The parameters, conditions, and other provisions pertaining to incorporated JVs shall also govern unincorporated JVs to the extent applicable.

**VIII**

**PROCESS FOR ENTERING INTO JV AGREEMENTS**

**A. REQUIREMENTS/CONDITIONS FOR PROPOSED JV ACTIVITY**

The proposed JV Activities shall comply with the following requirements/conditions:

1. The proposed JV activity is within the mandate of TIEZA.

2. The proposed JV activity is responsive in meeting national or specific development goals and objectives.

3. The proposed JV activity proposal clearly describes the proposed investment, including its total cost, activities, objectives, sources of funding, extent and nature of the proposed participation of TIEZA, and the relevant terms and conditions.

4. The JV activity proposal establishes all the components in determining the overall feasibility of the proposed JV activity, including the technical, financial, economic, and legal aspects. Moreover, in project risks distribution among JV partners, expertise and management track record of the JV partners in handling such risks (i.e. political, governance and economic) must be considered.

5. The JV activity proposal shall contain all the required approvals needed to be secured from other government agencies/offices.

6. The JV activity proposal shall indicate the conditions and mechanisms of profit-sharing between TIEZA and the JV partner.
B. PREPARATION OF SELECTION/ TENDER DOCUMENTS BY TIEZA

1. Eligibility Documents Kit

This ED Kit describes the procedures that will be followed in connection with applying for and in acquiring eligibility to participate in the competitive selection for a JV partner, including the amount of the proposal security and the validity period.

The ED Kit shall also enumerate the legal, technical and financial capability requirements from the Interested Proponent and the corresponding documents to prove said capabilities.

2. Terms of Reference

These describe the procedures that shall be followed in connection with the competitive selection for a JV partner, and reflects the minimum technical and financial requirements of the project. The TOR shall, as far as necessary and practicable, include the following information: general description and objectives of the JV activity; form, amount, validity, return, forfeiture, and other details regarding the proposal security; milestones; method, parameters and criteria for the evaluation of the proposals; minimum amount of equity of the prospective JV Partner; and revenue sharing arrangement, if any.

The TOR shall also indicate the minimum design and performance standards/specifications, as required by all concerned regulatory agencies, as may be pertinent or applicable to the JV activity and should state that non-conformity with any of these minimum requirements shall render the proposals as non-responsive. Likewise, for the purpose of evaluating proposals, the following economic parameters, among others, and where applicable, shall be prescribed: discount rate, foreign exchange rate and inflation factor; maximum period of project construction/ development; project duration; fixed term and price indices to be used in the adjustments of fees/ rental/ charges; and, minimum period of repayment, if applicable.

3. Information Memorandum

This provides general information to prospective bidders on the assessment of project potential and related informational aspects of the project.

4. Draft Contract

The draft contract shall reflect the terms and conditions in undertaking the JV activity, including the contractual obligations of the contracting parties and the ownership of the JV activity, project, or property after the termination of the JV Agreement. The draft contract shall include provisions on the following matters, as far as practicable:
a. date on which the agreement is established, executed, and considered effective;
b. names, addresses and identification of the parties, including the type of business of each member of the JV;
c. name under which the JV will do business, if applicable;
d. principal place of business of the JV;
e. clearly defined purpose and objective, contractual/agreement mode (whether JV company/corporate JV or contractual JV), term and scope of the JV;
f. total cost of the JV activity, project specifications and features;
g. relationship between the parties, management roles in the JV activity, and a statement that the parties are actually co-venturers for the project, whether or not the contract is in the name of all members;
h. establishment of a fund by the parties to finance the work, together with the amount, type (cash, assets, etc.), and valuation of committed contributions of each party and when such contributions will be made, with the fund being deposited in a special bank account under dual control and all progress payments and other revenues being deposited in such account. If the equity/contribution of the private sector is to be borrowed, a statement that there shall be no government guarantee for said loan;
i. procedure for additional capital infusion, if required, and a statement that there shall be no government guarantee for loans to be incurred by the private sector in case the additional contribution of the private sector is to be borrowed;
j. declaration of the participation of the parties and percentage in which profits and losses are shared, in proportion to the contributions of the party to the working fund. The amount of contribution of funds by the parties can be increased or decreased, depending on the contributions of equipment or expertise;
k. specified termination/liquidation of the JV Company, buy-out provisions, and details on the transfer of ownership of the JV activity/facility including provisions on what happens to the JV's assets after the expiration of the JV agreement or end of the JV period. If equity other than cash is to be contributed, a statement as to how the property will be appraised and valued during and after the effectivity of the JV Agreement;
l. designation of one of the parties as general manager of the project, with authority to bind the JV company/partnership/parties; or, in the alternative, the constitution of a management committee, with a provision for remuneration. Management duties, other duties of the co-venturers and procedures to be followed in dealing with unusual situations or problems that may develop should be specified;
m. implementation milestones, regular meeting schedules, financial and periodic JV and progress reporting procedure;
n. definition of items which are to be considered as costs to the JV for the purpose of determining profit or loss and a description of items which are
not reimbursable to members of the JV, and specified division of the profits and risks and losses;

o. confidentiality of trade information passed between the co-venturers;

p. ownership or retention of intellectual property rights and consultant reports;

q. performance security requirements of the project and the bonding obligations of the co-venturers;

r. undivided pro-rata interests held by the co-venturers on all assets of the JV;

s. restriction regarding assignment of the private sector participant’s undivided pro-rata interests in assets of the JV;

t. cost recovery scheme, including payment to the government of royalties/rights, the form/description and amount of earnings (cash, asset, etc.), whether they are in absolute amount or variable, and the period and timing such earnings or payment shall be received. In case of non-cash payment or payment in form of asset, a statement/provision on how it will be valuated, the minimum value of the asset, and the determination/selection of asset such as how and who will determine/select the asset;

u. indemnification and liquidated damages;

v. minimum insurance coverage;

w. acceptance tests and procedures;

x. grounds for and effects of contract termination/default including modes for settling disputes, procedure for handling guarantees, defects and insurance after termination, threshold (in terms of amount, time/period, or both) for which non-payment or delay in payment and delay in starting the project/s shall be grounds for termination/rescission of the JV contract/agreement;

y. manner and procedures for the resolution of warranty against corruption;

z. procedure and/or period for withdrawal by the government entity of its contribution to the JV, or exit divestment by the government entity of its interest in the JV, and substitution or addition of parties;

aa. payout of funds;

bb. nature of employment/service of existing personnel or those hired after the creation of the JV;

cc. dispute arbitration clause; and

dd. compliance with all other laws, rules and regulations, guidelines, and issuances.

5. Selection Form

The Selection Forms shall reflect the required information to properly evaluate the technical and financial proposal;

6. Forms of technical and financial proposals and performance securities;

and

7. Other documents
These are documents that may be required by TIEZA and other conditions of concerned regulatory agencies as may be applicable for the JV activity.

C. PUBLICATION/POSTING

TIEZA shall cause the publication of the Invitation to Apply for Eligibility and Submit Proposal (IAESP) in (i) newspapers of nationwide general publication and (ii) local newspapers of general circulation in the region, province, city, or municipality in which the projects are to be implemented, once a week for at least two (2) consecutive weeks.

The IAESP shall also be posted in the official TIEZA website and any conspicuous place within the TIEZA Main Office for at least fourteen (14) consecutive days starting on the date of first wave of publication in the newspapers.

D. FIRST STAGE OF EVALUATION: SUBMISSION AND ACCEPTANCE OF INITIAL DOCUMENTS

1. Interested Proponents shall be given at least fifteen (15) days from the last date of publication of the IAESP to submit initial documents. Notwithstanding, TIEZA may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV activity; provided, that the principles of transparency, competition and accountability are observed.

2. The Initial Documents indicated in Annex “A” of these JV Guidelines shall be submitted to TIEZA by the Interested Proponents.

3. Once the initial documents are submitted and the proper fees are paid, a copy of the ED Kit shall be given to the Interested Proponent.

E. SECOND STAGE OF EVALUATION: APPLICATION FOR ELIGIBILITY

1. Submission of EDs by Interested Proponents

1.1 Documentary Requirements. Interested Proponents applying for eligibility should submit the EDs below and in Annex “A” of these JV Guidelines, and those specified in the ED Kit.

1.2 Minimum Qualifications. Interested Proponents intending to participate in the eligibility process must possess the minimum qualifications provided in this section and in Annex “A” of these JV Guidelines, and must meet the nationality and ownership requirements under the Constitution and other applicable laws and issuances.

In case the prospective Project Proponent is a consortium, the member/s who shall be responsible for complying with the financial
and/or technical qualification shall be identified. For purposes of evaluating the financial and technical qualification of the consortium, only the financial and/or technical eligibility of the pre-identified member/s for their respective categories will be considered. Further, the members of participants thereof shall execute an undertaking in favor of TIEZA that if awarded the contract, they shall bind themselves to be jointly and severally liable for the obligations of the Project Proponent under the contract.

1.3 **Submission.** The Interested Proponent has to submit the following documents, if applicable:

1.3.1 Documents to be Submitted if Legal Entity
1.3.2 Documents to be Submitted if Consortium
1.3.3 Track Record of an Interested Proponent and its Personnel.
1.3.4 Net Worth and Financial Capability. The Interested Proponent must submit, among others, the following:

   a. Audited Financial Statements
   b. Income Tax Returns
   c. Net Worth
   d. Financial Support
   e. In addition to the above, the Interested Proponent must submit the documents listed in the ED Kit.

1.3.5 Certification of No Arrears and No Default
1.3.6 Certification of Non-Aggression

1.4 **Additional Information.** TIEZA or the JVSC may, in its discretion, require any additional information from any Interested Proponent to clarify an issue or verify information or validate documents. TIEZA or the JVSC may, in its discretion, also waive any required information not applicable to a given Interested Proponent but are required in general from all Interested Proponents.

1.5 **Deadline to Submit EDs.** Interested Proponents shall submit the EDs in a sealed envelope addressed to the Chairperson of the JVSC within thirty (30) days from the last day of submission of Initial Documents.

1.6 **Late Submission of EDs.** EDs submitted after the deadline for submission prescribed shall be considered late, and as a consequence, shall not be accepted and shall be returned unopened to its Interested Proponent.

2. **Opening and Evaluation of EDs**

2.1 EDs received will be opened and evaluated separately and independently of each other.
2.2 In opening the EDs, the JVSC shall be guided by the provisions in Annex "A" of these JV Guidelines.

3. Evaluation of EDs

3.1 Eligible Proponents. The JVSC shall conclude their evaluation of the EDs within fifteen (15) days after the last day for submission of EDs of Interested Proponents and determine which among them are "eligible" or "ineligible." Notice shall be sent to the Eligible Proponents within seven (7) days from the conclusion of the JVSC's evaluation.

All Interested Proponents with EDs declared by the JVSC as complete and compliant with the requirements shall be declared "Eligible Proponent". All Eligible Proponents shall be allowed to submit proposals.

The evaluation period for eligibility requirements may, at the discretion of the JVSC, be extended, provided that the extended period shall not exceed ninety (90) days from the last day for submission of EDs.

3.2 Right to Reject EDs. TIEZA and the JVSC reserve the right to reject any or all EDs, waive any minor defects therein, or discontinue the eligibility and shortlisting process at any time without incurring any liability to Interested Proponents.

3.3 Disqualification of Eligible Proponents. Eligible Proponents may be declared disqualified at any time on the basis of the following:

a. suppressed, undisclosed or false information that resulted in the eligibility of the Proponent;

b. failure to possess the general qualifications of Interested Proponents as outlined in these Guidelines;

c. failure to submit or delay in the submission the EDs specified in these Guidelines, or any other information reasonably required by TIEZA;

d. prohibition from entering into a contract with TIEZA;

e. presence of legal impediment to become a Winning Proponent;

f. assignment for the benefit of creditors, petition or application before any tribunal for a receiver or a trustee for itself or of any substantial part of its property, commencement of any judicial or other legal proceedings by reason of its financial difficulties under any reorganization, arrangement, readjustment of debt,
dissolution, or liquidation law or statute or any jurisdiction, 
whether now or hereafter in effect; or commencement against 
such party any such proceeding which shall remain un-dismissed 
for a period of sixty (60) days, or such party shall by any act 
indicated its consent to, approval of, or acquiescence in, any such 
proceeding or the appointment of any receiver of or trustee for it 
or any substantial part of its property, or the existence of any such 
receivership or trusteeship which remains un-discharged for a 
period of sixty (60) days; or any reorganization, arrangement, 
readjustment of debt, dissolution, or liquidation with respect to 
such party which does not involve a judicial proceeding;

g. previously failed to satisfactorily perform or complete any contract 
with TIEZA, its affiliates or subsidiaries, or involved in any 
litigation involving TIEZA, its affiliates or subsidiaries, or against 
or materially affecting TIEZA assets or properties;

h. failure to comply with any of the provisions in the ED Kit.

F. SUPPLEMENTAL COMPETITIVE SELECTION BULLETINS AND PRE-
SELECTION CONFERENCE

1. Responsibility of the Eligible Proponent. The Eligible Proponent shall be 
solely responsible for examining and understanding the requirements and 
terms and conditions of the selection documents with respect to the cost, 
duration and execution/operation of the project as it affects the preparation 
and submission of its proposal. TIEZA shall not assume any responsibility 
regarding erroneous interpretations or conclusions by the Eligible Proponent 
from information furnished or indicated in the competitive selection 
documents.

2. Supplemental Notices. On or before the pre-selection conference, an Eligible 
Proponent may submit to TIEZA a written request for clarification as to any 
data or requirements or any part of the selection documents. Any substantive 
interpretation given by TIEZA shall be issued in the form of a Supplemental 
Notice, and be furnished to all Eligible Proponents. TIEZA may also issue 
Supplemental Notices to all Eligible Proponents at any time for purposes of 
clarifying any provisions of the selection documents, provided that the same 
are issued within a reasonable period to allow all Eligible Proponents to 
consider the same in the preparation of their proposals.

3. Pre-Selection Conference. TIEZA shall conduct a pre-selection conference at 
least thirty (30) days before the deadline for the submission of proposals.

G. SUBMISSION OF TECHNICAL AND FINANCIAL PROPOSAL BY ELIGIBLE 
PROONENTS
Only Eligible Proponents shall be allowed to submit Proposals. Eligible Proponents shall submit to the JVSC, in accordance with the deadline set forth in the TOR, their Proposals containing certain documents and information required hereunder.

1. **Requirements for Submission of Proposals.** Eligible Proponents shall be required to submit their Proposals on the deadline stipulated in the TOR. Annex “B” of these JV Guidelines describes the inclusions in and procedure for submission of the Proposal. Among others, the following shall be submitted by the Eligible Proponent:

   a. Duly Accomplished Proposal Form;
   b. Technical Proposal;
   c. Financial Proposal;
   d. Proposal Security; and
   e. Secretary’s Certificate.

2. **Modification or Withdrawal of Proposals.** Eligible Proponents who withdraw their Proposals after submission to the JVSC shall result in the forfeiture of their Bid Security.

3. **Late Submission of Proposals.** Proposals submitted after the deadline for submission shall be considered late and shall not be accepted and be returned unopened to its Eligible Proponent.

4. **Extension of Validity of Proposals.** When an extension of validity of Proposals is considered necessary, Eligible Proponents who submitted compliant Proposals within the deadline shall be requested in writing by the JVSC to extend the validity of their Proposals before the expiration date of the same. However, they are not allowed to modify or revise the price or other substantial aspect of their proposals. Furthermore, private sector participants must correspondingly extend the validity of their Proposal Security as a condition for the extension of the validity of their proposals.

   Private sector participants shall not refuse such request for extension except on the following grounds: (1) loss of interest in the Project, and (2) unforeseen financial meltdown/crisis. Private sector participants who refuse the request based on these grounds shall not forfeit their Proposal Security; provided that, in case of refusal based on unforeseen financial meltdown/crisis, the private sector participant must submit an affidavit attesting to the facts alleged and other specific documents proving it.

**H. THIRD STAGE OF EVALUATION: OPENING AND EVALUATION OF TECHNICAL PROPOSAL**

Each Technical Proposal shall be checked for compliance with the required submissions listed in the TOR.
1. Preliminary Evaluation and Rating of Submission. The JVSC shall determine each Eligible Proponent’s compliance with the documents required to be submitted for the Technical Proposal as prescribed in the TOR using a non-discretionary “Submitted/Not Submitted” criterion.

If an Eligible Proponent submits the required document, it shall be rated “Submitted” for that particular requirement. Failure to submit a requirement or an incomplete submission shall be considered “Not Submitted” for the particular requirement or in certain cases “Not Applicable”. In case one or more of the above required documents is missing, incomplete, or patently insufficient, the JVSC shall rate the Technical Proposal as “Incomplete” and will return to the Eligible Proponent concerned its Proposal including the unopened Financial Proposal envelope. A Technical Proposal that contains all the required documents shall be declared as “Complete”.

2. Detailed Evaluation. Only Technical Proposals that were declared as “Complete” shall be retained by the JVSC for detailed evaluation.

The JVSC will evaluate the details of the “Complete” Technical Proposals and assign scores based on the criteria specified in the TOR. The scores on each criterion will be totaled. Only Technical Proposals which obtained at least a total score of eighty-five percent (85%) shall be allowed to proceed to the next stage which is the opening and evaluation of the Financial Proposals.

3. Presentation to the JVSC. As part of the detailed evaluation of Technical Proposals, Eligible Proponents may be required to do an oral presentation of their Technical Proposal to the JVSC as well as answer questions from, or issue clarifications to, the members of the JVSC. Eligible Proponents are also required to provide ten (10) copies of their respective presentations to the JVSC. The JVSC shall release the schedule of presentations immediately after the opening of Technical Proposals.

4. Period of Evaluation of Technical Proposals. The JVSC shall complete the evaluation of the Technical Proposals within twenty (20) days from the date the Technical Proposals are opened, subject to TIEZA’s authority to adjust period as provided in these Guidelines.

5. Notice to Eligible Proponents. The JVSC shall inform the Eligible Proponents within seven (7) days from completion of evaluation of Technical Proposals whether their Technical Proposals obtained the minimum score and are allowed/not allowed to proceed to the next stage, which is the opening of Financial Proposals.

I. FOURTH STAGE OF EVALUATION: OPENING AND EVALUATION OF FINANCIAL PROPOSALS

1. Opening of Financial Proposals. Only the Financial Proposals of Eligible Proponents with Technical Proposals garnering a total score of eighty-five
percent (85%) or higher shall be opened for evaluation. Those which garnered a total score of less than eighty-five percent (85%) shall not be considered further and shall be returned unopened, together with a notice stating the reasons for disqualification from further consideration.

The JVSC shall open the envelope of the Financial Proposals within seven (7) days from completion of the evaluation of the Technical Proposals following the same procedure prescribed for the opening of the envelopes containing the Technical Proposals.

2. **Period of Evaluation of Financial Proposals.** The evaluation of Financial Proposals shall be completed by the JVSC within fifteen (15) days from the opening of the same, subject to TIEZA’s authority to adjust period as provided in these Guidelines.

K. **SIMULTANEOUS EVALUATION OF THE TECHNICAL AND FINANCIAL PROPOSALS.** Simultaneous evaluation of the Technical and Financial proposals may be resorted to if the JVSC determines that the nature of the JV activity requires the appreciation of both the Technical and Financial Proposals as a whole in order to determine the best proposal; provided, that, said evaluation procedure shall be explicitly stated in the tender documents. Simultaneous evaluation of the Technical and Financial proposals shall be completed within thirty (30) days from the date the proposals are opened.

L. **RIGHT TO REJECT PROPOSALS.** TIEZA reserves the right to reject any or all proposals, waive any minor defects therein, conduct verification, request clarifications, and accept the offer it deems most advantageous to TIEZA.

M. **AWARD AND EXECUTION OF CONTRACT**

1. **Recommendation to Award.** The JVSC shall submit the recommendation of award to the TIEZA COO within ten (10) days from the conclusion of the financial evaluation. The JVSC shall include as part of its recommendation, a detailed evaluation report explaining the basis and evaluation of Proposals and its recommendations.

2. **Decision to Award.** The TIEZA COO shall approve or reject the recommendation of the JVSC. The Winning Proposal will be announced by the JVSC after approval by the TIEZA COO. The approval shall be manifested by signing and issuing the "Notice of Award" to the Winning Proponent fifteen (15) days from the approval of the TIEZA COO.

   If the recommendation to award was rejected by the TIEZA COO, the Proponent shall be informed in writing within fifteen (15) days from the issuance of denial by the TIEZA COO.

3. **Notice of Award.** A Notice of Award shall be issued to the Winning Proponent after approval by the TIEZA COO. TIEZA through the Notice of
Award shall inform the Winning Proponent that its Proposal was accepted by the agency and instruct the Winning Proponent to comply with the Conditions Precedent.

4. **Conditions Precedent.** Within thirty (30) days, or within the period specified in the TOR or within the extension given by TIEZA, after issuance of the Notice of Award and before the signing of the JV Agreement, the Winning Proponent shall present and submit to the JVSC the conditions precedent as indicated in the TOR.

Within seven (7) days from receipt of the Conditions Precedent from the Winning Proponent, the JVSC shall determine its sufficiency, and notify the Winning Proponent accordingly.

5. **Performance Security.** Conditions Precedent for the execution of the contract shall include the posting of a Performance Security in favor of TIEZA.

5.1 **Validity.** The Performance Security shall be valid and effective until all obligations have been delivered/ performed/ resolved, which may be beyond the contract period. The term of the Performance Security shall be indicated in the TOR.

5.2 **Form and Amount.** The JVSC shall determine which form of Performance Security it will require and the required amount shall be provided in the TOR. The Performance Security can be in the form of:

<table>
<thead>
<tr>
<th>Performance Security</th>
<th>Minimum Amount</th>
</tr>
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<tbody>
<tr>
<td>Manager’s Check</td>
<td>2% of the private sector participant’s contribution to the JV activity</td>
</tr>
<tr>
<td>Irrevocable Letter of Credit</td>
<td>(issued by a reputable bank)</td>
</tr>
<tr>
<td>Bank Guarantee</td>
<td>5% of the private sector participant’s contribution to the JV Activity</td>
</tr>
<tr>
<td>(issued by a reputable bank)</td>
<td></td>
</tr>
<tr>
<td>Surety Bond</td>
<td>10% of the private sector participant’s contribution to the JV Activity</td>
</tr>
<tr>
<td>(issued by the GSIS or any reputable</td>
<td></td>
</tr>
<tr>
<td>insurance company)</td>
<td></td>
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</tbody>
</table>

5.3 **Accreditation.** In case of a Surety Bond, the insurance company must be duly accredited by the Insurance Commission and is not blacklisted by or does not have any pending case against TIEZA, its affiliates or subsidiaries, or any other government agency.

5.4 **Disqualification and Forfeiture.** A Performance Security not conforming to the above shall be declared “Deficient” and shall result in the disqualification of the Winning Proponent that submitted it.

5.5 **Forfeiture.** Any of the following shall be a ground for the forfeiture of the Performance Security by TIEZA:

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a. any misrepresentation and/or breach of warranty made by the Winning Proponent in any of the documents or attachments submitted, to be decided upon by the TIEZA in its sole discretion after giving the former an opportunity to explain and it is not cured after seven (7) days from date of notice to the Winning Bidder;

b. failure of the Winning Bidder to pay in full the financial commitments due to TIEZA during the term of the contract;

c. the Winning Bidder seeks legal remedies that will result in a delay in:

i. the implementation of the JV Contract;

ii. the full payment of the financial commitments due to TIEZA during the term of the J V Contract; or

iii. compliance with any of its other obligations as set out in the JV Contract.

The Performance Security shall be forfeited by TIEZA upon certification by it that one or more of the circumstances described above occurred. The forfeiture of the Performance Security shall not preclude TIEZA from pursuing other remedies against the Winning Proponent.

5.6 The Performance Security shall be released by TIEZA provided that the following conditions are met:

a. the JV agreement or its period has expired or ended;

b. the private sector partner has delivered, performed, and resolved all of its obligations and issues with TIEZA; and

c. a certification relative to the foregoing is issued by the TIEZA COO.

6. Execution of the Contract. The authorized signatory/ies of the Winning Proponent and TIEZA shall sign and execute the Contract within seven (7) days from issuance of approval by the JVSC of the conditions precedent received from the Winning Proponent. All Contracts are subject to the TIEZA Board’s ratification. No higher approval is necessary as provided in TIEZA’s charter.

7. Failure to Execute the Contract. In the event of refusal, inability or failure of the Winning Proponent to execute a Contract with TIEZA within the time provided in these Guidelines, TIEZA shall forfeit the Proposal Security of the Winning Proponent. In such event, the following guidelines shall be followed:
a. TIEZA shall consider the Eligible Proponent with the next ranked compliant Proposal as the Winning Proponent, and notify said Eligible Proponent accordingly.

b. If the next ranked compliant Eligible Proponent shall likewise refuse or fail to execute the Contract with TIEZA, its Proposal Security shall likewise be forfeited and TIEZA shall consider the next ranked compliant Proposal, and so on, until a Contract shall have been executed.

c. In the event that TIEZA is unable to execute a Contract with any of the Eligible Proponents that submitted Proposals, a failure of competitive selection will be declared. TIEZA retains the right to conduct a second competitive selection or to evaluate other options.

8. Single Responsive Bid. A single and responsive bid shall be considered for award if it falls under any of the following circumstances:

a. after advertisement, only one Interested Proponent submits EDs within the deadline stipulated in the IAESP, and such Interested Proponent meets the eligibility requirements and submits a bid which is responsive to the technical and financial requirements;

b. after advertisement, multiple Interested Proponents submit EDs in accordance with the provisions of these Guidelines, but only one meets the eligibility requirements and such eligible Interested Proponent submits a bid which is responsive to the technical and financial requirements;

c. after the eligibility check, multiple Interested Proponents meet the eligibility requirements but only one submits a bid, and its bid is found to be responsive to the technical and financial requirements; or

d. after qualification/evaluation of proposals, only one Interested Proponent meets the technical requirements but is not able to comply with financial requirements, and a negotiation on the financial terms/proposal, in accordance with the guidelines herein set forth, is conducted and is successful.

N. PROCESS FLOW. Proposals shall be processed following the flowchart in Annex “D” of these Guidelines, which indicates the basic activities in the evaluation of proposals and the minimum number of days by which proposals are processed. In case of conflict between the contents of the annexes and the main body, the latter shall prevail.

O. CONTRACT EFFECTIVITY. The contract shall be effective upon the signing thereof by the TIEZA COO unless another date is stipulated therein.
P. APPEALS MECHANISM ON AWARD OF CONTRACT. The following rules on appeal shall apply:

1. Decisions of the JVSC may be appealed in writing by filing a Motion for Reconsideration (MR) before it within seven (7) days from receipt of said Decision. In case of denial, the matter may be appealed to the TIEZA COO within seven (7) days from receipt of denial of the MR. The appeal shall be made by filing a verified position paper with the TIEZA COO, accompanied by the payment of a non-refundable appeal fee, which shall not be less than one-half (1/2) of one percent (1%) of the project cost. The TIEZA COO shall act on the appeal within thirty (30) days. If there is no appeal made, the decision of the TIEZA COO on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.

2. Decisions of the TIEZA COO with respect to award of contract can be further appealed to the TIEZA Board by filing a verified Appeal Memorandum within seven (7) days from receipt of the TIEZA COO’s Decision and shall be accompanied by the payment of a non-refundable appeal fee, which shall not be less than one-half (1/2) of one percent (1%) of the project cost. The TIEZA Board shall act on the appeal within thirty (30) days. The decision of the TIEZA Board on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.

3. Appeals filed on time accompanied by payment of appeal fee shall effectively suspend the competitive selection/competitive challenge/negotiations, unless the JVSC, after deliberation and in its discretion, find that the results of the appeal shall not affect the selection process or the suspension shall prejudice the selection process or TIEZA.
IX
NEGOTIATED JOINT VENTURE (JVs) AND
COMPETITIVE CHALLENGE

A. NEGOTIATED JVs

TIEZA may directly negotiate a JV activity with a private sector entity under any of the following circumstances:

1. Direct Negotiations resulting to Two Failed Competitive Selection

There shall be a failure of competitive selection in any of the following instances:

a. no prospective bidder/s is/are eligible;
b. no bids or proposals are received;
c. no prospective bidder/s is/are able to comply with technical requirements;
d. no successful negotiation on the financial terms/proposal as provided in these Guidelines;
e. failure to execute a contract with TIEZA due to refusal, inability or failure of the Winning Proponent and the next complying proponents to enter into contract with TIEZA within the time provided.

In the event of a failed competitive selection brought about by the instances stipulated above, the JVSC shall review the TOR/bidding documents and conduct another competitive selection. In case of second failure of competitive selection, TIEZA may resort to Negotiated JV.

2. Unsolicited Proposal

a. An Unsolicited Proposal refers to a project proposal submitted by the private sector that is not in response to a formal solicitation or request by TIEZA.

b. To be considered complete, a proposal must contain the following documents as described in Annex "C" of these JV Guidelines:

i. Letter of Intent;
ii. Company Profile
iii. Business Case, Concept Plan, Pre-Feasibility Study, or Feasibility Study of the Proposed Project;
iv. Draft Contract or Term Sheet; and
v. Other documents as may be required by TIEZA.
3. Other direct negotiations with Interested Proponents

This involves those resulting from exploratory discussions and market sounding in highly exceptional and meritorious cases duly approved by the Board, or with proponents who have prior and existing business arrangements with TIEZA such as, but not limited to, a Memorandum of Agreement, Contract of Lease, among others.

Direct Negotiations under Section IX (A) (1) is not contemplated under this section.

B. COMPETITIVE CHALLENGE

For unsolicited proposals and other direct negotiations with Interested Proponents in Negotiated JVs, except direct negotiations resulting from Section IX (A) (1), the negotiated terms shall be subjected to a competitive challenge wherein other Interested Proponents shall be invited to submit comparative proposals. In the event of a two-failed competitive selection, the terms thereof shall no longer be subjected to a competitive challenge.

C. 3-STAGE FRAMEWORK FOR NEGOTIATED JVs

1. FIRST STAGE: INITIAL EVALUATION

1.1 The initial evaluation, which involves a completeness check, shall be completed by the JVSC within sixty (60) days upon submission of complete documents by Interested Proponents including the eligibility requirements provided in these JV Guidelines.

1.2 Upon completion of the initial evaluation, the JVSC shall make a recommendation to the TIEZA COO, who shall either issue a letter of acceptance or non-acceptance to negotiate. An acceptance shall not bind TIEZA to enter into the JV activity but shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV activity. In case of non-acceptance of the proposal to negotiate, the Interested Proponents shall be informed of the reasons or grounds thereof. Accepted proposal to negotiate shall be posted.
2. SECOND STAGE: CONDUCT OF NEGOTIATION, CONFERMENT OF ORIGINAL PROponent STATUS AND EVALUATION

2.1 TIEZA and the Interested Proponent shall negotiate on the terms and conditions, scope, and the legal, technical and financial components of the JV activity.

2.2 The negotiation shall, as far as practicable or unless otherwise determined by the JVSC, comply with the same process, requirements and conditions provided in these Guidelines.

2.3 The negotiation shall be completed within thirty (30) days upon issuance of acceptance letter of the proposal by TIEZA.

2.4 Within seven (7) days after the successful negotiation, TIEZA and the authorized representative of the Interested Proponent shall issue a signed certification that an agreement has been reached and both agree to submit the proposal to competitive challenge. Said certification shall also state TIEZA has found the Interested Proponent eligible to enter into the proposed JV activity and shall confer an “Original Proponent Status” to the latter. After the award of the Original Proponent Status, the selection documents for the competitive challenge, including the draft contract, are finalized.

2.5 If at the end of the period prescribed the negotiations do not result to an agreement acceptable to both parties, TIEZA shall have the option to reject the proposal by informing the Interested Proponent in writing of the grounds for rejection and thereafter accept a new proposal from another Interested Proponent, or to pursue the proposed activity through alternative routes other than JV.

2.6 In case similar proposals are received prior to acceptance of the proposal as the original proponent, TIEZA may reject all such proposals or instead, subject it to competitive selection.

3. THIRD STAGE: COMPETITIVE CHALLENGE PROCESS

3.1 The JV activity shall be subjected to a competitive challenge once the proponent has been granted original proponent status.

3.2 The JVSC and the TIEZA Legal Department shall prepare the ED Kit and TOR, and the Draft Contract, respectively, consistent with the terms and conditions approved for the JV activity, within thirty (30) days from the issuance of approval by the TIEZA COO. The foregoing shall be recommended by the JVSC to the TIEZA COO for approval.

3.3 Within seven (7) days from the approval of the tender documents by the TIEZA COO, the JVSC shall cause the publication and posting of the
invitation to apply for eligibility and to submit a comparative proposal. The publication and posting process shall be similar to that of competitive selection provided in these Guidelines.

3.4 Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.

3.5 The original proponent shall post the proposal security at the date of the first day of publication of the invitation to apply for eligibility and to submit a comparative proposal in the amount and form stated in the tender documents.

3.6 Prospective comparative proponents or challengers shall be given at least ninety (90) to one hundred twenty (120) days to submit complete proposal from the last day of publication and posting provided under Section 3.3 above. This period, however, can be reduced or increased if government interest warrants it.

3.7 If no comparative proposal is received by TIEZA the JV activity shall be immediately awarded to the original proponent.

3.8 The procedure for the determination of eligibility of comparative proponents, issuance of supplemental competitive selection bulletins and pre-selection conferences, submission and receipt of proposals, opening and evaluation of proposals shall follow the procedure stipulated under competitive selection of these Guidelines.

3.9 The non-winning Original Proponent may request for reimbursement of the cost incurred in preparing the business case, concept plan, and pre-feasibility study or feasibility study from the Winning Challenger subject to the submission of certified true copies of original receipts representing the expenses incurred. Payment thereof shall be made within one (1) year from the filing of claim for reimbursement by the non-winning Original Proponent. Failure on the part of the non-winning Original Proponent to file such claim within two (2) years from the Award of Contract shall result in the forfeiture of this right.

D. RIGHT TO OUTBID. The Original Proponent shall have the right to outbid the proposal submitted by the winning Challenger, the details, terms, and conditions thereof to be provided in the ED Kit and/ or TOR.
X
AMENDMENTS

These Guidelines may be amended or revised from time to time by the TIEZA Board, in consultation with the Office of the Government Corporate Counsel. The proposed amendment shall be initiated by the JVSC, which shall submit a recommendation to the TIEZA COO. Should the latter find merit in the JVSC's recommendation, he/she will endorse the proposed amendment or revision to the TIEZA Board for approval.

XI
SEPARABILITY

If any provision of these Guidelines is held or declared void or unenforceable by final judgment of a court of competent jurisdiction, the other provisions unaffected thereby shall remain in full force and effect.

XII
EFFECTIVITY

These Guidelines and any subsequent amendment, modification, or revision shall take effect immediately after publication.

APPROVED by the Board of Directors of the TIEZA on ________________.
ANNEX A
ELIGIBILITY REQUIREMENTS AND GUIDELINES

Provisions of Annex “A” are still governed by the Principles and General Guidelines indicated in the TIEZA Joint Venture Guidelines.

A. FIRST STAGE OF EVALUATION: INITIAL DOCUMENTS

1. Interested Proponents shall be given at least fifteen (15) days from the last date of publication of the IAESP to submit initial documents. Notwithstanding, TIEZA may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV activity; provided, that the principles of transparency, competition and accountability are observed.

2. The following Initial Documents shall be submitted to TIEZA by Interested Proponents:

   2.1 Letter of Interest addressed to TIEZA; and
   2.2 Non-refundable fee for the purchase of the ED Kit, amount of which may vary per proposed project.

Once the initial documents are submitted and the proper fees are paid, a copy of the ED Kit shall be given to the Interested Proponent.

B. SECOND STAGE OF EVALUATION: ELIGIBILITY

1. Minimum Qualifications. Interested Proponents intending to participate in the eligibility process must possess the minimum qualifications provided in this section and must meet the nationality and ownership requirements under the Constitution and other applicable laws and issuances.

In case the prospective Project Proponent is a consortium, the member/s who shall be responsible for complying with the financial and/or technical qualification shall be identified. For purposes of evaluating the financial and technical qualification of the consortium, only the financial and/or technical eligibility of the pre-identified member/s for their respective categories will be considered. Further, the members of participants thereof shall execute an undertaking in favor of TIEZA that if awarded the contract, they shall bind themselves to be jointly and severally liable for the obligations of the Project Proponent under the contract.

1.1 Documents to be Submitted if Legal Entity. If the Interested Proponent is a legal entity, it must submit the following documents:

   a. certified true copy of the Articles of Incorporation, Partnership, or its equivalent;
b. notarized Secretary’s Certificate that the legal entity meets the nationality and ownership requirements under the Constitution and other applicable laws and issuances; and

c. applicable authority, licenses, and clearances needed for the pursuit of its business.

1.2 **Consortium.** The following rules shall apply if the Interested Proponent is a consortium:

1.2.1 If the Interested Proponent is a consortium (whether formally incorporated with the SEC or its equivalent, or by virtue of an agreement among members) consisting of separate entities/corporations, the consortium, through a letter to the JVSC, should identify the lead institution that controls a sizeable portion of the consortium. Further, if the Interested Proponent is a consortium, each member of the consortium must have submitted the Initial Required Documents and the EDs.

1.2.2 If any member of the consortium is a foreign partnership or corporation, such member must be registered with the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity, and submit documents to prove such registration (i.e. authenticated copy of its Certificate of Registration, Articles of Association or its equivalent).

1.2.3 The Consortium shall also submit the following:

a. certified true copy of the Articles of Incorporation, Partnership, or its equivalent;

b. notarized Secretary’s Certificate that the legal entity meets the nationality and ownership requirements under the Constitution and other applicable laws and issuances;

c. letter declaring the members of the consortium and a statement on its intention to participate in the competitive selection for a JV Partner to be submitted by the lead entity of the consortium; and
d. Consortium Agreement

1.2.4 After the consortium has been found eligible and in the event that the lead institution is changed, the consortium should identify the new lead institution through a letter to the JVSC. The new lead institution can be an existing member of the consortium or can be a non-member but in any case, the new lead institution should be an Eligible Proponent.
1.2.5 Eligible Proponents are allowed to join or merge with other Eligible Proponents. An Eligible consortium can accept new members provided that the new members are Eligible Proponents.

1.2.6 An Interested Proponent can only be a member of one consortium at the time of submission of the EDs.

1.2.7 An Eligible Proponent can only be a member of one consortium at the time of submission of the Proposal.

1.2.8 If a member of an Eligible Consortium decides to drop out of its consortium, the following shall apply:

a. If the combined financial and technical capabilities of the remaining consortium members are beyond the minimum eligibility requirements specified in this ED Kit, then the consortium will not be required to seek a replacement.

b. If the combined financial and technical capability of the remaining consortium members is below the minimum eligibility requirements specified in this ED Kit, then the consortium must seek a replacement from among the other Eligible Proponents or merge/join themselves with other Eligible Proponents to meet the minimum requirements. Failure to do so will render the affected consortium as “ineligible” and will not be allowed to submit a Proposal.

1.3 Track Record of an Interested Proponent and its Personnel. An Interested Proponent must have:

1.3.1 successfully completed a similar or related project, the cost and the relevant period in which the similar/related projects were undertaken shall be determined by the JVSC depending on the scope and value of the proposed project or JV activity; and

1.3.2 financial capability to fund its proposed committed capital.

1.4 Net Worth and Financial Capability. TIEZA shall determine the minimum amount of equity needed for the JV activity. Financial capability shall be measured in terms of the ability of the proponent to provide a minimum amount of equity, to be determined by TIEZA depending on the scope and value of the proposed project. In order to measure the minimum equity, proof of ability of the Interested Proponent to provide equity or debt. The Interested Proponent must submit, among others, the following:

1.4.1 Audited Financial Statements. Interested Proponents must submit their Audited Financial Statements for the immediately past three (3) consecutive calendar years. The audited Financial
Statements to be submitted must be stamped "Received" by the Bureau of Internal Revenue (BIR) or its duly accredited authorized institutions, or its equivalent in another jurisdiction.

1.4.2 **Income Tax Returns.** Interested Proponents must submit their latest Income Tax Returns (ITR) stamped "Received" by the BIR, or its equivalent in the BIR Electronic Filing and Payment System or its equivalent in another jurisdiction.

1.4.3 **Net Worth.** Interested Proponents must have a current positive net worth. In case of a consortium, each member must have a current positive net worth. A notarized statement regarding the foregoing must be submitted.

1.4.4 **Financial Support.** Interested Proponents must submit a list of its bankers and total credit facilities, and a letter from a domestic universal/commercial bank, or an international bank with a subsidiary/branch in the Philippines, or any international bank recognized by the BSP, attesting that the Interested Proponent is one of its current clients, and is in good financial standing.

1.4.5 In addition to the above, the Interested Proponent must submit the documents listed in the ED Kit.

1.5 **Certification of No Arrears and No Default.** The following guidelines shall apply:

1.5.1 The Interested Proponent must not be in arrears and has not defaulted with its financial obligation to TIEZA, its affiliates or subsidiaries, regarding any past or current projects being undertaken with TIEZA, its affiliates or subsidiaries.

1.5.2 If the Interested Proponent is a consortium, said consortium, its members, affiliates or subsidiaries, and any material stockholder therein shall not be in arrears or has not defaulted with its financial obligation to TIEZA, its affiliates or subsidiaries, regarding any past or current project being undertaken with TIEZA or its affiliates or subsidiaries.

1.5.3 If the Interested Proponent is a corporation, said corporation and its material stockholders, its affiliates or subsidiaries, shall not be in arrears and has not defaulted with its financial obligation to TIEZA, its affiliates or subsidiaries, regarding any past or current project being undertaken with TIEZA, its affiliates or subsidiaries.

1.5.4 The Interested Proponent shall submit a notarized certification in the form to be specified in the prepared ED for every solicited JV.

1.6 **Certification of Non-Aggression.** The following guidelines shall apply:

1.6.1 The Interested Proponent must not be involved in any previous or ongoing litigation against TIEZA, its affiliates or subsidiaries, or against or materially affecting TIEZA's assets or properties.

1.6.2 If the Interested Proponent is a consortium, said consortium, its members, affiliates or subsidiaries, and any material stockholder
must not be involved in any previous or ongoing litigation against TIEZA, its affiliates or subsidiaries.

1.6.3 If the Interested Proponent is a corporation, said corporation and its material stockholders, affiliates or subsidiaries, must not be involved in any previous or ongoing litigation against TIEZA, its affiliates or subsidiaries, or against or materially affecting TIEZA assets or properties.

1.6.4 The Interested Proponent shall submit a notarized certification in the form to be specified in the prepared ED for every solicited JV.

2. Submission of EDs by Interested Proponents

2.1 Documentary Requirements. Interested Proponents applying for eligibility shall submit the EDs above and those specified in the ED Kit.

In the event that some of the EDs submitted are reproductions or certified true copies, the Interested Proponents hereby agree and authorize TIEZA and the JVSC and its authorized representatives to compare such reproductions or certified true copies to the originals thereof.

2.2 Additional Information. TIEZA or the JVSC may, in its discretion, require any additional information from any Interested Proponent. TIEZA or the JVSC may, in its discretion, also waive any required information not applicable to a given Interested Proponent but are required in general from all Interested Proponents.

2.3 Deadline to Submit EDs. Interested Proponents shall submit the EDs in a sealed envelope addressed to the Chairperson of the JVSC within thirty (30) days from the last day of submission of Initial Documents.

2.4 Signing and Marking of EDs. In applying for eligibility, the Interested Proponent must submit ten (10) copies (one original and nine machine copies) of his EDs. Each copy shall be accompanied by a checklist of all documents submitted in the form prescribed in the ED Kit.

2.4.1 Interested Proponents shall clearly mark each EDs as “EDs - Name of Project for Joint Venture - COPY No._”. In the event of any discrepancy among the ten sets, Copy No. 1 (the original copy) shall prevail.

2.4.2 All pages of the original EDs to be submitted shall bear the signature of the person or persons authorized to sign and submit the EDs.

2.4.3 If the Interested Proponent is a consortium, each representative of the members of the consortium shall sign the original copy of the EDs.
2.4.4 Changes or erasures in any document shall only be valid if said changes or erasures are counter-signed by the person authorized to sign the EDs.

2.5 Sealing of EDs. Interested Proponents shall enclose and seal each copy of the EDs in an envelope marked “EDs – Name of Project for Joint Venture - COPY No._”. These envelopes containing the EDs shall then be bound and submitted to the JVSC.

All envelopes shall be addressed to:

XXX
The Chairperson
Joint Venture Selection Committee
TIEZA
XXX
(Name and Address to be provided in the ED Kit)

and shall state the name and address of the Interested Proponent. It shall also bear the marking: “Do not open before (date and time indicated in the ED Kit)”.

TIEZA or the JVSC shall not assume any responsibility for the misplacement or premature opening of the Proposals not sealed and marked as required.

2.6 Modification or Withdrawal of EDs. Interested Proponents are not allowed to modify or withdraw their EDs after submission to the JVSC.

2.7 Late Submission of EDs. EDs submitted after the deadline for submission prescribed shall be considered late, shall not be accepted and shall be returned unopened to its Interested Proponent.

2.8 TIEZA’s Prerogative. The JVSC reserves the right to consider and decide on matters brought to its attention or such issues which shall arise or those which it may deem proper during the opening of the submission/opening of the EDs, including but not limited to extending the deadline for submission, for reasons which the JVSC shall deem justifiable, provided that the principles of fairness, transparency, competition and accountability are observed.

3. Opening and Evaluation of EDs

3.1 EDs received will be opened and evaluated separately and independently of each other.

3.2 In opening the EDs, the JVSC shall be guided by the following:
3.2.1 Only the members of the JVSC and its authorized representatives may open the envelopes containing the EDs.

3.2.2 The EDs received shall be opened in the order of its actual receipt (based on the time stamped on the envelopes) by the JVSC.

3.2.3 The envelopes containing the EDs shall be opened one at a time, and the names of the Interested Proponent and the documents submitted shall be read out and recorded.

3.2.4 The envelopes containing the EDs will be opened, following the procedure indicated below, for checking by the JVSC of the required documents for submission as well as markings by the JVSC.

3.2.5 Interested Proponents, or their duly authorized representatives, who submitted the EDs are allowed to attend and witness the proceedings, if they so desire. All Interested Proponents, or their duly authorized representatives, who submitted the EDs and are present at the opening of the envelopes containing the EDs shall sign a register of the EDs opening.

3.3 Opening of the EDs

3.3.1 Order of Opening of EDs. The JVSC shall start opening the envelopes containing the EDs at the date and time indicated in the ED Kit. The said envelopes shall be opened based on the order that it was received by TIEZA.

3.3.2 Checking for Compliance. Each ED shall be checked for compliance with the required submissions as specified in the ED Kit.

The completeness of the EDs of each Interested Proponent shall be determined by examining the submitted documents vis-à-vis the requirements of the ED Kit and using a completeness/incompleteness criteria. For each specific eligibility document required, the Interested Proponent shall be rated "Submitted" for each particular eligibility document submitted. If he fails to submit any of the said specific eligibility document, he shall be rated "Not Submitted" for that particular eligibility document. If an Interested Proponent is rated "Submitted" for all the EDs required, he shall be considered as "Complete" and he shall thereafter be evaluated for pre-qualification. The JVSC shall mark the set of EDs of the said Interested Proponent as "Complete". If an Interested Proponent is rated "Not Submitted" in any of the EDs required, he shall be considered "incomplete" and will not be allowed to participate further, neither will his EDs be evaluated for pre-qualification. The JVSC shall mark the sets of EDs of the said Interested Proponent as "Incomplete".
3.3.3 Minutes. The JVSC-Secretariat shall prepare the minutes of the proceedings of the opening of the EDs.

4. Evaluation of EDs

4.1 Eligible Proponents. The JVSC shall conclude their evaluation of the EDs within fifteen (15) days after the last day for submission of EDs of Interested Proponents and determine which among them are “eligible” or “ineligible.” Notice shall be sent to the Eligible Proponents within seven (7) days from the conclusion of the JVSC’s evaluation.

All Interested Proponents with EDs declared by the JVSC as complete and compliant with the requirements shall be declared “Eligible Proponent”. All Eligible Proponents shall be allowed to submit proposals.

4.2 Right to Reject EDs. TIEZA and the JVSC reserve the right to reject any or all EDs, waive any minor defects therein, or discontinue the eligibility and shortlisting process at any time without incurring any liability to Interested Proponents.

4.3 Appeals Mechanism on Eligibility Application. The following rules on appeal shall apply:

a. Decisions of the JVSC may be appealed in writing to the TIEZA COO. An appeal shall be made by filing a verified Position Paper within five (5) days from receipt of the decision of the JVSC, accompanied by the payment of a non-refundable appeal fee to be indicated in the ED Kit and shall be in the form of cash or manager’s or cashier’s check drawn from a commercial or universal bank operating within Metro Manila.

b. The appeal shall be acted upon within thirty (30) calendar days. The decision of the TIEZA COO, on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.

c. Disqualification of Eligible Proponents. Eligible Proponents may be declared disqualified at any time on the basis of any the following:

i. suppressed, undisclosed or false information that resulted in the eligibility of the Proponent;

ii. failure to possess the general qualifications of Interested Proponents as outlined in these Guidelines;
iii. failure to submit or delay in the submission the EDs specified in these Guidelines, or any other information reasonably required by TIEZA;
iv. prohibition from entering into a contract with TIEZA;
v. presence of legal impediment to become a Winning Proponent;
vi. assignment for the benefit of creditors, petition or application before any tribunal for a receiver or a trustee for itself or of any substantial part of its property, commencement of any judicial or other legal proceedings by reason of its financial difficulties under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute or any jurisdiction, whether now or hereafter in effect; or commencement against such party any such proceeding which shall remain un-dismissed for a period of sixty (60) days, or such party shall by any act indicated its consent to, approval of, or acquiescence in, any such proceeding or the appointment of any receiver of or trustee for it or any substantial part of its property, or the existence of any such receivership or trusteeship which remains undischarged for a period of sixty (60) days; or any reorganization, arrangement, readjustment of debt, dissolution, or liquidation with respect to such party which does not involve a judicial proceeding;
vii. previous failure to satisfactorily perform or complete any contract with TIEZA, its affiliates or subsidiaries, or involved in any litigation involving TIEZA, its affiliates or subsidiaries, or against or materially affecting TIEZA assets or properties; and
viii. failure to comply with any of the provisions in the ED Kit.
ANNEX B
SUBMISSION, OPENING AND EVALUATION OF PROPOSALS
FOR COMPETITIVE SELECTION AND COMPETITIVE CHALLENGE

Provisions of Annex "B" are still governed by the Principles and General Guidelines indicated in the TIEZA Joint Venture Guidelines.

A. SUBMISSION OF PROPOSAL BY ELIGIBLE PROPONENTS

Only Eligible Proponents shall be allowed to submit Proposals. Eligible Proponents shall submit to the JVSC, in accordance with the deadline set forth in the TOR, their Proposals containing certain documents and information required hereunder.

1. Requirements for Submission of Proposals. Eligible Proponents shall be required to submit their Proposals on the deadline stipulated in the TOR. The Proposals to be submitted by Eligible Proponents shall contain, among others, the following:

1.1 Duly Accomplished Proposal Form. An Eligible Proponent must submit a duly accomplished Proposal Form.

1.2 Technical Proposal. The Technical Proposal shall contain the following, as applicable:

a. compliance statements with regard to the technical parameters as stated in the tender documents;

b. operational feasibility;

c. technical soundness, including proposed project timeline;

d. preliminary environmental assessment;

e. cost and financing plan of the JV activity;

f. other documents to support the private sector participant’s technical proposal, as may be required by TIEZA.

1.3 Financial Proposal. The Financial Proposal shall contain the following, as the case may be:

a. compliance statements with regard to the financial parameters stated in the tender documents;

b. proposed cost of the JV activity, operation and maintenance cost, the amount of equity to be infused and debt to be obtained for the project, sources of financing, and all other related costs; and

c. financial proposal corresponding to the parameters set by TIEZA.

Fifty percent (50%) of the equity to be provided by the private sector should as much as possible come from its own resources and not borrowed.
1.4 **Proposal Security.** The form and amount, condition on return and forfeiture and validity of Proposal Security shall be discussed further in the TOR.

1.5 **Secretary’s Certificate.** If the Eligible Proponent is a legal entity, it must submit a notarized Secretary’s Certificate authorizing the submission of the Proposal, the submission of incremental Proposals (if needed), the designation of an authorized signatory, and an authorization and commitment to the payment of all financial obligations in case the Eligible Proponent is declared the Winning Proponent. If the Eligible Proponent is a consortium, each of the legal entities in the consortium must comply with the requirements stated herein.

2. **Submission of Proposals.** The following guidelines shall apply in the submission of Proposals:

2.1 TIEZA shall only start accepting Proposals on the day of opening of Proposals.

2.2 The deadline for submission of Proposals shall be one hundred twenty (120) days from the time notice of eligibility was received by the Eligible Proponents, unless another period is specified in the TOR depending on the complexity, nature or cost of the project.

2.3 All Proposals, all required documents, and all Proposal Securities, must be enclosed in properly labeled envelopes, as required in the TOR.

2.4 The Eligible Proponent shall submit ten (10) copies (one original and nine machine copies) of its Proposal. Each copy shall be accompanied by a checklist of all documents submitted in the form prescribed in the TOR.

3. **Signing and Marking of Proposals.** The following guidelines shall be observed:

3.1 Eligible Proponents shall clearly mark each Proposal as "**Name of JV Project – COPY No.**_." In the event of any discrepancy among the ten sets, Copy No. 1 (the original copy) shall prevail. Instructions on marking may vary depending on what is stated in the TOR.

3.2 All pages of the original Proposal to be submitted must bear the signature of the person or persons authorized to sign and submit the Proposal.

3.3 If the Eligible Proponent is a consortium, each representative of the members of the consortium shall sign the original copy of the Proposal.

3.4 Changes or erasures in any document shall only be valid if said changes or erasures is signed by the person authorized to sign the Proposal.

4. **Sealing of Proposals.** Eligible Proponents shall enclose and seal each copy of the Proposal in an envelope marked "**Name of JV Project – COPY No.**_." These envelopes containing the Proposal shall then be bound and submitted to the JVSC.
All envelopes shall be addressed to:

XXX

The Chairperson
Joint Venture Selection Committee
TIEZA

and shall state the name and address of the Eligible Proponent. It shall also bear the marking: "Do not open before (date scheduled for opening of envelopes)".

TIEZA or the JVSC shall not assume any responsibility for the misplacement or pre-mature opening of the Proposals not sealed and marked as required.

5. Modification or Withdrawal of Proposals. Eligible Proponents are not allowed to modify or withdraw their Proposals after submission to the JVSC.

6. Late Submission of Proposals. Proposals submitted after the deadline for submission shall be considered late, and shall not be accepted and be returned unopened to its Eligible Proponent.

7. Extension of Validity of Proposals. When an extension of validity of Proposals is considered necessary, Eligible Proponents who submitted compliant Proposals within the deadline shall be requested in writing by the JVSC to extend the validity of their Proposals before the expiration date of the same. However, they are not allowed to modify or revise the price or other substantial aspect of their proposals. Furthermore, private sector participants must correspondingly extend the validity of their Proposal Security as a condition for the extension of the validity of their proposals.

Private sector participants shall not refuse such request for extension except on the following grounds: (1) loss of interest in the Project, and (2) unforeseen financial meltdown/crisis. Private sector participants who refuse the request based on these grounds shall not forfeit their Proposal Security; provided that, in case of refusal based on unforeseen financial meltdown/crisis, the private sector participant must submit an affidavit attesting to the facts alleged and other specific documents proving it.

B. OPENING OF PROPOSALS

Proposals received will be opened and evaluated separately and independently of each other. In opening Proposals, the JVSC shall be guided by the following:

1. Only the members of the JVSC and its authorized representatives may open the envelopes containing the Proposals.

2. The Proposals received shall be opened in the order of its actual receipt (based on the time-stamp marked on the envelopes) by the JVSC.
3. Proposals will be opened, following the procedure indicated below, for checking by the JVSC of the required documents for submission as well as markings by the JVSC.

4. Each Proposal shall be checked first for its compliance with the Proposal Security requirements of the TOR. If not compliant, the rest of the Proposal will be returned unopened to the Eligible Proponent that submitted it.

5. If the Proposal Security is compliant, the Proposal Form submitted will be evaluated next to check its compliance with the requirements of this TOR. If the Proposal Form is not compliant, the rest of the Proposal will be returned unopened to the Eligible Proponent that submitted it.

6. If the Proposal Form is compliant, the Technical Proposal will be opened next for initial evaluation, following the procedure indicated below, for checking by the JVSC of the required documents for submission as well as markings by the JVSC.

7. The Financial Proposal will not be opened until the detailed evaluation of the Technical Proposal has been completed by the JVSC, and the Technical Proposal has obtained a minimum score of eighty-five percent (85%).

8. Eligible Proponents (or their duly authorized representatives) that submitted Proposals are allowed to attend and witness the proceedings, if they so desire. All Eligible Proponents who submitted Proposals, or their authorized representatives, present at the opening of the envelopes containing the Proposals shall sign a register of the Proposal opening.

9. The JVSC-Secretariat shall prepare the minutes of the proceedings of the opening of Proposals.

C. THIRD STAGE OF EVALUATION: OPENING AND EVALUATION OF TECHNICAL PROPOSAL

Each Technical Proposal shall be checked for compliance with the required submissions listed in the TOR.

1. **Preliminary Evaluation.** The JVSC shall determine each Eligible Proponent’s compliance with the documents required to be submitted for the Technical Proposal as prescribed in the TOR using a non-discretionary “Submitted/Not Submitted” criterion.

2. **Rating of Submission.** If an Eligible Proponent submits the required document, it shall be rated “Submitted” for that particular requirement. Failure to submit a requirement or an incomplete submission shall be considered “Not Submitted” for the particular requirement or in certain cases “Not Applicable”. In case one or more of the above required documents is missing, incomplete, or patently insufficient, the JVSC shall rate
the Technical Proposal as “Incomplete” and will return to the Eligible Proponent concerned its Proposal including the unopened Financial Proposal envelope. A Technical Proposal that contains all the required documents shall be declared as “Complete”.

3. **Right to Consider Matters Brought During Submission/Opening.** The JVSC reserves the right to consider and decide on matters brought to its attention, or such issues which shall arise, or those which it may deem proper, during the submission/opening of the Technical Proposals.

4. **Retention of Complete Technical Proposal.** Technical Proposals that were declared as “Complete” shall be retained by the JVSC for detailed evaluation.

5. **Detailed Evaluation.** The JVSC will evaluate the details of the “Complete” Technical Proposals and assign scores based on the criteria specified in the TOR. The scores on each criterion will be totaled. Only Technical Proposals that obtained at least a total score of eighty-five percent (85%) shall be allowed to proceed to the next stage which is the opening and evaluation of the Financial Proposals.

6. **Presentation to the JVSC.** As part of the detailed evaluation of Technical Proposals, Eligible Proponents may be required to do an oral presentation of their Technical Proposal to the JVSC as well as answer questions from, or issue clarifications to, the members of the JVSC. Eligible Proponents are also required to provide ten (10) copies of their respective presentations to the JVSC. The JVSC shall release the schedule of presentations immediately after the opening of Technical Proposals.

7. **Completion of Evaluation of Technical Proposals.** The JVSC shall complete the evaluation of the Technical Proposals within thirty (30) days from the date the Technical Proposals are opened.

In this regard, the JVSC shall inform the Eligible Proponents within seven (7) days from completion of evaluation of Technical Proposals whether their Technical Proposals obtained the minimum score and are allowed/not allowed to proceed to the next stage, which is the opening of Financial Proposals.

**D. FOURTH STAGE OF EVALUATION: OPENING AND EVALUATION OF FINANCIAL PROPOSALS**

1. **Opening of Financial Proposals.** Only the Financial Proposals of Eligible Proponents with Technical Proposals garnering a total score of eighty-five percent (85%) or higher shall be opened for evaluation. Those which garnered a total score of less than eighty-five percent (85%) shall not be considered further and shall be returned unopened, together with a notice stating the reasons for disqualification from further consideration.
The JVSC shall open the envelope of the Financial Proposals within seven (7) days from completion of the evaluation of the Technical Proposals following the same procedure prescribed for the opening of the envelopes containing the Technical Proposals.

2. **Evaluation of Financial Proposals.** The Financial Proposal shall be opened and checked for completeness in the presence of the Eligible Proponent(s) or their duly authorized representatives. The Financial Proposal shall be evaluated based on the provisions of the TOR.

3. **Completion of Evaluation of Financial Proposals.** The evaluation of Financial Proposals shall be completed by the JVSC within thirty (30) days from the opening of the same.

**E. Simultaneous Evaluation of the Technical and Financial Proposals.** Simultaneous evaluation of the Technical and Financial proposals may be resorted to if the JVSC determines that the nature of the JV activity requires the appreciation of both the Technical and Financial Proposals as a whole in order to determine the best proposal. Provided, that, said evaluation procedure shall be explicitly stated in the tender documents. Simultaneous evaluation of the Technical and Financial proposals shall be completed within thirty (30) days from the date the proposals are opened.

**F. Right to Reject Proposals.** TIEZA reserves the right to reject any or all proposals, waive any minor defects therein, conduct verification, request clarifications, and accept the offer it deems most advantageous to TIEZA.

**G. Prescriptive Periods.** The periods stated for the evaluation of the Technical and Financial Proposals are prescriptive.
ANNEX C
REQUIREMENTS FOR UNSOLICITED PROPOSAL

1. An Unsolicited Proposal refers to a project proposal submitted by the private sector that is not in response to a formal solicitation or request by TIEZA.

2. To be considered complete, a proposal shall contain the following documents:

a. **Letter of Intent** indicating the basic information of the Unsolicited Proposal such as:

   i. description of the proposed project including its rationale and objectives;
   ii. land area and location of the proposed development;
   iii. project implementation schedule; and
   iv. general description of new technology or new concept; and
   v. other relevant information

b. **Company Profile** together with the following documents:

   i. Articles of Incorporation, By-Laws, SEC Certificate of Incorporation and other documents issued by SEC or equivalent documents from the country of incorporation;
   ii. latest General Information Sheet (GIS); and
   iii. latest Tax Returns.

   TIEZA may require the submission of additional documents which it deems relevant and necessary.

c. **Business Case, Concept Plan, Pre-feasibility Study, or Feasibility Study** which may include:

   i. project background/ description of the project;
   ii. technical study;
   iii. financial viability assessment;
   iv. project economic viability assessment;
   v. value for money analysis;
   vi. risk allocation matrix; and
   vii. initial environmental assessment.

   TIEZA may require the inclusion of other information or details in the Business Case, Concept Plan, Pre-Feasibility Study, or Feasibility Study.

d. **Draft Contract/Term Sheet**

   The draft contract shall reflect the terms and conditions in undertaking the JV activity, including the contractual obligations of the contracting
parties and the ownership of the JV activity, project, or property after the
termination of the JV Agreement. The draft contract shall include
provisions on the following matters, as far as practicable:
i. date on which the agreement is established, executed, and
considered effective;
ii. names, addresses and identification of the parties, including the type
of business of each member of the JV, and indicating the person
authorized to transact with TIEZA;
iii. name under which the JV will do business, if applicable;
iv. principal place of business of the JV;
v. clearly defined purpose and objective, contractual/agreement mode
(whether JV company/corporate JV or contractual JV), term and
scope of the JV;
vi. total cost of the JV activity, project specifications and features;
vii. relationship between the parties, management roles in the JV
activity, and a statement that the parties are actually co-venturers
for the project, whether or not the contract is in the name of all
members;
viii. establishment of a fund by the parties to finance the work, together
with the amount, type (cash, assets, etc.), and valuation of
committed contributions of each party and when such contributions
will be made, with the fund being deposited in a special bank
account under dual control and all progress payments and other
revenues being deposited in such account. If the equity/contribution
of the private sector is to be borrowed, a statement that there shall
be no government guarantee for said loan;
ine. procedure for additional capital infusion, if required, and a
statement that there shall be no government guarantee for loans to
be incurred by the private sector in case the additional contribution
of the private sector is to be borrowed;
x. declaration of the participation of the parties and percentage in
which profits and losses are shared, in proportion to the
contributions of the party to the working fund. The amount of
contribution of funds by the parties can be increased or decreased,
depending on the contributions of equipment or expertise;
xii. specified termination/liquidation of the JV Company, buy-out
provisions, and details on the transfer of ownership of the JV
activity/facility including provisions on what happens to the JV’s
assets after the expiration of the JV agreement or end of the JV
period. If equity other than cash is to be contributed, a statement as
to how the property will be appraised and valued during and after
the effectivity of the JV Agreement;
xii. designation of one of the parties as general manager of the project,
with authority to bind the JV company/partnership/parties; or, in
the alternative, the constitution of a management committee, with a
provision for remuneration. Management duties, other duties of the
co-venturers and procedures to be followed in dealing with unusual
situations or problems that may develop should be specified;
xiii. implementation milestones, regular meeting schedules, financial and periodic JV and progress reporting procedure;

xiv. acquisition of licenses in the name of the JV or each co-venturer, as required;

xv. definition of items which are to be considered as costs to the JV for the purpose of determining profit or loss and a description of items which are not reimbursable to members of the JV, and specified division of the profits and risks and losses;

xvi. confidentiality of trade information passed between the co-venturers;

xvii. ownership or retention of intellectual property rights and consultant reports;

xviii. performance security requirements of the project and the bonding obligations of the co-venturers;

xix. undivided pro-rata interests held by the co-venturers on all assets of the JV;

xx. restriction regarding assignment of private sector participant’s undivided pro-rata interests in assets of the JV;

xxi. cost recovery scheme, including payment to the government of royalties/rights, the form/description and amount of earnings (cash, asset, etc.), whether they are in absolute amounts or variable, and the period and timing such earnings or payment shall be received. In case of non-cash payment or payment in form of asset, a statement/provision on how it will be valuated, the minimum value of the asset, and the determination/selection of asset such as how and who will determine/select the asset;

xxii. indemnification and liquidated damages;

xxiii. minimum insurance coverage;

xxiv. acceptance tests and procedures;

xxv. grounds for and effects of contract termination/default including modes for settling disputes, procedure for handling guarantees, defects and insurance after termination, threshold (in terms of amount, time/period, or both) for which non-payment or delay in payment and delay in starting the project/s shall be grounds for termination/rescission of the JV contract/agreement;

xxvi. manner and procedures for the resolution of warranty against corruption;

xxvii. procedure and/or period for withdrawal by the government entity of its contribution to the JV, or exit divestment by the government entity of its interest in the JV, and substitution or addition of parties;

xxviii. payout of funds;

xxix. nature of employment/service of existing personnel or those hired after the creation of the JV;

xxx. dispute arbitration clause;

xxxi. venue for filing of actions;

xxxii. amendment of contract;

xxxiii. separability clause;
xxxiv. compliance with all other laws, rules and regulations, guidelines, and issuances.

e. Other Documents as may be required by TIEZA.
ANNEX D
FLOW CHARTS

Competitive Selection
Negotiated JV and Competitive Challenge
**NEGOTIATED JOINT VENTURE - COMPETITIVE CHALLENGE**

**3-STAGE FRAMEWORK FOR UNSOLICITED PROPOSALS/OTHER DIRECT NEGOTIATIONS**

**FIRST STAGE: INITIAL EVALUATION**
- shall be completed by JVSC **within sixty (60) calendar days** upon submission of complete documents
- JVSC recommends acceptance/ non-acceptance to TIEZA COO
  - TIEZA COO issues acceptance
    - Proceed with negotiations
  - TIEZA COO issues non-acceptance
    - Inform Interested Proponent of the grounds for non-acceptance

**SECOND STAGE: CONDUCT OF NEGOTIATION, CONFERMENT OF ORIGINAL PROPOSENT STATUS AND EVALUATION**
- The negotiation shall be completed **within thirty (30) days** upon issuance of acceptance letter for the proposal by TIEZA
- In case of unsuccessful negotiation,
  - reject proposal in writing
  - accept new proposal or pursue proposed activity through alternative routes
- **Within seven (7) days after the successful negotiation**, TIEZA and the authorized representative of the Interested Proponent shall issue a signed certification that an agreement has been reached and both agree to submit the proposal to competitive challenge, conferment of OPS
- Proceed with competitive challenge

**THIRD STAGE: COMPETITIVE CHALLENGE PROCESS**
- The JVSC and the TIEZA Legal Department shall prepare the ED Kit and TOR, and the Draft Contract, respectively, consistent with the terms and conditions approved for the JV activity, **within thirty (30) calendar days** from the issuance of approval by the TIEZA COO
- **Within seven (7) calendar days** from the approval of the tender documents by the TIEZA COO, the JVSC shall cause the publication and posting of the invitation to apply for eligibility and to submit a comparative proposal
- Prospective comparative proponents or challengers shall be given **ninety (90) to one hundred twenty days (120) calendar days** or as may be approved by the JVSC from the issuance of tender documents to develop and submit comparative proposals

**RIGHT TO OUTBID**
- The outbidding shall be **within thirty (30) calendar days** from receipt of notification from the TIEZA of the results of the competitive challenge. If the original proponent submits a better offer than the one submitted by the challenger within the prescribed period, the JV activity shall be awarded to the original proponent.
AWARD AND EXECUTION OF CONTRACT

Recommendation to Award
- JVSC shall submit the recommendation of award to TIEZA COO within ten (10) calendar days from the conclusion of the financial evaluation.

Decision to Award
- Approval shall be manifested by signing and issuing the "Notice of Award" to the Winning Proponent fifteen (15) calendar days from the approval of the TIEZA COO.
- If the recommendation to award was rejected by the TIEZA COO, the Proponent shall be informed in writing within fifteen (15) calendar days from the issuance of denial by the TIEZA COO.

Conditions Precedent
- Within thirty (30) calendar days or within the period specified in the TOR or within the extension given by TIEZA, after issuance of the Notice of Award and before the signing of the JV Agreement, the Winning Proponent shall present & submit to the JVSC the conditions precedent.
- Within seven (7) calendar days from receipt of the Conditions Precedent from the Winning Proponent, the JVSC shall determine its sufficiency, and notify the Winning Proponent accordingly.

Execution of the Contract
- Winning Proponent and TIEZA shall sign and execute the Contract within seven (7) calendar days from issuance of approval by the JVSC of the conditions precedent received from the Winning Proponent.

Appeals Mechanism
- Decisions of the JVSC may be appealed in writing by filing a Motion for Reconsideration within seven (7) days from receipt by Proponent of said Decision.
- In case of denial, the matter may be appealed to the TIEZA COO by filing a verified Position Paper within seven (7) days from receipt by Proponent of denial of the MR, and shall be accompanied by a non-refundable appeal fee.
- The TIEZA COO shall act on the appeal within thirty (30) days. If the appeal is not resolved within said period, the appeal is deemed denied.
- Decision of the COO may be further appealed by filing a verified Appeal Memorandum to the TIEZA Board within seven (7) days from receipt of the COO's Decision and shall be accompanied by the payment of a non-refundable appeal fee.
- The TIEZA Board shall act on the appeal within thirty (30) days. The decision of the TIEZA Board on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.
PREPARATION OF SELECTION/ TENDER DOCUMENTS BY TIEZA

PUBLICATION/POSTING
IAESP shall be advertised once in a newspaper of general nationwide circulation & local newspaper where the asset/project is located for a period of at least two consecutive weeks, and posted continuously at the TIEZA website for at least 14 consecutive days starting on date of first publication

STAGE OF EVALUATION

FIRST STAGE OF EVALUATION: INITIAL DOCUMENTS
Interested Proponents shall be given at least fifteen (15) days from the last date of publication of the IAES to submit initial documents

SECOND STAGE OF EVALUATION: ELIGIBILITY
Evaluation of EDs
Eligible Proponents
- JVSC shall conclude their evaluation of the eligibility documents within fifteen (15) days after the last day for submission of eligibility documents of Interested Proponents and determine which among them are "eligible" or "ineligible."
- Notice shall be sent to the Eligible Proponents within seven (7) calendar days from the conclusion of the JVSC's evaluation

Appeals Mechanism
- An appeal shall be made by filing a verified Position Paper to the COO within five (5) days from receipt of the decision of the JVSC, accompanied by the payment of a non-refundable appeal fee to be indicated in the ED Kit
- The appeal shall be acted upon within thirty (30) days. The decision of the COO on the appeal shall be final and immediately executory

THIRD STAGE OF EVALUATION: OPENING AND EVALUATION OF TECHNICAL PROPOSAL
Completion of Evaluation of Technical Proposals
- JVSC shall complete the evaluation of the Technical Proposals within twenty (20) days from the date the Technical Proposals are opened
- JVSC shall inform the Eligible Proponents within seven (7) days from completion of evaluation of Technical Proposals whether their Technical Proposals obtained the minimum score and are allowed/not allowed to proceed to the next stage, which is the opening of Financial Proposals

FOURTH STAGE OF EVALUATION: OPENING AND EVALUATION OF FINANCIAL PROPOSAL
Opening of Financial Proposals
- JVSC shall open the envelope of the Financial Proposals within seven (7) days from completion of the evaluation of the Technical Proposals following the same procedure prescribed for the opening of the envelopes containing the Technical Proposals

Completion of Evaluation of Financial Proposals
- Evaluation of Financial Proposals shall be completed by the JVSC within fifteen (15) days from the opening of the same

Simultaneous Evaluation of the Technical and Financial Proposals
- Shall be completed within thirty (30) days from the date the proposals are opened

PRE-SELECTION CONFERENCE
- Pre-selection conference shall be conducted at least thirty (30) days before the submission of the proposal

PROPOSAL SECURITY
- Conditions precedent for the execution of the contract within the prescribed period of thirty (30) days or as specified or extended by TIEZA shall result in the confirmation of the Proposal Security

SUBMISSION OF PROPOSALS
- The deadline for submission of Proposals shall be the deadline specified in the TOR
AWARD AND EXECUTION OF CONTRACT

Recommendation to Award
- JVSC shall submit the recommendation of award to TIEZA COO within ten (10) calendar days from the conclusion of the financial evaluation.

Decision to Award
- Approval shall be manifested by signing and issuing the "Notice of Award" to the Winning Proponent fifteen (15) calendar days from the approval of the TIEZA COO.
- If the recommendation to award was rejected by the TIEZA COO, the Proponent shall be informed in writing within fifteen (15) calendar days from the issuance of denial by the TIEZA COO.

Conditions Precedent
- Within thirty (30) calendar days, or within the period specified in the TOR or within the extension given by TIEZA, after issuance of the Notice of Award and before the signing of the JV Agreement, the Winning Proponent shall present & submit to the JVSC the conditions precedent.
- Within seven (7) calendar days from receipt of the Conditions Precedent from the Winning Proponent, the JVSC shall determine its sufficiency, and notify the Winning Proponent accordingly.

Execution of the Contract
- Winning Proponent and TIEZA shall sign and execute the Contract within seven (7) calendar days from issuance of approval by the JVSC of the conditions precedent received from the Winning Proponent.

Appeals Mechanism
- Decisions of the JVSC may be appealed in writing by filing a Motion for Reconsideration within seven (7) days from receipt by Proponent of said Decision.
- In case of denial, the matter may be appealed to the TIEZA COO by filing a verified Position Paper within seven (7) days from receipt by Proponent of denial of the MR, and shall be accompanied by a non-refundable appeal fee.
- The TIEZA COO shall act on the appeal within thirty (30) days.
- Decision of the COO may be further appealed by filing a verified Appeal Memorandum to the TIEZA Board within seven (7) days from receipt of the COO's Decision and shall be accompanied by the payment of a non-refundable appeal fee.
- The TIEZA Board shall act on the appeal within thirty (30) days. The decision of the TIEZA Board on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.