2023 REVISED GUIDELINES AND PROCEDURES
FOR ENTERING INTO JOINT VENTURE (JV) AGREEMENTS
BETWEEN GOVERNMENT AND PRIVATE ENTITIES

1.0. **Legal Basis**. These Revised Guidelines is being issued pursuant to Section 8 (Joint Venture Agreements) of Executive Order (EO) No. 423 dated 30 April 2005, which mandates the National Economic and Development Authority (NEDA), in consultation with the Government Procurement Policy Board (GPPB), to issue the necessary guidelines on Joint Ventures (JVs). As provided for under Section 9 of the 2013 Revised JV Guidelines**,** the Office of the Government Corporate Counsel (OGCC) and the Governance Commission for Government-Owned or **-**Controlled Corporations (GCG) were likewise consulted in the revision of these Guidelines.

2.0. **Principles**. The Government Entity shall enter into a JV with a Private Entity consistent with the following principles:

2.1. Entering into a JV shall be pursued if there will be better value for money for the Government than if the project will be pursued through other modes of delivery. Ultimately, an objective assessment of what best serves the public interest should guide the decisions of Government;

2.2. Transparency shall be observed in the conduct of the Competitive Selection and Negotiated JV/Competitive Challenge Process and in the implementation of the JV Agreement, either through a Contractual JV or a JV Company, through wide dissemination of JV opportunities;

2.3. Open and fair competition shall be observed during the JV selection process and award;

2.4. The formation of the JV between Government Entity and Private Entity shall not prevent other potential players from profitably entering into business ventures/markets;

2.5. The formation of the JV between the Government Entity and Private Entity shall not prevent the JV Partners from entering into other JV Agreements and/or from profitably entering into other business ventures/markets;

2.6. The cost of producing the particular product, conducting the activity, or performance of service shall be efficient or potentially efficient towards earning potential profits for Government and the Market Player/Private Entity;

2.7. If the Government Entity is mandated by existing law as a Regulatory Body of the business of the JV, such role shall be clearly and explicitly delineated from its role as implementer of the business to avoid conflicts of interest;

2.8. As differentiated from projects procured under Official Development Assistance (ODA), Government Procurement Reform Act (GPRA), and Build-Operate-and-Transfer (BOT) Law, except for the Build-Operate-and-Own (BOO) scheme and similar schemes under the BOT Law where, generally, ownership of the asset/business will stay with the Government, JV Agreements allow sharing of profits and losses between the Government Entity and the Private Sector Partner. JV Agreements also allow the Private Sector Partner to take over the Infrastructure or Development Project undertaken for a single and specific goal, after the Government divests itself of any interest in the JV, provided that such divestment by Government Entity is allowed under existing rules and regulations;

2.9. Splitting of Government Contracts, or division/breaking up of Government Contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts to circumvent any provision or procedure under these Guidelines including the approval by the NEDA Board – Investment Coordination Committee (ICC), shall not be allowed;

2.10. Accountability for the JV lies with the Head of Government Entity involved in the approval and execution of the JV Agreements and the implementation of the JV. The Private Entity dealing with the Government Entity are similarly held accountable for all their actions relative thereto;

2.11. A JV Agreement shall not be entered into under these Guidelines for the purpose of circumventing procurement methods and certain processes and rules under GPRA and its Implementing Rules and Regulations (IRR), BOT Law and its IRR, and other applicable laws, rules and regulations as well as issuances of the NEDA Board – ICC;

2.12. Entering into a JV does not change the nature of the Government Entity. In no instance may the Government Entity transfer or divest its primary or regular functions, whether directly or indirectly, to the Private Sector Partner through the JV;

2.13. During the life and implementation of the JV Agreement, the Government Entity shall continue to adhere to its regular statutory, oversight, and regulatory requirements pursuant to existing laws, rules and regulations, if any;[1] and,

2.14. In case of ambiguity, the terms in the JV Agreement shall be liberally construed in favor of general public welfare, and of achieving the desired objectives of these Guidelines as set out under Section 3.0.

3.0. **Purpose**. These Guidelines are formulated to meet the following objectives:

3.1. To prescribe the rules, guidelines, and procedures forging the JV Agreements between a Government Entity as defined under Section 5.7, and a Private Entity;

3.2. To encourage pooling of resources and expertise between Government and Private Entities through JVs as a viable, efficient and practical alternative in pursuing development goals of the Government; and,

3.3. To ensure that all JV Agreements are entered into under the policy that all government contracts shall be awarded through a transparent and competitive process.

4.0. **Coverage**.

4.1. These Guidelines shall apply to all Government-Owned or -Controlled Corporations (GOCCs), government corporate entities/government instrumentalities with corporate powers (GCEs/GICPs), government financial institutions (GFIs), state universities and colleges (SUCs), as defined under Section 5.7.

4.2. These Guidelines shall not apply to the following:

a. Transactions of GFIs in the ordinary course of business as part of their normal and ordinary banking, financial or portfolio management operations;
b. JVs of government entities in the exercise of their primary mandate to dispose government assets or properties;
c. JVs of Local Government Units (LGUs);
d. JVs of Government Entities in the exercise of their primary mandate to undertake exploration of energy resources, such as oil and gas reserves; and,
e. JVs which are purely Operations and Maintenance Contracts having no initial capital expenditures.

5.0. **Definition of Terms**.

5.1. ***Approving Authority***. Refers to:

a. The NEDA Board – ICC: For JV Projects covered under Section 7.2.c.
b. The Head of the Government Entity: For JV Projects covered under Section 7.2.d.

5.2. ***Competitive Challenge***. An alternative selection process (provided under Annex "B" hereof) wherein third parties shall be invited to submit comparative proposals to a negotiated JV either initiated by a Private Entity or, by the Government in case it has failed to identify an eligible Private Entity for a desired activity after subjecting the same to a competitive selection as provided under Section VIII.9 of Annex "A" hereof.

5.3. ***Competitive Selection***. Refers to a process of selection by a Government Entity of a JV Private Partner which may be conducted in a single-stage or two-stage process, based on transparent criteria, which should not constrain or limit competition, and is open to participation by any interested and qualified Private Entity.

5.4. ***Contractual JV***. A legal and binding Agreement under which the JV Partners shall perform the functions and obligations under the JV Agreement without forming a JV Company.

[1] Including compliance with the IRR of Republic Act (RA) No. 11032 otherwise known as the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018" and applicable issuances of the Philippine Competition Commission (PCC).

5.5. ***Contribution***. Refers to cash, property, whether tangible or intangible, including shares of stock,[2] as well as labor performed for or services/assistance actually rendered to the JV that is capable of pecuniary valuation, or a combination of any or all of the foregoing, pooled together to undertake an investment activity for the duration of the JV. Such contributions by both the Government Entity and the Private Entity shall be indicated in the selection/tender documents and the JV Agreement in present value, with the discount rate prescribed by the appropriate Approving Authority.

Government contribution to JV undertakings shall not exceed fifty percent (50%) of the project cost for Contractual JVs or fifty percent (50%) of the outstanding capital stock of the JV Company.

5.6. ***Divestment***. Refers to the transfer of ownership of government assets or properties to a Private Sector Partner or a Private Entity. Divestment is discretionary upon the Head of the Government Entity and shall not diminish, impede or undermine the continued performance and exercise of the Government Entity's primary or regular function. Divestment may be made partially or fully and shall be subject to necessary government approvals.

5.7. ***Government Entity***. Refers to GOCCs, GCEs/GICPs, SUCs, and GFIs, created by law and executive issuances. GOCCs, GCEs/GICPs AND GFIs shall be as defined under Republic Act (RA) No. 10149, otherwise known as the GOCC Governance Act of 2011.

5.8. ***Government Undertaking***. Refers to any form of support from the National Government.

5.9. ***Head of Government Entity***. Refers to the governing board or its duly authorized official for GOCCs, GCEs/GICPs, SUCs, and GFIs.

5.10. ***Infrastructure or Development Projects***. Refer to investments in the following sectors:

a. Transportation (roads and traffic management, rail, airports and ports, among others);

b. Energy (power plants, transmission and distribution systems, biofuel or fossil fuel production, among others);

c. Water (bulk water source and supply, water transmission structures, sewerage systems, septage management projects, irrigation and flood management facilities, raw water treatment plants, wastewater treatment plants, among others);

d. Information and Communications Technology (telecommunications, network and databases, among others);

e. Social Infrastructure (health, education, housing, solid waste management facilities, among others); and

f. Other infrastructure and development projects (e.g., land reclamation and dredging, agricultural commodity production, harvesting and post-harvesting processing, among others)

as may be authorized pursuant to these Guidelines and other existing rules and regulations.

5.11. ***Joint Venture (JV)***. An arrangement whereby a Private Entity or a group of Private Entities on one hand, and a Government Entity or a group of Government Entities on the other hand, provide contribution to undertake a time-bound investment activity. Such investment activity or undertaking shall be for the purpose of accomplishing a specific goal with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transfer the activity to either the Private Entity under competitive market conditions or to the Government. The JV involves a community or pooling of interests in the performance/implementation of the investment activity, and each Party shall

[2] Revised Corporation Code. Sec. 61. Consideration for Stocks. – Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the issuance of stock may be: (a) Actual cash paid to the corporation; (b) Property, tangible or intangible, actually received by the Corporation and necessary or convenient for its use and lawful purpose at a fair valuation equal to the par or issued value of the stock issued; (c) Labor performed for or service actually rendered to the Corporation; (d) Previously incurred indebtedness of the Corporation; (e) Amounts transferred from unrestricted retained earnings to stated capital; (f) Outstanding shares exchanged for stocks in the event of reclassification or conversion; (g) Shares of stock in another Corporation; and/or (h) Other generally accepted form of consideration.

Where the consideration is other than actual cash, or consists of intangible property such as patents or copyrights, the valuation thereof shall initially be determined by the stockholders or the Board of Directors, subject to the approval of the Commission.

have the right to direct and govern the policies in connection therewith with the intention to share both profits and risks and losses subject to agreement by the JV Partners. A JV may be through a Contractual JV or a JV Company.

5.12. ***JV Agreement***. Refers to the contract between the JV Partners which shall contain the terms and conditions that shall govern the JV and the relationships of the JV Partners, and other matters which may be required under these Guidelines. All relevant laws, rules, and regulations, including these Guidelines, shall be deemed written into all JV Agreements entered.

5.13. ***JV Company***. A stock corporation incorporated and registered by the JV Partners, pursuant to the Government Entity's legal mandate and in accordance with the provisions of the corporation laws of the Philippines and all applicable rules and regulations. It shall perform the primary functions and obligations of the JV as stipulated under the JV Agreement and possess the characteristics stipulated under these Guidelines.

5.14. ***JV Partners***. Refer to the Government Entity and the Private Sector Partner/s that will undertake a JV in accordance with these Guidelines.

5.15. ***JV Proposal***. Refers to the formal proposal of either the Government Entity or the Private Entity to undertake a JV. It shall be comprised of, at the minimum, a feasibility study and the draft JV Agreement.

5.16. ***Negotiated JV***. Refers to an arrangement arising from a proposal initiated by a Private Entity, or, by the Government Entity in case it has failed to identify an eligible Private Entity, for a desired activity after subjecting the same to a Competitive Selection as provided under Section VIII.9 of Annex "A" hereof. The procedure for negotiated proposals is provided under Annex "B" of these Guidelines.

5.17. ***Private Entity***. Refers to any potential Private Sector Partner to the JV undertaking.

5.18. ***Private Sector Partner***. Refers to the Private Entity awarded with the JV Agreement, with sufficient legal, technical and financial capability, which shall have contractual responsibility as the JV Partner for either a Contractual JV or through the formation of a JV Company.

5.19. ***Project Cost***. Refers to the total costs to be expended to plan, develop and construct the project to completion stage including but not limited to the costs of feasibility studies, engineering and design, construction, equipment, land/right-of-way, taxes imposed on said cost, and development cost.

5.20. ***Public Utility Projects***. Refers to projects or facilities that provide public services as defined under the Amended Public Service Act and for which a franchise is required.

5.21. ***Regulatory Body***. Refers to any government agency or authority, body, commission, or other instrumentality mandated under applicable laws, rules and regulations to monitor, regulate, or otherwise exercise authority over the JV Activity.

5.22. ***Similar or Related Contracts***. For the purpose of these Guidelines, similar or related contracts refer to all ongoing or completed government and private contracts, JV or otherwise, involving scope of works or services which are related to or similar to the project being subjected to Competitive Selection/Challenge. The Government Entity may adopt or otherwise provide more details of this definition in the selection/tender documents.

6.0. **General Guidelines**.

6.1. Modes of Undertaking a JV should either be by:

a. Competitive Selection – The process for the conduct of Competitive Selection, contract award and approval are stipulated under Annex "A" of these Guidelines.
b. Negotiated JVs – Negotiated JVs may be entered under the circumstances stated under Annex "B" of these Guidelines.

The Government Entity shall ensure that all activities during the Competitive Selection/Challenge, award, and approval are conducted in a transparent and competitive process that promotes accountability and efficiency, and that the parameters are clearly defined and shall include the parameters as approved by the Approving Authority.[3]

[3] Approving Authorities being referred are those agencies defined and indicated under Sections 5.1 and 7.2 of these Guidelines.

6.2. JV Agreements entered into by the Government Entity with the Private Sector Partner, whether through Contractual JV or through the formation of a JV Company as provided in these Guidelines, should be clear in its intent to undertake a specific activity that is responsive to national development goals and objectives.

6.3. The Government Entity and Private Sector Partner shall enter into a JV Agreement with the following parameters, as applicable:

a. Ownership and nationality requirements under the Constitution and other pertinent laws should be complied with; provided, that the Government contribution in the JV shall be fifty percent (50%) or less of the project cost for Contractual JVs, or of the outstanding capital stock of the JV Company.

The Government Entity's contribution may be through any of the forms mentioned under Section 5.5 above. A Third-party Valuator shall be commissioned to assess the government contribution and validate the valuation report on the contribution of the Private Entity.

Government Entities intending to enter into a JV (through Competitive Selection) shall have the responsibility of ensuring that their assets are independently valued prior to submission to the appropriate Approving Authority.

For Negotiated JV Proposals, a third-party valuation of the Private Entity's contribution shall be required to be submitted under Stage One of Annex "B". Valuation of the Government contribution shall be processed pursuant to Stage Two of Annex "B" prior to submission of the JV Proposal to the Approving Authority.

For all valuation reports, a Certification shall be issued by the Third-party Independent Valuator stating that the latter has neither present nor prospective interest in the property/contribution, and that the independent valuator's fees are not contingent to the value reported and that, conflict of interest has been avoided at all times. All valuation reports shall be submitted to the appropriate Approving Authority as part of documentation for review. The report on valuation of assets should not be older than one (1) year from the date of submission to the Approving Authority.

The JV may sell, transfer, mortgage, encumber, or use as collateral, the assets contributed by the Private Partner to the JV and whatsoever rights over these assets, subject to the consent of the Head of the Government Entity and existing laws, rules, and regulations;

b. The JV Partners shall be permitted to derive income, which shall be from the net profit, of the JV itself or activities authorized under the JV Agreement during the term thereof;

c. The JV shall be undertaken for a fixed period or upon accomplishment of the purpose of the JV prior to the end of the fixed period, that is, with a specified start and end period/date as explicitly stipulated/defined in the JV Agreement;

d. The interests of the JV Partners in and to any profits, losses, assets acquired, constructed, and otherwise derived in connection with the JV Project shall be proportionate to their respective contributions to the JV, unless otherwise agreed upon by the JV Partners; Provided, that the Government Entity's share in any profits shall not be less than the proportion of its contribution to the JV. Said sharing agreement shall be indicated in the selection/tender documents and included in the JV Agreement;

e. A JV shall be subject to the relevant and applicable budgeting, accounting, auditing and other pertinent laws, rules and regulations, and other legal issuances;

f. A JV may be entitled to investment incentives under existing laws, rules, and regulations insofar as these may be applicable;[4]

g. In drafting the JV Agreement and other documents governing the relationship between the Government Entity and the private sector participant, the JV Partners should consider the following guidelines, among others:

[4] This may include, among others, RA No. 11534, otherwise known as the "Corporate Recovery and Tax Incentives for Enterprises Act" (CREATE ACT).

i. clearly defined business objectives;
ii. specified degree of participation and the management roles of each party in the JV;
iii. defined and specified contribution to the JV, and capital and ownership rights to property and over the JV Project;
iv. specified division of profits, risks and losses;
v. identified dispute mechanism to avoid management impasses that may produce deadlock or litigation;
vi. specified termination/liquidation of the JV and indicated buy-out provisions;
vii. specified confidentiality terms; and,
viii. stipulated indemnification mechanisms.

6.4. The JV Agreement shall explicitly provide for well-defined minimum design and specifications, performance standards, and other service requirements of the JV. These requirements shall take into consideration the technical, socio-economic, environmental, and other aspects of the JV. The failure of the Private Sector Partner to meet or perform the service requirements shall be a ground for termination of the JV Agreement.

NEDA may issue and publish standard form/model JV Agreements which may be used in all covered JVs. The standard forms are subject to the JV Partners' modification according to their specific use case and in compliance with existing laws, rules and regulations.

6.5. The JV Agreement should stipulate a fixed period for a term of existence not to exceed a maximum of twenty-five (25) years, renewable for not more than 25 years, with total maximum period of fifty (50) years, for the participation of the Government Entity as determined by the attainment of the Government Entity's objective in pursuing the investment, upon which the Government Entity may divest its interest in the JV based on existing laws, rules and regulations. Provided that for JV Companies, withdrawal of the Government Entity's capital contribution or interest before the expiration of said period is likewise allowed subject to procedures provided by the JV Agreement. Divestment by the Government Entity shall be made through Competitive Selection, initial public offering (IPO), as applicable, or any other means that promote competition, fairness and transparency;

6.6. The procurement activities of the JV, whether partially of fully financed through the contribution of the Government Entity or Government of the Philippines (GOP) regardless of source of funds, whether local or foreign, shall comply with applicable provisions of GPRA and its Revised IRR and all other guidelines and issuances on procurement.

6.7. The JV Agreement may be terminated or rescinded, if the Private Sector Partner fails to deliver or perform any major obligation/s prescribed in the JV Agreement, e.g., construction of the proposed building/s within the period specified in the JV Agreement. In such cases, the Government Entity may likewise forfeit the performance security of the Private Sector Partner. Upon termination of the JV Agreement due to Private Sector Partner's default, the provisions on the procedures of termination and liquidation, and termination payment specified in the JV Agreement will be observed.

6.8. For JVs involving the formation of a JV Company, as defined under Section 5.13 of these Guidelines, the JV Partners shall be further guided by the following parameters:

a. The Government Entity shall be represented in the Board of the JV Company. The composition of the Board shall be based on the JV Partners' proportional contribution. The JV Partners may agree for the Government Entity to have greater representation in the Board; and,

b. The Government Entity 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 JV Company in each year in accordance with the JV Agreement. Should the contracting parties deem it necessary, dividends to be issued in favor of each party may be held in trust by the JV Company for their exclusive benefit; provided that, the dividends to be issued for the government may be used to offset only the eligible liabilities of the JV; provided, furthermore, that such liabilities be limited to reasonable obligations incurred for the purpose of pursuing the objectives of the JV and that these be necessary expenses to the business and its operations; and provided, finally, that any deduction charged to dividends of either JV Partner that is held in trust by the JV Company must be properly accounted for and reported to the JV Partners concerned. Either party may also re-invest their respective dividends to the JV. The foregoing shall be without prejudice to existing laws, rules, regulations and issuances on the matter, including RA No. 7656.[5]

[5] Otherwise known as An Act Requiring Government-owned or -Controlled Corporations to Declare Dividends under Certain Conditions to the National Government, and For Other Purposes.

6.9. If the formation of a JV Company is not the best mode to implement a JV as determined by the Government Entity, it may opt to implement the JV through a contractual agreement.

6.10. The ownership of the JV project/facility may be transferred to either the Government Entity or the Private Sector Partner after the expiration of the JV Agreement depending on the terms stated therein; provided that, pursuant to Section 7.2.a. of these Guidelines, JVs which involve divestment or transfer of ownership of government assets or properties to a Private Sector Partner shall be approved/cleared by the Privatization Council (PrC), and by the GCG, as applicable.[6] Pursuant to Section 6.5 of these Guidelines, such divestment shall be made through Competitive Selection, IPO, as applicable, or any other means that means that promote competition, fairness and transparency; Provided, further, that the procedure for the transfer or divestment of government assets or properties to a Private Sector Partner shall be stipulated in the JV Proposal and Agreement and shall contain sufficient safeguards for the protection of the Government Entity, subject to the relevant laws, rules, and regulations; Provided, furthermore, that a JV Agreement shall be deemed incomplete should there be an absence of any procedure or other stipulations on transfer/divestment of the project/facility.

6.11. JVs under the mining sector shall be undertaken through competitive public bidding or relevant procurement modes in accordance with existing laws, rules and regulations.

6.12. A JV shall remain subject to regulation by the appropriate Regulatory Body, as provided by law, until full divestment of the Government Entity's ownership/interest to the JV has been made. The JV Agreement shall explicitly provide the specific Regulatory Body/ies as defined in Sections 2.13 and 5.21 of these Guidelines for the undertaking.

6.13. No Government Entity shall implement a JV that it regulates; Provided, that Government Entities with both regulatory and implementing functions intending to undertake JVs pursuant to their mandate shall have the responsibility of ensuring that the approval, implementation, monitoring and regulation of the JV shall be independently made. Said Government Entities must ensure that conflict of interest is avoided. For this purpose, Regulatory Bodies implementing a project shall prepare a Conflict Mitigation and Management Plan.

Moreover, said Government Entities exercising both regulatory and implementing functions must observe and uphold equal protection. In this regard, the application of its rules and other regulatory standards must be enforced consistently to the entities/individuals regulated and must not be relaxed or applied more favorably to the JV.

6.14. During the existence of the JV, the Government Entity shall continue to carry out its powers and functions in accordance with its mandate. Any changes to its functional organizational structure and plantilla positions as may be necessary to implement and fulfill its mandate made after the formation of the JV must be approved and adopted only after compliance with relevant laws, rules and regulations.

6.15. Every JV undertaken under the provisions of these Guidelines shall be in accordance with the plans, specifications, standards, and cost approved by the appropriate Approving Authority as provided under Section 7.2 of these Guidelines, and shall be under the supervision and/or regulation of the Government Regulatory Body pursuant to existing laws.

7.0. Process for Entering into JV Agreements

7.1. Requirements/Conditions for JV Proposals. JV Proposals shall comply with the following requirements/conditions:

a. The JV is within the mandate and charter of the Government Entity.
b. The JV is responsive in meeting specific development goals and objectives.
c. The JV Proposal clearly describes the proposed investment, including its total cost, activities, objectives, sources of funding, extent and nature of the proposed participation of the Government Entity, and the relevant terms and conditions.
d. The JV Proposal establishes all the components in determining the overall feasibility of the JV which include, among others, the technical, financial, socio-economic, environmental, and legal aspects.
e. The JV Proposal explicitly specifies the obligations of the JV Partners on the payment of all taxes, including value-added tax (VAT), franchise tax and other taxes pursuant to existing laws, rules and regulations, and

[6] GCG coverage excludes the Bangko Sentral ng Pilipinas (BSP), SUCs, Cooperatives, Local Water Districts, Economic Zone Authorities and Research Institutions. (Section 4 of RA No. 10149)

payment of loan obligations and interests, where applicable. Such obligations shall also be duly reflected in the JV Agreement.

f. The terms and conditions of the approval of the PrC and GCG, if applicable.

g. All the necessary clearances, certifications or authorizations from all concerned Oversight/Supervisory/Regulatory Bodies are secured pursuant to existing laws, rules and regulations.

h. The Government Entity shall have the following options for qualification/selection of JV Proposals:

   i. Two-stage Selection Process – Requires a pre-qualification process before the issuance of the request for proposals.
   ii. Single-stage Selection Process wherein the Government Entity may opt to do a simultaneous qualification for proposals instead of undertaking a pre-qualification process. Under the simultaneous qualification process, the private entities are asked to submit their eligibility requirements along with their JV Proposals on the financial and technical aspects of the project.

i. All JV Proposals shall comply with the requirements and be processed/approved in accordance with these Guidelines. JV Proposals received from or initiated by Private Entity not in response to an invitation from the Government Entity shall be processed as Negotiated JVs.

7.2. Approval of JV Proposals. The approval of JV Proposals shall be in accordance with the following:

a. Prior to submission of a JV Proposal to the Approving Authority as indicated in this Section, the following shall be secured:

   i. JV Proposals which involve divestment of government contribution or transfer of government assets or properties to the Private Sector Partner shall be required to secure approval/clearance from the PrC pursuant to EO 12 dated 14 August 1998, as amended by EO 323, dated 06 December 2000, and/or from the GCG, as applicable, pursuant to RA No. 10149, otherwise known as the GOCC Governance Act of 2011;
   ii. The Government Entity shall ensure due diligence and, in the case of Negotiated JVs, be responsible for the initial evaluation of the proposals in accordance with Annex "B" of these Guidelines;
   iii. The Government Entity shall establish and certify that the JV Proposal takes the form/nature of a JV in accordance with these Guidelines particularly Sections 5.11 and 6.13. Such certification shall be submitted to the appropriate Approving Authority along with the report on the result of the initial evaluation conducted and other documents pursuant to Section 7.2 of these Guidelines; and,
   iv. The Government Entity shall obtain the valuation reports of the government contribution, as applicable, of the Private Entity;

b. A complete copy of the JV Proposal and other pertinent documents shall be submitted to the appropriate Regulatory Body for its appropriate action in accordance with existing laws, rules and regulations, as follows:

   i. For Negotiated Proposals, within seven (7) working days from receipt thereof;
   ii. For JV Proposals where the Head of Government Entity is the Approving Authority, submission shall be made within seven (7) working days from approval. Such submission shall include certification from the Head of the Government Entity that the JV Guidelines are adopted as the legal framework to undertake the JV and that the proposed JV is technically, financially and economically feasible;
   iii. For all other JV Proposals, submission shall be made on or before the required submission to the Approving Authority as set forth by existing laws, rules and regulations.

c. For the following JVs with project cost of at least 2.5 Billion Pesos or government contribution of at least 150 Million Pesos or with contribution of the Government Entity exceeding fifty percent (50%) of its entire assets, the Approving Authority shall be the NEDA Board – ICC:

   i. Infrastructure or development projects as defined under Section 5.10 of these Guidelines;
   ii. JVs, as defined under Section 5.20 of these Guidelines, that are public utilities;
   iii. Negotiated JVs that are initiated by a Private Entity; and,
   iv. JVs that are not related to the primary mandate of the Government Entity.

   The NEDA Board – ICC may update the above threshold amounts as may be necessary.

d. For the following JVs, the Approving Authority shall be the Head of Government Entity:

i. Projects that are related to the Government Entity's primary mandate and not involving infrastructure projects as defined under Section 5.10 of these Guidelines; and,
ii. Projects not covered under Section 7.2.c of these Guidelines.

e. JV Proposals that shall be submitted to NEDA Board – ICC for approval as indicated in this Section should include the following:

i. Endorsement and certification by the Head of the Government Entity that the JV Agreement is compliant with the JV Guidelines and other existing laws;
ii. For Negotiated JVs that are initiated by the Private Entity, Evaluation Report by the Government Entity on the JV Proposal;
iii. Feasibility Study;
iv. Draft JV Agreement;
v. Risk Allocation Matrix and List of Contingent Liabilities;
vi. Valuation Reports by a Third-party Valuator as part of documentation for review; and,
vii. Other documents and requirements as may be determined by the NEDA Board – ICC pursuant to its guidelines.

f. In all cases, the Government Entity concerned shall furnish the Department of Finance (DOF) all the documents submitted to the Appropriate Authority.

g. The Approving Authority shall review/evaluate the feasibility/viability of the JV Proposal with respect to technical, legal, financial, socio-economic, environmental, and institutional aspects. The JV Proposal shall also be reviewed/evaluated in relation to sectoral plans and geographical strategies, among others.

h. The Approving Authority shall prescribe the detailed guidelines on the process and procedures for the approval of JV Proposals, as well as the requirements to be submitted in support thereof, provided that the same are consistent with these Guidelines.

i. The completeness of the submitted JV Proposal shall be checked within seven (7) working days upon the Approving Authority's receipt of the submission. In case of incomplete submission, the Approving Authority shall formally relay to the Government Entity of the deficiencies and return the incomplete documents. Thereafter, the JV Proposal shall be acted upon within a period of thirty (30) working days upon submission of complete documents as required by the Approving Authority.

j. For JV Proposals covered under Section 7.2.c above, the Invitation to Apply for Eligibility and to Submit a Proposal (IAESP) shall be issued/published only upon receipt by the Government Entity/Head of Government Entity of approval by NEDA Board – ICC and upon securing all the necessary certifications or other pre-requisite documents from relevant agencies.

k. Details on the following steps shall be provided under Annexes "A" and "B":

i. Public consultation for JVs involving Public Utilities and Infrastructure or Development Projects;
ii. Qualification/Selection Process (i.e., Single-stage or Two-stage); and,
iii. Recommendation to award or not to award JV Agreement.

7.3. Clearance/Approval of Department of Finance (DOF) and Department of Budget and Management (DBM). For JVs that will require National Government undertakings, such as, but not limited to, subsidies or guarantees, clearance/approval of the DOF and the DBM, as the case may be, shall be secured.

7.4. Review and Approval of the Draft JV Agreement. Upon approval of the JV Proposal by the Approving Authority, the Government Entity shall submit to the OGCC, Department of Justice (DOJ), or any other appropriate entity prescribed by law/issuances as the Statutory Counsel of GOCCs, GCEs, and GICPs, a copy of the draft JV Agreement and Instructions to Private Sector Participants, for its review to determine and ensure compliance with respect to these Guidelines as well as existing and applicable statutory and regulatory requirements. The appropriate Statutory Counsel shall respond to the Government Entity within twenty (20) working days upon receipt of the draft JV Agreement. Thereafter, the Head of the Government Entity shall proceed to approve the draft JV Agreement, considering the results

of the contract review done by the Statutory Counsel. The Head of the Government Entity shall be responsible for ensuring the consistency of the tender/bid parameters and the draft JV Agreement with the parameters, terms and conditions set forth by the Approving Authority.

7.5. Approval for Registration of JV Company. Upon favorable endorsement of the JV Agreement by the appropriate Statutory Counsel pursuant to Section 7.4 herein, the Government Entity shall submit to the GCG, as applicable, documents pertaining to the JV Proposal including the statutory counsel review of the JV Agreement, for review/appropriate action.

7.6. Deviations and Amendments to the JV Agreement**.** The Government Entity shall not proceed with the award and signing of the JV Agreement if there are material deviations from the parameters and terms and conditions set forth in the proposal/tender documents that tend to increase the financial exposure, liabilities and risks of Government or any other factors that would cause disadvantage to Government and any deviation that will cause prejudice to losing private sector participants. Said material deviations and amendments shall be subjected to the approval requirements under Sections 7.2, 7.3, 7.4 and 7.5 hereof. The Head of Government Entity shall be responsible for compliance with this policy. Violation of this provision shall render the award and/or the signed JV Agreement invalid.

Any amendment, variation, or supplemental agreement to a JV Agreement after award and signing of the JV Agreement may be approved by the Head of the Government Entity provided that:

A. There is no increase in the agreed tolls, fares, fees, rentals, and/or charges or a decrease in the Government Entity's revenue or profit share derived from the JV undertaking, except as may be allowed under a formula as approved by the relevant Regulatory Body, or the Approving Authority, as the case may be; or
B. There is no change in the scope of works, or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term; or
c. There is no additional Government Contribution or undertaking, or increase in the financial exposure of the Government under the project.

Upon due diligence and recommendation of the Head of the Government Entity, amendment, variation, or supplemental agreement to a JV Agreement not covered by the above shall undergo approval by the appropriate Approving Authority as provided in Sections 7.2, 7.3, 7.4 and 7.5 of these Guidelines, and in accordance with the existing guidelines of the Approving Authority; Provided, that an increase of at most ten percent (10%) project cost should be submitted to the Approving Authority for notation only. Any cost increase beyond 10% project cost shall require approval anew by the Approving Authority. Any addition to the scope of the project that is separable from the existing scope and costs more than 10% of the original project cost shall be treated as a new project and would be subject to the approval and tendering process under the Guidelines.

In case of amendment, variation or execution of supplemental agreements to a JV Agreement allowed under these Revised Guidelines, the performance security shall be proportionately amended (increased/decreased) in the case of any Government-approved variation.

No amendment, variation, or supplemental agreement to a JV Agreement, shall be implemented before the same is approved. Failure to secure clearance/approval of the Head of Government Entity or Approving Authority, as provided in this Section, prior to the implementation of the amendment, variation or supplemental to a JV Agreement, shall render the same *void ab initio*.
Applications for amendment, variation, or supplemental agreement to a JV Agreement shall not impair the substantive rights of the Private Sector Proponent, and shall be governed by existing laws, decrees, orders, rules and regulations at the time of application.

8.0. **Tolls, Fees, Rentals, Tariffs, and Charges**. The tolls, fees, rentals, tariffs, and charges that a JV may charge for the use/availment of the facility/service shall be subject to the approval of the appropriate Regulatory Body, or as provided by law.

The tolls, fees, rentals, tariffs, and charges may be subject to adjustment during the life of the JV Agreement, based on an approved formula/adjustment schedule in the approved JV Agreement. For this purpose, prior to tender, the concerned Agency/LGU shall secure either the advice of the Regulatory Body, or the approval of the Approving Authority, or both, as the case may be, for such formula. The monitoring of the consistency of the proposed adjustments of tolls, fees, rentals, tariffs, and charges with the prescribed rate of return, if any, shall be undertaken by the appropriate Regulatory Body or the Government Entity.

In case the Regulatory Body disapproves the proposed amount based on the adjustment of the tolls/fees/rentals/tariffs/charges stipulated in the JV Agreement, the Agency/LGU may allow the project proponent to recover the difference between the tolls/fees/rentals/tariffs/charges stipulated in the JV Agreement and the amount approved by the Regulatory Body through measures allowed in the JV Agreement and consistent with the Constitution and applicable laws.

9.0. **Change in Control or Composition of the Private Sector Partner**. Any change in control of the Private Sector Partner/composition of the Consortium may be made after the lock-in or holding period determined by the Government Entity and stated in the JV Agreement. The changes are permitted provided that the new Private Sector Partner shall have equal or better qualifications and the latter agrees to assume in full, all existing rights, privileges, responsibilities, and other obligations of the current Private Sector Partner to the JV. Any changes in control or composition shall be submitted to the Government Entity for approval at least thirty (30) working days prior to the effectivity of such change. Such changes in control or composition shall not prejudice the right of the Government Entity to opt out of a partnership with the new Private Sector Partner.

The new Private Sector Partner shall be evaluated using the same qualification criteria to determine if it has equal or better qualifications as with the previous Private Sector Partner, provided, that the former should comply with nationality requirements under the Constitution and other pertinent laws and in accordance with Section 6.4 herein and Section IV.2.A of Annex "A" of these Guidelines.

Any change in the ownership of the Private Sector Partner that will involve changes in the JV shall be upon favorable recommendation of the Government Entity and subject to approval by the appropriate Approving Authority provided in Section 7.2 of the Guidelines.

10.0. **Reporting Requirement**. The Heads of Government Entities as defined in Section 5.9 of these Guidelines, shall submit to the Office of the President (OP**)**, NEDA, DOF, GCG, DBM, Public-Private Partnership (PPP) Center, the appropriate Statutory Counsel, and Regulatory Body the salient features and a copy of JV Agreements and amendments, variations, or supplemental agreements thereto, together with all documents required therefor within fifteen (15) days from the execution of the JV Agreement, for monitoring of compliance with relevant policies, procedures, and conditions for approval of the JV.

During the course of implementation of the JV Agreement, the Government Entity shall submit an annual report on the status of project implementation to NEDA, the appropriate Regulatory Body, PPP Center, Philippine Competition Commission (PCC), DOF, GCG, AND DBM, for monitoring purposes. The annual report shall be submitted within the first quarter of the succeeding year and may be in any format, electronic/digital copy or hard copy, as may be required by the appropriate Regulatory Body, DOF, GCG, as applicable,[7] and DBM. The report shall use current standards in the production of annual reports and shall include the audited financial statements of the JV. In addition, the report shall also contain the JV's work program for a period as specified and required by DOF starting from the year the annual report is issued.

The signed JV Agreement shall be posted in the website of the Government Entity and the PPP Center within five (5) working days from signing/finalization.

11.0. **Compliance with the Provisions of these Guidelines**. All prospective JV Partners are enjoined to strictly adhere to the provisions of these Guidelines. A JV Agreement, or any amendment or supplemental agreement thereto, shall be deemed *void ab initio* if it is entered into by the JV Partners with material and/or willful violation of any of the provisions of these Guidelines and other laws, rules and regulations relative thereto. Void JV Agreements shall be deemed as not having been entered at all and shall vest no rights, benefits, or privileges.

The declaration of JV Agreements as *void ab initio* shall be at any time after the discovery of such violation and shall serve as a ground to restore the JV Partners' status quo at the expense of those persons liable. This shall be without prejudice to the filing of the appropriate administrative, civil, and/or criminal case/s against the public officer/s, employee/s, and/or private individual/s liable or in violation therefor.

The submission of any false or fraudulent information/document shall serve as a ground for the immediate rejection of the JV Proposal, disqualification of a Private Entity, or grounds to terminate the JV without prejudice to other civil, criminal, or other legal charges.

[7] GCG coverage excludes the BSP, SUCs, Cooperatives, Local Water Districts, Economic Zone Authorities and Research Institutions. (Section 4 of RA No. 10149)

12.0. **Amendments and Addenda**. The NEDA may amend and/or modify these Guidelines, in consultation with the GPPB, OGCC, GCG, and other Government Agencies, as may be deemed relevant by NEDA. Public consultations shall be held before any approval of the amendment or revision of the Guidelines.

Furthermore, the NEDA in consultation with the aforementioned agencies, may issue supplemental guidelines in the form of addenda or annexes to clarify specific provisions/requirements of these Guidelines as may be necessary. The publication and notices for the supplemental guidelines (Addenda/Annexes) shall be made in the NEDA website.

13.0. **Separability**. If any provisions of these Guidelines are 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.

14.0. **Effectivity**. These Revised Guidelines and any subsequent amendment or modification shall take effect immediately after the date of its publication (in print or through other electronic/online means) in any newspaper of general circulation or the Official Gazette. A copy of the Revised Guidelines and any subsequent amendment or modification shall be submitted to the Office of the National Administrative Registry (ONAR) and the University of the Philippines Law Center.

15.0. **Transitory Provision**. These Guidelines shall apply to all JVs, except JVs wherein a JV Agreement between the winning private sector participant and the Government Entity has been executed prior to effectivity of these Revised JV Guidelines.

These Revised JV Guidelines shall not, in any manner, operate to impair vested rights already accruing to the private sector participant prior to the effectivity of these Guidelines. Such vested rights shall refer to:

a. For JVs undertaken through Competitive Selection under the existing rules, the issuance of the Notice of Award (NOA) by the Head of the Government Entity prior to the effectivity of these Revised JV Guidelines; or,
b. For Negotiated JVs undertaken under existing rules, the conferment of the Original Proponent Status (OPS) by the Head of the Government Entity prior to the effectivity of these Revised JV Guidelines. For these Negotiated JVs, the Government Entity through its JV Selection Committee (JV-SC) may opt to apply the Modified Competitive Challenge as provided under Item 9 of Stage Three (Annex "B").

In the event where the NOA or the OPS, as applicable, has already been issued prior to the effectivity of these Guidelines, the procedures under these Guidelines for the Stages subsequent to such issuance of NOA or OPS shall be followed.

ARSENIO M. BALISACAN - OSEC-11586
National Economic and Development Authority Secretary

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ANNEX A

DETAILED GUIDELINES AND PROCEDURES FOR COMPETITIVE SELECTION FOR PUBLIC-PRIVATE JOINT VENTURES

I. The Joint Venture Selection Committee (JV-SC)

1. **Composition**. The Head of Government Entity shall create a JV-SC for purposes of selecting a Private Sector Partner for a proposed JV. The JV-SC shall be composed of the following:

   Regular Members (voting):

   a. Chairman – At least a third level officer of the Government Entity;
   b. Secretary – Any legal officer of the Government Entity;
   c. One (1) officer knowledgeable in finance;
   d. One (1) officer knowledgeable in management/operation of the JV; and,
   e. One (1) officer knowledgeable with the technical aspects or requirements of the project, duly designated by the Head of Government Entity on a project-to-project basis.

   Provisional Members (non-voting):

   f. One (1) technical officer from an appropriate Regulatory Body, when applicable, knowledgeable with the project at hand, to be invited by the Government Entity on a project-to-project basis; and

   g. Observers:

      i. One (1) representative from the Government Entity's statutory counsel (OGCC or the Office of the Solicitor-General [OSG] or as designated by the Department of Justice [DOJ]);
      ii. Two (2) representatives from the private sector – one (1) representative from a duly recognized association related to the project at hand, and one (1) representative from either the facility users, if applicable, or duly recognized accounting associations; and,
      iii. One (1) representative from the Commission on Audit (COA).

      Provisional members other than observers can participate in discussions/deliberations of the JV-SC. They may be consulted or be allowed to give advice or opinions to the regular members of the JV-SC.

      Observers cannot influence or attempt to influence the votes/actions of the regular members of the JV-SC. Observers shall not be placed in a conflicted situation and, if place in such situation, shall immediately inhibit and notify in writing the Government Entity. If deemed necessary, the observers may prepare a report indicating their observations and submit the same to the Government Entity and furnish a copy to the Office of the Ombudsman.

      Provisional members will be notified at least five (5) calendar days before the following stages: pre-selection conference, opening of technical and financial proposals, evaluation of technical and financial proposals, award of JV Agreement, and special meetings of the JV-SC. The absence of observers will not nullify the JV-SC proceedings, provided that they have been duly invited in writing.

      Provisional members shall be allowed to access to or be provided with all pertinent documents free of charge upon their request. In all instances, provisional members other than the Government Entity's Statutory Counsel shall be required to enter into a Confidentiality Agreement with the concerned Government Entity.

2. **Responsibilities**. The JV-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the approval of the selection/tender documents, publication of the Invitation to Apply for Eligibility and to Submit a Proposal, pre-qualification of prospective private sector participants, conduct of pre-selection conferences and issuance of supplemental notices, interpretation of the rules regarding the selection process, the conduct of the selection process, evaluation of the financial and technical proposals, resolution of disputes between private sector participants, and recommendation for the acceptance of the proposal and/or for the award of the JV Agreement.

3. **Quorum**. A quorum of the JV-SC shall be composed of a simple majority of all voting members. The Chairman shall vote only in case of a tie.

II. Selection/Tender Documents

1. **Selection/Tender Documents**. The Government Entity shall prepare the selection/tender documents which shall include the following:

   a. Instructions to Private Sector Participants;
   b. Minimum Design, Performance Standards/Specifications, Key Performance Indicators (KPIs), Business Efficiency Measures (BEMs) and other Financial and Economic Parameters, where applicable, among others;
   c. Information Memorandum, or its equivalent, containing the salient points of the Feasibility Study of the Project;
   d. Draft JV Agreement (in accordance with Sections 6.3, 6.4, 6.5, 6.10, 6.12, and 7.4 of these Guidelines, and Section II.5 of this Annex) reflecting the terms and conditions in undertaking the JV including, among others, the obligations of the JV Partners and the ownership of the JV or property after the termination of the JV Agreement;
   e. Selection form reflecting the required information to properly evaluate the technical and financial proposal;
   f. Forms of technical and financial proposals and performance securities; and
   g. Other documents as may be required by the Government Entity and other requirements of concerned Regulatory Bodies as may be pertinent or applicable to the JV.

   The documents enumerated above are minimum documentary requirements that need to be prepared by the Government Entity. However, the Government Entity is given discretion to add appropriate provisions as they may deem suitable for a particular project.

2. **Instructions to Private Sector Participants**. The instructions to private sector participants, which establish the rules of the selection process, shall be clear, comprehensive and fair to all private sector participants and shall, as far as necessary and practicable, include the following information:

   a. General description of the JV which shall include the goals and objectives of the JV, the problems that need to be addressed and potential challenges foreseen, among others;
   b. Proposal submission procedures and requirements, which shall include information on the manner of proposal submission, the number of copies of the technical and financial proposal to be submitted, where the proposals are to be submitted, the deadline for the submission of proposals, permissible mode of transmission of technical and financial proposals, etc.;
   c. Cost of application for eligibility and participation in the tender which shall not be higher than the cost prescribed under these Guidelines;
   d. Amount and form of proposal security, proposal security validity period as well as grounds for the forfeiture of proposal security;
   e. Milestones;
   f. Method, parameters, and criteria for the evaluation of the proposals;
   g. Minimum amount of equity of the Private Entity;
   h. Requirements of appropriate Regulatory Bodies/Agencies as may be pertinent or applicable to the JV;
   i. Profit-sharing arrangement;
   j. Nationality and ownership requirements as required by law;
   k. Grounds for revocation of award; and,
   l. Lock-in or holding period of the Private Sector Partner in the JV as determined by the Government Entity.

3. **Minimum Design, Performance Standards/Specifications, and Financial and Economic Parameters**. Minimum design and performance standards/specifications, including KPIs and BEMs, appropriate environmental standards by the Department of Environment and Natural Resources (DENR), and standards by concerned Regulatory Bodies, as may be pertinent or applicable to the JV, shall be clearly defined and shall refer more to the desired quantity and quality of the outputs of the JV, and should state that non-conformity with any of these minimum requirements shall render the proposals as non-responsive. The concerned Regulatory Body may further prescribe standard minimum designs, performance standards/specifications pertinent to the sector in order to guide the Government Entities in drafting the minimum design, performance standards/specifications of their JVs. Likewise, for the purpose of evaluating proposals, the following financial and economic parameters, among others and where applicable, shall be prescribed:

   a. Discount rate, foreign exchange rate, and inflation factor;
   b. Maximum period of project construction;
   c. Formula and parameters/terms (e.g., price indices, period of adjustment) to be used, if applicable; and
   d. Minimum period of repayment, if applicable.

The JV Partners shall adhere to the KPIs and BEMs and other equivalent standards prescribed by the appropriate Regulatory Body.

4. **Feasibility Study**. The Feasibility Study shall clearly establish whether the proposed JV is technically, financially and economically feasible, and determine the operational impact of the proposed JV including the advantages and disadvantages of its implementation. Specifically, the Feasibility Study shall include the following information:

   a. Objective and scope of the study;
   b. Analysis of the present condition;
   c. Approach and methodology;
   d. Demand and supply/market analysis;
   e. Technical analysis;
   f. Financial analysis (including information on financing scheme, total project cost, cost-sharing scheme, estimation of the Net Present Value and Rate of Return, and projected schedule of disbursements, incremental returns to Government, determination/analysis of JV arrangement, among others);
   g. Economic analysis;
   h. Social and environmental analysis;
   i. Legal and institutional analysis;
   j. Implementation plan of the recommended scheme based on the alternatives/configurations/technologies considered;
   k. Manpower and administrative support requirements; and,
   l. Other relevant information as may be required by the Approving Authority.

5. **Draft JV Agreement**. The draft JV Agreement should clearly define the basic and legal relationship between the JV Partners and their rights and responsibilities including specific Government Undertakings to be provided relative to the JV, if any. Specifically, the draft JV Agreement shall also contain provisions on the following matters, as far as practicable:

   a. The date on which the agreement is established, executed, and considered effective;
   b. The names, addresses and identification of the JV Partners, including the type of business of each member of the JV;
   c. The name under which the JV will do business;
   d. The principal place of business of the JV;
   e. Clearly defined purpose and objective/s, contractual / agreement mode (whether JV Company or contractual JV), term and scope of the JV. The term should be a fixed period not to exceed a maximum of fifty (50) years for the participation of the eligible entity as determined by the attainment of the eligible entity's objective in pursuing the investment;
   f. Total cost of the JV, project specifications and features;
   g. Minimum design, performance standards/specifications, KPIs, BEMs and other financial and economic parameters, where applicable, among others;
   h. The relationship between the JV Partners, management roles of each JV Partner in the JV, and a statement that the JV Partners are actually co-venturers for the project, whether or not the JV Agreement is in the name of all members;
   i. A written and signed agreement by the Consortium of the Private Sector Partners to be solidarily liable for the obligations specified under the JV Agreement, as may be applicable;
   j. The establishment of a fund by the JV Partners 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 part of contribution of the private sector is to be borrowed, a statement that there shall be no government guarantee for said loan;
   k. Procedure for additional capital infusions, 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;
   l. A declaration of the participation of the JV Partners 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 JV Partners can be increased or decreased, depending on the contributions of equipment or expertise;
   m. Specified termination/liquidation of the JV Company, buy-out provisions, and details on the transfer of ownership of the JV facility pursuant to Section 6.11 of these Guidelines including provisions on what happens to the JV's assets after the expiration of the JV Agreement or end of the JV period. If property other than cash is to be

contributed, a statement as to how the property will be valuated and the ownership of the property during and after the effectivity of the JV Agreement;

n. Designation of one of the JV Partners 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;
o. Implementation milestones, regular meeting schedules, financial and physical progress reporting procedure;
p. Standards in the conduct of a detailed review of the progress of the JV;
q. Establishment of a JV bank account, and the appointment of a chartered accountant and lawyer;
r. Provision for the acquisition of licenses in the name of the JV or each co-venturer, as required;
s. Type of insurance carried by the JV and clearly defined liabilities to be insured against by each participant. With respect to its contribution to the JV, the Government Entity is required to secure insurance from the Government Service Insurance System (GSIS) pursuant to Property Insurance Law and Administrative Order (AO) No. 141 (s. 1994);
t. 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, risks, and losses;
u. Confidentiality of trade information passed between the co-venturers;
v. Ownership or retention of patents, technology, and consultant reports;
w. Performance security requirements for the entire project covering the construction and operations stages of the JV, and the bonding obligations of the co-venturers;

x. Undivided pro-rata interests held by the co-venturers on all assets of the JV;
y. Restriction regarding assignment of private sector participant's undivided pro-rata interests in assets of the JV;
z. Cost recovery scheme, including payment to the government of royalties/rights, the form/description and amount of earnings (cash, asset, etc.), whether it is 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 valued, the minimum value of the asset, and the determination/selection of asset such as who will determine/select the asset and how it is determined/selected;
aa. Indemnification and liquidated damages due to a party's failure to comply with relevant obligations under the JV Agreements;
bb. Warranty bonds;
cc. Minimum insurance coverage;
dd. Acceptance tests and procedures;
ee. Validity of the performance security, warranty period and procedures;
ff. Grounds for and effects of contract termination/default including remedies, curing periods, 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 Agreement, and written notice requirements agreed upon by both JV Partners;
gg. The manner and procedures for the resolution of warranty against corruption;
hh. Compliance with all other laws, rules and regulations, such as but not limited to compliance with the minimum standards under the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (Anti-Red Tape Act)[8] as applicable;
ii. 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 partners;
jj. Payout of funds;
kk. Social and environmental safeguards;
ll. Alternative Dispute Resolution (ADR) mechanisms pursuant to EO No. 78 dated 04 July 2012 to avoid management impasses that may produce deadlock or litigation;
mm. Dispute Arbitration Clause;
nn. Lock-in or holding period in the case of divestiture as determined by the Government Entity; and,
oo. Notice to Proceed.

[8] Republic Act No. 11032 and its IRR otherwise known as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (Anti-Red Tape Act).

III. Publication of Invitation to Apply for Eligibility and to Submit a Proposal (IAESP)

Prior to issuance/publication of the IAESP, the Government Entity shall comply with the requirements stipulated under Section 7.0 of these Guidelines, and conduct public consultations, which must be completed at least seven (7) calendar days before submission to the Approving Authority as stipulated under 7.2 of these Guidelines to inform the stakeholders of the salient features of the JV and the proposed terms and conditions between the Government Entity and the Private Entity.

1. The IAESPs shall be published once in a broadsheet newspaper and/or on other reputable online newspaper/publication of general nationwide circulation, which includes the website of the Government Entity, and posted continuously, for a period of at least seven (7) calendar days, starting on date of advertisement, at the following:

   a. Website of the Government Entity, if available;
   b. Website of the Government Entity's service provider, if any; and,
   c. Any conspicuous place within the premises of the Government Entity.

2. Private sector participants shall be given at least thirty (30) calendar days from the last date of publication of the IAESP to apply for eligibility. Notwithstanding, the Government Entity may extend said period as may be appropriate for the nature, scope, size and complexity of the proposed JV. Provided, that the principles of transparency, competition and accountability are observed. In any event, the deadline for submission of eligibility requirements and proposal shall be indicated in the published IAESP.

3. The participation fees must be included in the IAESP.

   The JV-SC shall only consider the submission of prospective private sector participants upon full payment of the corresponding participation fee to the collecting/disbursing officer of the Government Entity. Payment for eligibility shall be made anytime within the period to submit the eligibility proposal, provided that, the participation fees for eligibility application shall not exceed twenty percent (20%) of the maximum amount of allowable participation fees below. Payment for bid participation by eligible bidders shall be made within the period to submit bid proposals and shall amount to the remaining balance of the maximum amount and net of the eligible participation fee.

   The amount of participation fees shall correspond to the estimated total project cost range as indicated in the table below. The total participation fee to be set by the Government Entity shall not exceed the maximum amount of fees specified in the table below.

Estimated Total Project Cost (In Philippine Peso)	**Maximum Amount of Eligibility Participation Fees** (In Philippine Peso)	**Maximum Amount of Bid Participation Fees** (In Philippine Peso)	**Maximum Total Amount of Participation Fees** (In Philippine Peso)
500 Million and below	5,000.00	20,000.00	25,000.00
More than 500 Million to 1 Billion	10,000.00	40,000.00	50,000.00
More than 1 Billion TO 2 Billion	15,000.00	60,000.00	75,000.00
More than 2 Billion TO 5 Billion	30,000.00	120,000.00	150,000.00
More than 5 Billion TO 10 Billion	40,000.00	160,000.00	200,000.00
More than 10 Billion	50,000.00	200,000.00	250,000.00

   Only those who have paid the corresponding participation fees shall be allowed to participate in the application for eligibility and submission of bid proposals.

IV. Qualification of Private Sector Participants

1. **Who may participate**. Any individual, partnership, corporation or firm, or consortium, whether local or foreign, subject to the limits set herein.

2. **Eligibility Requirements**

a. Legal Requirements. If the JV requires a public utility franchise, the private sector participant must be duly registered with the SEC and be at least sixty percent (60%) Filipino-owned. For projects other than these, prospective private sector participant shall comply with nationality and ownership requirements under the Constitution and other applicable laws and issuances, including applicable Executive Orders prescribing the Foreign Investment Negative List.

For JVs to be operated by the prospective JV Partner or a facility operator where operation of the facility does not require a public utility franchise, the JV Partner or facility operator may be Filipino or foreign-owned, as may be allowed under applicable laws, rules, and regulations, including applicable Executive Orders prescribing the Foreign Investment Negative List.

Prospective private participants may be required to submit to the Government Entity a certification under oath indicating that the prospective private sector participant has no pending case/s filed against it by the Government or by it against the Government or, should there be any, that such cases shall not impact the capability of the private sector to carry out its obligations under JV. The private sector participants may be required to submit full disclosure of its pending cases, whether by it against the Government or filed against it by the Government. Any misrepresentation in the certification under oath shall be a ground to disqualify the private sector participant.

b. Technical Requirements. The private sector participant, by itself or through the member-firms in case of a Consortium, which the prospective JV may engage for the project, must have successfully undertaken at least one (1) project similar or related to the JV whose value, adjusted to current prices using the Philippine Statistics Authority (PSA) Consumer Price Index (CPI), must be at least fifty percent (50%) of the cost of the JV subject of the selection process within a reasonable and relevant period as determined by the Government Entity. The private sector participant shall submit a statement of all its ongoing and completed government and private contracts similar or related to the JV subject of the selection process, including contracts awarded but not yet started, if any.

c. Financial Capability. The Government Entity shall determine before evaluation of eligibility, the minimum amount of equity needed for the JV.

The following documents shall be submitted by the private sector participant:

i. Audited financial statements for the past three (3) calendar years. If the private sector participant is required to submit Audit Financial Statements under the National Internal Revenue Code, as amended, or any other Philippines Tax law, rule or regulation, the audited financial statements to be submitted must be received by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions in accordance with their existing rules and regulations; and,
ii. Latest three (3) income and business tax returns and tax clearance pursuant to EO No. 398, s. 2005, if the private sector participant is subject to Philippine Taxation.

Financial capability shall be measured in terms of:

i. Proof of ability of the private sector participant to provide a minimum amount of equity to the JV, measured in terms of the net worth of the company, or a deposit equivalent to the minimum equity required set aside or ear-marked for the proposed JV; and
ii. 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 Bangko Sentral ng Pilipinas (BSP),[9] attesting that the private sector participant is one of its current clients, and is in good financial standing and/or is qualified to obtain credit accommodations from such banks to finance the JV.

d. In case of consortia, all the above legal, technical and financial eligibility requirements including a copy of the notarized Consortium Agreement which shall include the following information, shall be submitted by the Consortium to determine its overall or collective capability for the JV undertaking:

[9] The prospective JV Partner shall comply with policies of BSP on foreign investments and foreign currency loans/borrowings as stipulated in the *Manual of Regulations on Foreign Exchange Transactions (FX Manual).*

i. Brief description of the consortium, the individual members of the consortium, and the nature and extent of the participation (capital of each member in relation to the whole capital);
ii. The lead member of the Consortium who is authorized by all the members to represent and sign any and all documents related to this selection including the JV Agreement with the Government Entity; and,
iii. Written and signed agreement of all members of the consortium to be jointly and severally liable for the obligations of the Consortium prior to award of the JV Agreement.

e. Acceptance of Criteria and Waiver of Rights to Enjoin JV. In addition to the above, all prospective private sector participants shall be required to submit, as part of their qualification documents, a statement stipulating that the private sector participant: (i) has accepted the qualification criteria established by the JV-SC of the Government Entity; and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the Government Entity or its JV-SC to prevent or restrain the qualification proceedings related thereto, the award of the JV Agreement to a successful private sector participant, and the carrying out of the awarded JV Agreement. Such waiver shall, however, be without prejudice to the right of a disqualified or losing private sector participant to question the lawfulness of its disqualification or the rejection of its proposal by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

f. All other requirements under applicable laws, rules, and regulations.

3. **Eligible and Ineligible Private Sector Participants**. The Government Entity, through its JV-SC, shall within a period of fifteen (15) calendar days after the deadline set for the submission of the eligibility documents, complete the evaluation of the eligibility documents of the prospective private sector participants, and determine which among them are "eligible" and "ineligible". Accordingly, the JV-SC shall duly inform the eligible private sector participants within seven (7) calendar days after approval thereof. Ineligible private sector participants shall be similarly given notice of such ineligibility, stating therein the grounds for ineligibility within the same period.

Those ineligible may appeal their ineligibility to the Head of Government Entity or its authorized representative, within seven (7) calendar days from receipt of the notice of ineligibility. The selection process will be suspended for a maximum period of thirty (30) calendar days while the appeal is being evaluated. The Head of Government Entity or its authorized representative shall act on the appeal within the thirty (30)-calendar day period of suspension of the selection process. The decision of the Head of Government Entity, or its authorized representative, on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied, and the selection process will proceed.

As may be authorized by the appropriate Approving Authority, the government entity may opt to do a simultaneous qualification and selection as provided under Section VII.5 of Annex "A" of these Guidelines.

4. **Issuance of Tender Documents**. The Government Entity, through its JV-SC, shall make available the entire tender documents to the public immediately upon publication of the IAESP and for the entirety of the selection process by posting such documents online in the website of the Government Entity to provide respective private sector participants ample time to examine the same and to prepare their respective proposals prior to the date of opening of the proposals. The period for submission of proposals shall be at least thirty (30) calendar days from notice to the participants of the results of their eligibility**.** The setting of such period to submit proposals shall take into account the nature, scope, size, and complexity of the proposed JV. For negotiated JVs under Annex "B", selection/tender documents which shall be posted in the website of the Government Entity shall not include the feasibility study of the project which may involve proprietary information.

The proposal parameters for the proposed JV should be transparent and fair. It should not, in any way, favor or give advantage to a particular private sector participant.

V. Supplemental Competitive Selection Bulletins and Pre-Selection Conferences

1. **Responsibility of the Private Sector Participant**. The prospective private sector participant shall take all the necessary steps to carefully examine and acquaint itself with 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. The Government Entity shall not be responsible in any way for the prospective private sector participant's erroneous interpretations of any data furnished or indicated in the tender documents.

2. **Supplemental Notices**. A prospective private sector participant may submit a written request to the Government Entity on or before the pre-selection conference as to the meaning of any data or requirements or any part of the selection documents. Any substantive interpretation given by the Government Entity shall be issued in the form of a Supplemental Notice, and furnished to all prospective private sector participants. any Supplemental Notice shall be issued by the Government Entity to all prospective private sector participants at least seven (7) calendar days before the deadline for the submission of proposals or simultaneous submission of eligibility documents and proposals, as applicable, for purposes of clarifying any provisions of the selection documents. Receipt of all Supplemental Notices shall be duly acknowledged by each private sector participant prior to the submission of its proposal and shall be so indicated in the proposal.

   Any supplemental bulletin shall also be posted in the website of the Government Entity, if available, and at any conspicuous place within the premises of the Government Entity.

3. **Pre-Selection Conference**. For JVs with facility/project cost amounting less than Five Hundred Million Pesos (PhP 500 Million), pre-selection conference shall be conducted by the Government Entity at least fifteen (15) calendar days before the deadline for the submission of proposals (or simultaneous submission of eligibility documents and proposals in the case of Single Stage qualification / selection process). For JVs with facility/project cost amounting Five Hundred Million Pesos (PhP 500 Million) and above, the pre-selection conference shall be conducted at least thirty (30) calendar days before the deadline for the submission of proposals (or simultaneous submission of eligibility documents and proposals in the case of Single Stage qualification / selection process). Notwithstanding, the Government Entity may adjust said period to suit the nature, scope, size, and complexity of the proposed JV, provided that the Government Entity observes the principles of transparency, competition and accountability.

VI. Submission and Receipt of Proposals

1. **Requirements for submission of proposals**. Private sector participants who meet the eligibility requirements as provided in Section IV.2 shall be required to submit their proposals on or before the deadline stipulated in the "Instructions to Private Sector Participants". They shall submit two (2) separate sealed envelopes, one containing the technical proposal and another the financial proposal.

   a. The technical proposal shall contain the following, as applicable:

      i. Compliance statements with regard to the technical parameters as stated in the tender documents;
      ii. Operational feasibility;
      iii. Technical soundness, including proposed project timeline;
      iv. Preliminary environmental assessment;
      v. Cost and financing plan of the JV and third-party valuation of the bidder's contribution;
      vi. Proposal security which may be in cash, certified check, manager's check, letter of credit, or bank draft/guarantee issued by a reputable local/foreign bank, or a surety bond callable on demand issued by the GSIS or an entity duly registered and recognized by the Office of the Insurance Commissioner acceptable to the Government Entity, or any combination thereof payable to the Government Entity in accordance with the following schedule:

Project Cost (as estimated by the Government Entity or proposed by the Private Sector Participant)	**Required Proposal Security**
Less than PhP 5.0 Billion	2.0% of the Project Cost
PhP 5.0 Billion to less than PhP 10.0 Billion	1.5% of the Project Cost or PHP100 Million, whichever is higher
PhP 10.0 Billion and more	1.0% of the Project Cost or PHP150 Million, whichever is higher

      vii. Other documents to support the private sector participant's technical proposal, as may be required by the Government Entity.

   b. The financial proposal shall contain the following, as the case may be:

i. Compliance statements with regard to the financial parameters stated in the tender documents;
ii. Proposed cost of the JV, 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,
iii. Financial proposal corresponding to the parameters set by the Government Entity.

Fifty percent (50%) of the contribution to be provided by the Private Entity should come from its own resources and should not come from loans.

The Government Entity is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific JV.

c. Submission of late proposals. Proposals submitted after the deadline for submission prescribed in the "Instructions to Private Sector Participants" shall be considered late and shall be returned unopened.

VII. Opening and Evaluation of Proposals

1. **Opening of the envelope for the technical proposal**. At the date and time of the proposal opening stipulated in the "Instructions to Private Sector Participants", the JV-SC shall open only the first envelope containing the technical proposal and ascertain: (a) whether the same is complete in terms of the data/information required under Section VI.1 (a) above; and (b) whether the same is accompanied by the required proposal security in the prescribed form, amount, and period of validity. All private sector participants, or their representatives, present at the opening of the envelopes containing the technical proposal shall sign a register of the proposal opening.

2. **Evaluation of the technical proposal**. The evaluation of the first envelope containing the technical proposal shall involve the assessment of the technical, operational, environmental, and financing viability of the proposal, vis-à-vis the prescribed requirements and criteria/minimum standards, and basic parameters prescribed in the Competitive Selection documents.

   The JV-SC of the Government Entity shall complete the evaluation of the technical proposal within thirty (30) calendar days from the date the proposals are opened.

3. **Opening of the envelope for the financial proposal**. Only the financial proposals of private sector participants who passed the evaluation described under Section VII.2 hereof, shall be opened for further evaluation. The financial proposals tendered by private sector participants who failed the technical proposal evaluation under Section VII.2 hereof, shall not be considered further, and shall be returned unopened, together with a notice stating the reasons for disqualification from further consideration.

   The next working day after the completion of the evaluation of technical proposals, the JV-SC shall notify the private sector participants qualifying for the second stage of evaluation of the date, time and place of the opening of the envelopes for the financial proposal. The opening thereof shall follow the same procedure prescribed for the opening of the envelopes containing technical proposals.

4. **Evaluation of the financial proposal**. The evaluation of the financial proposal shall involve the assessment and comparison of the financial proposals against the financial parameters stated in the tender documents and proposal parameters set by the Government Entity. The proposed financing plan must show that the same adequately meets the costs relative to the JV. The evaluation of financial proposals shall be completed by the JV-SC of the Government Entity within fifteen (15) calendar days from the date of opening of the financial proposals.

5. **Simultaneous or Single-Stage Qualification and Selection**. As may be authorized by the appropriate Approving Authority, the Government Entity may opt to do a simultaneous qualification and selection wherein prospective private sector participants shall be asked to simultaneously submit its eligibility documents corresponding to the requirements so stated in Section IV.2 herein; the technical proposal; and the financial proposal. The requirements for submission of proposals are covered under Section VI of Annex "A" of these Guidelines.

   Private sector participants shall be given at least sixty (60) calendar days from the last date of publication of the IAESP to simultaneously apply for eligibility and submit technical and financial proposals. There shall be a single participation fee based on the maximum amounts provided in Section III.3 herein. The government entity, through its JV-SC, shall

complete the evaluation of the eligibility documents and proposals submitted by the private sector participants, within forty-five (45) calendar days from the date of opening of the eligibility documents and proposals.

6. **Simultaneous evaluation of the technical and financial proposals**. Subject to the determination of the Head of Government Entity wherein the nature of the JV shall warrant the appreciation of both the technical and financial proposals as a whole in order to determine the best proposal, simultaneous evaluation of the technical and financial proposals may be resorted to. Provided, that, said evaluation procedure shall be explicitly stated in the proposal documents. Simultaneous evaluation of the technical and financial proposals shall be completed within forty-five (45) calendar days from the date the proposals are opened.

7. **Prescriptive periods**. The periods stated for the evaluation of the technical and financial proposals are prescriptive. The Government Entity may adjust said periods to suit the nature, scope, size, and complexity of the proposed JV, provided the Government Entity observes the principles of transparency, competition, and accountability.

8. **Rejection of proposals**. Non-compliance to the information required on either the first or second envelope shall be grounds for rejection of proposals.

9. **Withdrawal and/or modification of proposals**. Withdrawal and/or modification of proposals may be allowed upon written notice by the private sector participant concerned, to the Government Entity prior to the time and date set for the opening of the envelope containing the technical proposal as specified in the "Instructions to Private Sector Participants". No proposals shall thereafter be modified or withdrawn. Proposal modifications received after said period shall be considered late and will be returned unopened. Withdrawal of proposals after the proposal opening date shall cause the forfeiture of the private sector participant's proposal security.

10. **Reservation clause**. The Head of Government Entity reserves the right to reject any or all proposals, declare a failure of selection, or not award the JV Agreement in the following situations:

    a. If there is *prima facie* evidence of collusion between officers or employees of the government entity, or between the JV-SC or any of its members and any of the private sector participants, or between the private sector participants, or between a private sector participant and a third party, which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
    b. If the JV-SC is found to have failed in following the prescribed selection procedures under the guidelines; or,
    c. For any justifiable and reasonable ground where the award of the JV Agreement will not redound to the benefit of the GOP.

11. **Breaking tie proposals**. In case tie proposals occur under Competitive Selection or Challenge, the tie shall be broken by the drawing of lots or by similar non-discretionary and non-discriminatory methods where results are based on sheer luck or chance.

VIII. Award and Approval of JV Agreement

1. **Recommendation to Award or not to Award**. Within seven (7) calendar days from the date of completion of the evaluation, the JV-SC shall submit the recommendation to award or not to award to the Head of Government Entity. The JV-SC shall include in its recommendation a detailed evaluation/assessment report with a clear explanation of the basis of its recommendations.

2. **Decision to Award**. Within seven (7) calendar days from the submission by JV-SC of the recommendation to award, the Head of Government Entity shall approve or reject the same. The approval shall be manifested by signing and issuing the "Notice of Award" to the winning private sector participant within seven (7) calendar days from approval thereof.

   All participating private sector participants shall be informed of the award in writing. Such decision shall be made available to the public upon request.

3. **Notice of Award**. The "Notice of Award" to be issued by the Head of Government Entity, shall contain among others, an instruction to the winning private sector participant to comply with conditions precedent for the execution of the JV Agreement and to submit compliance statements with regard thereto, within thirty (30) calendar days from receipt of the "Notice of Award" unless otherwise specified or extended by the appropriate Approving Authority.

Conditions precedent for the execution of the JV Agreement shall include among others the posting of a performance security in favor of the Government Entity. The Government Entity shall determine which form of performance security it will require which may be in the form of cash, bank draft or guarantee confirmed by a local bank (in the case of foreign private sector participants bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand issued by GSIS or by a surety or insurance companies duly accredited by the Office of the Insurance Commissioner acceptable to the Government Entity, or a combination thereof.

The Performance Security may be made in the same form as that of the proposal security under Section VI.1 and in accordance with the following thresholds:

a. Cash, manager's check, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the project cost.
b. Bank Guarantee – a minimum of five percent (5%) of the project cost.
c. Surety Bond – a minimum of ten percent (10%) of the project cost.

Failure to comply with the conditions precedent for the execution of the JV Agreement within the prescribed thirty (30)-calendar day period or as specified or extended by the appropriate Approving Authority will result in forfeiture of the proposal security and revocation of Notice of Award. Within seven (7) calendar days from receipt of the compliance statements from the winning private sector participant, the Head of Government Entity shall determine the sufficiency of the same, and notify the winning private sector participant accordingly.

4. **Validity and return of proposal and performance securities**. The execution of the JV Agreement shall be made within the period of the validity of the proposal security. The required proposal security shall be valid for a reasonable period, but in no case beyond one hundred eighty (180) calendar days following the opening of the proposals. Proposal securities shall be returned to the winning private sector participant and unsuccessful private sector participants upon signing of the JV Agreement by the winning private sector participant.

   The Performance Security for pre-construction and construction works shall be in accordance with the parameters, terms and conditions approved by the Approving Authority.

   A Performance Security for operations will be issued to guarantee the proper operation of the facility in accordance with the operating parameters and specifications under the JV Agreement. This performance security for operations shall be valid during the entire operations period.

   The Performance Security shall be proportionately increased in the case of government-approved variations causing an increase in the project cost. The Private Entity shall provide for the necessary additional performance security within fifteen (15) calendar days from the approval of the variation.

   In case of pre-termination caused by government, the Performance Security may be released immediately. Upon certification by the Head of Government Entity that there are no claims filed against the Private Sector Partner after the expiration of the JV Agreement or end of the JV period, the performance security shall be released by the former. As may be agreed upon in the JV Agreement, a portion of the performance security may be released upon compliance with corresponding milestones.

   The Government Entity shall strictly monitor compliance by the project proponent of the requirements for Performance Security and the sufficiency thereof.

5. **Extension of validity of proposals**. When the Head of the Government Entity deems an extension of validity of proposals to be necessary, those who submitted proposals shall be instructed in writing, to extend the validity of their proposals before the expiration date of the same. However, private sector participants shall not be allowed to modify or revise the price or other substantial aspect of their proposals.

   As a condition of the extension of the validity of their proposals, participating private sector participants must correspondingly extend the validity of their proposal security.

6. **Single responsive proposal**. A single and responsive proposal shall be considered for award if it falls under any of the following circumstances:

a. If after advertisement, only a single party submits eligibility documents within the deadline stipulated in the IAESP, and it meets the eligibility requirements, after which it submits a proposal which is responsive to the technical and financial requirements;
b. If after advertisement, more than one private sector participant submits eligibility documents in accordance with the provisions of these Guidelines, but only one private sector participant meets the eligibility requirements, after which it submits a proposal which is responsive to the technical and financial requirements;
c. If after the eligibility check, more than one private sector participant meets the eligibility requirements but only one private sector participant submits a proposal, and its proposal is found to be responsive to the technical and financial requirements; or,
d. If after qualification/evaluation of proposals, only one private sector participant meets the technical requirements but is not able to comply with financial requirements, after which a negotiation on the financial terms/proposal in accordance with Section VIII.8 hereof is conducted and is successful.

7. **Private Sector Participant/s compliant with the technical requirements**. When technically qualified private sector participant/s is/are unable to comply with financial requirements, the Government Entity may negotiate the financial terms/proposal with them in accordance with Section VIII.8 hereof.

8. **Negotiation on the financial terms/proposal under the Competitive Selection Process**. In case all technically qualified private sector participants, are unable to comply with the financial requirements, the Government Entity, through the JV-SC, shall invite said private sector participants to submit new financial proposals within seven (7) calendar days from the date of invitation. Thereafter, within seven (7) calendar days from end of the seven (7) day invitation period, the Government Entity shall open the new financial proposals, rank the proposals from the most to the least advantageous, and notify the proponent of the most advantageous financial proposal for negotiations. Within thirty (30) calendar days from the date of notice, the Government Entity shall negotiate the financial terms with the proponent of the most advantageous financial proposal. The technical proposal shall remain valid and binding. In the event the Government Entity fails to successfully negotiate with said proponent within the thirty (30) calendar day period, the Government Entity shall negotiate with the proponent of the next advantageous financial proposal, and so on and so forth, until a successful negotiation is concluded.

   In case of a single technically qualified private sector participant, upon opening its financial proposal, the Government Entity shall notify said private sector participant for negotiation of the financial terms or proposal. The Government Entity shall conclude said negotiation within thirty (30) calendar days from the date of notice. The technical proposal shall remain valid and binding. In the event that there is no successful negotiation, the Government Entity shall conduct another Competitive Selection. In case of second failure of Competitive Selection, the Government Entity may resort to negotiated JV pursuant to Annex "B" of these Guidelines.

9. **Failure of Competitive Selection**. There shall be a failure of Competitive Selection in any of the following instances:

   a. No prospective private sector participant/s is/are eligible;
   b. No proposals are received;
   c. No prospective private sector participant/s is/are able to comply with technical requirements;
   d. No successful negotiation on the financial terms/proposal as provided under Section 8 hereof; and,
   e. The winning private sector participant fails or is unable to enter into a JV Agreement with the Government Entity within the seven (7)-calendar day period provided in Section VIII.10 of these Guidelines.

   In the event of a failed Competitive Selection brought about by instances stipulated above, the Government Entity shall review the Terms of Reference (TOR)/selection/tender documents and conduct another Competitive Selection. In case of second failure of Competitive Selection, the Government Entity may resort to negotiated JV pursuant to Annex "B" of these Guidelines.

10. **Execution/Approval of the JV Agreement**. The authorized signatory/ies of the winning private sector participant and the Government Entity, shall execute and sign the JV Agreement, within seven (7) calendar days after the Head of Government Entity notifies the winning private sector participant of its compliance to the conditions or requirements precedent to the execution of the JV Agreement as referred to in Section VIII.3 above. Consistent with Article 1159 of the New Civil Code, said JV Agreement is considered the law between the JV Partners, and the JV Partners shall perform their respective prestations, obligations, and undertakings thereunder with utmost good faith, with a view to attaining the objective thereof. Within fifteen (15) calendar days from execution of the JV Agreement, an original signed and notarized copy of the JV Agreement and electronic copy of the same shall be submitted by the Head of Government Entity to:

a. The Office of the President (OP);
b. NEDA;
c. PPP Center;
d. GCG (as applicable);
e. Statutory Counsel;
f. Appropriate Regulatory Body;
g. DOF; and,
h. DBM.

In the event of refusal, inability or failure of the winning private sector participant to enter into a JV Agreement with the Government Entity, within the time provided therefore, said Government Entity shall forfeit its proposal security. In such event, the Government Entity shall consider the private sector participant with the next-ranked complying proposal as the winning private sector participant, and notify said private sector participant accordingly. If the next-ranked complying private sector participant shall likewise refuse or fail to enter into JV Agreement with the Government, its proposal security shall likewise be forfeited and the Government Entity shall consider the next-ranked complying proposal, and so on, until a JV Agreement shall have been entered into. In the event that the Government Entity is unable to execute the JV Agreement with any of the complying private sector participants, a failure of Competitive Selection will be declared and the JV may be subjected to a Competitive Selection again.

11. **Other Approvals for the JV Agreement**. The entity tasked under the JV Agreement shall, as may be required under existing laws, rules and regulations, secure any and all other approvals for the JV Agreement, or the implementation thereof, from government agencies or bodies including the Regulatory Body, in the case of public utility projects. This includes securing the necessary and appropriate environmental clearances from the DENR prior to actual project implementation. The DENR shall act on the environmental clearance of the JV within the time frame prescribed and following the guidelines of the DENR Administrative Order No. 96-37 and subsequent guidelines as may be issued from time to time. The Government Entity may provide the necessary assistance to its JV Partner in securing all the required clearances. The JV Agreement shall provide milestones in securing such other approvals required for the implementation of the JV Agreement.

12. **Effectivity of the JV Agreement/Issuance of the Notice to Proceed**. The JV Agreement shall be effective upon signing thereof by the authorized signatory/ies pursuant to Section VIII.10 unless another date is stipulated therein. The Government Entity, when deemed necessary, shall issue the "Notice to Proceed" to the Private Sector Partner within a reasonable period to be determined by the Government Entity and stated in the JV Agreement.

IX. Appeals Mechanism

Decisions of the JV-SC with respect to conduct of the Competitive Selection process may be appealed in writing to the Head of Government Entity: provided, however, that a prior motion for reconsideration should have been filed by the party concerned within three (3) calendar days upon receipt of written notice, and the same has been resolved by the JV-SC. The appeal must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the JV-SC denying its motion for reconsideration. An appeal may be made by filing a verified position paper with the Head of Government Entity, accompanied by the payment of a non-refundable appeal fee. The non-refundable appeal fee shall be in an amount equivalent to no less than 0.5 percent of the project cost.

ANNEX B

DETAILED GUIDELINES FOR NEGOTIATED JV AND COMPETITIVE CHALLENGE FOR PUBLIC-PRIVATE JOINT VENTURES

I. Negotiated JVs – Any Government Entity may directly negotiate a JV with any Private Entity under any of the following circumstances**:**

a. When a Government Entity receives a proposal from a Private Entity for a project; provided, that within ten (10) working days, such Government Entity shall publicly disclose the receipt of such proposal by simultaneously posting information of such receipt in its website and furnishing the PPP Center a copy of such notice. The minimum contents of the notice shall include the date of receipt, project name, short project description, and the proponent; or

b. When after a failed competitive selection as provided under Section VIII.9 of Annex "A" hereof, the Government Entity conducts another competitive selection which again fails. In this case, the Government Entity may seek out an eligible Private Sector Partner and request the latter to submit a proposal for the JV that is manifestly advantageous to government and proceed to negotiations, which must be concluded within one (1) year from date of submission of bids for which there was a second failure of competitive selection, and that negotiation shall only be on the financial terms or aspect. Prior to seeking out an eligible Private Sector Partner, the Government Entity shall review and, as may be necessary, revise the technical eligibility, and technical and financial parameters up to an extent equivalent to twenty percent (20%) of the project cost under the last failed competitive selection.

II. Competitive Challenge Procedure - In all cases where the Government Entity directly negotiates with a private sector participant for a proposed JV, the negotiated terms shall be subjected to a competitive challenge wherein other private sector entities shall be invited to submit comparative proposals, to ensure that JV Agreements are entered into under a transparent and competitive process that promotes accountability in government transactions.

III. Three-Stage Framework – Negotiated JVs shall be subjected to a three-stage process summarized as follows:

Stage One –Initial Evaluation of Proposals by Government Entity

1. The initial evaluation shall be completed by the Government Entity within ninety (90) calendar days from the public disclosure of the receipt of the proposal, subject to an extension for justifiable causes approved by the Head of Government Entity for up to a maximum period of one hundred twenty (120) calendar days, upon submission of complete documents by the Private Entity including the valuation report of the Private Entity's contribution and eligibility requirements as provided under Annex "A" of these Guidelines. Upon completion of the initial evaluation of the eligibility and merits of the project and the qualification of the Private Entity, the Head of Government Entity may accept or reject the JV Proposal and shall issue a letter of its acceptance/rejection.

   Such acceptance or rejection shall only be given after a period of 90 calendar days from the public disclosure of the receipt of the proposal, within which similar proposals may be submitted by other Private Entities. In case no other similar proposals are received within the 90-calendar day waiting period, the Government Entity shall proceed to negotiate with the lone proponent upon acceptance thereof.

2. In case similar proposals are received prior to acceptance of the first proposal, the Government Entity may reject all such proposals or instead, subject it to competitive selection pursuant to Annex "A" of these Guidelines. Otherwise, the Government Entity shall evaluate all proposals to determine the best and most advantageous proposal.

   The Government Entity shall consider all similar and complete proposals received within 90 calendar days from the public disclosure of receipt of the first proposal, provided that such public disclosure requirement under Item I.a. of Annex "B" shall also be observed for other proposals received.

   The Government Entity shall open, evaluate, compare, and rank all such similar and complete proposals within a period of 120 calendar days from the receipt of the first complete proposal, which may be extended to 180 calendar days as may be necessary considering the number and status of completeness of proposals. After the said period, the Government Entity shall issue a letter of acceptance to the highest-ranked proposal and proceed to negotiate with the proponent thereof. The rejection of any other proposal shall not prejudice its proponent from submitting a comparative proposal later in the competitive challenge.

The highest-ranking proposal shall refer to the best and most advantageous proposal which shall be determined after considering the financial, economic and technical merits of the proposal, among others, and would yield the most advantageous terms and benefits for the Government Entity and the public.

3. The Head of Government Entity's letter of acceptance shall explicitly state that such acceptance does not bind the Government Entity to enter into the JV, but shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV. In case of non-acceptance, the Private Entity shall be informed of the reasons/grounds for non-acceptance.

Stage Two – Conduct of Negotiation between Government Entity and Private Entity, Conferment of OPS, and Evaluation by the Approving Authority

The JV Partners shall negotiate on the terms and conditions of the JV. The following rules shall be adhered to in the conduct of detailed negotiations, and evaluation by the Approving Authority in case of successful negotiations:

1. Both JV Partners shall negotiate on the terms and conditions, scope, as well as all legal, technical, and financial aspects of the JV.

   The negotiation shall be completed within thirty (30) calendar days upon acceptance by the Government Entity of the proposal as provided in Stage One above; provided, that a longer period may be allowed as determined by the Government Entity considering the complexity of the project but shall in no case exceed a maximum period of ninety (90) calendar days from the time of acceptance of proposal by the Government Entity.

2. Negotiations shall comply with the process, requirements and conditions as stipulated under Sections 6 (General Guidelines) and 7.1 (Requirements/Conditions for JV Proposals) of these Guidelines.

   The Government Entity shall negotiate with the highest-ranking or lone proponent. However, should negotiations not result in an agreement acceptable to both JV Partners, the Government Entity shall have the option to reject the proposal by informing the Private Entity in writing stating the grounds for rejection and thereafter entertain any next-ranking proposal from the initial evaluation, or decide to pursue the proposed activity through alternative routes other than JV.

   This procedure shall apply to succeeding proposals, if any, by order of their ranking.

3. For JVs involving public utilities and infrastructure or development projects, within seven (7) calendar days after the successful negotiation, the Government Entity shall conduct public consultations to inform the stakeholders of the salient features of the JV and the proposed terms and conditions between the Government Entity and the private sector entity. The Government Entity shall post notices of consultations at its own website, if available, and/or on other reputable online newspaper/publication, and conspicuous public places in areas affected by the JV.

   Within fifteen (15) days from the conduct of the public consultation, the Private Entity shall provide clarifications to the comments/queries of the public. Within fifteen (15) calendar days from receipt of clarifications from the Private Entity, the Government Entity shall take appropriate action on whether or not to issue a certification of agreement after careful consideration on the results of the public consultation.

   The Head of Government Entity and the authorized representative of the Private Entity shall issue a signed certification that an agreement has been reached by both parties and, for negotiated JVs under Item I.a of Annex "B", that both agree to submit the proposal to competitive challenge. Said certification shall also state that the Government Entity has found the private sector participant eligible to enter into the proposed JV and shall confer to the proponent the OPS.

   For negotiated JVs under Item I.b of Annex "B", upon completion of the public consultations and issuance of the signed certification of agreement, the Government Entity may proceed to subject the proposal to the procedure for competitive challenge under Stage III.

   The Government Entity may at any time prior to the conferment of OPS reject the proposal. In case of such rejection, the Government Entity shall explain to the Private Entity in writing the reasons for rejection.

   The OPS shall expire at the end of the validity period of the approval by the appropriate Approving Authority of the negotiated JV Proposal and the draft JV Agreement.

The OPS granted to a Private Entity may, upon review or upon rejection of the Approving Authority, be revoked by the Government Entity which granted it based on the following grounds:

i. It is found that the facts disclosed are incomplete, incorrect, misleading, untrue, inaccurate, or different from what was represented; or
ii. Any non-compliance or violation of these Guidelines.

Upon revocation, the Government Entity may accept new negotiated proposals involving the same or similar project, provided that this shall not preclude the original proponent from resubmitting a new or revised proposal.

The grant of OPS does not preclude the Government from implementing a project that may conflict with the negotiated proposal or any of its components. No court, except the Supreme Court, shall issue any Temporary Restraining Order, Preliminary Injunction or Mandatory Injunction. A Preliminary Injunction or a Preliminary Mandatory Injunction shall be filed by the original proponent against the Government in case of such conflict, pursuant to RA No. 8975.

4. After conferment of the OPS, the Government Entity shall endorse the JV Proposal and submit pertinent documentation to the appropriate Entity and Approving Authority pursuant to Section 7.2 of these Guidelines for approval. For projects wherein the Approving Authority is the Head of Government Entity pursuant to Section 7.2.d of these Guidelines, conferment of the OPS shall be deemed an approval of the project proposal subject to compliance with the conditions stated in Section 7 of these Guidelines. The Head of Government Entity shall issue a certification pursuant to Section 7.2.b.ii.

   Unless provided otherwise in the rules of the Approving Authority, the approval by the appropriate Approving Authority of the negotiated JV Proposal shall be valid for a period of nine (9) months from the issuance of the approval or until the invitation for comparative proposals has been issued, whichever is earlier.

   Prior to submission to the Approving Authority, the Government Entity shall subject its contribution to a third-party valuation.

5. In case the JV Proposal is disapproved by the appropriate Approving Authority, the Government Entity shall inform the original proponent of such disapproval and that the OPS shall be withdrawn. The Government Entity may thereafter entertain the next-ranking proposal from the initial evaluation, if any.

Stage Three – Competitive Challenge

Once the JV Proposal is approved by the Approving Authority, the JV shall be subjected to a competitive challenge as follows:

1. The Government Entity shall prepare the tender documents and update the draft JV Agreement consistent with the terms and conditions approved by the Approving Authority and pursuant to Section II (Selection/Tender Documents) of Annex "A" of these Guidelines.

2. The Head of Government Entity, through the JV-SC, shall approve all tender documents including the draft JV Agreement before the publication of the invitation to apply for eligibility and to submit a comparative proposal.

3. The JV-SC shall, within seven (7) calendar days upon approval by the Approving Authority of the JV Proposal as referred to in Stage Two above, publish the invitation to apply for eligibility and to submit a comparative proposal in accordance with the procedures under Section III of Annex "A" of these Guidelines.

4. For JVs that will require national government undertakings, such as, among others, subsidies or guarantees, the Invitation to Apply for Eligibility and to Submit a Comparative Proposal shall be published only upon receipt of clearance from DOF and DBM, as applicable.

   Interested private proponents shall be qualified in accordance with Section IV.2 (Eligibility Requirements) under Annex "A" of these Guidelines. The tender documents which shall be prepared by the Government Entity shall be issued in accordance with Section III of Annex A of these Guidelines.

5. 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.

6. The original proponent shall post the proposal security at the date of the first day of the publication of the invitation to apply for eligibility and to submit a comparative proposal in the amount and form stated in the tender documents as provided under Section VIII.3 of Annex "A".

7. Prospective comparative private sector participants or challengers shall be given one hundred twenty (120) calendar days from the first day when the tender/bidding documents are posted to develop and submit comparative proposals unless a longer period not exceeding one (1) year is determined and approved by the appropriate Approving Authority, after having considered the nature and complexity of the JV project. If no comparative proposal is received by the Government Entity, the JV shall be immediately awarded to the original proponent.

8. The procedure for the determination of eligibility of comparative proponents/private sector participants, issuance of supplemental bid bulletins and pre-selection conferences, submission and receipt of proposals, opening and evaluation of proposals shall follow the procedure stipulated under Annex "A" of these Guidelines. In the evaluation of the financial proposals, the best and final offer (BAFO method) as defined hereunder shall be applied.

   For negotiated JVs wherein OPS has been conferred prior to effectivity of these Guidelines, the JV-SC may opt to apply either the Modified Competitive Challenge or the BAFO method as defined hereunder. If BAFO is not the best method to evaluate the financial proposals as determined by the Government Entity, it may opt to apply the Modified Competitive Challenge procedure, provided, that other procedures or requirements after conferment of the OPS stipulated under these Revised Guidelines shall still be adhered to.

   The evaluation of financial proposals shall be completed by the JV-SC of the Government Entity within fifteen (15) calendar days.

9. Under the modified competitive challenge, the original proponent may opt to submit on or before the date of the opening of financial proposals its second financial proposal. The financial proposal(s) of the comparative private sector participant/s or the challenger/s who have been determined to have passed the technical evaluation and the second financial proposal, if applicable, of the original proponent shall be opened at the same time during the scheduled opening of financial proposals.

   If the Government Entity, upon recommendation of the JV-SC, determines that an offer made by the challenger is superior or more advantageous to the government than the financial proposal of the original proponent, the JV Agreement shall be awarded to the challenger offering the most advantageous price.

   In case the challenger/s fail/s to outbid the financial proposal of the original proponent or in case there is/are no challenger/s, the JV Agreement shall be awarded to the original proponent.

10. Pursuant to the transitory provisions and Item 9 of Stage Three above, the BAFO method shall be conducted by the JV-SC in the evaluation of financial proposal/s following the procedure stipulated herein. In the event a challenger's financial proposal is found to be more advantageous than the financial proposal of the original proponent, the JV-SC shall invite all private sector participants including the original proponent to submit their best and final offer or the second financial proposal using the same parameters as in the tender documents issued by the Government Entity. All second financial proposals shall be submitted within seven (7) calendar days from the date of the invitation. If the challenger/s and/or the original proponent decide not to submit a second financial proposal, the JV-SC shall consider their first financial proposal in the evaluation of the second financial proposals. the second financial evaluation shall be completed by the JV-SC of the Government Entity within fifteen (15) calendar days.

    If, again, the Government Entity, upon recommendation of the JV-SC, determines that a final offer made by the challenger is superior or more advantageous to the government than the financial proposal of the original proponent, the JV Agreement shall be awarded to the challenger offering the most advantageous proposal.

    In case the Government Entity determines the financial proposal of the original proponent to be superior or more advantageous or in case there is no challenger, the JV Agreement shall be awarded to the original proponent.

11. In case tie proposals occur between the original proponent and challenger/s, the JV Agreement shall be awarded to the original proponent.

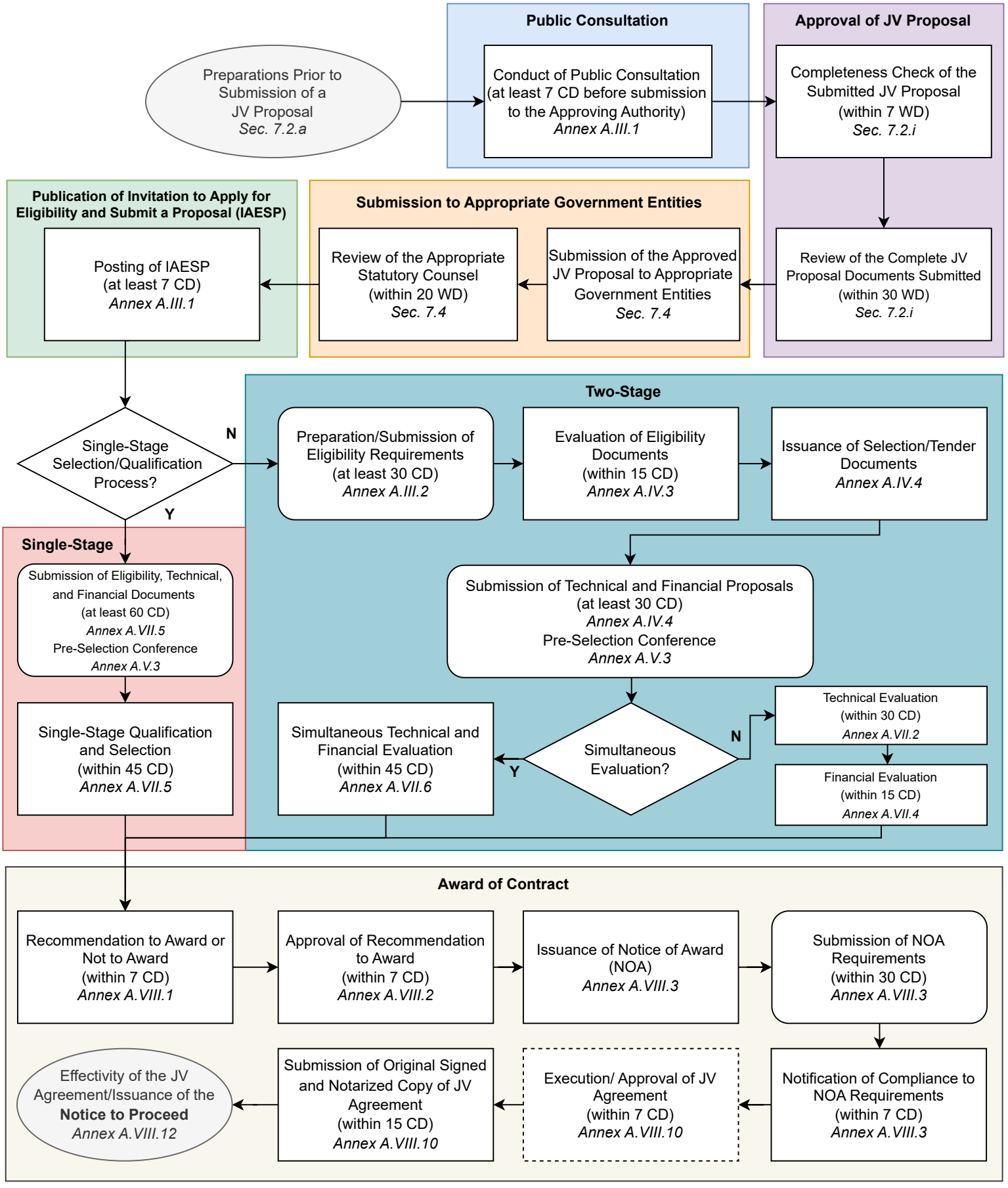
12. In case tie proposals occur between the challengers offering better financial proposals than the second financial proposal of the original proponent, the procedure for breaking tie proposals shall be done through drawing of lots or similar methods that are non-discretionary and non-discriminatory such that it is based on sheer luck or chance.

13. The award and approval of the JV Agreement shall be in accordance with the procedures under Section VIII of Annex "A" of these Guidelines. Appeals mechanism shall be in accordance with the procedures under Section IX of Annex "A" of these Guidelines.

Legend:
- **Rounded Edges: Private Entity Action**
- **Sharp Edges: Government Entity Action**
- **Dotted Edges: Both Private and Government Entity Action**

2023 Revised JV Guidelines

ANNEX A



Legend:
- **Rounded Edges**: Private Entity Action
- **Sharp Edges**: Government Entity Action
- **Dotted Edges**: Both Private and Government Entity Action

2023 Revised JV Guidelines

ANNEX B

NEGOTIATED JOINT VENTURES

Receipt of Proposal/s from a Private Entity/Entities

Government Entity receives a proposal *Annex B.I.a*

Posting of Notice at GE Website and Furnishing PPP Center a Copy Thereof (within 10 WD) *Annex B.I.a*

In case of Two Failed Bids

Government Entity seeks out a JV Partner *Annex B.I.b*

Submission of Proposal for Direct Negotiations *Annex B.I.b*

THREE STAGE FRAMEWORK

STAGE I- INITIAL EVALUATION OF PROPOSALS

Initial Evaluation of Proposal/s Received During the 90 CD Waiting Period

(within 90 up to 180 CD) *Annex B.III.Stage I.1*

Complete the 90 CD Waiting Period & Accept the Lone/Best Proposal *Annex B.III.Stage I.*

STAGE II - NEGOTIATION, CONFERMENT OF ORIGINAL PROPONENT STATUS, AND EVALUATION

For Private-initiated Proposals, Negotiation on Terms and Conditions (within 30 up to 90 CD) *Annex B.III.Stage II.1*

For Two-Failed Bids, Negotiation on the Financial Aspect (within 1 year from failure) *Annex B.I.b*

Public Consultation (within 7 CD after successful negotiations) *Annex B.III.Stage II.4*

Issuance of Certification of Successful Negotiation/ Conferment of OPS (within 15 CD) *Annex B.III.Stage II.4*

Is the JV a Private-initiated Proposal?

Y

N

Approval of JV Proposal

Completeness Check of the Submitted JV Proposal (within 7 WD) *Sec. 7.2.i*

Review of the Complete JV Proposal Documents Submitted (within 30 WD) *Sec. 7.2.i*

Submission to Appropriate Gov't Entities

Submission of the Approved JV Proposal to Appropriate Government Entities *Sec. 7.4*

Review of the Appropriate Statutory Counsel (within 20 WD) *Sec. 7.4*

STAGE III- COMPETITIVE CHALLENGE

Posting of IAESP (at least 7 CD) *Annex B.III. Stage III.3*

Preparation/Submission of Eligibility Requirements (at least 30 CD) *Annex A.III.2*

Evaluation of Eligibility Documents (within 15 CD) *Annex A.IV.3*

Issuance of Selection/Tender Documents *Annex A.IV.4*

Submission of Bids/Proposals (at least 120 CD) *Annex B.III. Stage III.7* Pre-Selection Conference *Annex A.V.3*

Technical Evaluation (within 30 CD) *Annex A.VII.2*

Financial Evaluation (within 15 CD) *Annex A.VII.4*

Best and Final Offer (BAFO)

Is the Financial Proposal of the Challenger Superior than of OP?

Y

Invitation to Submit Second Financial Proposal *Annex B.III. Stage III.10*

Submission of Second Financial Proposal (within 7 CD) *Annex B.III. Stage III.10*

Evaluation of the Second Financial Proposal (within 15 CD) *Annex B.III. Stage III.10*

N

Award of Contract

Recommendation to Award or Not to Award (within 7 CD) *Annex A.VIII.1*

Approval of Recommendation to Award (within 7 CD) *Annex A.VIII.2*

Issuance of Notice of Award (NOA) *Annex A.VIII.3*

Submission of NOA Requirements (within 30 CD) *Annex A.VIII.3*

Notification of Compliance to NOA Requirements (within 7 CD) *Annex A.VIII.3*

Execution/ Approval of JV Agreement (within 7 CD) *Annex A.VIII.10*

Submission of Original Signed and Notarized Copy of JV Agreement (within 15 CD) *Annex A.VIII.10*

Effectivity of the JV Agreement/Issuance of the Notice to Proceed *Annex A.VIII.12*