

**PPP GOVERNING BOARD
POLICY MATTER OPINION NO. 2024-10-01**

Requesting entity: PPP Center

Issues/Concerns:

1. What “comparative challenge documents” are being referred to in Section 93 (*Applicable timelines for Unsolicited Proposals*) of the implementing rules and regulations (IRR) of Republic Act No. 11966 (PPP Code) that will trigger the commencement of the comparative challenge period?
2. When is the reckoning point of the comparative challenge period, in cases where the PPP Pre-Qualification, Bids, and Awards Committee (PBAC) of the Implementing Agency (IA) issued the comparative challenge documents on different days, or in cases where the PBAC of the IA failed to issue the comparative challenge documents within the deadline provided for in Section 93 of the PPP Code IRR?

Section 25 (*PPP Governing Board*) of the PPP Code and Section 157 (*Powers and Functions of the PPP Governing Board*) of its IRR institutionalized the PPP Governing Board as the overall policy-making body for PPP-related matters and mandated it to issue supplemental guidelines, forms, and templates to further operationalize the provisions set forth in the PPP Code IRR. Additionally, pursuant to Section 24(a)(11) (*Powers and Functions*) of the PPP Code and Section 154(k) (*Powers and Functions of the PPP Center*) of its IRR, the PPP Center is vested with the authority to draft Policy Matter Opinions for the approval of the PPP Governing Board, in response to requests by government agencies and private entities.

This Policy Matter Opinion is being issued in response to the request of the PPP Center, and in anticipation of similar concerns that may be raised on Unsolicited Proposals that will undergo comparative challenge process.

The comparative challenge period shall commence upon the simultaneous issuance of all comparative challenge documents within 20 calendar days from the issuance of the invitation for comparative proposals.

The following sections of the PPP Code IRR lay down the guidelines and principles that govern the conduct of the comparative challenge process for Unsolicited Proposals:

- (1) Section 2 (*Declaration of Policy*) states that the government “shall **affirm open, fair, transparent, and competitive selection** as the central tenet for securing private investment in PPP Projects” and “shall implement a policy of full public disclosure of all its transactions involving public interest”.
- (2) Section 93 (*Applicable timelines for Unsolicited Proposals*) states that the period for comparative challenge shall **commence upon issuance** of the comparative challenge documents.
- (3) Section 65 (*Preparation of Tender Documents*) specifies that “tender documents”, or “comparative challenge documents” in the case of Unsolicited Proposals, **shall include the following:**
 - (a) Instructions to Challengers;

- (b) Draft PPP Contract, as approved in accordance with Section 80 of the IRR, reflecting the parameters, terms, and conditions (PTCs) approved by the appropriate Approving Body;
- (c) "Bid Form" reflecting the required information to properly evaluate the bid proposal;
- (d) Forms of bid and performance securities;
- (e) Requirements and timelines/milestones of agencies concerned in granting of Administrative or Local Franchise, if applicable; **and**
- (f) Other documents as may be deemed necessary by the PBAC.

(4) Section 66 (*Issuance of Tender Documents*) states that **"challengers shall be provided ample time to examine the tender documents and to prepare their respective proposals prior to the bid submission date"**.

To uphold the aforementioned rules and principles of the PPP Code and its IRR, the PBAC, which is the responsible entity in charge of preparing and issuing comparative challenge documents and in all aspects of the pre-bidding and bidding processes, shall ensure that all prospective challengers have equal access to all necessary information that will enable them to prepare their comparative proposals on a level playing field throughout the entirety of the comparative challenge period approved by the appropriate Approving Body.

Therefore, Sections 65, 66, and 93, of the PPP Code IRR shall be read such that all of the documents indicated in items (a) to (f) of Section 65 of the PPP Code IRR shall be issued and be made available simultaneously to all prospective challengers. The simultaneous issuance of comparative challenge documents shall occur within the 20-calendar day period specified in Section 93 of the PPP Code IRR, and shall trigger the commencement of the comparative challenge process.

For avoidance of doubt, the comparative challenge period shall not commence if any one of the documents indicated in Section 65 of the PPP Code IRR has not been released or made available to the prospective challengers.