



EXECUTIVE ORDER NO. 197
Series of 2022

**2022 AMENDED DETAILED GUIDELINES FOR THE SUBMISSION, DETAILED
NEGOTIATION AND COMPETITIVE/SWISS CHALLENGE OF UNSOLICITED
PROPOSALS FOR PUBLIC-PRIVATE PARTNERSHIP PROJECTS**

WHEREAS, on February 27, 2013, the Sangguniang Panlalawigan of Bataan passed Provincial Ordinance No. 02, S. 2013 entitled, "INTEGRATED PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE PROVINCIAL GOVERNMENT OF BATAAN;"

WHEREAS, on September 22, 2014, Executive Order No. 85, S. 2014 was issued providing for Detailed Guidelines for Competitive/Swiss Challenge for Public-Private Partnership (PPP);

WHEREAS, Provincial Ordinance No. 2, Series of 2019 or the "Bataan PPP and Investment Center Ordinance" was enacted by the Sangguniang Panlalawigan on February 26, 2019 which created the Public-Private Partnership and Investment Center (PPPIC) and provided for its functions and power to set the policies concerning PPP projects in the Province as well as to coordinate and regulate the implementation of all approved PPP projects;

WHEREAS, on June 22, 2020, the Sangguniang Panlalawigan of Bataan enacted Provincial Ordinance No. 11, S. 2020 entitled, "AN ORDINANCE ADOPTING THE REVISED PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE PROVINCIAL GOVERNMENT OF BATAAN, PROVIDING FOR THE PROCEDURE FOR SELECTING THE PRIVATE SECTOR PROPONENT, ADOPTING A CONTRACT MANAGEMENT FRAMEWORK, PROVIDING APPROPRIATIONS AND FOR OTHER PURPOSES;"

WHEREAS, on February 26, 2021, Executive Order No. 12, S. 2021 was issued providing for Detailed Guidelines for the Submission, Detailed Negotiation and Competitive/Swiss Challenge of Unsolicited Proposals for Public-Private Projects;

WHEREAS, on July 12, 2021, Executive Order No. 68, S. 2021 was issued providing for Revised Detailed Guidelines for the Submission, Detailed Negotiation and Competitive/Swiss Challenge of Unsolicited Proposals for Public-Private Projects;

WHEREAS, on 06 September 2022, in order to encourage more businessmen to invest in the Province of Bataan and pursuant to Republic Act No. 11032 or the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018", the eligibility requirements for private sector proponent were modified under Executive Order No. 157, Series of 2022 or the "Revised Detailed Guidelines for the Submission, Detailed Negotiation and Competitive/Swiss Challenge of Unsolicited Proposals for Public-Private Partnership Projects;"

WHEREAS, to be able to provide sufficient time for the interested private sectors to prepare for each stage of the PPP process and for the Province to evaluate and select the best PPP project proposal, the prescribed time indicated under Executive Order No. 157 must be adjusted;

NOW, THEREFORE I, **Jose Enrique S. Garcia III**, Governor of Bataan, by virtue of the powers vested in me by law, promulgate these Revised Detailed Guidelines for the Submission, Detailed Negotiation and Competitive/Swiss Challenge of Unsolicited Proposals for Public-Private Partnership (PPP) Projects:

Three-Stage Framework - The Unsolicited Proposal for a PPP project shall be subjected to three steps process summarized as follows:

STAGE ONE - Initial Evaluation of Unsolicited Proposals

Section 1. Initial Evaluation



The initial evaluation and determination of the eligibility of the Private Sector Proponent (PSP) shall be completed within sixty (60) calendar days upon written acknowledgment by the PPPIC of the receipt of an unsolicited proposal with complete documents from the PSP, including the eligibility requirements provided in these Guidelines.

“Complete Documents” include, but shall not be limited to,

- a. Cover letter indicating the basic information on the unsolicited proposal such as the total project cost, a description of the project, its expected output and outcome, implementation period, and general description of the new concept or technology. In case of consortia, the roles and responsibilities of each member-entity shall be also stated;
- b. Accomplished Application for Public-Private Partnership Form;
- c. Business case, pre-feasibility or feasibility study, or project case as may be applicable;
- d. Company Profile which should include the following, but not limited to:
 - Company Background and History;
 - Field of Expertise;
 - List of Current Board of Directors with Profile, if a corporation;
 - List of Current Corporate Officers with Profile, if a corporation;
 - List of its partners with profile and their roles, i.e. managing partner, silent partner, etc., if a partnership;
 - List of officers with profile and their roles, if a cooperative;
 - List of Products, Services or Notable Projects with description; and
 - Valid International Organization for Standardization “ISO” 9001:2000 certification, or an equivalent (if applicable);
- e. Unsolicited Proposal; and
- f. Draft PPP contract which shall state the PSP’s proposed project terms and conditions.

Section 2. Eligibility Requirements

a. Legal Requirements

If the Project activity requires a public utility franchise, the private sector participant must be Filipino or, in case of a corporation, duly registered with the SEC and be at least sixty percent (60%) Filipino-owned. For other projects, prospective private sector participant shall comply with nationality and ownership requirements under the Constitution and other applicable laws and issuances.

For project activities to be operated by the prospective PSP or a facility operator where operation of the facility does not require a public utility franchise, the PSP or facility operator or concessionaire may be Filipino or foreign-owned, as may be allowed under applicable laws, rules, and regulations.

Legal Documents include the following:

1. Registration Certificate issued by the Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC) or Cooperative Development Authority (CDA) as the case may be;

2. Articles of Incorporation and By-laws for corporations;
3. Latest General Information Sheet filed with the SEC;
4. Articles of Partnership for partnerships;
5. Articles of Cooperation for cooperatives;
6. Joint Venture Agreement for joint venture companies;
7. Valid & Current Mayor's Permit;
8. Registration Certificate issued by Bureau of Internal Revenue (BIR) which contains the Tax Identification Number (BIR Form 2303);
9. Philippine Contractors Accreditation Board License for infrastructure projects (If foreign contractor, proof that it is licensed and accredited by the accreditation institution in the Contractor's country and once awarded, the same must register with the Philippine Contractors Accreditation Board (PCAB);
10. Latest Tax Clearance Certificate issued by BIR;
11. Notarized Sworn Declaration/Statement of the PSP that:
 - a. All documents submitted to the PPPIC are original or authentic copies of original documents from government agencies;
 - b. No government agency has blacklisted the proponent or any of its partners or member-entities in case of a consortia;
 - c. Acceptance of Criteria and Waiver of Rights to Enjoin Project Activity. All prospective private sector participants shall be required to submit, as part of their documentary qualification, a statement stipulating that the PSP: (i) has accepted the qualification criteria established by the PPP Selection Committee (PPPSC) of the Province; and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the Province or its PPPSC to prevent or restrain the qualification proceedings related thereto, the award of the contract to a successful private sector participant, and the carrying out of the awarded contract. Such waiver shall be, however, without prejudice to the right of a disqualified or losing PSP 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; and
 - d. Consent is given by the PSP to the PGB through the PPPIC to share the documents submitted with other government agencies for purposes of authentication, due diligence, and study of the proposal.

b. Technical Requirements

The prospective PSP or any contractor/s of the PSP must have completed at least one project or any phase of the project that is similar or related to the project activity whose value, adjusted to current prices using the Philippine Statistics Authority (PSA) Consumer Price Index (CPI), World Bank Data, or any credible rating agency acceptable to the Province, must be at least fifty percent (50%) of the cost of the project activity subject of the selection process within the relevant period as determined by the Province.

The prospective PSP, or when applicable, the contractor/s of the PSP, shall submit a statement of all its ongoing and completed government and private contracts similar or related to the project activity subject of the selection process, including contracts awarded but not yet started, if any. Copies of the contracts of the projects in the list should be attached thereto. Notwithstanding the foregoing, the PPPSC may at its discretion adjust said technical requirements as may be appropriate for the nature, scope, size, and complexity of the proposed project activity; provided, that the principles of transparency, competition, and accountability are observed.

For purposes of the above, PSPs shall submit as part of their pre-qualification statement a business plan and/or duly executed agreements, which shall, among others, identify their members, the equity interest/contribution of each member to the PSP in the case of

consortia, their prospective contractor/s, if the experience of their contractor/s are necessary for the determination of the capacity of the PSP to undertake the project, and the description of the respective roles said members and contractors, if necessary, shall play or undertake in the project, including as to which member/s is/are the prospective facility operator/s, if applicable. If undecided on a specific contractor, the PSP may submit a short list of contractors to the PGB from among which it will select the final contractor. Short listed contractors are required to submit their eligibility requirements and a statement indicating willingness to participate in the project and capacity to undertake the requirements of the project.

The PSP must also submit a list of the names and positions of its key personnel and the latter's sufficient experience in the relevant aspect of schemes similar or related to the subject project.

c. Financial Capability

The Province shall require the PSP to show adequate capability to sustain the financing requirements for the detailed engineering design, construction, and operation and maintenance phases of the project as the case may be.

Financial capability shall be measured in terms of:

- i) proof of ability of the prospective PSP to provide a minimum amount of equity equivalent to not less than Twenty-Five Percent (25%) of the project cost, measured in terms of the net worth of the company which should be higher than the amount of equity required set aside or earmarked for the proposed project activity as declared and certified in a notarized sworn statement (in case of sole proprietorship/partnership) or a Board Resolution (in case of corporation); and
- ii) a bank certificate 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), attesting that the prospective PSP is one of its current clients, that the PSP is in good financial standing, and/or qualified to obtain credit accommodations from such bank to finance the project;
- iii) Provided that, for big projects of regional and national interests involving investments worth Ten Billion Pesos (PHP 10,000,000,000.00) or more, financial capability may be preliminarily measured solely on the basis of paragraph (ii) above; provided further, that, after the project cost is finally determined during the Detailed Negotiation Stage, the PSP shall be required to comply with the proof of ability to provide equity under paragraph (i) above as a condition prior to the issuance of the Certificate of Successful Negotiation and the conduct of the Competitive or Swiss Challenge.

The following documents shall also be submitted by the prospective PSP:

1. Audited financial statements for at least the past three (3) calendar or fiscal years counted from the date of its submission. If the prospective PSP is Filipino, the audited financial statements to be submitted must bear the stamp "received" by the BIR or its duly accredited and authorized institutions;
2. Income Tax Returns for the past three (3) calendar or fiscal years, if the PSP is Filipino;

The PSP is also required to submit its latest audited financial statements and latest Income Tax Return, after the end of the calendar or its fiscal year, if the PSP's proposal is still undergoing evaluation or detailed negotiation.

d. In case of consortia or joint ventures, all member-entities of the prospective PSP shall also

submit its company profile and all the above legal, technical and financial eligibility requirements or the equivalent documents in the country of origin with an apostille/authentication, if a member is a foreign entity, to determine the overall capability of the consortia for the project undertaking. A notarized Memorandum of Agreement between and among the member-entities stating, among others, their respective obligations and responsibilities for the proposed project, must also be submitted together with notarized Board Resolutions authorizing them to enter into a consortium or joint venture. If the parent company is the partner in the proposed project, a notarized Board Resolution should likewise be submitted.

Section 3. Submission of Unsolicited Proposals

PSPs may submit their unsolicited proposals and other documentary requirements by delivering hard copies to Public-Private Partnership and Investment Center (PPPIC) or by sending scanned copies of complete original or duly certified documents via electronic means to the designated email address of the PPPIC at pppic@bataan.gov.ph. If the unsolicited proposal is submitted via electronic means through email, the PSP shall send the original or certified true copies of the same to the office of the PPPIC by courier or other means. Upon receipt of the original or certified true copies, the PPPIC shall indicate therein the date and time the proposal was electronically received.

The PPPIC shall immediately acknowledge receipt of the proposal including those submitted via electronic means and, as soon as practicable, evaluate the documents to determine whether the PSP have submitted complete documents and all eligibility requirements. The PPPIC shall, within thirty (30) calendar days from acknowledgment of receipt of the unsolicited proposal, inform the PSP via e-mail whether or not complete documents and eligibility requirements have been received by the office.

In the event of submission of incomplete documents by the PSP, the PPPIC shall notify the PSP via email specifically indicating the lacking documents thereof. The PPPIC shall likewise inform the PSP that their proposal shall not be further evaluated pending submission of the lacking documents. Further, PPPIC may immediately reject the proposal for non-submission of the lacking documents within thirty (30) calendar days from receipt of its email, unless the PSP presents a reason to justify the delay for the submission of the lacking documents. In such case, the PSP shall be given reasonable time to comply.

Section 4. Evaluation by the PPP Selection Committee (PPPSC)

Upon receipt of the original and certified copies of the complete documents of the unsolicited proposal, the PPPSC shall convene for the purpose of evaluating and determining the eligibility of the PSP and whether or not the said unsolicited proposal should be recommended for acceptance to the Governor. For this purpose, the PPPSC may be convened in person or remotely by means of different online meeting platforms such as, but not limited to, Skype, Zoom, and Google Meet.

Within thirty (30) days upon receipt of the recommendation of the PPPSC, the Governor shall issue a certificate of acceptance or non-acceptance of the proposal.

In case a Certificate of Acceptance of the unsolicited proposal is issued by the Governor, the Province and the PSP shall then proceed to detailed negotiations. The issuance of the Certificate of Acceptance shall also mean that the PSP becomes the original proponent (OP) and no other proposal for the same project will be subjected to the foregoing process, and that the PSP which has attained OP status has been preliminarily declared eligible subject to further review and determination during the detailed negotiation. An acceptance shall not bind the Province to enter into a PPP Project, but it shall mean that authorization is given to proceed with detailed negotiations of the terms and conditions of the PPP project. In case of non-acceptance, the PSP shall be informed of the reasons/grounds for non-acceptance.

If there are more than one unsolicited proposal submitted for the same PPP Project, the Governor, upon the recommendation of the PPPSC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the greater advantage and benefits to the community and revenues to the Province.

The OP Status of PSP may be revoked or cancelled at any stage of the PPP process if the PSP loses its eligibility to proceed with the project and/or the PSP misrepresents or conceals any information that is material for the evaluation for the granting of the OPS or continuing the negotiations between the Parties.

If the reason for losing the eligibility of the PSP may be remedied, the PSP shall be given a curing period of thirty (30) calendar days from receipt of notice from the PPPIC. The said period may be extended for justifiable reason subject to the approval of the PPPSC. Otherwise, the OPS will be revoked/cancelled without prejudice to the submission of a new proposal once the PSP becomes eligible.

STAGE TWO - Detailed Negotiations

Section 5. Conduct of Negotiations between the Province and PSPs

The parties shall negotiate on the terms and conditions of the PPP project personally or remotely by using different online meeting platforms. The following rules shall be adhered to in the conduct of the detailed negotiations:

- a. The parties shall negotiate on the terms and conditions, scope, as well as all legal, technical, and financial aspects of the proposed PPP Project. The negotiations shall commence within fifteen (15) calendar days upon the formation of the Technical Working Group (TWG) of the Province for the project;
- b. The negotiated terms as agreed upon by the PSP and the TWG, shall be reviewed by the PPPSC. Within thirty (30) days from the submission of the negotiated terms, the PPPSC shall decide whether or not to accept the negotiated terms. If the negotiated terms are approved by the PPPSC, the Parties shall issue a joint certification stating that an agreement has been reached by both parties and both agree to submit the proposal to competitive challenge. The said certification shall also specify the eligibility of the PSP and the technical and financial aspects of the PPP Project as agreed upon.

If the negotiated terms are not accepted by the PPPSC, the parties may decide whether to renegotiate the terms or not. If the parties agree to renegotiate, they shall submit the renegotiated terms again to the PPPSC for its approval. If the PPPSC still disapproves the renegotiated terms, the negotiation process will be terminated and the project proposal will be deemed as rejected;

- c. Upon approval of the negotiated or renegotiated terms by the PPPSC, the PPPSC shall issue a resolution recommending to the Governor the acceptance of the negotiated or renegotiated terms and the signing of the Certificate of Successful Negotiations between the parties. The issuance of the joint certification commences the activities for the solicitation for comparative proposals;
- d. However, should negotiations not result to an agreement acceptable to both parties, the Governor, upon recommendation of the PPPSC, shall have the option to reject the proposal by informing the PSP in writing stating the grounds for rejection and thereafter may accept a new proposal from other PSPs, or decide to pursue the proposed activity through other PPP Modalities;

- e. Both parties may also agree in writing to suspend the negotiations at any stage prior to Competitive Challenge for reasons agreed upon by both parties. The agreement to suspend shall be signed by the Governor upon the recommendation of the PPPSC and the authorized representative of the PSP. The resumption of the negotiations, however, shall be subject to the submission of the most recent and updated eligibility requirements for the project.

STAGE THREE – Competitive Challenge or Swiss Challenge

Section 6. Competitive Challenge or Swiss Challenge

Competitive Challenge or Swiss Challenge is an alternative selection process wherein third parties or challengers shall be invited. The Private Sector Proponent (PSP) who submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offer given by comparative PSPs.

In all cases where the PSP submits an unsolicited proposal to the Province for a PPP project, the negotiated terms shall be subjected to a competitive challenge wherein other PSPs shall be invited to submit challenge proposals. This is to ensure that the PPP projects are entered into under a transparent and competitive process that promotes accountability in government transactions and will yield greater benefits to the Province and its constituents.

Section 7. Procedure for Competitive Challenge

Upon the issuance of the joint certification of successful negotiations, the PPP Project shall be subjected to a competitive challenge as follows:

- a. The PPPIC shall prepare the tender documents consistent with the terms and conditions embodied in the successful negotiations as provided in Stage Two. The eligibility criteria used in determining the eligibility of the PSP shall be the same as those stated in the tender documents. 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.
- b. The Governor shall approve all selection/tender documents including the draft contract before the publication of the invitation to apply for and to submit comparative proposal.

Section 8. Selection/Tender Documents

The PPPIC shall prepare the selection/tender documents which shall include the following:

- a. Instructions to PSPs;
- b. Minimum Design, Performance Standards/Specifications, and other Financial and Economic Parameters, where applicable, among others;
- c. Pre-feasibility Study or Project Study;
- d. Draft PPP Contract reflecting the terms and conditions in undertaking the PPP activity including, among others, the contractual obligations of the contracting parties and the ownership of the PPP activity, project, or property after the termination of the PPP Agreement;
- e. Checklist of eligibility reflecting the required information/requirements 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 PPPSC that may be pertinent or applicable to the PPP activity.

Section 9. Instructions to Private Sector Participants (PSPs)

The instructions to PSPs, 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 and objectives of the PPP activity;
- 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. Amount and form of proposal security and proposal security validity period;
- d. Milestones;
- e. Method, parameters and criteria for the evaluation of the proposals;
- f. Minimum amount of equity of the prospective PSP;
- g. Revenue sharing arrangement, if any;
- h. Statement that the competitive challenge is confined to a financial challenge, i.e., the challengers must accept the technical aspects of the Project as agreed upon between the Province and the PSP-OP; and
- i. Nationality and ownership requirements as required by law.

Section 10. Minimum Designs, Performance Standards/Specifications and Economic Parameters

Minimum design and performance standards/specifications, including appropriate environmental standards by the Department of Environment and Natural Resources (DENR), and standards by concerned regulatory agencies as may be pertinent or applicable to the PPP activity, shall be clearly defined and shall refer more to the desired quantity and quality of the outputs of the PPP activity and should state that non-conformity with any of these minimum requirements shall render the proposals as non-responsive. Likewise, for the purpose of evaluating proposals, the following economic parameters, among others and where applicable, shall be prescribed:

- a. Discount rate, foreign exchange rate and inflation factor;
- b. Maximum period of project construction;
- c. Fixed term and price indices to be used in the adjustments of tolls/fees/rentals/charges, if applicable; and
- d. Minimum period of repayment, if applicable.

Section 11. Draft PPP Contract

The draft contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities including specific undertakings to be provided by the Province relative to the PPP activity, if any. Specifically, the draft contract shall also contain provisions on the following matters, as far as practicable:

1. The date on which the agreement is established, executed, and considered effective;
2. The names, addresses and identification of the parties, including the type of business of each member of the PPP;
3. If applicable, the name under which the PPP or Joint Venture (JV) will do business;
4. The principal place of business of the PSP;
5. If applicable, clearly defined purpose and objective/s, contractual/agreement mode (formation of a single-purpose project company or vehicle [SPV]; whether JV Company/Corporate JV or contractual JV, in the case of a JV), term and scope of the PPP or JV. The term should be a fixed period not to exceed a maximum of fifty (50) years for the participation of the Province as determined by the attainment of the Province's objective in pursuing the investment;
6. Total cost of the PPP activity, project specifications and features;
7. If applicable, the relationship between the parties, management roles of each party in the PPP or JV activity, and a statement that the parties are actually co-venturers for the project in the case of a JV, whether or not the contract is in the name of all members;
8. The establishment of a fund by the parties to finance the work, together with the amount, type (cash, assets, etc.), and valuation of committed contributions of each party and when such contributions will be made, with the fund being deposited in a special bank account under dual control and all progress payments and other revenues being deposited in such account. If the equity/contribution of the private sector is to be borrowed, a statement that there shall be no government guarantee for said loan;
9. 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;
10. A declaration of the participation of the parties and percentage in which profits and losses are shared, in proportion to the contributions of the party to the working fund. The amount of contribution of funds by the parties can be increased or decreased, depending on the contributions of equipment or expertise;
11. If applicable, specified termination/liquidation of the SPV or JV Company, buy-out provisions, and details on the transfer of ownership of the JV activity/facility including provisions on what happens to the JV's assets after the expiration of the JV agreement or end of the JV period, in the case of a JV. If equity other than cash is to be contributed, a statement as to how the property will be valued and the ownership of the property during and after the effectivity of the JV Agreement;
12. In the case of a JV, designation of one of the parties as general manager of the project, with authority to bind the JV Company/Partnership/Parties; or, in the alternative, the constitution of a management committee, with a provision for

remuneration. Management duties, other duties of the co-venturers and procedures to be followed in dealing with unusual situations or problems that may develop should be specified;

13. Implementation milestones, regular meeting schedules, financial and periodic PPP or JV and progress reporting procedure;
14. Establishment of a bank account, and the appointment of a chartered accountant and lawyer;
15. Provisions for the acquisition of licenses in the name of the SPV, JV or each co-venturer, as required;
16. Type of insurance carried by the PSP or JV and clearly defined liabilities to be insured against by each participant;
17. Definition of items which are to be considered as costs to the JV for the purpose of determining profit or loss and a description of items which are not reimbursable to members of the JV and specified division of the profits and, risks and losses, in the case of a JV;
18. Confidentiality of trade information passed between the co-venturers;
19. Ownership or retention of patents, technology, and consultant reports;
20. Performance security requirements of the project and the bonding obligations of the PSP or co-venturers;
21. Undivided pro-rata interests held by the co-venturers on all assets of the JV, in the case of a JV;
22. Restrictions regarding assignment of PSP's undivided pro-rata interests in assets of the JV, in case of a JV;
23. Cost recovery scheme, including payment to the province 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 how and who will determine/select the asset;
24. Indemnification and liquidated damages;
25. Performance and warranty bonds;
26. Minimum insurance coverage;
27. Acceptance tests and procedures;
28. Validity of the performance security, warranty period and procedures;
29. Grounds for and effects of contract termination/default including modes for settling disputes, procedure for handling guarantees, defects and insurance after termination, and 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 PPP or JV contract/agreement;

30. The manner and procedures for the resolution of warranty against corruption;
31. Compliance with all other laws, rules and regulations;
32. Procedure and/or period for withdrawal by the Province of its contribution to the JV, or exit divestment by the Province of its interest in the JV, and substitution or addition of parties;
33. Payout of funds; and
34. Alternative Dispute Resolution (ADR) mechanisms to avoid management impasses that may produce deadlock or litigation.

Section 12. Invitation to Submit Expression of Interest to Submit Comparative Proposal

Within thirty (30) calendar days upon issuance of the joint certification as referred to in Stage Two above, the PPPSC shall publish the invitation to submit Expression of Interest to submit comparative proposals. The Invitation shall be advertised once in a national newspaper of general circulation, and posted continuously for a period of seven (7) calendar days, starting on date of advertisement, at the following: (a) Website of the Provincial Government of Bataan; (b) Website of the Bataan’s service provider, if any; and (c) any conspicuous place within the premises of the Province. The publication may carry with it a statement that if no expression of interest from any PSP is submitted within the prescribed period or date specified in the invitation, Stage Three shall be deemed terminated and the Project shall be awarded to the PSP-OP.

Section 13. Proposal Security of the Original Proponent

The original proponent shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.

Proposal security in the form as required by the Province 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 Government Service Insurance System (GSIS) or an entity duly registered and recognized by the Office of the Insurance Commissioner, or any combination thereof payable to the Province in accordance with the following schedule:

Total Contribution of the Private Sector Participant as Estimated by the Government Entity	Required Proposal Security
Less than PhP 5.0 Billion	2.0% of the private sector participant’s contribution as estimated by the Province
PhP 5.0 Billion to less than PhP 10.0 Billion	1.5% of the private sector participant’s contribution as estimated by the Province
PhP 10.0 Billion and more	1.0% of the private sector participant’s contribution as estimated by the Province

The required proposal security shall be valid for a reasonable period, but in no case beyond two hundred forty (240) calendar days following the opening of the proposals.

Section 14. Eligibility of PSPs and Procedure in the Submission, Receipt, Opening and Evaluation of Comparative Proposals

Prospective comparative PSPs or challengers shall be given sufficient time from the publication of the invitation to submit their comparative proposals.

The procedure for the determination of eligibility of comparative PSPs, issuance of supplemental competitive selection bulletins and pre-selection conferences, submission and receipt of proposals, opening and evaluation of proposals shall follow the procedure stipulated below:

A. Qualification of Private Sector Participants

1. **Who May Participate.** Any individual, partnership, corporation or firm, or consortium, whether local or foreign, subject to the limitations set herein.
2. **Eligibility Requirements.** The PSP shall submit the eligibility documents provided in Stage One above.
3. **Eligible and Ineligible.** The Province, through the PPPIC, shall within fifteen (15) calendar days after the deadline set for submission of the eligibility documents, complete the evaluation of the eligibility documents of the prospective PSPs, and determine which among them are "eligible" and "ineligible". Accordingly, the PPPIC shall duly inform the eligible PSP within fifteen (15) days after determination thereof. Ineligible PSP shall be similarly given notice of such ineligibility, stating the grounds for ineligibility within the same period.
4. **Issuance of Tender Documents.** The Province shall make available the related competitive selection documents to all eligible PSP as soon as practicable to provide prospective PSPs ample time to examine the same and to prepare their respective proposals prior to the date of opening of the proposals.

B. Supplemental Competitive Selection Bulletins and Pre-Selection Conferences

1. **Responsibility of the PSP.** The prospective PSP shall be solely responsible for having taken all the necessary steps to carefully examine and acquaint himself 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 Province concerned shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective private sector participant out of data furnished or indicated in the competitive selection documents.
2. **Supplemental Notices.** A prospective PSP may submit a written request to the Province 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 Province shall be issued in the form of a Supplemental Notice and furnished to all prospective PSPs. The Province may also issue Supplemental Notices to all prospective private sector participants at any time for purposes of clarifying any provisions of the selection documents, provided that the same are issued within a reasonable period to allow all private sector participants to consider the same in the preparation of their proposals. Receipt of all Supplemental Notices shall be duly acknowledged by each private sector participants prior to the submission of his proposal and shall be so indicated in the proposal.
3. **Pre-Selection Conference.** For every project activity, a pre-selection conference shall be conducted by the Province at least fifteen (15) calendar days before the

deadline for the submission of proposals. Notwithstanding, the Province may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed project activity, provided that the principles of transparency, competition and accountability are observed.

C. Submission and Receipt of Proposals

Requirements for Submission of Proposals. Private sector participants shall be required to submit their proposals on or before the deadline stipulated in the “Instructions to Participants”. For eligible participants, proposals shall be submitted in two (2) separate sealed envelopes, the first being the technical proposal and the second, the financial proposal.

- a. The technical proposal shall contain the following, if 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 project activity;
 - vi. Proposal security in the form as required by the Province 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 Government Service Insurance System (GSIS) or an entity duly registered and recognized by the Office of the Insurance Commissioner, or any combination thereof payable to the Province in accordance with the following schedule:

Total Contribution of the Private Sector Participant as Estimated by the Government Entity	Required Proposal Security
Less than PhP 5.0 Billion	2.0% of the private sector participant’s contribution as estimated by the Province
PhP 5.0 Billion to less than PhP 10.0 Billion	1.5% of the private sector participant’s contribution as estimated by the Province
PhP 10.0 Billion and more	1.0% of the private sector participant’s contribution as estimated by the Province

The required proposal security shall be valid for a reasonable period, but in no case beyond two hundred forty (240) calendar days following the opening of the proposal

- vii. Other documents to support the private sector participant’s technical proposal, as may be required by the Province.

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 project activity, operation and maintenance cost, the amount of equity to be infused and debt to be obtained for the project, sources of financing, and all other related costs; and
- iii. Financial proposal corresponding to the parameters set by the Province.

Thirty percent (30%) of the equity to be provided by the private sector entity should as much as possible come from its own resources and not borrowed.

The Province is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific project activity.

- 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.

D. 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 PPPSC shall open only the first envelope containing technical proposal and ascertain: (a) whether the same is complete in terms of the data/information required 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.

Only those proposals that have been determined to have positively passed the evaluation of the technical proposal shall be qualified and considered for the evaluation of the financial proposal.

3. **Opening of the envelope for the financial proposal.** Only the financial proposals of private sector participants who passed the evaluation described in the immediately preceding paragraph, shall be opened for further evaluation. The financial proposals tendered by private sector participants who failed the technical proposal evaluation in the immediately preceding paragraph, shall not be considered further, and shall be returned unopened, together with a notice stating the reasons for disqualification from further consideration.
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 proposal of the original Proponent. The proposed financing plan must show that the same adequately meets the costs relative to the project activity. The evaluation of financial proposals shall be completed by the PPPSC within thirty

(30) calendar days from the opening of the financial proposal.

5. **Simultaneous evaluation of the technical and financial proposals.** Subject to the determination of the PPPSC wherein the nature of the project activity 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 sixty (60) calendar days from the date the proposals are opened.

Section 15. Evaluation of Proposals

In the evaluation of proposals, the best offer shall be determined to include the original proposal of the PSP. If the Province determines that an offer made by a comparative PSP or challenger other than the negotiated terms with Private Sector Original Proponent (PSP-OP) is superior or more advantageous to the Province than the original proposal, the PSP-OP shall be given the right to match such superior or more advantageous offer. The PSP-OP shall be notified in writing of such superior or more advantageous offer by a comparative PSP or challenger containing an invitation to match or better such superior or more advantageous offer within a period not exceeding thirty (30) calendar days.

Should no matching offer be received within the stated period, the PPP project shall be awarded to the comparative PSP submitting the most advantageous proposal. In which case, the challenger shall reimburse the PSP-OP of its costs in preparing the complete documents, provided, such amount and the corresponding receipts and vouchers were submitted to the PPPSC and made known to all challengers prior to the submission of their technical and financial proposals.

If a matching offer is received within the prescribed period, the PPP project shall be awarded to the PSP-OP. If no comparative proposal is received by the Province or if no expression of interest is submitted to the PPPSC within the prescribed and published period, the PPP project shall be immediately awarded to the PSP-OP.

Section 16. Recommendation of Award by the PPPSC

Within thirty (30) calendar days from the date of completion of the Competitive Challenge, the PPPSC shall submit the recommendation of award to the Governor.

All PPP Contracts must be signed by the Governor with prior authorization by the Sangguniang Panlalawigan.

Section 17. Prior Public Consultation

In all PPP projects, prior public consultations shall be conducted explaining the PPP Project, PPP Contract, accountability mechanisms built into the PPP arrangement, the benefits and costs of the PPP Project, among other relevant matters.

Section 18. Decision to Award

Within fifteen (15) calendar days from receipt of the recommendation of the PPPSC to award the PPP project, the Governor shall endorse the same to the Sangguniang Panlalawigan for its immediate consideration, approval and authority. Within fifteen (15) working days upon receipt of the Sangguniang Panlalawigan Resolution giving the Governor the authority to sign and award

the PPP project, the "Notice of Award" to the winning private sector participant shall be issued by the Office of the Governor.

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

The "Notice of Award" to be issued by the Province, shall contain among others, an instruction to the winning private sector participant to comply with conditions precedent for the execution of the Project 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 Province.

Section 19. Conditions Precedent and Performance Security

Conditions precedent for the execution of the contract shall include, but not limited to, the posting of a performance security in favor of the Province. The Province 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 bidders bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand issued by Government Service Insurance System (GSIS) or by a surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:

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

In case the Performance Security posted is not in the form of cash, the same should be valid or automatically renewed during the entire project term and one year thereafter. A notarized Affidavit of Undertaking on the part of the proponent to automatically renew the said bond every year and one (1) year after the project period shall be attached.

Failure to comply with the conditions precedent for the execution of the contract within the prescribed thirty (30)-calendar day period will result in confiscation of the proposal security. Within fifteen (15) calendar days from receipt of the compliance statements from the winning private sector participant, the Province shall determine the sufficiency of the same, and notify the winning private sector participant accordingly.

Section 20. Post-Award Conference

Immediately after the PPP contract is awarded, the PPPIC shall call a post-award conference to ensure that the Province and PSP have a clear and mutual understanding of the terms and conditions of the PPP contract, and to determine the responsibilities of parties. Notice of the post-award conference shall be sent by the PPPIC at least five (5) working days before the scheduled date thereof.

The post-award conference shall be attended by the PPPIC and members of the technical working group, such employees and contractors of the Province who shall be involved in the management of the PPP contract, and key personnel of the PSP.

The PPPIC Head shall preside at the post-award conference, and shall appoint a secretary of the conference from the provincial personnel present.

The minutes of the conference shall be sent to each participant within five (5) days of the adjournment of the conference.

Section 21. Execution of the Project Agreement

The authorized signatories of the winning PSP and the Province, shall execute and sign the Project Agreement, subject to the availability of both parties, within thirty (30) calendar days after the winning private sector participant notifies the Province of its compliance to the conditions or requirements precedent to the execution of the contract as provided above, provided that all contracts must be signed by the Head of the Province with prior authorization by the Sangguniang Panlalawigan.

Consistent with Article 1159 of the New Civil Code, said Agreement is considered the law between the parties, and the parties shall perform their respective prestations, obligations, and undertakings thereunder with utmost good faith, with a view to attaining the objective thereof.

In the event of refusal, inability or failure of the winning PSP to enter into contract with the Province, within the time provided therefore, said PSP shall forfeit its proposal security. In such event, the Province 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 contract with the Province, its proposal security shall likewise be forfeited and the Province shall consider the next ranked complying proposal, and so on, until a contract shall have been entered into.

Section 22. Validity and Return of Proposal and Performance Securities

The execution of the Project 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 two hundred forty (240) calendar days following the opening of the proposals. Proposal securities shall be returned to the winning bidder and unsuccessful private sector participants upon signing of the Project Agreement by the winning private sector participant.

The performance security shall be valid within the period of one (1) year after the expiration of the Project Agreement or end of the Project period, or as may be stipulated in the Project Agreement. Upon certification by the Province that there are no claims filed against the private sector partner after the expiration of the Project Agreement or end of the project period, the performance security shall be released by the former. As may be agreed upon in the Project Agreement, a portion of the performance security shall be released upon compliance with corresponding milestones.

Section 23. Conditions Precedent for the Issuance of Notice to Proceed

The parties shall comply with the following conditions precedent within ninety (90) calendar days from the signing date:

- (a) Securing of all relevant Permits and Licenses;
- (b) Submission of all Designs, Plans and other documents by the PSP to the PGB, and the PGB's approval of the same;

- (c) Submission of the list of contractor/s of the PSP for the project, and the PGB's approval of the same if only one name is submitted, or after evaluation of the contractor's qualification of the PGB's selected contractor if there is more than one contractor in the list submitted.

In case the PSP submits the documents stated in (a), (b) and (c) with less than fifteen (15) calendar days remaining in the given period, the PGB shall have an additional fifteen (15) calendar days to evaluate the PSP's submission for approval.

- (d) Creation of Project Management and Monitoring Team;
- (e) Submission of the Proposed Implementation Schedule by the PSP; and
- (f) Submission of other requirements as agreed upon during the Post Award Conference.

If upon the lapse of the ninety (90)-day period, the Parties are unable to, or have not fully complied with all the Conditions Precedent, they shall either: (a) agree to extend the period of compliance; or (b) waive fulfillment of the conditions precedent, as may be applicable. In both instances, neither party shall be considered in default.


Section 24. Notice to Proceed/Commence Implementation

A notice to proceed/commence implementation or similar certification shall be issued to the winning PSP after the signing of the contract and upon compliance to the conditions precedent as stated in Section 23.

Section 25. Effectivity

These Revised Detailed Guidelines for the Submission, Detailed Negotiation and Competitive/Swiss Challenge of Unsolicited Proposals for Public-Private Partnership Projects (PPP) shall take effect immediately and shall be posted in the Capitol Compound for a period not less than thirty (30) days. All previously approved Guidelines inconsistent with the provisions of this Executive Order are hereby deemed superseded, repealed and/or amended accordingly.

DONE in the City of Balanga, Province of Bataan this 14th day of December 2022.


JOSE ENRIQUE S. GARCIA III
Governor