

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

- 1.0 Legal Basis. These Guidelines are 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). The Office of the Government Corporate Counsel (OGCC), Department of Justice (DOJ), GOCCs and the private sector have also been consulted in the formulation of the Guidelines.

- 2.0 Principles. The Government shall enter into a JV arrangement consistent with the following principles:
 - 2.1 The creation of the JV should not prevent potential players from profitably entering into business venture/market.
 - 2.2 The cost of producing the particular product, activity, or service should be efficient or potentially efficient towards earning potential profits for government and the market player/private sector partner.
 - 2.3 There should be no barriers for the government's withdrawal of its contribution to the JV investment.
 - 2.4 The role of government as regulator of the business of the JV should be clearly and explicitly delineated from its role as implementer of the business to avoid conflicts of interest.
 - 2.5 As differentiated from projects procured under Official Development Assistance (ODA), Build Operate and Transfer Law (BOT) and Government Procurement Reform Act (GPRA) where ownership of the asset/business will stay with the government, JV Agreements allow the private sector to take over the undertaking of the projects in its entirety after the government divests itself of any interest in the JV.
 - 2.6 Accountability for the JV project ultimately devolves on the Head of the Government Entity involved in the JV Agreements and the implementation of the JV project. The private parties dealing with the Government are similarly held accountable for all their actions relative thereto.

- 3.0 Purpose. These Guidelines are being formulated to meet the following objectives:
 - 3.1 To prescribe the rules, guidelines and procedures forging JV Agreements between government corporations as defined under section 4.0 below, and private entities;
 - 3.2 To encourage pooling of resources and expertise between government and private sector 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 process.

4.0 Coverage.

4.1 These guidelines shall apply to all government-owned and/or controlled corporations (GOCCs), government corporate entities (GCEs), government instrumentalities with corporate powers (GICPs), government financial institutions (GFIs), state universities and colleges (SUCs), as defined under Section 5.0 and which are expressly authorized by law or their respective charters to enter into JV Agreements. Local Government Units (LGUs) are not covered by these Guidelines.

4.2 Transactions of GFIs in the ordinary course of business as part of their normal and ordinary banking, financial or portfolio management operations shall not be covered by the provisions of these Guidelines.

5.0 Definition of Terms.

5.1 *Government Entity.* Refers to GOCCs, GCEs, GICPs, SUCs, and GFIs, created by law, executive issuances and by the Corporation Code, among others.

5.2 *Government Corporate Entity (GCE) and Government Instrumentality with Corporate Powers (GICP).* Refer to entities exercising both government and corporate powers, but which do not fall under the definition of a GOCC under the Administrative Code.

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

5.4 *Joint Venture (JV).* A contractual arrangement whereby a private sector entity or a group of private sector entities on one hand, and a Government Entity or a group of Government Entities on the other hand, contribute money/capital, services, assets (including equipment, land or intellectual property), or a combination of any or all of the foregoing. Parties to a JV share risks to jointly undertake an investment activity in order to accomplish a specific, limited or special goal or purpose with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transferring ownership of the investment activity to the private sector under competitive market conditions. It involves a community or pooling of interests in the performance of the service, function, business or activity, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing both profits and losses, subject to agreement by the parties. A JV may be a contractual JV, or a corporate JV.

5.5 *JV Company.* An entity registered with the Securities and Exchange Commission (SEC) by the JV partners that shall perform the primary functions and obligations of the JV as stipulated under the JV Agreement. The JV Company shall possess the characteristics stipulated under these Guidelines.

- 5.6 *Contractual JV.* A legal and binding agreement under which the JV partners shall perform the primary functions and obligations under the JV Agreement without forming a JV Company.
- 5.7 *Competitive Selection.* Refers to a process of selection by a Government Entity of a JV partner(s), based on transparent criteria, which should not constrain or limit competition, and is open to participation by any interested and qualified private entity.
- 5.8 *Competitive Challenge.* An alternative selection process wherein third parties shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the private sector entity that submitted the unsolicited proposal is accorded the right to match any superior offers given by a comparative private sector participant.
- 5.9 *Negotiated Projects.* Refers to instances where the desired project is the result of an unsolicited proposal from a private sector proponent or, if the government has failed to identify an eligible private sector partner for a desired activity after subjecting the same to a competitive selection.
- 5.10 *Unsolicited Proposal.* Refer to project proposals submitted by the private sector to undertake Infrastructure or Development Projects without a formal solicitation issued by a Government Entity. These projects may be entered into by the Government Entity on a negotiated basis, provided, however, that there shall be no direct government guarantees for JVs resulting from an unsolicited proposal.

6.0 General Guidelines.

- 6.1 JV Agreements entered into shall consider the following parameters:
- a. Investments or JV Agreements must be made only in activities directly and immediately related to and in furtherance of the primary corporate purpose, mandate, or charter of the investing Government Entity;
 - b. The JV should be clear in its intent to undertake a specific activity that is responsive to national development goals and objectives; and
 - c. The JV should not tend to crowd out private sector initiative in a particular industry or sector. The DTI, BOI and NEDA shall issue a negative list of industries or sectors on a periodic basis where the formation of a JV is likely to crowd out private sector initiative.
- 6.2 The preferred mode of implementing a JV Agreement shall be through a JV Company to be formed by the Government Entity and the private sector entity, under the following parameters:
- a. The JV Company shall be registered as a stock corporation in accordance with the provisions of the Corporation Code, as amended, and the prevailing and applicable rules and regulations promulgated by the SEC;

- b. Ownership and nationality requirements under the Constitution and other pertinent laws should be complied with; provided, that the Government Entity's equity contribution in the JV Company shall only be less than fifty percent (50%) of the outstanding capital stock of the latter. Government's contribution may be through assets (including money, equipment, land, intellectual property or any thing of value) which shall be subject to a 3rd party independent valuation. For as long as the Government Entity is involved in the JV undertaking, the private sector party shall not sell/transfer its interest in the JV Company without the express written consent of the Government Entity;
- c. The Government Entity shall be represented in the Board of the JV Company in proportion to its investment;
- d. The JV Company shall be permitted to derive income from the activities authorized under the JV Agreement thereof during the term thereof. The Government Entity and the private sector partner shall be entitled to receive dividends and/or any other form of share from net profits earned by the JV Company in accordance with the JV Agreement. The determination of net profits shall be subject to a verification process for allowable operations and management expenses specified therein;
- e. The JV Company is encouraged to stipulate a fixed period for the participation of the Government Entity. This period shall be determined by the attainment of the Government Entity's objective in pursuing the investment, or when the private sector partner is projected to be able to proceed with the JV activity without further need of government support. Further, the withdrawal of the Government Entity's capital contribution before the expiration of the said period is likewise encouraged; provided, that the divestment is made through competitive selection, initial public offering (IPO), or any other means that promote competition, fairness and transparency. The foregoing factors shall be accorded greater importance than the financial impact or financial benefit of the proposed investment to the Government Entity concerned.
- f. In drafting the incorporation documents of the JV Company and other contracts governing the relationship between the Government Entity and the private sector participant, the parties should consider the following guidelines: (1) clearly defined business objectives; (2) specified degree of participation and the management roles of each party in the JV Activity; (3) defined contribution of capital and ownership rights to property; (4) specified division of the profits and losses; (5) identified dispute mechanism to avoid management impasses that may produce deadlock or litigation; (6) specified termination/liquidation of the JV Company and indicate buy-out provisions; (7) specified confidentiality terms; and (8) stipulated indemnification mechanisms.

6.3 If the formation of a JV Company is not the best mode to implement a JV Activity as determined by the Government Entity, it may opt to implement the JV project through a contractual agreement. Prior to entering into a Contractual JV, the

parameters similar to those governing JV Companies under Section 6.2 (f) herein are to be observed.

7.0 Process for Entering into JV Agreements. Prior to entering into a JV Agreement, the proposed JV activity shall be approved in principle, in accordance with the procedure stipulated below:

7.1 Approval in Principle by the Head of a Government Entity. For JV Agreements regardless of cost, the Head of the Government Entity concerned shall have the authority to approve the proposed JV Agreement in principle, subject to the compliance to the conditions listed hereunder:

- a. Justification that the JV activity is within the mandate and charter of the Government Entity concerned as certified and notarized by the head of the Government Entity;
- b. Clear description of the proposed investment, including its activities, objectives, source(s) of funding, extent and nature of the proposed participation of the investing Government Entity, period of participation of the Government Entity, and the relevant terms and conditions of the undertaking under the proposed JV Agreement, among others;
- c. Justification as to the responsiveness and relative priority of the proposed JV activity in meeting national or specific development goals and objectives; and
- d. All other components of the JV Agreement, including the technical, financial, legal and other aspects in determining the over-all feasibility of the proposed JV activity, among others, shall be established.

7.2 For JV activity that will require national government undertakings, subsidies or guarantees, clearance/approval of the Department of Finance (DOF) and/or the Department of Budget and Management (DBM), as the case may be, shall be secured.

7.3 Modes of Selecting a JV Partner

- a. Competitive Selection – The process for the conduct of Competitive Selection, contract award and final approval shall be stipulated under Annex A of these guidelines. In the conduct of the Competitive Selection process, the Government Entity shall ensure the following:
 - i. all activities during the competitive selection, award, and final approval are conducted in a transparent and competitive process that promotes accountability and efficiency; and
 - ii. the competitive selection parameters are clearly defined and shall include the parameters as approved by the Head of the Government Entity.
- b. Negotiated Agreements – Negotiated agreements may be entered under the following circumstances:

- i. When a Government Entity receives an unsolicited proposal;
- ii. When there is failure of competition when no proposals are received or no private sector participant is found qualified and the Government Entity decides to seek out a JV partner; and
- iii. When there is failure of competition, i.e., there is only a single interested party remaining as defined under VIII(6) of Annex A.

In the case of subsection b(iii) above, the procedures outlined in Annex B (Limited Negotiation Procedures in case of Failed Competitive Selection under Section 6 of Annex "A" of the Guidelines) shall apply. Subsections b(i) and b(ii) shall be governed by the rules under Annex C (Detailed Guidelines for Competitive Challenge Type Procedure Public-Private Joint Ventures).

7.4 Deviations and Amendments to the JV Agreement. The concerned Government Entity shall not proceed with the award and signing of the contract 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 7.1 and 7.2 hereof. The Head of the Government Entity concerned 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 to a JV Agreement after award and signing of contract, which does not materially affect the substance of the competitive selection, shall be subjected to the requirements stipulated under Sections 7.1 and 7.2 hereof. Non-compliance with the corresponding approval process stated shall render the amendment null and void.

8.0 Reporting Requirement. During the course of implementation of the JV Agreement, the concerned Government Entity shall submit an annual report on the status of its implementation during a current year to the Department of Finance, for monitoring purposes. The annual report shall be submitted within the first quarter of the succeeding year. The report shall use current standards in the production of corporate 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 of three (3) years starting from the year the annual report is issued.

Pursuant to Section 10 of EO No. 423, the heads of government entities as defined in Section 5 of these Guidelines, shall submit to NEDA the salient features and a copy of JV Agreements amounting to at least Three Hundred Million Pesos (P300 Million) together with all documents required thereto for monitoring of compliance with relevant policies, procedures and conditions for approval of the JV undertaking.

- 9.0 Amendments. These Guidelines may be amended and/or modified from time to time by NEDA through its Director-General, in consultation with the GPPB and the OGCC.
- 10.0 Separability. If any provision of these Guidelines is held or declared void or unenforceable by final judgment of a court of competent jurisdiction, the other provisions unaffected thereby shall remain in full force and effect.
- 11.0 Effectivity. These Guidelines and any subsequent amendment or modification shall take effect fifteen (15) calendar days from the date of its publication in a newspaper of general circulation or the Official Gazette or other modes legally acceptable, and a copy of it shall be submitted to the Office of the National Administrative Registry (ONAR) and the UP Law Center.

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 the Government Entity shall create a JV-SC for purposes of selecting a private partner for a proposed JV. The JV-SC shall be composed of the following:

Regular Members (voting):

- a. Chairman – At least a third ranking officer of the Government Entity;
- b. Secretary – representative from the Government Entity’s statutory counsel (OGCC or the OSG) or any legal officer of the concerned Government Entity;
- c. One (1) officer knowledgeable in finance;
- d. One (1) officer knowledgeable in management/operation of the JV;
- e. One (1) officer knowledgeable with the technical aspects or requirements of the project, duly designated by the Head of the Government Entity concerned on a project-to-project basis, and
- f. One (1) representative from the National Economic and Development Authority.

Provisional Members (non-voting):

- g. One (1) technical officer from a concerned regulatory body, when applicable, knowledgeable with the project at hand, to be invited by the Government Entity concerned on a project-to-project basis; and
- h. Three (3) Observers –
 - I. 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
 - II. Observer – One (1) representative from the Commission on Audit (COA).

Observers will be notified at least two (2) calendar days before the following stages: pre-selection conference, opening of technical and financial proposals, evaluation of technical and financial proposals, contract award, and special meetings of the JV-SC. The absence of observers will not nullify the JV-SC proceedings, provided that they have been duly invited in writing.

2. Responsibilities. The JV-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the selection/tender documents, publication of the invitation to apply for eligibility and submit 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 contract.

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 concerned shall prepare the selection/tender documents, which shall include the following:
 - a. Instructions to Private Sector Participants;
 - b. Minimum Design, Performance Standards/Specifications, and other Financial and Economic Parameters, where applicable, among others;
 - c. Feasibility Study or a Business Case/Pre-feasibility Study of the Project;
 - d. Draft Contract reflecting the terms and conditions in undertaking the JV activity, including, among others, the contractual obligations of the contracting parties;
 - 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;
 - g. Current applicable rules and regulations of the BSP, as applicable;
 - h. Other documents as may be required by the Government Entity concerned.

The documents enumerated above are just for guidance/reference. The Government Entity concerned is given full discretion to select the appropriate provisions as they assess suitable for a particular contract/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 and objectives of the JV 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 JV partner;
 - g. Requirements of concerned regulatory bodies;
 - h. Current rules and regulations of the BSP;
 - i. Revenue sharing arrangement, if any; and
 - j. Nationality and ownership requirements as, required by law.
3. Minimum Designs, Performance Standards/Specifications and Economic Parameters. Minimum design and performance standards/specifications, including appropriate environmental standards by the DENR, shall be clearly defined and shall refer more to

the desired quantity and quality of the outputs of the JV activity and should state that non-conformity with any of these minimum requirements shall render the proposals as non-responsive. Likewise, for the purpose of evaluating proposals, the following economic parameters, among others and where applicable, shall be prescribed:

- 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.
4. Draft Contract. The draft contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities including specific Government Undertakings to be provided by the Government Entity relative to the JV activity, if any. Specifically, the draft contract shall also contain provisions on the following matters, as far as practicable:
- i. the date on which the agreement is established, executed, and considered effective;
 - ii. the names, addresses and identification of the parties, including the type of business of each member of the JV;
 - iii. the name under which the JV will do business;
 - iv. the principal place of business of the JV;
 - v. purpose, term and scope of the JV;
 - vi. project specifications and features;
 - vii. a statement that the parties are actually co-venturers for the project, whether or not the contract is in the name of all members;
 - viii. the establishment of a fund by the parties to finance the work, together with the amounts to be contributed by each party, 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;
 - ix. procedure for additional capital infusions, if required;
 - x. 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 parties can be increased or decreased, depending on the contributions of equipment or expertise;
 - xi. 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;
 - xii. designation of one of the parties as general manager of the project, with authority to bind the JV Company/Partnership/Parties; or, in the alternative, the constitution of a management committee, with a provision for remuneration. Management duties, other duties of the co-venturers and procedures to be followed in dealing with unusual situations or problems that may develop, should be specified;
 - xiii. implementation milestones, regular meeting schedules, financial and periodic JV and progress reporting procedure;
 - xiv. establishment of a JV bank account, and the appointment of a chartered accountant and lawyer;

- xv. provide for the acquisition of licenses in the name of the JV or each co-venturer, as required;
- xvi. type of insurance carried by the JV and clearly defined liabilities to be insured against by each participant;
- xvii. 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;
- xviii. confidentiality of trade information passed between the co-venturers;
- xix. ownership or retention of patents, technology, and consultant reports;
- xx. performance security requirements of the project and the bonding obligations of the co-venturers;
- xxi. undivided pro-rata interests held by the co-venturers on all assets of the JV;
- xxii. restriction regarding assignment of private sector participant's undivided pro-rata interests in assets of the JV;
- xxiii. cost recovery scheme;
- xxiv. indemnification and liquidated damages;
- xxv. performance and warranty bonds;
- xxvi. minimum insurance coverage;
- xxvii. acceptance tests and procedures;
- xxviii. warranty period and procedures;
- xxix. grounds for and effects of contract termination including modes for settling disputes and procedure for handling guarantees, defects, and insurance after termination;
- xxx. the manner and procedures for the resolution of warranty against corruption;
- xxxi. compliance with all other laws, rules and regulations;
- xxxii. procedure for exit of the Government Entity and Substitution or addition of parties;
- xxxiii. payout of funds; and
- xxxiv. disputes arbitration clause.

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

1. The IAESPs shall be advertised once in a newspaper of general nationwide circulation, and posted continuously for a period of seven (7) calendar days, starting on date of advertisement, at the following:
 - i. Website of the Government Entity concerned, if available;
 - ii. Website of the Government Entity's service provider, if any; and
 - iii. Any conspicuous place within the premises of the procuring 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 and to submit a proposal. Notwithstanding, the Government Entity concerned may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV activity. Provided, that the principles of transparency, competition and accountability are observed

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 activity requires a public utility franchise, the private sector participant must be duly registered with the SEC and be at least 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.

For JV activities 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 or concessionaire may be Filipino or foreign-owned, as maybe allowed under applicable laws, rules, and regulations.

- b. **Technical Requirements.** The prospective JV Partner must have completed a similar or related project costing at least 50% of the JV activity subject of the selection process within the relevant period as determined by the Government Entity. The prospective JV Partner shall submit a statement of all its ongoing and completed government and private contracts similar or related to the JV activity 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 activity.

The following documents shall be submitted by the prospective JV Partner:

- i. Audited financial statements for the past three calendar years. If the prospective JV Partner is Filipino, the audited financial statements to be submitted must be stamped “received” by the BIR or its duly accredited and authorized institutions; and
 - ii. Latest tax returns, if the JV Partner is Filipino.
 - d. In case of consortia, all member entities of the prospective JV Partner shall also submit the above legal, technical and financial eligibility requirements to determine the overall capability of the consortia for the JV undertaking.
 - e. **Acceptance of Criteria and Waiver of Rights to Enjoin JV Activity.** 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 concerned; and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the concerned Government Entity or its JV-SC 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,

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.

Financial capability shall be measured in terms of: i) proof of ability of the prospective JV Partner to provide a minimum amount of equity to the JV activity, 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 Activity; 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 BSP, attesting that the prospective JV Partner is one of its current clients, and is in good financial standing.

3. Eligible and Ineligible. 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 JV Partners, and determine which among them are “eligible” and “ineligible”. Accordingly, the JV-SC shall duly inform the eligible JV Partners 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 the Government Entity or his 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 the Government Entity or his 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 the Government Entity, or his 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.

4. Issuance of Tender Documents. The Government Entity concerned shall make available the related competitive selection documents to all eligible private sector participants as soon as practicable 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 time period from the last day of the issuance of tender documents to the date of opening of the proposal shall not exceed sixty (60) calendar days for JV Agreements costing more than Php 500 Million, and thirty (30) calendar days for JVAs costing less than Php 500 Million.

The proposal parameters for the proposed JV activity should be transparent and fair. It should not, in any way, be tailor-made for or meant to 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 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 Government Entity 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 private sector participant may submit a written request to the Government Entity concerned 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 concerned Government Entity shall be issued in the form of a Supplemental Notice, and furnished to all prospective private sector participants. The Government Entity concerned 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 is 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 JV activities involving government exposure of less than 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. For JV activities involving government exposure of at least Php 500 million, the pre-selection conference shall be conducted at least thirty (30) calendar days before the submission of proposals. Notwithstanding, the Government Entity concerned may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV activity. Provided, that the principles of transparency, competition and accountability are observed.

VI. Submission and Receipt of Proposals

1. 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, as applicable:
 - 1) compliance statements with regard to the technical parameters as stated in the tender documents;
 - 2) operational feasibility;
 - 3) technical soundness, including proposed project timeline;
 - 4) preliminary environmental assessment;
 - 5) cost and financing plan of the JV activity; and
 - 6) proposal security in accordance with the following schedule:

Cost of JV activity as estimated by the government entity	Required Proposal Security
Less than PhP 5.0 billion	2.0% of the cost of the JV activity
less than PhP 5.0 billion to less than PhP 10.0 billion	1.5% of the cost of the JV activity or PhP 100 million, whichever is higher
PhP 10.0 billion and more	1.0% of the cost of the JV activity or PhP 150 million, whichever is higher

- 7) other documents to support the private sector participant's technical proposal, as may be required by the concerned Government Entity.
- b. The financial proposal shall contain the following, as the case may be:
- 1) compliance statements with regard to the financial parameters stated in the tender documents
 - 2) proposed cost of the JV activity, operation and maintenance cost, the amount of equity to be infused and debt to be obtained for the project, sources of financing, and all other related costs
 - 3) financial proposal corresponding to the parameters set by the concerned Government Entity

Fifty percent (50%) 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 government entity concerned is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific JV activity.

2. 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 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 concerned shall complete the evaluation of the technical proposal within fifteen (15) calendar days from the date the proposals are opened. 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/technical 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 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 concerned. The proposed financing plan must show that the same adequately meets the costs relative to the JV activity. The ~~second-stage~~ evaluation of financial proposals shall be completed by the JV-SC of the concerned Government Entity within fifteen (15) calendar days.
5. Simultaneous evaluation of the technical and financial proposals. Subject to the determination of the Head of the Government Entity wherein the nature of the JV 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 thirty (30) calendar days from the date the proposals are opened.
6. Prescriptive periods. The periods stated for the evaluation of the technical and financial proposals are prescriptive. The Government Entity concerned may adjust said periods as may be appropriate for the nature, scope, size, and complexity of the proposed JV activity. Provided, that the principles of transparency, competition and accountability are observed.
7. Rejection of proposals. Non-compliance to the information required on either the first or second envelope shall be grounds for rejection of proposals.
8. 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.

9. Right to Reject All Proposals. The Government Entity concerned reserves the right to reject any or all proposals, waive any minor defects therein and accept the offer it deems most advantageous to the government.

VIII. Award and Approval of Contract

1. Recommendation to Award. Within seven (7) calendar days from the date the evaluation procedure adopted is completed, the JV-SC shall submit the recommendation of award to the Head of the Government Entity concerned. The JV-SC shall include as part of its recommendation, a detailed evaluation/assessment report on its decision regarding the evaluation of the proposals, and explain in clear terms 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 the 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 concerned, 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 fifteen (15) calendar days from receipt of the “Notice of Award”.

Failure to comply with the conditions precedent for the execution of the contract within the prescribed fifteen (15)-calendar day period will result in confiscation of the proposal security. Within seven (7)-calendar days from receipt of the compliance statements from the winning private sector participant, the Head of the Government Entity shall determine the sufficiency of the same, and notify the winning private sector participant accordingly.

4. Validity of Proposals/Return of Proposal Security. 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 unsuccessful private sector participants upon signing of the JV Agreement by the winning private sector participant.

5. Extension of Validity of Proposals. When an extension of validity of proposals is considered necessary, those who submitted proposals shall be requested 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.

Private sector participants shall have the right to refuse such an extension without forfeiting their proposal security. 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. Failure of Competitive Selection. There shall be a failure of competitive selection in any of the following instances:
 - a) If there is only a single party who submits eligibility documents within the deadline stipulated in Invitation to Apply for Eligibility and to Submit a Proposal;
 - b) If at anytime prior to the issuance of the notice of eligibility, should interested parties withdraw from the competitive selection process outlined in Annex "A", with the effect that there is only a single interested party remaining;
 - c) If there is only a single interested party who is determined to be eligible to submit a proposal;
 - d) If at anytime after the issuance of the notice of eligibility until deadline for submission of proposals, should eligible private sector participants withdraw from the competitive selection process outlined in Annex "A" with the effect that there is only a single eligible private sector participant remaining and eligible to submit a proposal;
 - e) If there is only a single eligible private sector participant that submits a proposal;
 - f) Should no Technical Proposal be rated "passed";
 - g) If there is be only a single eligible private sector participant whose Technical Proposal is rated "passed," but whose Financial Proposal does not meet the financial parameters set for in the Tender Documents: and
 - h) Should no Financial Proposal of any eligible private sector participant whose Technical Proposal is rated "passed", meets the financial parameters set forth in the Tender Documents.
 - i) No proposals were received or no private sector entity is found qualified for the JV undertaking.

In the event of a failed competitive selection brought about by instances stipulated under items a., b., c., d., e, g. and h. above, the JV Activity, at the sole decision of the Head of the Government Entity concerned, may be subjected to a competitive selection once more, or, may be the subject of limited negotiations in accordance with Annex "B" hereof. In the event of a failed competitive selection brought about by an instance stipulated under item f. above, a competitive selection shall be conducted again by the Government Entity. In the event of a failed competition brought about by item (i) above, the Head of Agency concerned may seek private sector entities for the JV undertaking subject to Annex "C" hereof.

7. Execution/Approval of the JV Agreement. The authorized signatory(ies) of the winning private sector participant and the Government Entity concerned, shall

execute and sign the JV Agreement, within seven (7) calendar days from receipt by the winning private sector participant of the notice referred to in VIII.3 above.

Consistent with Article 1159 of the New Civil Code, said JV 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. An original signed copy of the contract shall be submitted to:

1. The Office of the President;
2. NEDA;
3. Statutory Counsel;
4. GPPB; and
5. DOF in case of GOCCs and GFIs, and DBM in case of other entities;

In the event of refusal, inability or failure of the winning private sector participant to enter into contract with the Government Entity concerned, within the time provided therefore, said Government Entity shall forfeit its proposal security. In such event, the Government Entity concerned 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 Government, its proposal security shall likewise be forfeited and the Government Entity concerned shall consider the next ranked complying proposal, and so on, until a contract shall have been entered into. In the event that the concerned Government Entity is unable to execute the contract 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.

8. Other Approvals for Contract. 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 contract, or the implementation thereof, from government agencies or bodies including the Regulator, 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 activity 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 contract shall provide milestones in securing such other approvals required for the implementation of the contract.

Prior to the execution of the JV Agreement, the OGCC, OSG or other entity prescribed by law/issuances as the statutory counsel of GOCCs, GCEs and GICPs, shall issue the corresponding Counsel's Opinion.

9. Contract Effectivity. The contract shall be effective upon signing thereof by the Head of Government Entity and unless another date is stipulated therein.

IX. Appeals Mechanism

1. Decisions of the JV-SC with respect to conduct of the competitive selection process may be appealed in writing to the Head of the Government Entity concerned: Provided, however, that a prior motion for reconsideration should have been filed by the party concerned, and the same has been resolved 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 the Government Entity concerned, 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 one-half (1/2) of one percent (1%) of the project cost.

X. Final Approval

1. Contract Award and Final Approval. Subject to the charter of the Government Entity concerned, no further and higher approval is necessary, unless the same is required by Law to be acted upon by the President. In which case, the procedure stipulated under Section 6 (Government Contracts Requiring Presidential Action and/or Approval) of EO No. 423, as amended by EO No. 645, shall be followed. Upon approval of the JV Agreement, the Government Entity concerned shall adhere to the requirements of Section 10 (Submission of Government Contracts) of the same EO, as deemed applicable.

ANNEX B

DETAILED GUIDELINES FOR LIMITED NEGOTIATION PROCEDURES IN CASE OF FAILED COMPETITIVE SELECTION UNDER SECTION 6 OF ANNEX “A” OF THE GUIDELINES

Upon the declaration of a failed competitive selection under Section VIII.6 of Annex A of the Guidelines, the Government Entity concerned shall enter into limited negotiations.

The Government Entity concerned shall set the timetable of the various activities for the limited negotiations. The Government Entity concerned may terminate the limited negotiations should the party it is negotiating with fail to observe the said timetable.

The negotiations shall be in accordance with the following procedures:

- I. Should there be a failure of competitive selection brought about by instances stipulated under Section VIII.6.a and 6.b as outlined in Annex “A”, with the effect that there is only one (1) interested party remaining, the following procedure shall be observed:
 - (a) The Government Entity concerned shall proceed with the determination of the eligibility of the sole private sector entity;
 - (b) The sole private sector entity’s eligibility documents shall be evaluated in accordance with the rules set forth in Annex “A” of the Guidelines;
 - (c) If the eligibility documents are found to be insufficient and rated “failed”, the Government Entity concerned shall terminate the negotiations. In the event the negotiations are terminated, the Head of the Government Entity, at its sole option, may conduct again a competitive selection or decide to pursue the proposed activity through alternative routes other than JV;
 - (d) If the eligibility documents are found sufficient and rated “passed”, the Government Entity concerned shall give the sole private sector entity the draft tender documents in accordance with Annex “A” of the Guidelines;
 - (e) The sole private sector entity shall submit a proposal in accordance and compliance with Annex “A” of the Guidelines;
 - (f) The Government Entity concerned shall simultaneously evaluate the technical and financial proposals of the sole private sector entity in accordance with Annex “A” of the Guidelines;
 - (g) If the proposal of the sole private sector entity is rated “failed”, the Government Entity concerned shall terminate the negotiations and, the Head of the Government Entity, at its sole option, may conduct again a competitive selection or decide to pursue the proposed activity through alternative routes other than JV.
 - (h) Should the proposal of the sole private sector entity meet the parameters set forth in the tender documents, the Government Entity concerned shall enter into the JV Agreement with the sole private sector entity concerned. In the event that an agreement is not reached, negotiations shall be terminated.

- II. Should there be a failure of competitive selection brought about by instances stipulated under Section VIII.6.c and 6.d as outlined in Annex “A” with the effect that there is only one (1) interested party remaining and eligible to submit a proposal the following procedure shall be observed:

- (a) The sole eligible party shall be instructed to submit a proposal.
- (b) The process outlined in I(d) to (h) above shall then be observed and followed.

III. Should there be a failure of competitive selection brought about by Section VIII.6.e as outlined in Annex “A” such that only one (1) proposal is received by the Government Entity, the process outlined in I(f) to (h) above shall then be observed and followed.

IV. Should there be a failure of competitive selection brought about by Section VIII.6.g and 6.h as outlined in Annex “A”, the following procedure shall be observed:

- (a) The negotiation shall be on a “Financial Proposal” only basis. The Technical Proposal shall remain valid and binding.
- (b) The eligible private sector participant/s whose Technical Proposal/s was/were rated “passed” but whose Financial Proposal/s is/are non-compliant with the Financial Parameters outlined in the Tender Documents, shall be asked to submit a revised Financial Proposal.
- (c) Should there be more than one revised Financial Proposal, the revised Financial Proposal/s shall be evaluated in accordance with Annex “A” of the Guidelines.
- (d) Should the revised Financial Proposal meet the Financial Parameters outlined in the Tender Documents, the Government Entity concerned shall enter into the JV Agreement with the eligible Private sector participant (if there is only one remaining) or with the eligible private sector participant submitting the most advantageous Financial Proposal, in accordance with Annex “A” of the Guidelines. Should the eligible private sector participant still fail to meet the Financial Parameters outlined in the Tender Documents, the Government Entity concerned shall terminate the negotiations with the said eligible private sector participant/s, and, the Head of the Government Entity, at its sole option, may conduct another round of competitive selection, or decide to pursue the proposed activity through alternative routes other than JV.

ANNEX C

DETAILED GUIDELINES FOR COMPETITIVE CHALLENGE PROCEDURE FOR PUBLIC-PRIVATE JOINT VENTURES

- I. *Negotiated JVs* – Any Government Entity may directly negotiate a JV activity with a private sector entity whenever allowed under the Guidelines issued by the NEDA.
- II. Competitive Challenge Procedure – In all cases where the Government Entity directly negotiates with a private sector participant for a proposed JV undertaking, 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 JV Agreements shall be subjected to a three-stage process, summarized as follows:

Stage One – A private sector entity submits an unsolicited proposal to the Government Entity, or the Government Entity seeks out a JV partner after failed competition for a JV activity deemed manifestly advantageous to Government. The private sector entity submits a proposal to the Government Entity for a projected JV activity/undertaking. The Government Entity, through its JV-SC, is tasked with the initial evaluation of the proposal. Upon completion of the initial evaluation, the Head of the Government Entity, upon recommendation of the JV-SC, shall either issue an acceptance or non-acceptance of the proposal. The Government Entity concerned shall act on the proposal within ten (10) working days upon submission of complete documents by the private sector entity. An acceptance shall not bind the Government Entity to enter into the JV activity, but, shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV activity. In case of non-acceptance, the private sector entity shall be informed of the reasons/grounds for non-acceptance.

Stage Two – The parties negotiate and agree on the terms and conditions of the JV activity. The following rules shall be adhered to in the conduct of detailed negotiations and the preparation of the proposal documents in case of a successful negotiations:

1. Both parties shall negotiate on, among others, the purpose, terms and conditions, scope, as well as all legal, technical, and financial aspects of the JV activity
2. The JV-SC shall determine the eligibility of the private sector entity to enter into the JV activity in accordance with Sec. IV.2 (Eligibility Requirements) under Annex A hereof.
3. Negotiations shall comply with the process, requirements and conditions as stipulated under Sections 6 (General Guidelines) and 7 (Process for Entering into JV Agreements) of the Guidelines. Once negotiations are successful, the Head of the Government Entity and the authorized representative of the private sector entity shall issue a signed certification that an agreement has been reached by both parties. Said certification shall also state that the Government Entity has found the

private sector participant eligible to enter into the proposed JV activity and shall commence the activities for the solicitation for comparative proposals. However, should negotiations not result to an agreement acceptable to both parties, the Government Entity shall have the option to reject the proposal by informing the private sector participant in writing stating the grounds for rejection and thereafter may accept a new proposal from private sector participants, or decide to pursue the proposed activity through alternative routes other than JV. The parties shall complete the Stage Two process within thirty (30) calendar days upon acceptance of the proposal under Stage One above

4. After an agreement is reached, the contract documents, including the selection documents for the competitive challenge are prepared.

Stage Three – Once the negotiations have been successfully completed, the JV activity shall be subjected to a competitive challenge, as follows:

1. The Government Entity shall prepare the tender documents pursuant to Section II (Selection/Tender Documents) of Annex A hereof. The eligibility criteria used in determining the eligibility of the private sector entity 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. The Head of the Government Entity shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
2. Within seven (7) calendar days from the issuance of the Certification of a successful negotiation referred to in Stage Two above, the JV-SC shall publish the invitation for comparative proposals in accordance with Section III.2. (Publication of Invitation to Apply for Eligibility and to Submit Proposal) under Annex A hereof.
3. The private sector entity 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.
4. The procedure for the determination of eligibility of comparative proponents/private sector participants, issuance of supplemental competitive selection bulletins and pre-selection conferences, submission and receipt of proposals, opening and evaluation of proposals shall follow the procedure stipulated under Annex A hereof. In the evaluation of proposals, the best offer shall be determined to include the original proposal of the private sector entity. If the Government Entity determines that an offer made by a comparative private sector participant other than the original proponent is superior or more advantageous to the government than the original proposal, the private sector entity who submitted the original proposal shall be given the right to match such superior or more advantageous offer within thirty (30) calendar days from receipt of notification from the Government Entity of the results of the competitive selection. Should no matching offer be received within the stated period, the JV activity shall be awarded to the comparative private sector participant submitting the most advantageous proposal. If a matching offer is received within the

prescribed period, the JV activity shall be awarded to the original proponent. If no comparative proposal is received by the Government Entity, the JV activity shall be immediately awarded to the original private sector proponent.

5. Within seven (7) calendar days from the date of completion of the Competitive Challenge, the JV-SC shall submit the recommendation of award to the Head of the Government Entity. Succeeding activities shall be in accordance with Sections VIII. (Award and Approval of Contract) and X (Final Approval) of Annex A hereof.