



Republic of the Philippines
PHILIPPINE RECLAMATION AUTHORITY



**PHILIPPINE RECLAMATION AUTHORITY (PRA) GUIDELINES
AND PROCEDURES FOR ENTERING INTO JOINT VENTURE
(JV) AGREEMENTS WITH
PRIVATE SECTOR ENTITIES**

WHEREAS, Public-Private Partnership (PPP) is a developmental strategy aimed at achieving better quality of life for Filipinos and serving the public good whereby resources are exchanged between and gains realized by government and private sector entities (PSEs). Joint Ventures (JVs) is a recognized PPP modality.

WHEREAS, pursuant to Section 8 of *Executive Order No. 423 dated 30 April 2005*, the National Economic and development Authority (NEDA) is mandated to issue guidelines to govern JV Agreements (JVAs) with PSEs “with the objective of promoting transparency, competitiveness, and accountability in government transactions, and, where applicable, complying with the requirements of an open and competitive bidding.”

WHEREAS, on April 2008, the NEDA issued the *Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities* (NEDA JV Guidelines). On May 2013, the NEDA JV Guidelines was revised and, pursuant to No. 4.2(b) thereof, exempted from its coverage “JV activities of government corporate entities in the exercise of its primary mandate to dispose government assets and properties.”

WHEREAS, the Philippine Reclamation Authority (PRA) is an incorporated governmental instrumentality¹ mandated by Section 4(b) of Presidential Decree No. 1084 (PD No. 1084), as amended, otherwise known as the *Charter of the Public Estates Authority*, “to develop, improve, acquire, administer, deal in, subdivide, dispose, lease and sell any and all kinds of lands, buildings, estates and other forms of real property, owned, managed, controlled and/or operated by the government.”

WHEREAS, the PRA is one such government entity exempt from the ambit of the 2013 NEDA JV Guidelines and may, therefore, issue its own guidelines and procedures to govern JVAs it may enter into with PSEs. Such exemption

¹ *Republic of the Philippines, represented by the Philippines Reclamation Authority vs. City of Parañaque*, GR No. 191109, 18 July 2012.

has been confirmed by NEDA in its letter to PRA on February 6, 2018 and the Office of the Government Corporate Counsel (OGCC) in its *Opinion No. 051, Series of 2018 dated March 16, 2018*.

WHEREAS, PRA hereby issues these guidelines and procedures in entering into JVAs with PSEs with the aim of accelerating the development and maximizing the value of PRA assets and properties.

WHEREAS, it is understood that these JV Guidelines and Procedures, do not preclude PRA from disposing or privatizing its assets, properties and facilities through other means. Pursuant to Section 5(m) of PD No. 1084, as amended, Sections 1 (b) and 2 of E.O. 654 (1981) and applicable jurisprudence, PRA may “enter into, make, perform and carry out contracts of every class and description, including loan agreements, mortgages and other types of security arrangements, necessary or incidental to the realization of its purposes with any person, firm or corporation, private or public, and with any foreign government or entity.”

Article 1. Legal Basis. This JV Guidelines and Procedures are being issued pursuant to Section 5(p) of PD No. 1084, as amended, which mandates the PRA “to promulgate such rules and regulations as may be necessary to carry out its purposes xxx.”

Article 2. Principles. The PRA shall enter into a JVA consistent with the following principles:

- Section 1. The JV activity shall be consistent with the mandate and authority of PRA under PD No. 1084, as amended, and other relevant laws, Executive Orders, rules and regulations, and applicable jurisprudence, to the extent applicable.
- Section 2. There should be no barriers for PRA’s withdrawal of its contribution to the JV investment.
- Section 3. The role of PRA 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.
- Section 4. The JV activity shall maximize the value of PRA assets or shall be efficient or potentially efficient towards earning potential profits for PRA while providing reasonable returns for the PSE.

Article 3. Purpose. These JV Guidelines and Procedures are being formulated to meet the following objectives:

1. To prescribe the rules, regulations, guidelines and procedures in entering into JVAs with PSEs for projects or undertakings consistent with PRA's primary mandate to dispose government assets or properties. These JV Guidelines and Procedures, however, do not extend to land reclamation projects and activities of PRA;
2. To maximize the value of PRA assets, properties and facilities through the proper development, disposition, and operations thereof;
3. To encourage the participation of PSEs possessing expertise and technical capabilities in property, facilities, and project development, and in operations and managements, to enter into JVAs with PRA;
4. To make JVs with the private sector a viable, efficient, and practical alternative in pursuing the development goals of PRA; and,
5. To ensure that all JVAs are entered into by PRA through a fair, objective and transparent process and procedures that promote accountability in government transactions.

Article 4. Coverage. The instant JV Guidelines and Procedures shall apply to all JVAs for the development and disposition of PRA's existing properties and projects, whether owned, administered or controlled by PRA and the operations of PRA assets and facilities; This JV Guidelines and Procedures shall not, however, cover reclamation or to be reclaimed lands still forming part of the land of the public domain pursuant to the ruling of the Supreme Court *En Banc* in *Francisco I. Chavez vs. Public Estates Authority and Amari Coastal Bay Development Corporation*.²

² GR No. 133250, 09 July 2001.

Article 5. General Guidelines.

Section 1. JVs entered into by PRA shall consider the following parameters:

1.1 Investments or JVs must be made only in activities directly and immediately related to, and in furtherance of, the primary purposes of PRA to dispose government assets or properties as mandated by Sections 4 and 5 of PD No. 1084, as amended; and,

1.2 The JV should be clear in its intent to dispose of its property that is responsive to development goals and objectives of PRA.

Section 2. PRA shall create a JV Selection Committee (JVSC), which shall, at the minimum, be composed of the following:

Chairperson – At least a Department Manager of PRA;

One (1) Officer from the PRA Legal Department;

One (1) Officer from the PRA Finance Department;

One (1) Officer knowledgeable in Project or Business Management and Operations; and,

One (1) Officer knowledgeable on Technical Aspects/ Requirements of the Project/ Business Undertaking.

Observer: OGCC Representative (Non-voting)

Section 3. The JVSC shall be responsible for:

3.1 all aspects of the pre-selection and selection process, including but not limited to the preparation of selection and/or tender documents, publication of the invitation to apply for eligibility and to submit a proposal, pre-qualification of prospective PSEs, conduct of the pre-selection conference and issuance of supplemental notices, interpretation of rules regarding the selection process, conduct of the selection process, evaluation of financial and technical proposals, resolution of disputes between and among PSEs, and recommendation for the acceptance of the proposal and/or the award of the contract;

3.2 the processing of unsolicited proposals, from the receipt of proposals, the initial evaluation, and all other steps until rejection or contract award.

Section 4. PRA may opt to form a separate JV Company (incorporated JV) or enter into a JV contractual agreement (unincorporated JV) depending on which JV mode will provide the most efficient and viable financial arrangement for PRA and its JV partners.

4.1 In case of an incorporated JV, the corporation shall be formed by PRA and the PSE pursuant to Articles 2, 4 and Article 5 Section 1 hereof and the following additional parameters:

4.1.1 The JV company shall be incorporated and registered as a stock corporation in accordance with the provisions of Batas Pambansa Bilang 68 (BP Blg. 68), otherwise known as the *Corporation Code of the Philippines*, as amended, and the prevailing and applicable rules and regulations promulgated by the Securities and Exchange Commission (SEC);

4.1.2 Ownership and nationality requirements under the 1987 Philippine Constitution and other pertinent laws shall be complied with; provided, that PRA's equity contribution in the incorporated JV shall be no more than fifty percent (50%) of the corporation's outstanding capital stock, which contribution may be through assets (including equipment, land, utility franchise, development rights, leasehold rights, intellectual property, cash or anything of value) subject to a third party independent valuation. For as long as PRA is involved in the JV undertaking, the PSE shall not sell or otherwise transfer its interest in the incorporated JV without the express written consent of PRA;

4.1.3 PRA shall be represented in the Board of Directors of the incorporated JV in proportion to its investment;

4.1.4 The incorporated JV shall be permitted to derive income from the activities authorized under the JVA during the term thereof. PRA and the PSE shall be entitled to receive dividends from the net profits that would constitute a portion of the unrestricted retained earnings of the company in each year in accordance with the JVA;

4.1.5 The JV Company shall stipulate a fixed term of existence of not more than fifty (50) years;

4.1.6 PRA may, at its sole discretion, divest its interest in the incorporated JV based on existing laws, rules and regulations; and,

4.1.7 The withdrawal of PRA's capital contribution, if at all, should be done prior to the expiration of the incorporated JV's corporate existence; provided, that the divestment is made through competitive selection, initial public offering, or any other means that promote competition, fairness and transparency.

Section 5. The above parameters and other provisions pertaining to incorporated JVs shall also govern unincorporated JVs to the extent applicable.

Section 6. In all cases, full divestment should be undertaken in accordance with all the related laws, rules and regulation, guidelines, legal issuances, as may be applicable with disposition of government assets and properties,

Section 7. PRA may select JV partners either through competitive selection or negotiated JVA mode. In either case, it must ensure that the process of selection, award and approval are conducted in a transparent and competitive process that promotes accountability and efficiency through publication of the relevant terms and conditions of the competitive challenge/selection.

Article 6. Process for Entering into JVAs. Prior to entering into a JVA, the proposed JV activity shall comply with the following conditions *sine qua non*:

- 6.1 The proposed JV activity and proposed JVA should comply with Articles 2, 4 and 5Section 1 hereof;
- 6.2 Clearly describe the proposed investment, including its activities, objectives, source(s) of funding, extent and nature of the proposed participation of PRA, period of participation of PRA, and the relevant terms and conditions of the undertaking under the proposed JVA, among others;
- 6.3 Lay down the responsiveness and priority of the proposed JV activity in meeting PRA's development goals and objectives;
- 6.4 Establish all other components of the JVA, including the technical, financial, economic, legal and other aspects in determining the over-all feasibility of the proposed JV activity, among others; and,
- 6.5 Secure all necessary and applicable clearances and/or approvals from other government agencies or offices.

Article 7. Modes of Selecting a JV Partner. The manner of selecting the JV partner may either be through:

- 7.1 Competitive Selection – In the conduct of the Competitive Selection process, PRA shall ensure the following:
 - 7.1.1 all activities during the competitive selection, award, and final approval are conducted in a transparent and competitive process that promotes accountability and efficiency; and,
 - 7.1.2 the competitive selection parameters are clearly defined and shall include the parameters as approved by the PRA Board of Directors (PRA Board).

7.2 Negotiated JVs – Negotiated JVs may be entered under the following circumstances:

7.2.1 When PRA receives and subsequently accepts an unsolicited proposal; or,

7.2.2 When there is failure in the competitive selection.

Article 8. Competitive Selection, Negotiated JVs, and Competitive Challenge Procedure.

Section 1. **Competitive Selection.** The process for the conduct of Competitive Selection, contract award and final approval shall be as follows:

1.1 **Selection/ Tender Documents.** The JVSC is responsible for the preparation of the selection/tender documents appropriate for the mode of selection and the particular project. These may include:

1.1.1 **Instructions to PSEs.** This contains the general description and objectives of the JV activity; proposal submission procedures and requirements; amount, form and validity period of proposal security; milestones; method, parameters and criteria for the evaluation of the proposals; minimum amount of equity required from the JV Partner; requirements of concerned regulatory bodies/agencies as may be pertinent or applicable to the JV activity: revenue sharing arrangement, dividends policy, if any; and nationality and ownership requirements as required by law;

1.1.2 **Minimum Design, Performance Standards/ Specifications.** This shall include appropriate environmental standards by the Department of Environment and Natural Resources (DENR) and other standards set by PRA and other concerned regulatory agencies as may be pertinent or applicable to the JV activity.

1.1.3 **Financial and Economic Parameters**

For purposes of evaluating JV proposals, the following economic parameters, among others and where applicable, shall be prescribed (i) discount rate, foreign exchange rate and inflation factor; (ii) maximum period of project construction (iii) fixed term and price indices to be used in the adjustments of tolls/fees/rentals/charges, and (iv) minimum period of repayment;

1.1.4 **Feasibility Study or Pre-feasibility Study of the Proposed Project;**

1.1.5 **Draft Contract** reflecting the terms and conditions in undertaking the JV activity, including the contractual obligations of the contracting parties and the ownership of the JV activity, project or property after the termination of the JVA. The draft contract shall include provisions on the following matters, as far as practicable:

1.1.5.1 Clearly defined purpose and objectives, contractual/agreement mode (whether incorporated or unincorporated JV), term and scope of the JV;

1.1.5.2 Total cost of the JV activity, project, specifications and features;

1.1.5.3 The relationship between the parties, management roles in the JV activity, and a statement that the parties are actually co-ventures for the project, whether or not the contract is in the name of all members;

1.1.5.4 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 PSE is to be borrowed, a statement that there shall be no government guarantee for said loans;

- 1.1.5.5 Procedures for additional capital infusions, if required, and a statement that there shall be no government guarantee for loans to be incurred by the PSE in case the additional contribution of the PSE is to be borrowed;
- 1.1.5.6 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;
- 1.1.5.7 Specified termination/liquidation of the JV company, buy-out provisions, and details on the transfer of ownership of the JV activity/facility including provisions on what happens to the JV's assets after the expiration of the JVA or end of the JV period. If equity other than cash is to be contributed, a statement as to how the property will be appraised and valued, and the ownership thereof, during and after the effectivity of the JVA.
- 1.1.5.8 Implementation milestones, regular meeting schedules, financial and periodic JV and progress reporting procedure;

- 1.1.5.9 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 JV, and specified division of the profits and risks and losses;
- 1.1.5.10 Performance security requirement of the project and the bonding obligations of the co-venturers;
- 1.1.5.11 Undivided pro-rata interests held by the co-venturers on all assets of the JV;
- 1.1.5.12 Restriction regarding assignment of PSE's undivided pro-rata interests in assets of the JV;
- 1.1.5.13 Cost recovery scheme, including payment to the government of royalties/rights, the form /description and amount of earnings (cash, asset, etc.), whether they are in absolute amounts or variable, and the period and timing such earnings or payment shall be received. In case of non-cash payment or payment in form of asset, a statement/provision on how it will be valued, the minimum value of asset, and the determination /selection of asset such as how and who will determine/select the asset;
- 1.1.5.14 Indemnification and liquidated damages;
- 1.1.5.15 Performance and warranty bonds;
- 1.1.5.16 Minimum Insurance coverage;
- 1.1.5.17 Acceptance tests and procedures;

- 1.1.5.18 Validity of the performance security, warranty period and procedures;
- 1.1.5.19 Grounds for and effects of contract termination/default including modes for setting 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 JV contract/agreement;
- 1.1.5.20 The manner and procedures for the resolution of warranty against corruption;
- 1.1.5.21 Compliance with all other laws, rules and regulations;
- 1.1.5.22 Procedure and/or period for withdrawal by the government entity of its contribution to the JV, or the exit of divestment by the government entity of its interest in the JV, and substitution or addition of parties;
- 1.1.5.23 Payout of funds; and,
- 1.1.5.24 Disputes arbitration clause.
- 1.1.6 **Selection Form** reflecting the required information to properly evaluate the technical and financial proposal;
- 1.1.7 **Forms** of technical and financial proposals and performance securities; and,
- 1.1.8 **Other documents** as may be required by the JVSC and other requirements of concerned regulatory

agencies as may be pertinent or applicable to the JV activity.

1.2 Publication of Invitation to Apply for Eligibility and to Submit a Proposal (IAESP). The IAESP shall be advertised at least once a week for three (3) consecutive weeks in a newspaper of general nationwide circulation, and posted continuously at the website of PRA starting on the date of advertisement until acceptance. Interested PSEs shall be given thirty (30) calendar days from the last date of publication in a newspaper of general nationwide circulation of the IAESP to apply for eligibility and to submit a proposal. Notwithstanding, PRA 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.

1.3 Qualifications of PSE. Any individual, partnership, corporation, firm, or consortium, whether local or foreign, may participate subject to the limits set herein:

1.3.1 Legal Capacity. The prospective PSE must meet the nationality and ownership requirements under the 1987 Philippine Constitution and other applicable laws and issuances.

1.3.2 Technical Capability. The prospective JV Partner, by itself or through member-firm/s in case of a consortium, or through consultant(s)/contractor(s) which the prospective JV Partner may engage for the project, must have successfully undertaken project(s) similar or related to the JV activity being proposed or subjected to selection process. The cost and the relevant period in which the similar projects were undertaken shall be determined by the JVSC depending on the scope and value of the proposed Project or JV activity. The individual firms and/or its consultant(s)/ contractor(s) may individually specialize on any or several phases of the project(s). A consortium proponent shall be evaluated based

on the individual or collective experience of the member-firms and of the consultant(s)/contractor(s) that is engaged for the project.

- 1.3.3 Financial capability eligibility requirements. The JVSC shall determine before evaluation of eligibility, the minimum amount of equity needed for the JV activity. Financial capability shall be measured in terms of the ability of the prospective JV Partner to provide a minimum amount of equity to the JV activity, which shall be determined by the JVSC depending on the scope and the value of the proposed project. The minimum equity shall be measured in terms of proof of the ability of the prospective Project Proponent and/or consortium to provide:

Equity

- 1.3.3.1 A minimum amount of equity to the project measured in terms of the net worth of the company. or in the case of a consortium, the net worth of the lead member or the combined net worth of members;
- 1.3.3.2 Set-aside deposit equivalent to the minimum equity required, or

Debt

- 1.3.3.3 A notarized statement/certification from a domestic universal/commercial bank or any international bank recognized by the Bangko Sentral ng Pilipinas attesting that the prospective Project Proponent and/or members of the consortium are banking with them, and that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the project.

1.3.4 Acceptance of Criteria and Waiver of Rights to Enjoin JV Activity. In addition to the above, all prospective PSEs shall be required to submit, as part of their qualification documents, a statement stipulating that the PSE: (i) has accepted the qualification criteria established by the JVSC of PRA; and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against PRA or its JVSC to prevent or restrain the qualification proceedings related thereto, the award of the contract to a successful PSE, and the carrying out of the awarded contract.

1.3.5 If the PSE is a consortium, it must also submit a copy of the Consortium Agreement, which shall include the following information:

1.3.5.1 brief description of the consortium, the individual members of the consortium and the nature and extent of the participation which may include a statement of the capital of each member in relation to the whole capital or their respective participation or involvement in the proposed project;

1.3.5.2 the lead member of the consortium, who is authorized by all the members to represent and sign any and all documents related to this bidding including the JVA with PRA; and,

1.3.5.3 agreement of all members to be jointly and severally liable for the obligations of the consortium under the award/contract.

1.4 Eligible and Ineligible. PRA, through its JVSC, shall, within a maximum period of thirty (30) calendar days after the deadline for submission of eligibility documents, complete the evaluation of the eligibility documents of the

prospective JV Partners and determine which among them are “eligible” and “ineligible” using a non-discretionary Pass/Fail criteria. Within fifteen (15) calendar days after such determination, the JVSC shall duly inform the prospective JV partners in writing of their eligibility or ineligibility. In case of the latter, the grounds for ineligibility must be stated in the notice.

- 1.5 Issuance of Tender Documents. PRA shall make available the related competitive selection documents to all eligible PSEs as soon as practicable to provide them 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 forty-five (45) calendar days.

The proposal parameters for the proposed JV activity should be transparent and fair. It should not, in any way, be tailor-made for or be meant to favor or give advantage to a particular PSE.

- 1.6 Supplemental Competitive Selection Bulletins and Pre-Selection Conferences.

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

- 1.6.2 Supplemental Notices. On or before the pre-selection conference, a prospective PSE may submit to PRA a written request for clarification as to any

data or requirements or any part of the selection documents. Any substantive interpretation given by PRA shall be issued in the form of a Supplemental Notice, and be furnished to all prospective PSEs. PRA may also issue Supplemental Notices to all prospective PSEs at any time for purposes of clarifying any provisions of the selection documents, provided that the same are issued within reasonable period to allow PSEs to consider the same in the preparation of their proposals.

1.6.3 Pre-Selection Conference. PRA shall conduct a pre-selection conference at least thirty (30) calendar days before the deadline for the submission of proposals. Notwithstanding, PRA 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 fairness, transparency, competition and accountability are observed.

1.7 Submission and Receipt of Proposals. PSEs shall be required to submit their proposals on or before the deadline stipulated in the “Instructions to Private Sector Entities.” 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.

1.7.1 The Technical Proposal shall contain the following, as far as applicable, (i) compliance statements with regard to the technical parameters as stated in the tender documents; (ii) operational feasibility; (iii) technical soundness, including proposed project timeline; (iv) preliminary environmental assessment; (v) other documents to support the PSE’s technical proposal, as may be required by PRA;

1.7.2 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 and financing

plan of the JV activity, operation and maintenance cost, the amount of equity to be infused and debt to be obtained for the project, sources of financing, and all other related costs; and, (iii) other details corresponding to the parameters set by PRA; (iv) cost and financing plan of the JV activity; and

1.7.3 Proposal security in the amount to be determined by PRA, but which shall not be more than ten percent (10%) of the cost of the JV activity subject of the selection process. The proposal security shall be in the form of a bank manager's check or cashier's check issued by a universal or commercial bank. In the case of an Original Proponent (OP) of an unsolicited proposal, the OP shall post the Proposal Security on the first day of the publication of the Invitation to Apply for Eligibility and to Submit a Comparative Proposal (IAESCP) in the amount and form stated in the tender documents. The proposal security shall be valid until the parties' execution of the contract.

1.7.4 PRA is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific JV activity.

1.8 Submission of late proposals. Proposals submitted after the deadline for submission prescribed in the "Instructions to Private Sector Entities" shall be considered late and shall be stamped with the date and time received and be returned unopened.

1.9 Opening and Evaluation of Proposals.

1.9.1 Opening of the Envelope for the Technical Proposal. At the date and time of the proposal opening stipulated in the "Instructions to Private Sector Entities," the JVSC shall open only the first envelope containing the technical proposal and ascertain: (a) whether the same is complete in terms

of the data/information required; and, (b) whether the same is accompanied by the required proposal security in the prescribed form, amount, and period of validity. All PSEs or their representatives present at the opening of the envelopes containing the Technical proposal shall sign a register of the proposal opening.

1.9.2 Evaluation of the Technical Proposal. The evaluation of the first envelope containing the Technical Proposal shall involve the assessment of the technical, operational, and environmental viability of the proposal, vis-à-vis the prescribed requirements and criteria/minimum standards, and basic parameters prescribed in the competitive selection documents. The JVSC shall complete the evaluation of the technical proposals within thirty (30) calendar days from the date the proposals are opened. Only those proposals that have positively passed the evaluation of the Technical proposal shall be qualified and considered for the evaluation of the Financial Proposal.

1.9.3 Opening of the Envelope for the Financial Proposal. Only the Financial Proposals of PSEs who passed the technical proposal evaluation shall be opened for further evaluation. The financial proposals tendered by PSEs who failed the technical proposal evaluation shall not be considered further, and shall be returned unopened, together with a notice stating the reasons for disqualification. The JVSC shall notify the qualifying PSEs of 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.

1.9.4 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 proposals parameters set by PRA. The proposed financing plan must show that the same adequately meets the costs relative to the JV activity. The evaluation of Financial Proposals shall be completed by the JVSC within fifteen (15) calendar days.

- 1.9.5 Simultaneous Evaluation of the Technical and Financial Proposals. Simultaneous evaluation of the technical and financial proposals may be resorted to if the JVSC determines that the nature of the JV activity requires the appreciation of both the Technical and Financial Proposals as a whole in order to determine the best proposal. In such case, the tender documents shall explicitly state the evaluation procedure. Simultaneous evaluation of the Technical and Financial Proposals shall be completed within thirty (30) calendar days from the date the proposals are opened.
- 1.9.6 Prescriptive Periods. The periods stated for the evaluation of the Technical and Financial Proposals are prescriptive and directory. The JVSC 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 fairness, transparency, competition and accountability are observed.
- 1.9.7 Rejection of Proposals. Non-compliance to the information required on either the first or second envelope shall be grounds for rejection of proposals.
- 1.9.8 Withdrawal and/or Modification of Proposals. Withdrawals and/or modification of proposals may be allowed upon written notice by the PSE concerned to the JVSC prior to the time and date set for the opening of the envelope containing the

Technical Proposal as specified in the “Instructions to the Private Sector Entities.” 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 PSE’s Proposal Security.

1.9.9 **Right to Reject All Proposals.** PRA 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.

1.9.10 **Breaking Tie Bids.** In case tie bids occurs under competitive selection or competitive challenge, the procedure for breaking the bids shall be done through drawing of lots or similar methods that are non-discretionary and non-discriminatory such that it is based on sheer luck or chance.

1.10 Award and Approval of Contract.

1.10.1 **Recommendation to Award.** Within seven (7) calendar days from the completion of the evaluation procedure by the JVSC, the PRA General Manager (PRAGM) shall recommend to the PRA Board the approval of the award to the Winning PSE. The PRAGM’s Memorandum to the PRA Board recommending the award should contain the JVSC recommendation, including minutes of negotiation meeting duly signed by all its members, and the JVSC evaluation/assessment report on the proposals explaining in clear terms the basis of its recommendations.

1.10.2 **Decision to Award.** Within seven (7) calendar days from the submission by the PRAGM of the recommendation to award, the PRA Board shall approve or reject the same. The approval shall be manifested by signing and issuing the “Notice of

Award” to the Winning PSE within seven (7) calendar days from approval thereof. PRA shall post a corresponding “Notice” on its website declaring the award of the JV undertaking to the Winning PSE.

1.10.3 **Notice of Award.** The “Notice of Award” to be issued by the PRA shall contain, among others, an instruction to the Winning PSE to comply with condition precedent for the execution of the JVA and to submit compliance statements with regard thereto, within fifteen (15) calendar days from receipt of the “Notice of Award” unless otherwise specified or extended by PRA.

1.10.4 **Performance Security.** Conditions precedent for the execution of the JVA shall include the posting of a Performance Security in favor of PRA. The JVSC 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 Insurance Commission as follows: (i) cash, Manager’s Check, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the PSE’s contribution to the JV activity; (ii) Bank Guarantee - a minimum of five percent (5%) of the PSE’s contribution to the JV activity; or, (iii) Surety Bond – a minimum of ten percent (10%) of the PSE’s contribution to the JV activity.

Failure to comply with the conditions precedent for the execution of the contract within the prescribed thirty (30)-calendar day period or as specified or extended by PRA will result in confiscation of the Performance Security. Within seven (7) calendar days from receipt of the compliance statements

from the winning PSE, PRA shall determine the sufficiency of the same, and notify the winning PSE accordingly.

- 1.10.5 **Validity and Return of Proposal and Performance Securities.** The execution of the JVA 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. Unless earlier forfeited, Proposal Securities shall be returned to all PSEs upon signing of the JVA by the winning PSE.

The Performance Security shall be valid within the period of one (1) year after the expiration of the JV or end of the JV period, or as may be stipulated in the JVA. Upon certification by PRA that there are no claims filed against the Winning PSE after the expiration of the JVA or end of the JV period, the Performance Security shall be released by the former. As may be agreed upon in the JVA, a portion of the Performance Security shall be released upon compliance with corresponding milestones.

- 1.10.6 **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, PSE shall not be allowed to modify or revise the price or other substantial aspect of their proposal. Further, the PSE must correspondingly extend the validity of their Proposal Security as a condition for the extension of the validity of their proposals.

PSEs shall not refuse such request for extension except on the following grounds: (1) loss of interest

in the Project, and (2) unforeseen financial meltdown/crisis. PSE who refuse the request based on these grounds shall not forfeit their Proposal Security.

- 1.10.7 **Single Responsive Bid.** A single and responsive bid shall be considered for award if it falls under any of the following circumstances: (i) if, after advertisement, only one PSE submits eligibility documents within the deadline stipulated in the IAESP, and such PSE meets the eligibility requirements and submit a bid which is responsive to the technical and financial requirements; (ii) if, after advertisement, multiple PSEs submit eligibility documents, in accordance with the provisions of these Guidelines, but only one meets eligibility requirements and such eligible PSE submits a bid which is responsive to the technical and financial requirements; (iii) if, after the eligibility check, multiple PSEs meet the eligibility requirements but only one submits a bid, and its bid is found to be responsive to the technical and financial requirements; or, (iv) if, after qualification/evaluation of proposals, only one PSE meets the technical requirements but is not able to comply with financial requirement, and a negotiation of the financial terms/ proposal in accordance with Section 6.13 (i) hereof is conducted and is successful.
- 1.10.8 **Prospective Bidder/s Compliant with the Technical Requirement.** In case no technically qualified prospective bidder is able to comply with financial requirements, PRA may conduct negotiation on the financial terms in accordance with the instant JV Guidelines and Procedures.
- 1.10.9 **Negotiation on the Financial Terms/Proposal under the Competitive Selection Process.** In case the PSEs, whose Technical Proposals are rated “passed”, are not able to comply with the financial

requirements, PRA shall request said participants to submit the new Financial Proposals. Thereafter, the JVSC shall notify and negotiate with the proponent with the most advantageous Financial Proposal. The Technical Proposal shall remain valid and binding. In the event the JVSC fails to successfully negotiate with said proponent within thirty (30) calendar days reckoned from the date of notification, the JVSC shall negotiate with the next ranked most advantageous financial proposal, and so on and so forth, until a successful negotiation has been concluded.

In case of a single technically qualified participant, PRA may conduct negotiations on the financial terms or on the Financial Proposal and shall conclude said negotiation within fifteen (15) calendar days. The Technical Proposal shall remain valid and binding.

If there is no successful negotiation, PRA shall conduct another competitive selection. In case of a second failure of competitive selection, PRA may resort to a Negotiated JV.

1.10.10 **Failure of Competitive Selection.** There shall be a failure of competitive selection in any of the following instances: (i) no prospective bidder/s is/are eligible; (ii) no bids or proposals are received; (iii) no prospective bidders/s is/are able to comply with technical requirements; or (iv) no successful negotiation on the financial terms/proposal as provided herein.

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

1.10.11 **Execution/Approval of the JVA.** The authorized signatory(ies) of the Winning PSE and PRA, shall execute and sign the JVA, within seven (7) calendar days after PRA notifies the Winning PSE of its compliance to the conditions or requirements precedent to the execution of the contract.

In the event of refusal, inability or failure of the Winning PSE to enter into contract with PRA within the time provided therefore, PRA shall forfeit its Proposal Security. In such event, PRA shall consider the PSE with the next ranked complying proposal as the Winning PSE, and notify said PSE accordingly. If the next ranked complying PSE shall likewise refuse or fail to enter into contract with PRA, its Proposal Security shall likewise be forfeited and PRA shall consider the next ranked complying proposal, and so on, until a contract shall have been entered into. In the event that PRA is unable to execute the contract with any of the complying PSEs, a failure of competitive selection will be declared and the JV may be subjected to a competitive selection again.

1.10.12 **Deviation and Amendments to the JVA.** PRA shall not proceed with the award and signing of the contract if there are material deviations from the parameters, terms and conditions set forth in the proposal/tender documents that tend to increase the financial exposure, government liabilities and risks or any other factor that would cause disadvantage to government and any deviation that will cause prejudice to losing PSEs. Violation of this provision shall render the award and/or the signed JVA invalid.

1.10.13 **Other Approval for Contract.** The entity tasked under the JVA 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, or in the case of public utility projects. PRA 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. In case of unsolicited JV projects, PRA will ensure that required approvals under existing laws shall be complied with as condition precedents prior to contract effectivity.

Prior to the execution of the JVA, the OGCC as the statutory counsel of PRA, shall issue the corresponding Counsel's Opinion.

1.10.14 **Contract Effectivity**. The contract shall be effective upon signing thereof by the PRAGM unless another date is stipulated therein.

1.10.15 **Amendment of JVA**. Any amendment to the JVA must be executed in writing by the co-venturers, provided, that such option is incorporated in the JVA and that such right is available to any PSE declared eligible in the competitive selection or challenge process.

Section 2. **Negotiated JVAs and Competitive Challenge**. In case of unsolicited proposals, and in all cases where PRA directly negotiates with the PSE for a proposed JV activity, the negotiated terms shall be subjected to a competitive challenge wherein other PSEs shall be invited to submit comparative financial proposals.

2.1 The PRA and PSE shall negotiate on the terms and conditions of the proposed JV activity; which negotiations shall, as far as practicable, comply with the same process, requirements and conditions as in the case of JV proposals solicited through the competitive selection process.

It is understood, however, that the competitive challenge is limited only to the financial aspect of the project. The technical aspect of the project, as agreed upon during the negotiations, shall be adopted by third party challengers; otherwise, they shall be declared ineligible.

- 2.2 The process for the conduct of Competitive Challenge, contract award and final approval shall also follow the provisions of Article 8 hereof to the extent applicable.

Section 3. **Unsolicited JV Proposals.** When PRA receives a proposal from the PSE for a JV activity, the JVSC shall conduct a preliminary evaluation. The preliminary evaluation shall be completed by the JVSC within thirty (30) calendar days upon submission of complete documents by the PSE. The JVSC shall determine on preliminary evaluation the completeness of the proposal and whether the proposed JV activity meets the requirements under Article 6 hereof.

A complete proposal shall contain the following documents:

- 3.1 Cover letter indicating the basic information of the unsolicited proposal, such as:
 - 3.1.1 Description of the proposed project (rational, objectives)
 - 3.1.2 Land area and location of the proposed property for development and disposition
 - 3.1.3 Project implementation schedule
 - 3.1.4 Other relevant information
- 3.2 Company profile
 - 3.2.1 SEC papers or the equivalent document from the country of incorporation which includes Articles of Incorporation
 - 3.2.2 Latest General Information Sheet (GIS)
 - 3.2.3 Latest Tax Returns (Income and Business Taxes)
- 3.3 Feasibility/Pre-Feasibility Study

3.4 Draft Contract/Term Sheet

3.5 Other documents that are needed even if proprietary in nature

Upon completion of the preliminary evaluation, the JVSC shall recommend to the PRAGM the acceptance or non-acceptance of the proposal. The PRAGM shall endorse his/her recommendation to the PRA Board for approval. Acceptance of the proposal by the PRA Board does not confer upon the PSE OPS. The PRA and the PSE shall, within a period of five (5) calendar days from acceptance by the PRA Board, enter into detailed negotiations on the terms and conditions of the proposed JV activity (i.e. legal, technical and financial components). The negotiations shall be completed within ten (10) calendar days. The terms of detailed negotiations as well as conferment of OPS to the PSE shall be approved by the PRA Board.

Should the parties not agree by the end of the negotiation period, PRA shall have the option of rejecting the proposal by informing the PSE in writing of the grounds for rejection; and, thereafter enter into negotiations with the next highest ranked proponent and so on (if multiple unsolicited proposals have been received by PRA) until the PRA has conferred upon the PSE OPS. If no PSE has been conferred OP Status, PRA may accept a new proposal from another PSE, or pursue the proposed activity through alternative routes other than JV.

Within a maximum of seven (7) calendar days after the successful negotiation and approval thereof by the PRA Board, PRA and the authorized representative of the PSE shall issue a signed certification that an agreement has been reached and both agree to submit the proposal to a competitive challenge. Said certification shall also state that PRA has found the PSE eligible to enter into the proposed JV activity and shall confer an OP Status (OPS) to the latter.

OPS will only be given after the approval by both parties of the Certification of Successful Negotiation (CSN).

After the award of the OPS, the selection documents for the competitive challenge, including the draft contract, shall be prepared by the JVSC. The selection documents shall be consistent with the tender documents enumerated in Article 8, Section 1.1 herein to the extent applicable. The draft contract for the JV shall be reviewed by the OGCC.

3.6 Publication of the Invitation to Apply for Eligibility and to Submit Comparative Proposal (IAESCP)

The JVSC shall adopt the recommendations of OGCC in its review of the draft contract for the JV. The JVSC, through the PRA GM shall then endorse to the PRA Board for approval the draft JV contract as reviewed by OGCC. Within fifteen (15) calendar days from PRA Board approval of the draft JV contract incorporating the comments and recommendations of the OGCC, the JVSC shall cause the publication of the Invitation to Apply for Eligibility and to Submit a Comparative Proposal (IAESCP). The IAESCP shall be published once a week for three (3) consecutive weeks in a newspaper of general nationwide circulation and posted continuously in the PRA website starting on the date of advertisement until acceptance. Interested PSEs shall be given thirty (30) calendar days from the last date of publication in a newspaper of general nationwide circulation of the IAESCP to apply for eligibility and to submit a comparative proposal. Notwithstanding, PRA 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.

3.7 Interested PSE challengers shall be qualified in accordance with Article 8, Sections 1.3 and 1.4 herein. The tender documents for the competitive challenge shall only be issued to eligible PSE challengers.

3.8 **Right to Outbid.** The Right to Outbid is an automatic right bestowed upon the OP.

If PRA determines in the foregoing cases that an offer made by a comparative PSE-challenger other than the OP is superior or more advantageous in terms of higher Internal Rate of Return (IRR) to the PRA than the original proposal, the OP shall be given the right to outbid the better offer of the challenger. Outbidding by the original proponent of the challenger's offer shall be measured in terms of a higher IRR and/or revenues than the challenger's comparative proposal as the JVSC may determine as appropriate taking into consideration the proposal that is most advantageous to PRA. The outbidding shall be within fifteen (15) calendar days from receipt of notification from the PRA of the results of the competitive challenge. If the OP submits a better offer than the one submitted by the challenger within the prescribed period, the JV activity shall be awarded to the OP. However, should there be no better offer received from the original proponent within the prescribed period, the JV activity shall be awarded to the challenger submitting the most advantageous proposal to PRA. In case, however, that no comparative proposal is received by the PRA challenging the original proposal, the JV Activity shall immediately be awarded to the OP.

- 3.9 If there is more than one unsolicited proposal submitted for the same project, the PRAGM, upon recommendation of the JVSC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the higher IRR and/or revenues deemed most advantageous to PRA.

Article 9. Submission of Award to PRA Board. Within ten (10) calendar days from the date of completion of the Competitive Challenge, the JVSC, through the PRA GM, shall submit the recommendation of award to the PRA Board. Succeeding activities shall be in accordance with Article 8, Section 1.10 of this PRA JV Guidelines and Procedures (Award and Approval of Contract).

Article 10. Appeals Mechanism. A PSE aggrieved by the decisions of the JVSC may, within five (5) calendar days from receipt of the JVSC decision, seek a motion for reconsideration thereof.

The JVSC shall resolve the motion for reconsideration within five (5) calendar days from receipt thereof. In the event that the JVSC denies the motion for reconsideration, the aggrieved PSE may appeal the same to the PRA Board by filing a verified position paper with the PRA Board and paying a non-refundable appeal fee of one-half (1/2) of one percent of the proposed project cost, within five (5) calendar days from receipt of the JVSC resolution denying the motion for reconsideration.

The PRA Board shall act on the appeal within fifteen (15) calendar days from receipt of the appeal. The decision of the PRA Board on the appeal shall be final and immediately executory. If the appeal is not resolved within the said period, the appeal is deemed denied.

Article 11. Amendments. This JV Guidelines and Procedures may be amended and/or modified from time to time by PRA.

Article 12. Separability. If any provision of this JV Guidelines and Procedures is held or declared void or unenforceable by final judgement of a court of competent jurisdiction, the other provisions unaffected thereby shall remain in full force and effect.

Article 13. Transitory Provisions. The provisions of the instant JV Guidelines and Procedures shall, upon its effectivity, apply to all pending or under evaluation JV proposals.

PSEs with pending or under evaluation JV proposals shall be given thirty (30) calendar days within which to comply and/or complete the requirements prescribed herein.

Article 14. Effectivity. This JV Guidelines and Procedures, and any subsequent amendment or modification thereto, shall take effect within fifteen (15) calendar days from publication in a newspaper of general circulation and UP Law Center.

Approved on April 18, 2018

Philippine Reclamation Authority

(Original Signed)
ALBERTO C. AGRA
Chairman

(Original Signed)
JANILO E. RUBIATO
General Manager & CEO