

# Philippine National Construction Corporation

## SPECIAL GUIDELINES FOR LEASE

### I. RATIONALE

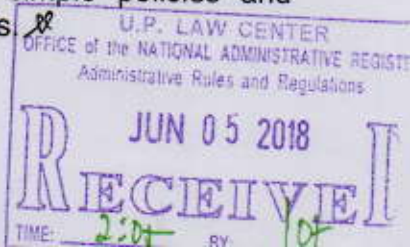
These Guidelines shall establish the general procedure for the lease of all real properties of the Philippine National Construction Corporation (PNCC).

The objective of these Guidelines is to contribute to the development of PNCC properties, as an important source of economic growth and social development within the proximate area of the properties through effective partnership with the private sector.

These Guidelines are hereby adopted pursuant to PNCC's authority under the Second Article of its Charter, empowering the corporation to lease out its properties. These guidelines, however, shall not preclude PNCC from developing its assets, properties and facilities through any other means.

### II. POLICIES

- A. It is hereby declared as a policy that PNCC shall advance the corporate success and promote the interest of the community and the society through, among others, the development of its real properties.
- B. The development of the real properties of PNCC may be undertaken in partnership with the private sector through a long-term lease agreement that shall include, as a condition, the introduction of valuable improvements which eventually shall belong to PNCC.
- C. In developing its real properties, PNCC may lease out any and all its real properties.
- D. As a general rule, every long-term lease agreement that PNCC shall enter into shall be the subject of a competitive selection process that observes the principle of fairness, transparency and competition. The mode of implementing the lease projects shall be determined by the PNCC Board, which shall also determine the time for advertising Solicited Proposal and the time for accepting Unsolicited Proposal for a particular lease project. For purposes of these Guidelines, a lease agreement shall be considered long term when the lease period exceeds more than 1 year.
- E. PNCC shall promote competition and efficiency in the development of its real properties by establishing clear and simple policies and procedures to encourage the entry of investments.

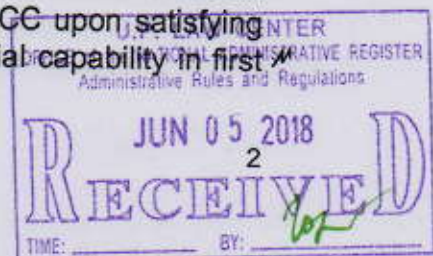




### III. GUIDELINES

#### A. Definition of Terms

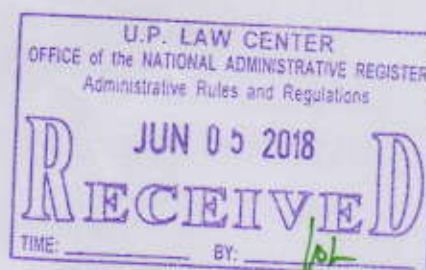
1. **Competitive Challenge or Swiss Challenge** - An alternative selection process wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the private sector proponent (**PSP**) who submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative PSP.
2. **Competitive Negotiations** - Refers to a process where the PNCC negotiates with eligible and qualified PSPs and awards the project to that PSP which offers the best combination of quality and price.
3. **Competitive Selection or Bidding or Open Competition** - Refers to a method of selection or procurement initiated and solicited by PNCC, based on transparent criteria, which is open to participation by any eligible PSP.
4. **Lease or Affermage** - A contractual arrangement providing for operation, maintenance, and management services by the PSP, including working capital and or improvements to an existing infrastructure or development facility leased by the PSP from the PNCC for a fixed term. Under a lease, the PSP retains revenue collected from customers and makes a specified lease payment to the PNCC. Under an *affermage*, the parties share revenue from customers wherein the PSP pays the contracting authority an *affermage* fee, which varies according to demand and customer tariffs, and retains the remaining revenue. The PNCC may provide a purchase option at the end of the lease period in accordance with law.
5. **Limited Negotiations** - Refers to a process whereby the PNCC negotiates with the PSP in instances when there is only one eligible and qualified PSP in a competitive selection process, under Stage 2 of the competitive challenge process, or when there is a prior completed competitive process.
6. **Negotiated Projects** - Refer to instances where the desired project is the result of an unsolicited proposal from a PSP or, where the PNCC has failed to identify an eligible PSP for a desired lease activity or when there is only one qualified bidder after subjecting the same to a competitive selection or bidding.
7. **Original Proponent** - In a Swiss Challenge, the PSP who submits an unsolicited proposal which is accepted by the PNCC upon satisfying the PNCC's requirements for technical and financial capability in first





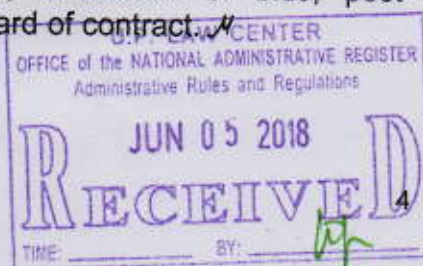
in time basis. In case of a challenge to the Original Proponent's unsolicited proposal, the Original Proponent has the right to match the challenger's proposal.

- 8. Project Study** - A study, full or pre-feasibility study or business case prepared by the PNCC in a competitive selection or a PSP when submitting an unsolicited proposal, containing or indicating the legal, technical and financial aspects of the project.
- 9. Unsolicited Proposal** - Refers to project proposals submitted by a PSP to the PNCC to undertake lease activities without a formal solicitation issued by the PNCC whereby the negotiated terms shall be subjected to comparative proposals.
- B. Rules of Interpretation.** - These Guidelines and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives set forth herein.
- C. General Procedures for Implementing the Lease Project**
1. There shall be constituted a Leasehold Selection Committee (LSC) and Special Bids and Awards Committee (SBAC), which shall recommend for the PNCC Board's approval of the required documentations and criteria for leasing that will be the basis in implementing the Lease Projects, namely: List of Eligibility Documents, List of Tender Documents, Terms of Reference (TOR) and other terms and conditions of the lease agreement.
    - a. The LSC shall be composed of a chairman and four (4) members who shall be appointed by the PNCC President & CEO.
  2. The SBAC shall administer the conduct of bidding for the leasing of the PNCC property pursuant to the approved TOR.
    - a. The SBAC shall be composed of a chairman and four (4) members who shall also be appointed by the PNCC President & CEO.
  3. The TOR shall prescribe the rules and procedures in the leasing and development of the PNCC property. It shall contain, among others, the requirements for technical and financial proposals, which shall include the minimum investment requirement and required performance bonds or guarantees for such investments, minimum required payments to PNCC and the acceptable forms of guarantees for such required payments. *M*



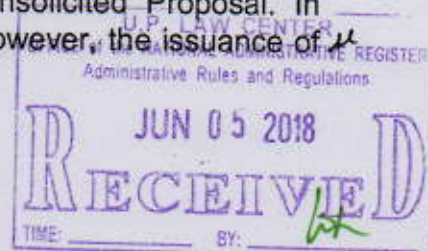


- a. In case of conflict between the TOR and the resulting contract, the provisions of the TOR and its supplemental bid bulletins, if any, shall prevail.
4. The terms of the lease contract shall be in accordance with the rules and requirements set forth in the TOR for the lease of the property. The draft pro forma contracts for each lease activity shall be prepared by the Legal Department for review by the Office of the Government Corporate Counsel (OGCC).
- a. The initial lease period for the Property shall not exceed fifty (50) years, subject to renewal under such terms and conditions as may be approved by the PNCC Board of Directors in accordance with law.
- b. The lease terms shall include, but shall not be limited to, indicative lease rates, revenue share, rent-free period, advance payments, annual escalation rates and deposits. The said lease terms shall be effective for three (3) years unless sooner revised by the PNCC Board.
- c. The PNCC Business Development Committee shall conduct a review of the lease guidelines and shall make recommendations on proposed revisions.
5. Upon the recommendation of the President, the PNCC Board shall formulate the following: Criteria, List of Eligibility Documents, List of Tender Documents, Draft of the TOR and Draft Contract as required. In the course of the Competitive Procedures, the President & CEO may recommend to the PNCC Board any changes in the said documentations or requirements.
6. Competitive Procedures. - For lease arrangements, competitive selection, competitive challenge or competitive negotiations may be undertaken by PNCC in selecting the PSP.
- a. Competitive Selection.
- i. The Competitive Selection procedure shall consist of the following steps: advertisement, issuance of instructions and tender documents, conduct of pre-bid conferences, eligibility screening of prospective PSPs, receipt and opening of bids, posting of proposal securities, evaluation of bids, post-qualification verification, and award of contract.





- ii. The PNCC Board may review bidders declared ineligible and those disqualified by the SBAC. Likewise, the PNCC Board shall deliberate and approve the award of the contract.
  - iii. Where the PNCC fails to identify an eligible PSP for a desired lease activity or when there is only one qualified bidder after subjecting the same to a bidding or competitive selection, Limited Negotiations may take place. The negotiations shall cover all the technical and financial aspects of the lease activity.
- b. Competitive Negotiations. - The PNCC shall invite three (3) or more qualified PSPs to enter into negotiations for a lease project, informing all the qualified PSPs that there is more than one offeror and simultaneous negotiations are being conducted and that the lease contract shall be awarded to the PSP which offers the best combination of quality and price based on the project study prepared by the PNCC. In the interest of securing the optimum results for PNCC, the President/CEO may recommend to the PNCC Board a second round of negotiation for interested parties to make a better offer. Prior to the start of the negotiations with the identified PSPs, the PNCC shall publish the announcement. Upon the recommendation of the President & CEO, the PNCC Board shall approve the criteria for the selection of the best offer and subsequent award of the contract.
- c. Competitive Challenge. - The Competitive Challenge process is divided into three (3) Stages:
- 1. Stage One/Unsolicited Proposal - The steps are:
    - i. A PSP submits an Unsolicited Proposal accompanied by a cover letter, eligibility documents, project study, proposal, and draft lease contract to the PNCC for a potential Lease Project.
    - ii. The LSC shall determine the completeness of the Unsolicited Proposal, the eligibility of the PSP and the recommendation to be made for the proposal.
    - iii. Upon completion of the initial evaluation by the LSC, the President & CEO shall endorse to the PNCC Board its recommendation, all pertinent documentations will also be submitted. The PNCC Board decides as to the acceptance or non-acceptance of the PSP's Unsolicited Proposal. In acceptance, a certificate is issued, however, the issuance of





certificate of acceptance shall not confer Original Proponent Status (OPS) upon the PSP.

- iv. The LSC shall adopt the first-in-time approach where the first complete proposal to be submitted shall be the first to be evaluated and decided upon before another proposal may be considered. The second complete proposal will only be entertained if the first one is rejected. If there is more than one Unsolicited Proposal submitted for the same Project at the same time, the President & CEO, upon recommendation of the LSC, may give its recommendation, for the PNCC Board to select among the unsolicited proposals that provides the greatest advantage and benefits to PNCC.

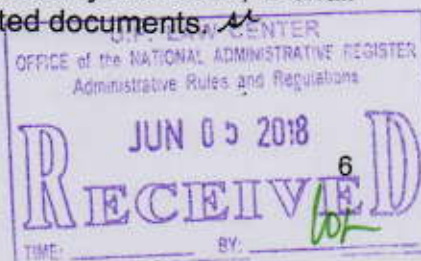
2. Stage Two/Detailed Negotiations - The steps are:

- i. Once negotiations have been completed and upon the recommendation of the LSC through the President & CEO, PNCC Board shall determine whether or not to accept the terms of the lease. If an agreement has been reached, the parties shall issue a joint certification stating that an agreement has been reached and specifying the eligibility of the PSP as Original Proponent.
- ii. The issuance of the certification shall commence the activities for the solicitation for comparative proposals.
- iii. However, should the terms and conditions be not acceptable as determined by the PNCC Board, the PNCC shall reject the proposal by informing the PSP in writing stating the grounds therefor, and thereafter may renegotiate or accept new proposals from other PSPs; decide to pursue the proposed activity through other modalities; or subject the lease activity to Competitive Selection.



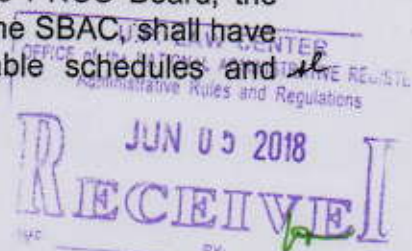
3. Stage Three/Competitive Challenge or Swiss Challenge Proper - The steps are:

- i. The SBAC shall prepare the tender documents. The criteria to be used in determining the eligibility of the PSP shall be the same as those stated in the tender documents. Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.





- ii. The President/CEO shall recommend to the PNCC Board the approval of the Tender Documents, the Lease Contract and the TOR before the publication of the invitation for comparative proposals.
  - iii. The SBAC shall publish the invitation for comparative proposals.
  - iv. The Original Proponent shall post the proposal security before the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.
  - v. In the evaluation of the comparative proposals as a prelude to determine the best offer, the original proposal of the original proponent shall be considered. The best offer and what is to be matched shall be determined in accordance with the criteria approved by the PNCC Board. During the conduct of Swiss Challenge, if PNCC determines that an offer made by a comparative PSP or challenger other than the negotiated terms with Original Proponent is superior or more advantageous to PNCC, the Original Proponent shall be given the right to match such superior or more advantageous offer within a period stated in the TOR. Should no counteroffer by the Original Proponent be received within the stated period, the lease activity shall be awarded to the comparative PSP submitting the most advantageous proposal. If a counter-offer that at least matches the offer of a comparative PSP is received within the prescribed period, the lease activity shall be awarded to the Original Proponent. If no comparative proposal is received by the PNCC, the Project shall be immediately awarded to the Original Proponent.
  - vi. In case the Original Proponent is unable to match the superior offer of the challenger, the winning challenger shall reimburse the Original Proponent the cost of preparing the Project Study; provided, that reimbursement shall be limited only to the direct cost of preparing the project study substantiated by receipts which are expressly stated in the terms of reference for the Competitive Challenge, and that the LSC and PNCC Board have determined that the cost is reasonable.
6. Schedules and Timelines. - As approved by the PNCC Board, the President & CEO, upon the recommendation of the SBAC, shall have the authority to adopt and prescribe reasonable schedules and





timelines for each selection process which shall foster free competition, transparency and accountability.

7. The Lease Contract shall be signed by the President & CEO on behalf of the PNCC upon approval by the PNCC Board and the duly authorized representative/s of the PSP, with the prior review of the OGCC. The lease agreement shall be valid and enforceable only upon delivery of the contract by PNCC to the PSP.
- D. The PNCC Board reserves the right to settle issues arising from the conduct of Swiss Challenge and other controversies that may arise in the future in the implementation of this guidelines and make decisions on matters not provided in this Lease Guidelines to foster free competition, transparency and accountability. The decision of the PNCC Board is final.
- E. Only Decisions of the SBAC may be appealed in writing to the PNCC Board; provided, that the appellant has filed with the SBAC, within five (5) calendar days from receipt of the questioned SBAC decision, a motion for reconsideration. The verified appeal must be filed with the PNCC President within five (5) calendar days from receipt of the resolution of the motion for reconsideration. The filing of the appeal shall be accompanied by the payment of a non-refundable appeal fee, the amount of which shall be determined by LSC and stated in the TOR.  
  
The PNCC Board shall act on the appeal within thirty (30) calendar days. The decision of the PNCC Board, or its authorized representative, on the appeal shall be final and immediately executory. If the appeal is not resolved within the said period, the appeal is deemed denied.
- F. These Guidelines may be amended or modified by the PNCC Board and such amendment shall become effective immediately upon publication.
- G. 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.
- H. Business Development Committee of the PNCC Board shall exercise oversight function over the implementation of these Guidelines.
- I. These Guidelines shall take effect immediately after publication.

APPROVED by the PNCC Board of Directors on 21 May 2018 pursuant to Board Resolution No \_\_\_\_\_. *u*

