



Presidency of the Republic

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DECREE No. 64.-

THE PRESIDENT OF THE REPUBLIC OF EL SALVADOR,

WHEREAS:

- I. Article 101 of the Constitution of the Republic establishes that the economic order must essentially respond to the principles of social justice, which aim to ensure an existence worthy of human beings for all of the people of the country, where the State is in charge of promoting economic and social development through greater production, productivity and the rational use of resources, as well as promoting the different productive sectors and defend the interests of consumers;
- II. Article 113 of the Constitution of the Republic sets out the promotion and protection of associations of an economic nature that tend to increase national wealth through a better use of natural and human resources, and to promote a fair distribution of profits generated from their activities and that this kind of associations may allow the participation of individuals and of the State, of municipalities and public utility entities.
- III. The government of El Salvador is committed with all of the initiatives that tend to provide efficient and effective infrastructure and public services and of general interest, of which the Public - Private Partnerships are of great importance;
- IV. That through Legislative Decree No 379, dated May 23 of 2013, published in the Official Gazette No. 102, Volume No. 399 of June 5 of the same year, the Special Law for Public - Private Partnerships was issued;
- V. Through Legislative Decree No 666, dated April 25 of 2014, published in the Official Gazette No. 90, Volume No. 403 of May 20 of that same year, reforms to the Special Law for Public - Private Partnerships were issued; and,
- VI. For the enforcement and development of the mentioned Law, it is necessary to dictate and complement the norms and principles established under the Law, to which end the Regulation of the mentioned Law must be issued, in accordance with the provisions of the Constitution of the Republic.

THEREFORE,

In the exercise of its constitutional authority,

DECREES the following:



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REGULATION OF THE SPECIAL LAW FOR PUBLIC - PRIVATE PARTNERSHIPS

**TITLE I
GENERAL PROVISIONS**

SOLE CHAPTER

Purpose of the Regulation

Art. 1. - The purpose of this Regulation is to develop the provisions contained under the Special Law for Public- Private Partnerships, which establishes the regulatory framework for the development of Public- Private Partnership projects for the provision of infrastructure and public services and of general interest.

Contents of the Public- Private Partnership Contract

Art. 2.- The Public – Private Partnership contract may adopt any of the following modalities: public works concessions, public services concessions, or those that involve the exploitation or execution of a general- interest activity.

It could also adopt a combination of the above-mentioned modalities previously mentioned, and may include provisions that are supplementary to the main modality.

The Public – Private Partnerships shall include the following among other aspects, depending on the modality to be adopted:

- a) Provision of services at the project area for which the works were built.
- b) Provision of public service, in accordance with the Public- Private Partnership project.
- c) Execution and exploitation of a general -interest activity, in accordance with the Public – Private Partnership project.
- d) The manner how the necessary equipment will be provided for the operation of the public works, public services, or general- interest activity.
- e) Maintenance of the works, facilities and equipment in optimal usage conditions.
- f) The collection of tariffs and prices to be paid by the users of the works, public services, or general- interest activities.
- g) The execution of investments or re-investments that constitutes the development plan for the Public- Private Partnership project.



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- h) The use and enjoyment of national assets of public or fiscal use, destined to develop the work given in concession or the general- interest activity, whichever the case.
- i) The use and enjoyment of private assets destined to providing the public service or the general- interest activity established in the contract.

Types of Services associated with the Project

Art. 3.- The Public- Private Partnerships contracts may include the following services associated with the Project, as prescribed in the tender guidelines:

- a) Basic services: those that make up the specific objective of the Public- Private Partnership contract, and that are indispensable and for which the private participant is authorized to collect a tariff;
- b) Complementary services: are all additional services that are useful for the project, that the private participant is authorized to provide, and for which he may charge a price to users, based on the Public- Private Partnership contract; and,
- c) Special mandatory services: other services established as mandatory in the tender guidelines. These may be charged or free, depending on what was set up in the tender guidelines.

Applicable regulation and legal documentation

Art. 4.- The Public- Private Partnership contracts referred to in the previous article will be governed by:

- a) The Constitution of the Republic;
- b) The Special Law for Public- Private Partnerships;
- c) The regulatory framework referring to the contracting State institution and, in its absence, by the supplementary legislation, as applicable;
- d) The current Regulation of the Special Law for Public- Private Partnerships;
- e) The corresponding tender guidelines and their modifications or amendments, if any;
- f) The technical and economic offer submitted by the successful bidder of the Public- Private Partnership contract, as approved by the contracting State institution;
- g) The Public- Private Partnership contract.



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Interpretation of the Contract

Art. 5.- A special clause must be included in the tender guidelines or in the Public- Private Partnership Contract that contains the rules for Contract interpretation, which may include assumptions related to the prevalence of the tender guidelines and their modifications or amendments, in case of an interpretation discrepancy of the contract.

Economic nature of the Public- Private Partnership Contracts

Art. 6.- Considering their economic nature, the Public- Private Partnerships are classified as self-sustaining and co-financed.

The classification criteria must be established in the corresponding tender guidelines. Without detriment to the previously mentioned, the criteria may contain elements related to the existence or absence of resources or guarantees, and consider aspects such as:

a) For self-sustaining contracts, the following general elements may be considered:

- 1) That no State resources are committed;
- 2) That during the validity of the contract, the revenues of the private participant are made up solely by tariffs or amounts charged directly to the users;
- 3) That the fees or amounts cover all costs of the project, during the validity period of the contract, and that they allow the private participant to attain profitability that is adequate for the risk he is assuming, and which corresponds to market conditions.

b) For co-financed contracts, the following general elements may be considered:

- 1) That State resources are committed. The following will be considered as a commitment of State Resources: compensations destined to pay the private participant for acts foreseen in the Public- Private Partnership contract, whether its purpose is compensate investment in the project, or the operation and conservation activity which is incurred in the provision of the service;
- 2) That it demands guarantees from the State. The following shall be considered as committed guarantees by the State: payment of potential obligations to the private participant, to improve the project's profile risk and at promote the participation of private bidders.

For purposes of this classification, assets delivered by virtue of the Public- Private Partnership contract, considered as necessary for the corresponding project, will not be considered as State resources or guarantees.



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The Ministry of Finance will verify and express an opinion on the assessment of fiscal impacts regarding Public- Private Partnerships, with the purpose of determining whether a Public- Private Partnership contract is self-sustainable or co-financed.

Definitions

Art. 7.- The following definitions apply, for the correct interpretation of this Regulation,:

- a. Lenders:** natural or legal entity, or group thereof, that allow and facilitate funding of the the special purpose partnership, be it through direct loans or through bonds, securities, guarantees or any other bonds, for a determined Public- Private Partnership project.
- b. Successful Bidder:** offeror to whom the Public- Private Partnership contract is awarded.
- c. Project area:** area required for the execution of the works, and to provide the services defined in the Public- Private Partnership contract.
- d. Conservation or maintenance:** repairs necessary to the works or facilities built by the special-purpose vehicle, or pre-existing in the project area, with the purpose that these maintain or recover the required service level for which they were projected, both in quantity and in quality. It is understood that necessary preventive measures to prevent deterioration of works or facilities are also included in this concept.
- e. Private Initiative Project:** a project and its corresponding documentation submitted by an individual, according to the provisions of the Special Law for Public- Private Partnerships.
- f. Offer:** Set of documents that make up the technical and economic offers by the bidder, including complementary documents and general background.
- g. Pre-qualified Offeror:** legal entity or entities, interested in the bid for a Public- Private Partnership project, that has complied with the requirements established by the prequalification guidelines.
- h. Applicant:** Legal entity, and all types of associations among them, which applies to a contracting State institution as a private initiative, for the execution of projects under the Special Law for Public- Private Partnerships.
- i. Final investment budget:** those disbursements that, directly or indirectly are necessary for the execution of the Public- Private Partnership project.
- j. Official quotation of the works or services:** is the total value of the work, estimated by the contracting State institution, and included in the tender guidelines.
- k. Tariff regime:** group of tariffs charged for basic services provided by the private participant.
- l. Special Purpose Vehicle:** public limited company, and of Salvadoran nationality, established by the successful bidder, with whom the contracting State institution will sign the Public- Private Partnership, with the purpose of developing all activities related with the contract in reference, in the manner and conditions determined in the tender guidelines.



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m. Tariff: remuneration of basic services provided by the private participant, regulated in the Public-Private Partnership contract or, by the Inspection Agency for Public- Private Partnerships or the sectoral regulators if that's the case.

TITLE II INSTITUTIONAL FRAMEWORK

CHAPTER I

ADMINISTRATIVE AUTHORITIES AND THEIR FUNCTIONS

Contracting State Institutions

Art. 8.- The contracting State institutions are the public administration bodies entitled to carry out the public -private partnership projects according to the Special Law for Public- Private Partnerships.

The functions of the contracting State institutions, as procuring entities and administrators of the Public-Private Partnership contract are established in their respective legal frameworks, in the Law for Public – Private Partnerships, in the tender guidelines, in the contract, and in the present Regulation.

Public Registry of Public- Private Partnership Projects

Art. 9.- There will be a Public Registry of Public- Private Partnership projects. All projects executed under any of the contractual modalities established in Article 4 of the Special Law for Public- Private Partnerships shall be registered.

Said registry will be managed by PROESA, which must guarantee expedited and permanent access to its information, electronically, through its institutional website.

Without detriment to the provisions of the Law for Access to Public Information, all Public- Private Partnership projects must be registered, and as a minimum, the following information will be available:

- a) Tender guidelines for Public- Private Partnership Projects.
- b) Pre-feasibility studies for the Public- Private Partnership Projects.
- c) Feasibility studies for the Public- Private Partnership Projects.
- d) Cost- benefit analysis for Public- Private Partnership Projects.
- e) Award resolutions for Public- Private Partnership Projects.
- f) Public- Private Partnership Contracts and their modifications.
- g) Special pledges established per the Special Law for Public- Private Partnerships.
- h) Pre-qualified offerors for bids on Public- Private Partnership Projects
- i) Pre-qualified for consultants and advisors, experts, arbitrators and suppliers.



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The afore-mentioned documents must include the Public- Private Partnership Projects rejected, approved or executed.

Public- Private Partnership Policies

Art. 10.- The Public- Private Partnership Policy to be presented by PROESA Board of Directors to the President of the Republic should be in accordance with the General Government Plan. Its modifications or its new emissions shall be issued when the Board of Directors deems necessary.

CHAPTER II

INSPECTION AGENCY FOR PUBLIC- PRIVATE PARTNERSHIPS

Inspection Agency for Public- Private Partnerships

Art. 11.- The Inspection Agency for Public- Private Partnerships, hereon OFAPP,(for its initials in Spanish), will be responsible for technical compliance oversight with the obligations established in the Public- Private Partnerships, during its operation phase, and under the terms provided in the Special Law for Public- Private Partnerships.

Its oversight will include the service levels, the technical standards, the tariff regime, the quality of service and the exercise of user rights, in accordance with the Special Law of Public- Private Partnerships and this Regulation, the tender guidelines and the contract.

Establishment of the OFAPP

Art. 12.- The OFAPP will start its operations when the Board of Directors of PROESA approves the origin of the first Public- Private Partnership project, in accordance with its legal system, there were no regulating entities or sector supervisory bodies. The same resolution that approves the origins will declare the start-up of operations of OFAPP.

Said resolution, regarding the start-up of operations of OFAPP shall be notified to the President of the Republic, the Minister of Public Works, Transportation and Housing and Urban Development, to the Supreme Court of Justice and to the Board of Directors of the Central Reserve Bank of El Salvador, for the purposes of Art. 23 of the Special Law for Public- Private Partnerships. The notification must refer to what is established in Articles 23, 24 and 25 of said Law.

Incompatibilities of OFAPP members



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Art. 13.- The causes of inability stated under letter c), numerals i) and iii), of Article 24 of the Special Law for Public- Private Partnerships whereby if any of the OFAPP members incur into while exercising their position, are considered incompatibilities and will constitute sufficient cause for removal.

If any of the OFAPP members incur into any cause of incompatibility, he must resign immediately from his position to the person who appointed him, and notifying such situation to the President of OFAPP. From the presentation of said resignation, the member will be disqualified to continue in his position and shall be replaced by the corresponding alternate. If not, the following will proceed:

The OFAPP, ex-officio or by request of a party, will notify whoever designated him, the causes for incompatibility that could affect any of its members, sending them the corresponding records. Said Authority or Body, shall issue a statement regarding the incompatibility within a period of 3 working days, starting from the date when the case background was received. The statement must be justified and shall be issued after an audience with the affected party.

From the date when the records were sent as referred to in the previous paragraph, the affected party must abstain from knowing and resolving matters related to his position, and, during this time, the corresponding alternate shall replace him.

If an incompatibility cause were accepted, the Authority or Institution that appointed the affected member must remove him from his position, and shall appoint a replacement according to the general regulations. If the incompatibility cause were rejected, the affected member shall resume his functions starting from the date of the notification of the resolution rejecting it.

The provisions of this article is without detriment to the civil, administrative and criminal responsibility that may affect the OFAPP member against whom an incompatibility cause has been declared.

Dedication and remuneration of the OFAPP members

Art. 14.- The President of OFAPP will have exclusive dedication. The remaining three members may carry out other activities that do not involve any of the disqualification causes described in Article 24 of the Special Law for Public- Private Partnership.

The OFAPP will be governed by a special wage system that will determine the remuneration of the members, based on remunerations per attended meeting. Only five sessions per month may be remunerated.

The salary of the President of the OFAPP will be proposed and approved by the members of this agency, except for the President, who shall be substituted to make this decision.

The alternate members will receive remuneration only when they substitute the main members in the corresponding session.

Secretary of the OFAPP



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Art. 15.- The OFAPP shall have a Secretary, who will be appointed by the agency, by proposal from its President, who shall have the following functions:

- a) Keep a record of the presentations put forward to OFAPP, and make them available to its members within 24 hours after being submitted;
- b) Summon the members of OFAPP, by request of the President, to the sessions of the Agency, and publicly inform the dates and times of the sessions;
- c) Take part in the sessions of the Agency, without the right vote or opine, and recording true and complete minutes of the sessions;
- d) Keep the corresponding Minute Registry and publish them duly signed within a period of fifteen days, at the latest, or any other term provided by the OFAPP, in the OFAPP website, except in the case of the Executive Report;
- e) Keep a record of the resolutions, agreements or opinions issued by the Agency;
- f) By request of the President, process the necessary information requirements from the contracting State institutions and private participants, for the compliance of the OFAPP functions;
- g) Help the OFAPP in its internal administration, and liaise with the contracting authorities to attend to administrative matters; and,
- h) All other functions assigned by the OFAPP for compliance with its duties.

The Secretary of the Agency must be a lawyer of the Republic, and comply with the eligibility as defined by the OFAPP. The Secretary may be appointed to work exclusively as such, or among the civil servants that are already working for OFAPP, in which case he shall not exclusively have the duties stated in the present article.

OFAPP Sessions and internal workings

Art. 16.- The functions of the OFAPP cannot be delegated, and will be exercised collectively, in a legally constituted session.

The OFAPP will meet periodically, in an ordinary session, every fifteen days. All other sessions will be extraordinary in nature, and will be called upon request from the President. The attendance of three of its members, including the President will be the minimum quorum for a session.

The OFAPP must be summoned with minimum five-day advance notice, through communications sent to the home address of the members or via electronic mail. Such advance notice will not be required if the members expressly state their commitment to attend through the Secretary of the Agency.

The alternate member of the OFAPP shall replace the main member in case of vacancy, absence, or impediment from the main member, with no need to accredit this condition before third parties. The alternate members may participate in all sessions, but will only have full rights to vote and opine, and to remuneration, when substituting the main members.

If the attendance of representatives, directors, administrators, advisors and dependents from the private participants, as well as authorities or professionals from the contracting State institution were necessary, a summon will be sent for the hearing in which said people will be heard, by mandate of the



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OFAPP President; this notification will be sent at least ten working days prior to the date of the corresponding session.

The resolutions or opinions adopted or issued by the OFAPP will be decided through simple majority from the present members. If during any session there were a tie related to any of the matters, the vote of the President of the OFAPP will be the decisive one.

The OFAPP will establish all the necessary internal regulations and that are not defined in the present regulation, which may be informed through its webpage on the next working day following its adoption.

Book of Minutes and Executive Report

Art. 17- Proceedings, agreements and acts issued by the OFAPP, shall be recorded in the book of minutes. The Secretary of the Agency without detriment to the foregoing, must also draft an Executive Report at the end of each session, that summarizes the topics discussed and the agreements reached, which must be signed immediately by the attendees, and shall be published in the website of the OFAPP on the next working day.

Exceptionally, when the issued heard by OFAPP are of greater complexity, or the drafting of the grounds for the act being issued requires more time, said Agency must issue a report on them, to be incorporated into the next session's minutes. The report shall be drafted by any of the members that were in agreement, and that is designated by the President or the Secretary of the Agency to the task.

Procurement of goods and services

Art.18.- The procurement of goods and services required by the OFAPP to perform its duties will be subject to what is established under the Public Administration's Law for Acquisitions and Contracts.

Inspection or verification by third parties

Art. 19.- The OFAPP may entrust operative tasks of inspection or verifying and certifying the compliance of norms under its competency, to suitable, duly-certified third parties.

Duly-certified third parties are the following: any natural person or legal entity with a valid registration or authorization issued by some agency that is part of the public administration.

Only in exceptional duly justified cases,, may third parties be hired that are not registered or authorized as provided in the above paragraph; in which case, said authorization requires unanimity by the members of OFAPP.

In special cases, when the importance, complexity or specialization of the work requires it, OFAPP may create Special Registries, with the purpose of registering professionals specialized in matters on which there are no public registries for their accreditation. In these cases, the Agency shall establish special



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registry requirements, which will be detailed in the requirements of the calling for registration at the Special Registry.

TITLE III SOLE CHAPTER

ABOUT THE RIGHTS AND OBLIGATIONS OF THE PRIVATE PARTICIPANT

Rights and obligations of the private participant

Art. 20.- The private participant shall comply with the obligations incorporated into the Public- Private Partnership contract, in accordance with the norms of public law, especially as regards its relationship with the contracting State institution, the regulations on the construction and exploitation regimes, provision of public service and execution and exploitation of general- interest activities, the collection of tariffs, its re-adjustment and remuneration system with the State, which make up the economic regime of the contract. It must also comply with the norms that regulate the activity that makes up the Public Private Partnership project.

Regarding its economic rights and obligations with third parties, the special purpose vehicle will be governed by the norms of private law and, in general, may perform any lawful operation, without need for prior authorization from the contracting State institution, with the sole exceptions regulated expressly by the Special Law for Public- Private Partnership, the present Regulation, and those stipulated in the tender guidelines and the contract.

Obligation to submit reports

Art. 21.- The private participant shall submit to the contracting State institution and the OFAPP, reports regarding the development and execution of the contract, in the formal and temporary conditions established in the tender specification and the Public- Private Partnership contract.

The tender guidelines must establish, at a minimum, that the delivery of these reports be made in paper and in digital format, which must be defined by the contracting State Institution. For this, the term for delivery of these reports must be, at least, every six months.

TITLE IV OF THE TENDER

CHAPTER I

ACTIONS PRIOR TO THE TENDER REGIME



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Feasibility study of the Project

Art. 22.- To initiate the development procedure of a Public- Private Partnership project, the contracting State institution must present a feasibility to PROESA Board of Directors that must contain, at a minimum, as set out in letters a), b) and c) of Article 32 of the Special Law for Public- Private Partnerships.

In cases where required by the applicable legislation, the feasibility study must also incorporate, a preliminary analysis of the environmental risks and its corresponding mitigating measures.

Other studies.

Art. 23.- The feasibility study may also consider any of the following studies:

- a) Engineering Study
- b) Demand and Social Assessment Study
- c) Territorial Study
- d) Expropriations Study
- e) Legal Study
- f) Technological implementation and service level to users Study
- g) Business Design Structuration
- h) Economic- Financial Study

The origin of some of these studies and their scope, will be determined by PROESA Board of Directors depending on the nature of the Public- Private Partnership project.

Admissibility test of the feasibility study

Art. 24.- The contracting State institution must send the feasibility study to PROESA Board of Directors, who will, no later than five days starting from its reception, will resolve on its admissibility.

The feasibility study must be delivered in original and two copies, in accordance with the Form for Feasibility Study Presentation written by PROESA.

Prior to sending the Feasibility Study to the Ministry of Finance, PROESA Board of Directors must verify that the presentation complies with the following requirements:

- a) That the institution that submitted the feasibility study is authorized to develop Public- Private Partnership projects per Article 2 of the Special Law for Public- Private Partnerships.
- b) That the project that is hoped to be developed is within the scope of enforcement of the Law, and that it does not deal in matters excluded from it, per Article 3 of the Special Law for Public- Private Partnerships.
- c) That the capital expenditure and the operation and maintenance expense at its present value for of the Public- Private Partnership project is higher than the equivalent to forty-five thousand times the current minimum monthly wage for the sector of trade and services, per Article 3 of the Special Law for Public- Private Partnerships.



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- d) That the contractual mode through which they intend to develop the project is a Public-Private partnership contract of the ones mentioned in Article 4 of the Special Law for Public-Private Partnerships.
- e) That the Public- Private Partnership project is framed within the Public- Private Partnership policies defined by the President of the Republic, per Article 14, paragraph a) of the Special Law for Public- Private Partnerships.
- f) That the feasibility study comply with the contents stated in paragraphs a), b) and c) of Article 32 of the Special Law for Public- Private Partnerships.
- g) That in cases required by the applicable law, the feasibility study incorporates a preliminary analysis of environmental risks, and their corresponding mitigating measures.

In the event it were proven that the presentation from a contracting State institution does not comply with the requirements stated above, PROESA Board of Directors will reject said presentation. If the presentation is incomplete, the contracting State institution shall deliver the missing background documentation within the term that is established for that purpose, or else it will be considered that the presentation has not been submitted.

Within the term to admit the presentation, PROESA Board of Directors may request, if necessary, engineering studies or other studies included in Art. 23 of the present Regulation. To that effect, a term for their presentation will be established, which may be extendable. If said studies are requested, PROESA Board of Directors must resolve on their admissibility within five days, starting from the date of reception of the additional studies.

If the presentation complies with the requirements stated above, PROESA Board of Directors shall issue a resolution of admission, and send a copy of the feasibility study to the Ministry of Finance, within five days, starting from the issuance of the resolution stated above.

Content of the study of economic feasibility of the project

Art. 25.- The study of economic feasibility of the project referred to in paragraph a) of Article 32 of the Special Law for Public- Private Partnerships must include at least the following information:

- a) Name, location, description and objective of the project.
- b) Responsible contracting State institution.
- c) Relevance of the project and its consistency with national or municipal priorities, as is the case.
- d) Diagnostic on the current supply, or “without project”, of the infrastructure and/ or public service, identifying the problem that they seek to solve, and the reasons why it is in the best interest of the country to resolve said situation.
- e) Identification of the characteristics of the existing demand and supply, in terms of coverage and quality, as well as of the projected supply and demand.



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- f) Preliminary description of the service level to achieve,
- g) Initial estimate of the investment costs and operation and maintenance expenses, at the level of an engineering preliminary design.
- h) Initial estimate of project income (tariffs, among others).
- i) Term of the project or assessment horizon.
- j) Preliminary identification and allocation of risks under the mode of Public- Private Partnership.
- k) Preliminary estimate of the resources required by the contracting State institution for the payment to the private participant for the private supply of the infrastructure and/ or public service, and the institution's capacity to assume said commitments.
- l) Evaluation of the cost- benefit or socio- economic profitability analysis.
- m) Preliminary Value for Money evaluation.
- n) Classification as self- sustainable or co- financed project.
- o) List of pending studies to be contracted, that are needed for the structuring of the project, with a statement regarding the corresponding funding source for its performance.

Pre- feasibility study of the project

Art. 26.- in those cases where the contracting State institution did not have a feasibility study, it may submit to PROESA Board of Directors a pre- feasibility study that includes the proposal of the Public- Private Partnership project, for which the following must be identified:

- a) The need or unsatisfied demand, the problem to be solved or the potentiality to be developed with the project;
- b) The characteristics of the possible solution that the project might represent;
- c) The main benefits and costs of the project;
- d) The initial evaluation indicators, both socio- economic and financial, that may recommend a decision on the project; and,



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- e) The proposal and technical- economic analysis of all alternatives that might be established to solve the identified problem, with an estimate of the socio- economic evaluation indicators for each of the proposed alternatives, which, in turn, allow for the selection of the most convenient alternative and the recommendation of a decision on the project.

Evaluation by PROESA

Art. 27.- PROESA, through its Board of Directors, will issue the norms regarding the form of evaluation of the potential Public- Private Partnership projects to be submitted for approval of the Board of Directors.

Ministry of Finance regulation

Art. 28.- The Ministry of Finance must issue the necessary regulation to comply with the functions granted by the Special Law for Public- Private Partnerships, especially those pertaining to its Articles 19 and 32, as well as the manuals and internal procedure policies to determine organizationally, which is the responsible area within the institution to comply with said purpose.

Ministry of Finance ruling in the feasibility phase

Art. 29.- The Ministry of Finance must issue a ruling in accordance with Article 32 of the Special Law for Public- Private Partnerships, that will have the following objectives:

- a) To evaluate the allocation of risks and fiscal impacts of the Public- Private Partnership projects;
- b) Verify and issue an opinion on the evaluation of Value for Money; and,
- c) To verify the fiscal consistency of the commitments for future quantifiable firm and contingent liabilities derived from every Public- Private Partnership project corresponding to the Executive Branch.

CHAPTER II

TENDER REGIME



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Pre-qualification of offerors

Art. 30.- The contracting State institution may issue a call for pre-qualification of the offerors, to select, the interested parties that comply with the uniform, objective and reasonable requirements established in the corresponding pre-qualification guidelines, through a process made up of one or several phases which may only refer to legal aspects, and matters of financial or technical capacity, or expertise.

Authority to withdraw before the tender

Art. 31.- The contracting State institution may withdraw from the tender of a Public- Private Partnership project, for public- interest reasons and through a substantiated resolution once the pre-qualification has been performed, without it causing the right to compensation for any of the pre-qualified offerors.

Drafting and approval of the pre-qualification guidelines

Art. 32.- Without detriment to the cooperation agreement regulated under Article 34 of the Law, whenever there is a pre-qualification phase, the contracting State institution, together with PROESA, will draft the pre-qualification guidelines to be approved by PROESA Board of Directors.

For the approval of the pre-qualification guidelines, PROESA Board of Directors may request the favorable ruling from the Ministry of Finance regarding the economic and financial requirements included in the document.

Regarding the technical or experience requirements, PROESA Board of Directors may request the opinion of the OFAPP or the corresponding sectoral regulator. To this effect, PROESA shall ask both institutions for their corresponding rulings, which may be issued in a period of no more than thirty days.

Call for pre-qualification

Art. 33.- The invitation for a pre-qualification must state the period and the place to obtain the pre-qualification guidelines, the area or object of the Public- Private Partnership project, and the period to submit the background documentation. The invitation for the pre-qualification shall be governed, as pertinent, by the provisions of Art. 36 of the present Regulation.

Content of the pre-qualification guidelines

Art. 34.- The pre-qualification guidelines must include the following, among others:

- a) General description and objectives of the Public- Private Partnership project;
- b) Pre-qualification phases;
- c) Pre-qualification requirements;



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- d) Obligatory nature of presenting a preliminary technical project;
- e) Obligatory nature of the prequalified offerors to concur to the funding of the studies that the proposing State institution deems necessary; and,
- f) Existence of a competitive dialogue and treatment that the participants of the competitive dialogue will receive in the future public tender.

The interested parties may make inquiries regarding the pre-qualification terms within the established period. Questions will be answered in communications called clarification notices, addressed to everyone that obtained the pre-qualification terms.

The contracting State institution, together with PROESA, may, at its own initiative, or in response to a question, make clarifications, rectifications, amendments or additions to the pre-qualification terms through the same drafting procedure, except for the period to issue the rulings, which shall be of fifteen days, whereby all interested parties that had obtained the documents must be notified.

The contracting State institution, together with PROESA, will pre-qualify the interested parties that comply with the requirements stated in the prequalification terms, and may reject, through a substantiated resolution, those that are not suitable under those criteria.

Competitive dialogue

Art. 35.- The competitive dialogue will begin with a formal communication from the contracting State institution to all pre-qualified offerors, where it will ask about their willingness to participate in this procedure, besides informing them of the consequences of their decision, in accordance with the pre-qualification terms.

It will be understood that any prequalified offerors that does not wish to participate in the competitive dialog will express their decision, as well as the parties that do not state their formal decision within the established period set by the State contracting institution.

The contracting State institution will provide a draft of the tender guidelines and contract, as well as any other background information related to the public- private partnership project that it deems pertinent and that it has in its possession, only to the pre-qualified offerors that have stated their willingness to participate in the competitive dialogue procedure.

The pre-qualified offerors must, in the term established by the contracting State institution, formulate improvements, additions or adjustments they deem convenient, to the background documentation received, particularly in those matters related to service levels and technical standards.

Additionally, the contracting State institution may hold sessions or work meetings with the pre-qualified offerors, which must be set up formally, with minimum two days advance notice. The corresponding minutes from each of these work meetings will be drafted, and will be signed by all the participants.



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Within the terms stated in the corresponding pre-qualification conditions sheet, the pre-qualified offerors and the contracting State institutions may ask questions or request clarifications regarding those matters that they deem pertinent, related to the background information delivered.

All communications and acts, of both the pre-qualified offerors and of the contracting State institution, shall be made known immediately by said contracting institution to all participants in the competitive dialogue, without detriment to the exceptions established in Article 36, paragraph 4 of the Special Law for Public- Private Partnerships.

The improvements, additions or adjustments suggested by the pre-qualified offerors will not be binding for the contracting State institution.

Invitation for tender

Art. 36.- The invitation for tender is the act through which the contracting State institution invites all interested parties so that they submit their offers, subject to the tender guidelines

Depending on the complexity, the nature and magnitude of the project, the form in which said invitation is made will be established in the tender guidelines. Notwithstanding the foregoing, it might be made following the procedure established in the present article.

The invitation for tender will include, as a minimum, the area or objective of the public- private partnership, the period and place to obtain the tender guidelines and, the date, time and place for delivery of technical and economic offers.

The invitation for tender might be made through the contracting State institution's and PROESA's webpages set up for that, and at least in one of mass media national newspapers; besides, publishing it in the following media must be considered:

- a) Specialized technical publications, recognized internationally; and,
- b) Newspapers with broad international circulation.

The criteria to opt for any of these media will be governed by the one that has greater access to potential offerors.

The invitation may also be obtained directly at the contracting State institution responsible for the invitation, during the term established, in which case a payment corresponding to its reproduction costs will be demanded.

Notwithstanding the foregoing, when there had been a pre-qualification of the project, and only those pre-qualified offerors may bid, the public invitation will be considered as issued.

Obtaining the tender guidelines

Art. 37.- Depending on the complexity, nature and magnitude of the project, the tender guidelines will define the way in which they shall be obtained, which may be downloaded by any interested party from



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the electronic system set up by the contracting State institution to that purpose, starting from the zero hours of the first day established for obtaining them, until the twenty-third hour and fifty-ninth minutes of the last day established for obtaining them.

The specifications may also be obtained in the facilities of the contracting State institution. In this case, the term for obtaining them starts on the day indicated in the invitation notices.

Without detriment to what is established in the tender guidelines, at the time of its reception, the delegate from the contracting State institution may create an individual record, in which will be included:

- a) The name of the Institution that makes the invitation, the tender or competition number and the name of the process;
- b) The name of the legal entity that acquires the tender guidelines, address, electronic mail, fax, telephone, or media to receive notifications;
- c) The name, identification document and signature of the person in charge of obtaining the tender guidelines;
- d) Date and time when they obtained the tender guidelines; and,
- e) Other conditions that are considered pertinent.

The price of the tender guidelines, regardless of the way in which they are obtained from the institution, will be fixed by PROESA Board of Directors for each project.

Offeror requirements

Art. 38.- National or foreign legal entities or groups of them may attend the tender releases as long as they comply at least with the following requisites:

- a) That they are not subject to disqualifications or prohibitions that keep them from contracting with the institutions stated in Article 3 of the Special Law for Public- Private Partnerships, per the current legal norms.
- b) That they are not subject to the prohibitions stated in Article 40 of the Special Law for Public- Private Partnerships;
- c) That they comply with the requisites and current general requirements on the matter, according to the current legal norms;
- d) Any other requisite established in the tender guidelines.

Tender guidelines

Art. 39.- Without detriment to the provision of Article 41 of the Special Law for Public- Private Partnerships, the tender guidelines will include, besides, the following matters:



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- a) Ruling of the legal norm that govern the contract.
- b) Official budget for the work.
- c) Guarantee regime, its nature and value, indicating the terms in which they must be delivered. Among others, bid bond, construction and operation bond are to be considered.
- d) Terms for questions and clarifications regarding the tender guidelines.
- e) Penalties for breach of the Public- Private Partnership contract.
- f) If dealing with a private initiative project, the identity of the applicant and the reimbursement of the costs of the studies, if applicable.
- g) Specification of the Public- Private Partnership project, as well as of the additional work, included in the tender guidelines, for the operation of it, and the minimum technical requirements for its design, execution and conservation, and for the exploitation of the service, correspondingly, as well as the environmental requirements that affect the project.
- h) Payments that the private participants must make to the State, if any.
- i) Payments that the State must make to the private participant, if any.
- j) Whether the investment and the construction will be made in one or more stages, during the period of validity of the Public- Private Partnership contract, conforming to the compliance of the previously- established service level. In case the above- mentioned is not established, it will be done in only one stage.
- k) Any other stipulation necessary or convenient to include, per the established in the Special Law for Public- Private Partnerships and the present Regulation.

Inquiries regarding the tender guidelines

Art. 40.- The offerors may ask questions or request clarifications regarding the tender guidelines, which must be addressed to the head of the contracting State institution or whoever had issued the invitation for tender. The corresponding document shall be forwarded to the incumbent office in the term established in the tender guidelines.

The responses to the inquiries sent by the offerors shall be included in communications named clarifying circulars, addressed to all the participants.

Modifications and amendments to the tender guidelines

Art. 41.- The contracting State institutions may issue, in writing, modifications or amendments to the tender guidelines, in the terms and forms established in the tender guidelines, term that may be up to ten days before the date established for reception and opening of bids. All the interested parties that had obtained the tender guidelines shall be notified likewise of the corresponding modifications or clarifications. These terms shall be established in the specifications.

If the contracting State institution makes modifications to the specifications in a term shorter than established, the date for reception and opening of technical offers must be changed to a date at least ten days after the last modification, all per the regulated in the same tender guidelines. The addenda or amendments shall be submitted through the same process of approval, except for the term for their approval, that in this case shall be ten days.



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The tender guidelines may provide a different regulation than the contained in the present article, depending on the complexity, nature and magnitude of the project.

The offer

Art. 42.- The conditions for presentation of the offer shall be established in the tender guidelines. The offer shall be made up of the “Technical Offer”, which shall contain the general and technical background required by the tender guidelines, and by the “Economic Offer”.

Without detriment to the tender guidelines stating a different regulation depending on the complexity, nature and magnitude of the project, the following might be considered:

- a) All direct and indirect costs associated with the presentation and submission of their offer will be by charge of the offeror. The contracting State institution in no instance will be responsible for said costs.
- b) The offers and all annexes submitted by the offerors must be written in Spanish. The offers must be delivered in Offer Envelopes, marking which correspond to the technical offer, and which to the economic offer. Both envelopes must state the name of the offeror.
- c) The offers must be submitted in physical format. To those effects, the technical and economic offers must be submitted duly numbered in original and copy, in separate sealed envelopes.

Contents of the offers

Art. 43.- The offer may contain, without detriment to what is determined in the tender guidelines, and depending on the unique nature of the project, the following background documentation and requirements, unless these were required in the pre-qualification:

I. Technical Offer

A. General Background

a. Offeror identification

1. Copy, certified by a notary, of the Public Deed of the Establishment of the Company and its modifications if any, duly registered in the Registry of Commerce of the National Registry Center, and a certification of the corresponding current commerce inscription, or certification that proves reliably that this is in process or being granted or renewed; and, if dealing with a foreign legal person, the corresponding instruments, duly authenticated and registered, per the norms of its country.
2. Certified copy of the instrument proving the proxy, duly granted before a notary, or a current appointment credential, duly registered in the Registry of Commerce, if applicable.



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3. Foreign legal persons must submit a judicial report that summarizes the life of the company, indicating the date of establishment, modifications, objective, capital, administration and legal representative, where it is concluded that it was legally established.

The tender guidelines may demand other types of background information.

b. Sworn statement

The Sworn Statement, subscribed by a notary, must contain, at a minimum, the following:

1. That the offeror is not in default with its debts with the State, its autonomous institutions, of the municipality or municipalities where the project will be developed, nor of the pension fund system. Likewise, the corresponding solvencies and legal supporting documentation that certify these conditions must be submitted;
2. That the offeror knows and understands the national and international legislation of protection to worker's rights, and its commitment to respecting it;
3. The non-existence of hindrances or disqualifications to enter into contracts of this nature, or to be offerors.
4. The obedience of all provisions inherent to the tender and award process of the public-private partnership contract and the norms established in the Special Law of Public- Private Partnerships, in the present Regulation and in the corresponding tender guidelines.

c. Guarantee that the offer will be maintained

The offerors must include in their documentation a Guarantee that the offer will be maintained in the form, amount and conditions specified in the tender guidelines.

B. Technical background

Considering the diverse nature of the projects that may be object of a Public- Private Partnership contract, the Contracting State Institution and PROESA will determine the content, aspects and weight of the technical offer in the tender guidelines.

II. Economic Offer

The economic offer shall include the proposal and background under which the offeror is willing to take on the project, based on one or some of the factors for award stated in the tender guidelines.

Opening of offers

Art. 44.- The tender guidelines, considering the complexity, nature and magnitude of the project, shall determine the procedure for reception and opening of offers. Without detriment to the foregoing, the following might be considered:



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That the offers are received in a public act by the Evaluation Committee on the day, time and place stated to this effect in the tender guidelines, in the presence of the offerors that wish to attend, and whose offers had been submitted in the term therein established.

If the date of reception and opening of offers were postponed, all rights and obligations by the contracting State institution and the offerors will be understood to be extended until the new date of reception and opening of the offers, and the corresponding guarantees must be established in said opportunity, if applicable.

During the opening event, both the technical and economic offers will be received, but only the envelope with the technical offer from each participant will be opened. Those offers received late, those that do not have all the documents requested in the tender guidelines, and those not presenting the Guarantee that the offer will be maintained will be considered excluded, as per the tender guidelines.

The economic offer envelopes shall be stamped and sealed by all members of the Evaluation Committee. They will remain in custody, unopened, until the moment when the acceptable technical offers have been selected, on the date established in the tender guidelines.

During the opening ceremony, a minute will be written, which shall leave a record of who presented offers, of the documents received and the observations made by the offerors and the members of the Evaluation Committee.

No new offer or counter-offer will be accepted after the opening of the technical offer.

Offer Evaluation Committee

Art. 45.- The evaluation committee for the technical and economical offers shall be made up by a representative from PROESA, a representative from the Ministry of Finance, and two representatives from the contracting State institution.

The members of the Committee shall evaluate the offers independently, and will have a fixed term, established in the tender guidelines, according to the magnitude of the project, its complexity or the documents that had been required in the offer.

Study and evaluation of technical offers

Art. 46.- The Evaluation Committee shall function according to the following procedure:

The technical aspects on which the Evaluation Committee must issue a statement shall be indicated in the tender guidelines. The decisions of the Evaluation Committee shall be made through three votes in the same direction. In the event of a tie, the PROESA representative shall have the quality vote.

The Evaluation Committee for the technical offers shall draft a Qualification Minute, declaring the offers presented either technically acceptable or technically unacceptable. The offers that do not comply with the provisions of the tender guidelines will be deemed technically unacceptable.



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If there were no technically acceptable proposals, the evaluation committee shall recommend that the tender be declared null and void.

Offer clarifications

Art. 47.- By request from the Evaluation Committee, and with the authorization of PROESA Board of Directors, the contracting State entity may request from the offerors, up until the opening of the economic offer, clarifications, rectifications in case of errors in form or omissions, and the submission of support documentation, with the objective of clarifying and establishing the accurate sense and scope of the offer, keeping the offers from being disqualified for formal aspects in the technical evaluation, and always caring about the principle of transparency in the process and equality of the offerors. The contracting State institution, with the favorable opinion of PROESA Board of Directors, will be the one to determine if the errors or omissions may be rectified through this procedure and may, if it deems it necessary, postpone the date for opening of the economic offer.

Opening of economic offers

Art. 48.- Without detriment to what is provided in the tender guidelines, the opening of the economic offers shall be held on the date, time and place established therein, without going against what is stated in the previous article, and the offerors that wish to attend, may do so.

The Evaluation Committee shall disclose the result of the technical evaluation of the offers, and will proceed to open only the envelopes of the economic offers from the offerors whose offers were declared technically acceptable. The envelopes of the offerors whose offers were not accepted in the stage of the technical evaluation will be returned, unopened. This will be included in the corresponding minutes.

The economic offers that do not include all the documents required in the tender guidelines will be rejected.

During the opening ceremony, a minute will be written up that will state who submitted an offer, the background documentation received, and the observations made by the offerors and the Evaluation Committee.

Evaluation of the economic offer

Art. 49.- In the economic evaluation phase, the Evaluation Committee shall verify that all requirements established in the tender guidelines have been complied with, and it will evaluate the offers considering the bidding factors established in said specifications.

The Evaluation Committee for the economic offers shall write up a Qualification Minute, that shall be signed by all members of the committee, in which it shall recommend the award to the winning offeror.

If there were no valid economic offers, the evaluation committee shall recommend that the tender be declared null and void.



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Publicity in the evaluation procedure

Art. 50.- There must be a written record of all acts performed by the Evaluation Committee and the offerors, which must be published in the contracting State institution's and in PROESA's webpage.

Awarding by the contracting State institution

Art. 51.- Within a 5 day period, starting from the notification of the recommendation by the Evaluation Committee, the contracting State institution must approve or reject the recommendation. In case of the former, it shall award the contract to the winning offer, in case of the latter, it must justify its rejection of the recommendation and declare the tender process as finished. If there were no valid offers, the contracting State institution shall declare the tender null and void.

Before establishing the special purpose vehicle, the successful bidder shall renew the Guarantee that the offer will be maintained for the term determined, during the period given for that purpose and as applicable keep it valid until the guarantee of construction or exploitation, is delivered. If the offeror's non-compliance with this obligation resulted in the expiration of the term to enter into the Public-Private Partnership contract as established in the tender guidelines, the contracting State institution will put the guarantee into effect, and Article 55 of the Special Law for Public- Private Partnerships will apply.

Incorporation and requirements of the special purpose vehicle

Art. 52.- Within the period specified in the tender guidelines, which in no case shall be less than sixty days starting from the date when the award resolution was made firm, the offeror awarded the Public-Private Partnership contract must legally establish a public limited company, of Salvadoran nationality, with whom the Public- Private Partnership contract will be entered.

The object of the special purpose vehicle shall be determined in the tender guidelines, according to the unique characteristics of the works or services being tendered. The duration of the partnership shall be the longest time between the duration of the Public- Private Partnership plus two years, or the time that the guarantee of works or services to be performed should last. The tender guidelines may establish other characteristics or requirements that must be fulfilled by said partnership.

The percentage of paid- in of the special purpose vehicle at the time of its establishment, shall be determined by the tender guidelines for each project, without detriment to the legal requirements on the matter. The capital of this company will be made up of nominal shares.

Without detriment to the general accounting norms applicable to companies, the contracting State entity may require the special purpose vehicle, through the tender guidelines, the accounting information records considered necessary to oversee the Public- Private Partnership contract and the special purpose partnership.



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PRIVATE INITIATIVE REGIME

Private initiative projects

Art. 53.- In accordance with the provisions of the Special Law for Public- Private Partnerships, any legal entity and any type of linkages among them, whether national or foreign, may apply to the contracting State institutions, private initiative projects to be developed by any of the contractual modes of public-private partnerships.

Projects where private initiative applies

Art. 54.- The private initiative procedure will only be accepted in relation to the following type of project:

- a) That they have been qualified as self-sustaining, in accordance with their economic nature, by the contracting State institution and PROESA Board of Directors;
- b) That do not correspond to a project that, at the time of presenting the private initiative project, is being studied by PROESA or any contracting State institution to be executed through a Public- Private Partnership;

To this purpose, PROESA and the other institutions mentioned must keep a public list of the projects being studied to be subject to said modality. The projects that have not been released for tender within four years, starting from the date when they were incorporated, except when PROESA or some of the institutions mentioned before, as is the case, justify keeping them there; and,

- c) That incorporate innovative practices in the economic sector to which the project corresponds, and regarding the traditional public supply.

To the purposes mentioned in the paragraph above, the application will be considered as constituting an original contribution to the sector to which the project corresponds, when compared to others drafted by the State or presented by private entities, or that constitutes an innovative contribution from the standpoint of design, technology or administration of the project.

Private initiative stages

Art. 55.- The private initiative procedure will be made up of two stages. In the first one, hereon after the "Presentation", the applicant shall deliver a pre-feasibility study of the private initiative to the contracting State institution, so that it may evaluate whether it generates interest.

Presentation



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Art. 56.- The proponent must present before the contracting State institution, a pre-feasibility study that includes the proposal of the initiative project, for which the following must be identified: on one hand, the unsatisfied need, problem to be solved, or potentiality to be developed through the project and, on the other one, the characteristics of the probable solution that the project might represent, as well as their main benefits and costs, and the initial evaluation indicators, both socio-economic and financial, that allow the recommendation of a decision on the project.

Besides, the study must contain the proposal and technical- economic analysis of all alternatives that may be established to solve the identified problem, with an estimate of the socio- economic and financial evaluation indicators for each of the proposed alternatives, that in time will allow the selection of the most convenient alternative and the recommendation of a decision on the project.

Whenever pertinent, each one of the conditions stated must be duly supported and justified, indicating the information sources used.

The communications or notifications made by the contracting State institution, both in this stage and on the proposal stage, shall be addressed to the residence indicated by the applicant, through certified mail, or any other media that generates proof of reception.

The presentation of the pre-feasibility study and its corresponding documentation will be delivered, in one original and two copies, per the Private Initiative Presentation Form, drafted by PROESA, at the notifying department of the contracting State institution, where they shall record the date and time of delivery.

The contracting State institution shall review within ten days, starting from the presentation, whether the pre-feasibility study and the accompanying background information correspond to the established in the present Regulation, and shall notify the applicant. If it were proven that the background documents are incomplete, the applicant shall deliver the missing ones at the incumbent office of the contracting State institution, for which purpose it will have a term of five days, starting from the date when it received the notification. In case these new background documents were not submitted within the term, it will be considered that the Presentation was not submitted.

The contracting State institution will have a period of sixty days, starting from the date of the presentation of the private initiative, or from its complement, depending on the case, to issue a statement on the pre-feasibility study for the private initiative and other background documentation. If the contracting State institution deemed that there is no interest in the project, it shall notify it in writing to the applicant. If the contracting State institution deemed it interesting, it shall request a ruling from PROESA Board of Directors.

The ruling requested from PROESA Board of Directors shall be binding for the contracting State institution, and must be issued no later than fort-five days, counted from the reception of the corresponding request.

If the ruling of PROESA Board of Directors is favorable, the contracting State institution shall issue a formal declaration of interest in the private initiative proposal, and shall notify the applicant. If the ruling of PROESA Board of Directors were not favorable, the contracting State institution shall issue a formal and justified statement of no interest for the applicant.



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Proposal Stage

Art. 57.- The expressions of interest must be published once in two newspapers of national circulation, as well as in the institutional webpage of the contracting State institution and of PROESA, so that interested third parties, within a maximum period of sixty days, starting from the last publication, may state their interest regarding the execution of an alternate project. After the term just mentioned, PROESA shall notify said situation to the private initiative proponent, within five working days, at the most.

If there were no third parties interested in the execution of an alternative project, the proponent of the private initiative shall present the feasibility studies under the terms of Article 32 of the Special Law for Public- Private Partnerships, and 22 of the present Regulation, within a year, starting from the notification informing about the existence of interested third parties. Said term shall be extendable through a justified resolution.

If there were one or more third parties interested in the execution of an alternative project, they shall submit a guarantee that in a term no later than ninety days, starting from their statement of interest, they shall present a pre-feasibility study of their alternative project.

Once the pre-feasibility studies are received, the contracting State institution, together with PROESA Board of Directors, and within a maximum period of forty-five days, starting from the date of reception of the studies, they shall select the proposal that, duly sustained, offers the project with the greatest social profitability and, over this, shall require the corresponding proponent to present a feasibility study under the terms of Article 32 of the Special Law for Public- Private Partnerships and 22 of the present Regulation.

Rights of the offeror that proposes the project

Art. 58.-The offeror whose private initiative proposal was accepted may participate in the tender procedure under the same terms and conditions as all other individuals, but, with the following rights over the other offerors.

- a) The right to match the best offer, in which case there will be a process for a definite break of the tie between the proponent and the bidder that had taken the first place, each submitting a better offer based on the competition factor. This tie- breaker must be performed at the latest fifteen days after the opening of the economic offers; and,
- b) To be reimbursed for the expenses incurred to prepare the private initiative proposal, if he were not awarded the contract. This reimbursement shall be made by the awardee, in case the original proponent were not the winner, and must be made effective after the subscription of the contract. If the proponent did not participate in the referred selection procedure as invited, he will lose the right to request a reimbursement of the expenses incurred in the preparation of the proposal.

For purposes of determining the expenses to be reimbursed, the private initiative proponent, or the interested third party, as the case may be, shall submit, together with the pre-feasibility study a budget



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with the expenses incurred in the proposal for the private initiative. Responsibility for this falls to the proponent when he submits the feasibility study.

The contracting State entity, together with PROESA, shall review and assess the budgets submitted, with market criteria, and will determine, the amount of the expenses that the contracting State entity shall reimburse as compensation for expenses incurred for the proposal of the private initiative, to the offeror whose proposal for private initiative was accepted.

Consequences of a declaration of no interest

Art. 59.- If the contracting State institution issues a final resolution of declaration of no interest, it will not be able to call for tender in relation to the private initiative project, or other that has the same object or is similar in substance, during a period of two years, starting from the notification of that resolution.

If the contracting State institution decides to release the above mentioned project for tender within the term stated, the amount to be paid in compensation to the proponent for expenses incurred for the proposal of the private initiative, shall be the amount determined based on the parameters established in the previous article, in the case of pre-feasibility, duly re-adjusted according to the Price to the Consumer Index.

TITLE V SOLE CHAPTER

SUBSCRIPTION AND CONTENT OF PUBLIC- PRIVATE PARTNERSHIP CONTRACTS

Form and subscription of the Contract

Art. 60.-The Public- Private Partnership contracts shall be granted through a public deed, and shall be entered into by the contracting State institution, represented by its head or by the Attorney General of the Republic, or an officer appointed by him as the case may be, and the special purpose vehicle, within the term established in the tender guidelines.

Contractual provisions

Art. 61.- Without detriment to the agreed provisions, which according to the nature of each Public-Private Partnership contract, and provided in the corresponding Law, the following rules shall apply for these types of contracts:

- a) Since the improvement of the Public- Private Partnership contract, the private participant may issue, transfer or relinquish the shares in the special purpose vehicle. The tender



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- guidelines and the contract must contain the requirements and conditions under which the contracting State institution shall authorize said actions.
- b) The private participant may relinquish the Public- Private Partnership contract in its entirety during the exploitation state. The tender guidelines and the contract shall establish the conditions that the future assignee shall fulfill, which in no case may be more cumbersome than the established for the original offerors.
 - c) The contracts will allow the private participant to fund the project in the way he deems convenient, even by placing securities of any kind in public offer in the stock market. In case of debt securities, no values or bonds may be issued if their term for total or partial redemption expire after the term of validity of the Public- Private Partnership contract.
 - d) The Public- Private Partnership shall stipulate a regime of contractual obligations, as well as the penalties to be imposed on the private participant as consequence for their transgression, among which those that result from the violation of workers' rights must be included.
 - e) In the execution of the Public- Private Partnership, private participants shall perform acquisitions of assets and contracting of services at their convenience, and without being subject to a specific regime for acquisitions and contracts.
 - f) The provisions of Public- Private Partnership contracts may not change the objective conditions established in the tender guidelines.

Guarantee of contract

Art. 62.- The special purpose partnership shall issue guarantees of construction and of exploitation within the periods established under the tender guidelines.

The guarantees to which this article refers shall be sufficient, and they may be real or personal. Their nature, form and amount shall be determined in the tender guidelines.

Guarantee during the construction stage

Art. 63.- The purpose of the construction guarantee is to ensuring compliance with the obligations of the private participant during the construction phase. This guarantee shall replace the guarantee that the offer and term maintenance guarantee, form and amount that will be established in the tender guidelines; in any case, the term of the guarantee may not be less than the one established in the tender guidelines for the phase of construction, plus three months.

The work construction guarantee shall be returned to the private participant once the works are finished in full, and the documents required by the contract shall be returned to finalize this phase, provided the guarantee of exploitation has been delivered, as per the contracting State institution, and is in agreement with the present Regulation.

Guarantee during the exploitation state



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Art. 64.- The private participant is obliged to deliver to the contracting State institution an exploitation guarantee in the term, form and amount established in the tender guidelines. In all cases, this guarantee shall have a validity equal to the period of the exploitation phase, plus twelve months, at a minimum. However, the special purpose vehicle may opt to deliver guarantee documents with a shorter period of validity, as long as this is accepted by the contracting State institution, and each document is delivered before the expiration of the previous one; the contracting State institution is authorized to collect on the current guarantee in case this has not been renewed at least ten days in advance. The term of the latest document shall be what is pending from the exploitation stage, plus twelve months, at a minimum.

The tender guidelines may require the constitution for new guarantees for the performance of new investments and with the purpose of ensuring compliance with the conditions, in which the contracting State institution shall receive the work object of the Public- Private Partnership contract, among others. The term for establishment, validity, form and amount shall be established in the tender guidelines.

The guarantee of exploitation shall be returned in the term stated in the tender guidelines, provided that the private participant has complied with all obligations contracted with the contracting State institution.

Insurances

Art. 65.- Without detriment to Article 56, paragraph e) of the Special Law for Public- Private Partnerships, the private participant must obtain insurance policies that cover civil responsibility for third- party damages and the catastrophic risks that may occur during the period of validity of the Public- Private Partnership contract. The amounts perceived from the insurances against catastrophes shall be destined for the reconstruction of the work, unless the parties agree to use them for other purposes or works related to the public- private partnership contract.

The tender guidelines shall determine the terms, form, conditions, modes and other clauses that said policies must contain, as well as the procedure for approval thereof.

The tender guidelines may demand other types of insurance policies.

Special collateral guarantee

Art. 66.- A special collateral for public- private partnerships is established, which shall be without displacement of rights and pledged assets. This may be contracted by the private participant with the financial creditors of the project or of its operation, or in the issuance of debt securities of the special purpose vehicle. The above, without detriment of the use, on the part of the private participant, of similar figures established in other set of laws.

TITLE VI SOLE CHAPTER



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EXECUTION OF THE PUBLIC- PRIVATE PARTNERSHIP CONTRACT

Delivery of assets

Art. 67.- The Public- Private Partnership contract shall specify the assets that will be kept as property of the State, and those that will be the property of the private participant, if applicable.

In the Public- Private Partnership contracts, the public assets shall be specified according to the following categories:

- a) Those that imply delivery of assets or material works that have the nature of national assets of public use;
- b) Those that imply the delivery of assets or material works that have the nature of State property.

In no case shall the public property assets be transferred in property to the private participants per the Public- Private Partnership contract.

In Public- Private Partnership contracts, private assets shall be specified according to the following categories:

- a) Assets that the private participant is obliged to give back or transfer to the State at the end of the contract; and,
- b) The assets that the private participant may retain or those that he might dispose of at the end of the contract.

If the Public- Private Partnership contract includes public or private assets, on which the work will be executed or the service or activity will be provided, these shall be understood as delivered to the private participant in the condition in which they were at the time of delivery of the land or material work, and it will be his responsibility to comply with the obligations that are established in the tender guidelines regarding them.

National assets of public use or State property, intended to develop the work object of a Public- Private contract, and that are included in the area of the project, shall be subject to this since the perfection of the Public- Private Partnership contract, without detriment to what is established in the tender guidelines. In no case shall assets that are the property of the State be transferred in property to private participants by virtue of the Public- Private Partnership contract.

Acquisition of assets and rights

Art. 68.- The assets and rights that the private participant acquires in any heading and that are subject to the Public- Private Partnership contract may not be alienated separately from it, nor mortgaged or subjected to any type of tax, without the consent of the contracting State institution, and shall become the property of Public Treasury merely by operation of law.



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The contracting State institution shall keep an updated record of all assets and rights subject to the contract. All those assets and rights acquired by the private participant, at any heading, during the validity of the contract, and that are qualified as such by the contracting State institutions, shall be considered assets subject to the contracts. When dealing with Public- Private Partnership contracts under the mode of public work concession, the concessionary special purpose vehicle may acquire for the state the land necessary to carry out the works established in the contract. In every case, the tender guidelines shall state the procedure for asset acquisition.

Construction phase

Art. 69.- The construction phase, if any, shall start with the engineering studies, if applicable, and with the start of the period for the execution of works, in accordance with the Public- Private Partnership contract, and shall end with the start of the provision of services, as defined in the tender guidelines.

Said stage shall include the following aspects, per the contracting mode for Public-Private Partnerships:

- a) The performance of the studies provided in the tender guidelines;
- b) The construction of the works stated in the tender guidelines;
- c) The supply of equipment defined in the tender guidelines;
- d) The maintenance and repair of assets or material works of public or private domain, delivered to the private participant, in the standard provided by the tender guidelines, since the start of the contract;
- e) The use and enjoyment of national assets of public use or State property destined to developing the Public- Private Partnership project; and,
- f) The use and enjoyment over private assets destined to developing the Public- Private Partnership project.

Log book during the construction stage

Art. 70.- All communication and relationship between the private participant and the contracting State institution, shall be channeled through the contract supervisor, from the moment of appointment up to the moment when his functions are finished.

To this purpose, the project supervisor must have, among other background documents, a book denominated Log Book, which shall give details of the Public- Private Partnership project the special purpose vehicle and the project supervisor, mentioning the pertinent resolutions. The log book shall record the most important events that take place during the construction stage, especially regarding compliance from the private participant as relates to the technical specifications, observations made during construction, communications and notifications to the special purpose vehicle, among other matters, and of the obligations contracted per the tender guidelines and the offer submitted.

Functions of the project supervisor during the construction stage



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Art. 71.- During the construction phase, the project supervisor shall oversee the development of the public- private partnership contract, and shall have all functions and authorities established in the tender guidelines, with at least the following:

- a) Ensure that the private participant fulfills its contractual obligations;
- b) Ensure the proper development of the construction of works, and inform the contracting State institution of non-compliance with the obligations established in the tender guidelines and the contract, so that the corresponding contractual penalties may be applied;
- c) Ensure that the designs, blueprints, studies and specifications of the public- private partnership project are in conformity with the tender guidelines and the contract;
- d) Ensure the compliance with specifications and technical norms over the construction of the works;
- e) Ensure compliance with the work plan proposed by the special purpose vehicle;
- f) Ensure compliance with safety norms;
- g) Ensure compliance with quality norms;
- h) Deliver to the contracting State institutions the reports that it requests related to the execution of the Public- Private Partnership contract during the phase of construction;
- i) Review the statistical information provided by the special purpose vehicle;
- j) Deliver the land necessary for the construction of works, as stated in the tender guidelines, with due annotation in the Log Book;
- k) Ensure the compliance with legal, accounting and administrative aspects and, in general, with any others that arise from the contract documents; and
- l) Give instructions for the compliance with the Public- Private Partnership contract, following the instructions of the contracting State institution.

Penalties during the construction stage

Art. 72.- Non-compliance or infraction by the private participant regarding any of the obligations of the Public- Private Partnership contract shall generate the penalties established in the tender guidelines and the contract itself.

The private participant shall not be exempt from responsibility, not even in the cases in which the non-compliance results from the contracts it has signed with third parties.

Procedure in case of application of penalties during the construction stage

Art. 73.- When the private participant does not fulfill its obligations, or incurs any of the penalties established in the tender guidelines, the project supervisor shall inform the contracting State institution of this situation.

If the contracting State institution considers that there are enough merits, it shall notify the charges to the private participant, who will have a term of fifteen days, starting from the date of notification to arrange a deposition and submit pertinent evidence. Once the term granted for that effect has expired, the contracting State institution must state and notify its resolution within the next fifteen days.



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The resolution of the contracting State institution shall file revision appeal before this same Agency in a period of on more than five days, starting from the notification of the resolution. The contracting State institution shall resolve and give notice regarding the recourse in a term no longer than fifteen days, starting from the date when the recourse was filed.

The penalties applied by the contracting State institution may be paid by the private participant within the thirty days following the date on which the resolution that applies the penalty is made firm. If the licensee did not comply with the penalty applied within the term given, the contracting State institution will make effective the guarantees, without detriment to all other pertinent actions.

Subcontracts

Art. 74.- The private participant may subcontract any type of activity included in the Public- Private Partnership contract, unless it were expressly prohibited by the tender guidelines of the contract. In every case, the private participant will always be responsible before the contracting State institution for the correct execution of the contract. The tender guidelines may establish requisites for the sub-contracts.

Subcontractors may not start works unless their respective contracts are formalized by the private participant, by delivering a copy of the contracts to the contracting State institution.

Private participants must deliver to the contracting State institution, on a monthly basis, information regarding payment made to the subcontractors. This information shall be published in the webpage of the contracting State institution, and must be updated monthly.

Start of construction and maximum terms

Art. 75.- The tender guidelines may establish maximum terms for the start of construction and progress of works, and determine the corresponding penalties in case of delays thereof.

Compliance with term

Art. 76.- The private participant is obliged to finish the works and to start supplying the service on the dates and total or partial terms indicated in the tender guidelines, or on the ones determined in his offer, as applicable. The tender guidelines shall state the penalties in favor of the contracting State institution for breaches of contract.

If during the work construction there were delays caused by unforeseen events or force majeure, the private participant shall submit its written justification to the project supervisor, within the thirty days of the delay, and, in every case, within the valid term; once this period expires, no justification will be accepted. The contracting State institution, after receiving the project supervisor's report, shall analyze the reasons given by the private participant to justify the delay, and shall decide whether to accept or deny the extension of the term.



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If the delay in compliance with the partial or final deadlines were imputable to the contracting State institution, the private participant shall be granted an extension of the term for construction, equal to the period of hindrance or stop of works, without detriment to the applicable compensations.

Investment or construction by stages

Art. 77.- The tender guidelines may establish whether the investment and the construction will be made in one or several stages over the period of validity of the public- private partnership contract, conforming to the compliance with the previously established service levels, as well as the terms and conditions to which these shall be subject.

Exploitation stage

Art. 78.- The exploitation stage shall start with the beginning of the supply of service. This stage is made up of several aspects, depending on the public- private partnership mode used:

- a) Supply of the public service for which the work was constructed, the supply of a public service or exploitation and execution of a general- interest activity;
- b) The conservation of the work, facilities and equipment in optimal use conditions, as demanded by the tender guidelines;
- c) The charge of fees to be paid by the users of the services that the private participant is authorized to supply per the public- private partnership contract;
- d) The use and enjoyment of public use national assets, or State property, aimed at developing the public- private partnership project; and,
- e) The use and enjoyment of private assets destined to develop the public- private partnership project.

Start of supply of services

Art. 79.- The private participant shall request the start of supply of services within the term established in the tender guidelines.

Once the private participant has requested the authorization to start the supply of service, a Committee shall be appointed, made up of three people: one representative from the contracting State institution, another one from PROESA, and one appointed by the OFAPP.

Within ten days, beginning from the date of reception of the request to start the supply of service, the private participant shall be summoned for the inspection of the work, service or activity. Once the satisfactory condition of the works and facilities, and their correspondence with the project and other approved technical specifications has been confirmed, the corresponding minute shall be written up. If the works were incomplete or defective, that shall be included in the minute, which shall have a detailed description of the omissions or defects observed. Said minute shall be signed by the members of the



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Committee and the representative from the special purpose vehicle, and shall be issued in triplicate, with one set being given to the private participant.

The private participant shall not start supply of the service until the omissions or defects have been repaired to satisfaction of the Committee, in the terms established in the minute. In case of serious faults, the contracting State institution shall not authorize the start of the supply of service.

The start of the supply of service shall be authorized through a resolution from the contracting State institution. The total amount of the investment made by the private participant shall be included in the resolution.

Project service manual

Art. 80.- The contracting State institution shall prepare, together with the private participant, a service manual for each Public- Private Partnership contract that is about to start the exploitation phase, which must include all norms derived from the tender guidelines and the technical offer. Said manual must be sent to the OFAPP for their clearance, within the term established in the tender guidelines and, if these did not include a provision about this, at least sixty days before the date established for the start of supply of service. The OFAPP must issue a statement within twenty days, starting from the date of reception of the draft of the manual by the contracting State institution, which must approve it within five days, starting from the date of clearance.

Besides the established in Article 88 of the Special Law for Public- Private Partnerships, the service manual, according to the diverse nature of the projects, shall include, among other matters:

- a) Measures for caring for the work, safety and security;
- b) Measures for maintaining and cleaning the different facilities;
- c) Norms for the use of mandatory services established in the tender guidelines, and of the complementary services;
- d) Operation, quality and administration standards for the supply of services;
- e) Norms regarding user complaints;
- f) Evaluation and control mechanisms; and,
- g) Procedures.

The exploitation phase may not be started without the approval of the service manual.

Guarantees during the performance of the contract

Art. 81.- The work, service or general- interest activity, object of the Public- Private Partnership contract, constitutes a public service, so the private participant is obliged to supply it without interruption, except for exceptional situations, due unforeseen events or force majeure, provided that these comply with the service conditions and with the payment of the fees authorized in the corresponding contract.

The public- private partnership contract must include mechanisms that allow guarantee that the private participant complies with their contractual obligations, stated above.



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The mechanisms that the contract might include for the purposes stated above, may be the following, among others:

- a) Adaptation of the service so it responds to actual demand;
- b) Continuity and regularity of the service; and,
- c) Availability of the service for users under conditions that hinder the arbitrary discrimination in its supply, except for cases when the tender guidelines so authorize it for social well-being reasons.

The study, analysis and implementation of these mechanisms shall be at the exclusive cost and charge of the private participant.

Compensation for variations in the contract or contractual modifications

Art. 82.- The contracting State institution shall compensate the private participant only for the demands of the change of contract, for requests for changes in the contract, for variations thereof, or contractual modifications, insofar as said changes imply a negative effect on the economic and financial balance of the contract.

The calculation of the compensations and the adjustments of parameters mentioned below shall always be made so as to obtain the present net value of the additional project that equals zero, all that considering the applicable discount rate and the economic effect that the additional project might have on the original project, including the higher risk that it may add to it.

The economic compensations in these cases must be stated in one or several of the following elements:

- a) Pecuniary compensation delivered by the State;
- b) Voluntary payments made directly to the private participant by third parties interested in the development of the work;
- c) Modification of the present value of total income for the project, in case that had been used as a factor for award;
- d) Alteration of the term of the contract, as long as it does not exceed the maximum term contemplated in this Law; or,
- e) Modification of the fees or other factor of the economic regime of the contract.

Liquidity fund for Public- Private Partnerships

Art. 83.- The liquidity fund created through Article 66 of the Special Law for Public- Private Partnerships aims at complying with the obligations generated from firm, contingent and quantifiable commitments to which the State is obligated through the subscription of the Public- Private Partnership contracts.

The Fund is with the Development Bank of El Salvador, and is constituted by separate assets, with specific purposes, under the administration of the above mentioned bank.

For the purposes of the Special Law for Public- Private Partnerships, it is expressly recorded that the assets in the Development Bank of El Salvador shall not respond, directly or indirectly, for any of the



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obligations contracted and operations performed with charge to the resources of the above mentioned Fund, since this is a special asset, independent of the Development Bank of El Salvador, which only acts as its administrator.

Administration and investment mechanisms of the Fund

Art. 84.- The administration of the Liquidity Fund for Public- Private Partnerships shall be governed by the authorities assigned to the organs of the Development Bank of El Salvador, in Title I, Chapter V, of the Law of the Financial System for Development Promotion.

The resources of the Liquidity Fund for Public- Private Partnerships may only be invested in fixed income instruments, issued by the State, of low risk and high liquidity. Additionally, they may be kept in deposits in any currency, in the Central Reserve Bank and entities authorized by the Superintendence of the Financial System for accepting deposits from the public.

The Development Bank of El Salvador shall pay, to whoever it legally corresponds, with charge to the Fund resources, and by instruction from the contracting State institution, the values derived from firm, contingent and quantifiable commitments to which the State is obliged by the Public- Private Partnership contracts.

For the purposes mentioned above, the contracting State institutions, for each Public- Private Partnership contract, shall submit to the Development Bank of El Salvador, during the month of October of the previous year, a list of all payments to be made to the private participant, stating the motive, estimated amount and term in which they must be made. Likewise, it must reiterate the corresponding payment one month in advance from the payment date.

The delivery of the list of payments or of the written reiteration will be without detriment of the obligation of the contracting State institution of issuing a formal instruction for payment to the Development Bank of El Salvador, ten days prior to the payment date established in the tender guidelines.

The payments that the Development Bank of El Salvador must make shall be made through certified check, or cashier's check or treasurer's check, issued against a bank authorized by the Superintendence of the Financial System to operate in the country, issued to the special purpose vehicle or to whom it legally corresponds.

TITLE VII SOLE CHAPTER

SUSPENSION AND TERMINATION OF THE CONTRACT

Suspension of the contract



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Art. 85.- The contract might be temporarily suspended by the causes and under the conditions regulated in Art. 69 of the Special Law for Public Private Partnerships; in which case all rights and obligations of the private participant and of the contracting State institution derived from the Public Private Partnership contract shall be suspended. The contracting State institution shall issue a reasoned resolution regarding compliance with the cause that originates the suspension. Said resolution shall contain, at least, the description of the event or cause that originates the suspension, citing the legal base that supports it and the intended term during which the contract will be suspended. The cited resolution shall be sent to PROESA Board of Directors no later than five days after it is issued, so that this may authorize or deny the suspension, determining whether the suspension has merits according to the parameters established in Art. 69 of the Special Law for Public Private Partnerships. PROESA Board of Directors shall issue its ruling within fifteen days, at the latest, starting from the date of reception of the resolution in PROESA's facilities. The same procedure must be followed in case of an extension of the suspension, which may be done only once.

The suspension on the contract will end just with the passage of the time established in the resolution.

Causes for termination of the Public Private Partnership contract

Art. 86.- The Public Private Partnership contract shall be terminated through:

- a) Expiration of the term or compliance with some action of revocation stipulated in the contract;
- b) Abandonment of the project or gross non-compliance with contractual obligations as defined in the tender guidelines, declared by the contracting State institution with prior approval from PROESA Board of Directors;
- c) Unforeseen event or force majeure, duly proven, per the stipulated in the tender guidelines and in the contract;
- d) Early termination by cause of public interest;
- e) Mutual agreement; and,
- f) Other causes stipulated in the tender guidelines and in the contract.

Expiration of the term or compliance with some action of revocation stipulated in the contract

Art. 87.- The Public Private Partnership contract will be terminated when the term for which it was granted expires, with its modifications, or in compliance with any action of revocation stipulated therein.

The procedure for reception must be established in the Public Private Partnership contract, considering the nature of the project.

The contracting State institution shall oversee that, in compliance with the provided for each case in the tender specification and in the Public Private Partnership contract, the private participant:

- a) Delivers all assets that he is obliged to return or transfer to the State at the end of the contract;



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- b) Transfers the technology used in the work, asset or service in turn, and the innovations introduced in them;
- c) Provides timely training to the corresponding the public officials, as successors in the exploitation activities and maintenance of the service and of the infrastructure; and,
- d) Provides support services, consultancy and resources, including the supply of spare parts, whenever necessary, during a reasonable period determined in the tender guidelines, starting from the delivery of the infrastructure to the contracting State institution.

The contracting State institution, per the procedure established in the contract, shall process the termination and will establish the amount of the payments or charges to be made to the private participant.

The contracting State institution must also confirm that the private participant has complied with its labor obligations, and that it made the necessary provisions for compliance thereof until the end of the contract.

Serious breach or Abandonment of the project by the private participant

Art. 88.- The contracting State institution, with prior approval from PROESA Board of Directors, shall declare the termination of the Public- Private Partnership contract, in case of serious breach with the contract or abandonment of the project by the private participant, according to the terms stipulated in the contract in reference.

Together with the declaration of termination of contract, the contracting State institution shall appoint a comptroller, who shall have the authority to ensure the compliance with the Public- Private Partnership contract. This comptroller shall comply with his obligations with the diligence of a good merchant in his own business, and will be held liable civilly, criminally and administratively for any malicious or negligent actions that he incurred while exercising his charge.

During the intervention period, all rights and obligations of the contracting State institution and of the private participant, derived from the Public- Private Partnership contract, will remain valid.

The comptroller, starting from the moment of his appointment, shall record income and expenses of the Public- Private Partnership contract, for purposes of good administration, and may, while exercising his charge, have access to all books, papers and documents of the private participant that are related to the referred contract.

If a new private participant were designated, per Art. 73, paragraph 2 of the Special Law for Public- Private Partnerships, this may request a report of accounts of the intervention period. The contracting State institution shall send a report to the new private participant of the activities performed by the Comptroller, once these are finished, with the objective of informing him of what transpired during said period.

Within a term of one-hundred and eighty days, starting from the declaration of gross non-compliance with the contract or the abandonment of the project, the contracting State institution shall appoint a



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new private participant from a list proposed by the creditors, approved by their majority. The members of that list must comply with all requirements established in the tender guidelines to be an offeror. Said requirements may be modified, through a resolution from PROESA Board of Directors, based on the new background that reveal the shortcomings of the original ones.

If the replacement would not have been done during the above mentioned period, the contracting State institution shall release the contract for tender for the remaining term, or for a new one, with prior approval from PROESA Board of Directors.

The declaration of non-compliance shall deem demandable the guarantees established in the Special Law for Public- Private Partnerships, the present Regulation, the tender guidelines, and the contract.

Partial non-compliance for unforeseen events or force majeure

Art. 89.- If the unforeseen or force majeure event affected only partially the compliance with the contractual obligations, and to the extent that the rest of the contract is susceptible to compliance, the parties shall agree, per the established in the contract, the adjustment to the legal, technical and economic stipulations of the contract, to adapt it to the compliance of the subsistent obligations.

Early termination of the contract due public interest

Art. 90.- The contracting State institution may declare the early termination of the public- private partnership contract, for reasons of public interest, if any of the following causes is found:

- a) That the work or service became unnecessary for the satisfaction of the public needs that generated the Public- Private Partnership project.
- b) That the work or service required a re-design or complement in such a way that the additional investments to adapt the work to the new conditions, that it exceeds twenty percent of the initial budget for the work or service, and it were proven that the economic and social benefits exceed the cost of the early termination for the State. Said amount shall be updated to the date when the request for approval is submitted, using the price to the consumer index.

To exercise this authority, the contracting State institution shall request the approval of PROESA Board of Directors, which may only grant it after a favorable ruling from the Ministry of Finance, from a fiscal standpoint, and from the OFAPP regarding the matters of its competence.

The resolution that declares the early termination of the public- private partnership contract shall set the term and conditions in which the private participant must deliver the work or service to the contracting State institution.

In the case of early termination of the contract due public interest, the private participant will be entitled to a compensation. The public- private partnership contract shall stipulate the criteria and procedures to calculate said compensation.

Mutual agreement for a new release for tender



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Art. 91.- With the purpose of increasing the service levels, and improving the technical standards of the project, the contracting State institution and the private participant may convene to terminate the public- private partnership contract by mutual agreement.

The early termination of the contract by mutual agreement for a new release for tender will only proceed when the following requisites are fulfilled:

- a) The Public- Private Partnership contract is in the phase of exploitation;
- b) Two thirds of the original term of the contract have elapsed; and,
- c) The project needed a re-design or complement, complement in such a way that the additional investments to adapt the work to the new conditions, that it exceeds twenty percent of its initial budget. Said amount shall be updated to the date when the request for approval is submitted, using the price to the consumer index.

To exercise this authority, the contracting State institution shall request the approval of PROESA Board of Directors, which may only grant it after a favorable ruling from the Ministry of Finance, from a fiscal standpoint, and from the OFAPP regarding the matters of its competence.

Once this approval is obtained, the contracting State institution shall release the project for tender, to award a new contract referred to the same project, where the original private participant may take part. In all cases, the original contract shall remain valid until the start of the term of the new contract.

The private participant shall provide the contracting State institution with all information necessary for the performance of the new tender in a competitive manner.

If the contract were terminated early for a new release for tender, the private participant shall have the right to compensation. The tender guidelines and the public- private partnership contract shall stipulate the criteria and procedures to calculate said compensation.

TITLE VIII SOLE CHAPTER

OVERSIGHT

Inspection Agency for Public- Private Partnerships

Art. 92.- The Inspection Agency for Public- Private Partnerships, OFAPP, is responsible for the technical oversight of compliance with the obligations established in the Special Law or Public- Private Partnerships, in the tender guidelines and in the Public- Private Partnership contract, during the exploitation phase of the project.

Said oversight shall deal with the service levels, the tariff regime, and users rights, per the tender guidelines and in the Public- Private Partnership contract.



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Rights and duties of the users

Art. 93.- The rights and services of the users to the assets and services that are subject of a public-private partnership contract, are established in articles 79 and 80 of the Special Law or Public- Private Partnerships.

Ensuring the compliance with the obligations of the private participant and of the contracting State institution towards the users of the asset or service subject of a Public- Private Partnership contract, is the responsibility of the OFAPP.

Complaint before the OFAPP for violation of user rights

Art. 94.- Any user of a public- private partnership project may seek help, from the OFAPP if his user rights, as established in the Special Law or Public- Private Partnerships, are violated, within six months from the date when the event occurred.

The users that consider that their rights have been affected through the actions of the participant that go against Article 79 of the Special Law or Public- Private Partnerships, may present a complaint to the OFAPP.

The complaint may be presented in writing, verbally, via phone, electronically, or through any other suitable means, and must contain, at least:

- a) User's identification and general information
- b) Private participant's identification and general information;
- c) A description of the events that originated the controversy.

If the complaint did not comply with the legal requirement per the paragraph above, the OFAPP shall advise the interested party so that this may repair the omissions within three days/77

The OFAPP shall justify its resolution regarding the complaining in a maximum period of thirty days, starting from the day when the complaint was submitted, considering the formalities above and qualifying the origin of its complaining. The term to resolve this will be suspended once the term for the user to repair the advice has expired.

The OFAPP shall communicate its decision to the affected party, in writing, and with justification, copying the contracting State institution and the private participant.

If the complaint submitted by a user were accepted, the OFAPP shall inform about the procedure to impose fines and penalties against the contracting State institution or the Private Participant, per the Special Law or Public- Private Partnerships.



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The fines shall be applied, without detriment to the actions that the affected party might take against the responsible person, with the purpose of repairing the damages caused directly by the infraction, if any.

Auditing function

Art. 95.- The OFAPP may perform technical audits of the contracting State institution and the private participant, with the sole purpose of verifying the compliance with their legal and contractual obligations.

Audits will be performed to verify the compliance of the corresponding legal and contractual obligations, both of the private participant, as of the contracting State institution.

The main purpose of these audits is to measure and evaluate the service levels, tariff regime and user rights, from the verification of contractual indicators, of the control programs for all elements that make up the Public- Private Partnership contract, and the current legal regulations.

To this end, the timely presentation, the corresponding approval and the supervision of compliance with all plans, programs and control instruments established per the Public- Private Partnership contract shall be verified.

Auditing process

Art. 96.- Each Special Law or Public- Private Partnership contract shall be subject to an audit at least once a year. In all, the OFAPP may perform technical audits whenever it deems convenient, without need for advanced notice. To this purpose, in the month of December of each year, the Annual Auditing Schedule for the following year shall be set, indicating the quarter of the year when it will take place. During the first quarter of each year, the contracting and appointment of the auditor, or auditors, to carry out this schedule, shall be drafted.

The last week of March shall be marked in the final calendar for each audit, which must include the singularities of each contract, so as not to affect its compliance, such as high season, and others.

As a result of the audit, numerical qualifications, or indexes to reflect quality levels, and that orient corrective, preventive and penalizing actions, shall be drafted.

Each month of December, said indexes shall be made public, with a comparative analysis of each concession contract in operation. With this, a quality ranking of the contracts in operation shall be drafted, to be published every month of January.

List of private participants

Art. 97.- The OFAPP shall make, every year, a list of private participants, where it establishes comparisons among the different special purpose vehicle, parties to the Public- Private Partnership



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contracts. The purpose of said lists is to provide indispensable information to the users for their decision making, thus contributing to more transparency in the market.

To make this lists, the OFAPP shall consider the following criteria: complaints submitted by the users that were favorably accepted, fines imposed, user satisfaction survey results, and index of service continuity of the private participants.

Once the results are given, it will draft the list of special purpose vehicle, scoring them in decreasing order, per the results of the reviewed background, but, granting the same category to those that obtain the same result. Said list shall be communicated to the special purpose vehicle, and shall be made public before December 31 of each year.

TITLE IX SOLE CHAPTER

REGARDING THE EXPERTS ON CONFLICT RESOLUTION

Requirements for qualification, appointment formalities and parameters for remuneration of the experts

Art. 98.- The technical and economic discrepancies that arise between the parties to a public-private partnership contract, and that are part of a controversy subject to the decision of the Arbitration Panel, may be submitted to the consideration of one or more experts.

To proceed with the appointment of an expert, the arbitration panel shall summon the parties to a hearing, where it shall be determined, firstly by agreement of the parties, or, in its absence, by the panel, the number of experts to be appointed, the quality, aptitudes and titles that they must have, and the point or points of matter of the report.

The expert must be a professional with a college degree, with at least ten years experience in his field, and a distinguished professional or academic trajectory related to the matter on which he will be giving an opinion. Said professionals may not be, and may not have been, in the twelve months prior to their appointment, related to the private participant, be it as directors, employees, independent advisors, shareholders or proprietors of rights in it or in its headquarters, affiliated companies, subsidiaries, allied companies, or with construction or construction or engineering companies subcontracted by the licensee; they may not be, and may not have been, in the twelve months prior to their appointment, related to the contracting State institution as a public servant, or have served in any capacity where he received payment for his services.

If the parties cannot agree on the designation of the people, the panel shall make the appointment, in which case it may not select any of the two first persons proposed by either party.

The experts' remuneration shall be set by the Arbitration Panel, with prior agreement from the parties regarding this matter. In the absence of an agreement between the parties, the Arbitration Panel shall



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resolve the remuneration with criteria based on market prices. In no case, may said value exceed the remuneration to the members of the Arbitration panel.

The experts' remuneration shall be considered an arbitration process expense, and shall be paid in equal proportion by the contracting State institution and the private participant.

TITLE X

Final Provisions

Sole Chapter

Working Days

Art. 99.- All terms contemplated in this Regulation will be of working days, except when the contrary is expressly stated in this Regulation or in the Special Law for Public - Private Partnerships.

Validity

Art. 100.- The present Decree will enter into effect eight days after its publication in the Official Gazette.

GIVEN AT THE PRESIDENTIAL PALACE: San Salvador, on the twenty-ninth day of the month of May of Two-thousand Fifteen.

((stamp: Presidency of the Republic of El Salvador C.A.))

((signature)) Salvador Sanchez Ceren President of the Republic

((Ministry of Treasury Republic of El Salvador in Central America San Salvador))

((signature)) Roberto de Jesus Solorzano Castro Vice-Minister of Treasury Bureau in-charge

((Stamp: Ministry of Economy Minister))

((signature)) Tharsis Salomon Lopez Guzman Minister of Economy



Presidency of the Republic

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EL SALVADOR
UNÁMONOS PARA CRECER

MINISTERIO DE GOBERNACIÓN
Y DESARROLLO TERRITORIAL
GOBIERNO DE

Certification No 2569

The below signing Chief of the Official Gazette:

Certifies: that Executive Decree No. 64, which contains the Regulation for the Special Law for Public - Private Partnerships, will be published in the Official Gazette, No. 102, Volume No. 407, corresponding to June 8 of this year, except in case of fortuitous events or force majeure.

And at the request of the Secretariat for Legislative and Judicial Affairs of the Presidency of the Republic, issues the present Certification at the DIRECTORATE OF THE OFFICIAL GAZETTE; San Salvador, June ten of Two-Thousand Fifteen.

((signature))

Mercedes Aida Campos de Sanchez
Chief of the Official Gazette

((stamp: Ministry of Governance
and Territorial Development
Official Gazette
National Press))

MdeM