Content

Title：	Regulations Governing the Organization of the Selection Committee and the Evaluation for Private Participation in Infrastructure Projects Ch
Date：	2019.04.30
Legislative：	1.Promulgated by the Public Construction Commission, Executive Yuan, as per Letter, Reference No. (89)-Kung-Cheng-Chi-Tzi-89013511, dated May 24, 2000. 2.Article 4 was amended by the Public Construction Commission, Executive Yuan, as per Letter, Reference No. (90)-Kung-Cheng-Chi-Tzi-90039321, dated October 17, 2001. 3.Last amended by the Public Construction Commission, Executive Yuan, as per Letter, Reference No. (94)-Kung-Cheng-Chi-Tzi-09400472260, dated December 23, 2005. 4.Amended on January 3, 2007 5.Amended on November 5, 2010 6.Articles 3, 5, 17, 18, 19, 21, 24, 25, and 26 were amended by the Ministry of Finance, as per Decree, Reference No. Tai-Cai-Cu-Tzi-10425515770, dated October 15, 2015 and became effective as of the promulgation date. 7.Articles 3, 6, 9, 15, 20, 21, 22, 24, 25, and 29 were amended by the Ministry of Finance, as per Decree, Reference No. Tai-Cai-Cu-Tzi-10825510010, dated April 30, 2019 and became effective as of the promulgation date. The promulgation date of Article 6 shall be further decided by the Ministry of Finance.
Content：	**Article 1** These Regulations are enacted in accordance with Paragraph 3, Article 44 of the Act for Promotion of Private Participation in Infrastructure Projects ("the Act"). **Article 2** To evaluate applications submitted in response to an infrastructure project for private participation planned by the government, the authority in charge shall, for each project, organize a Selection Committee for the Private Participation in Infrastructure Projects ("the Selection Committee"). The Selection Committee shall be established before posting a public notice inviting private participation, and shall be dissolved upon completing the review process and when no relevant affairs are left requiring attention. **Article 3** The duties of the Selection Committee are as follows: 1. To prescribe or approve the evaluation items, evaluation criteria and measures of selection; 2. To conduct a comprehensive evaluation of the applications; 3. To handle all the matters that should be conducted by the Selection Committee pursuant to Paragraph 1, Article 29 of the Act; and

4. To assist the authority in charge to interpret matters related to the evaluation items, evaluation criteria, evaluation process, or the selection outcomes.

When prescribing or approving the evaluation items and evaluation criteria, Selection Committee shall first consider the purpose of infrastructure project and public interest and shall not contemplate the favorable or unfavorable conditions for the specific applicant.

Evaluation criteria mentioned in the first subparagraph of the first paragraph shall include the financial plan and be set with appropriate allocation keys or weights; innovation and creativity may be included in the evaluation criteria or sub-criteria, subject to the nature of the project.

The financial plan mentioned in the preceding paragraph shall be included in the royalties or governmental premiums, subject to the nature of the project.

Article 4

The Selection Committee shall consist of 7 to 17 members who shall be appointed or retained by the authority in charge and who shall have professional knowledge or experience in fields related to the infrastructure project. At least half of the Selection Committee members shall be outside experts and/or scholars.

The positions mentioned in the preceding paragraph are non-paying positions.

The candidates for the outside experts and/or scholars to be retained in accordance with the first paragraph may be selected from the competent authority's list of recommended candidates. The selected candidates shall be proposed to the head of the authority in charge or his/her deputy for approval. The candidates proposed or approved are not limited to the persons on the list of recommended candidates.

The competent authority shall publish the list of recommended candidates specified in the preceding paragraph on its website.

The outside experts and/or scholars to be retained in accordance with the third paragraph shall be retained by the authority in charge upon their consent.

Article 4-1

In selecting a Selection Committee member, the authority in charge of the infrastructure project may not:

1. extend a personal favor or accept lobbying.
2. accept self-recommendation.
3. select a person who favors a specific supplier.

4. select a person who has no professional knowledge in fields related to the infrastructure project.
5. select a person whose integrity is questionable.
6. do any other things that are proscribed by the competent authority.

Article 5

The outside experts and/or scholars specified in Article 4 shall be defined as follows:
1. Where the infrastructure project is conducted by the authority in charge, the outside experts and/or scholars shall be anyone outside the main body of the authority in charge and its affiliated entities or institutions at all levels;
2. Where an affiliated entity or institution is authorized by the authority in charge in compliance with Paragraph 2, Article 5 of the Act to conduct the infrastructure project, the outside experts and/or scholars shall be anyone outside the main body of the authority in charge and its affiliated entities or institutions at all levels, the authorized entity or institution, or the affiliated entity or institution of the authorized entity;
3. Where another government agency is commissioned by the authority in charge in compliance with Paragraph 3, Article 5 of the Act to conduct the infrastructure project, the outside experts and/or scholars shall be anyone outside the main body of the authority in charge and its affiliated entities or institutions at all levels, the commissioned agency and its affiliated entities or institutions at all levels, or the competent authority of infrastructure.
Affiliated entities or institutions at all levels mentioned in the paragraphs above do not include public universities and colleges.

Article 6

After the establishment of the Selection Committee, the member list shall be published immediately on the information network of the competent authority. The same shall also apply to amendments and supplements thereto. However, this should not apply when there is a necessity not to disclose the list at the discretion of the authority in charge upon taking into consideration the characteristics of the case and the actual needs.
If the authority in charge publishes the member list, it shall be kept confidential before public disclosure. If unpublished, it shall be kept confidential prior to the commencement of the evaluation.

Article 7

The Selection Committee shall have a chairperson to manage all

evaluation matters, and a deputy chairperson to assist the chairperson in handling evaluation matters. Both the chairperson and deputy chairperson shall be appointed by the head of the authority in charge or any person authorized by the head or shall be selected by and among the members.

The Selection Committee meetings shall be called by the chairperson, who will also serve as the chairman of the meeting. If the chairperson is unable to attend the meetings, the deputy chairperson shall act in his/her stead. If both the chairperson and the deputy chairperson are unable to attend, the members present shall select a member to preside over the meeting.

Where the matter specified in Subparagraph 1, Article 3 has an existing precedent or is simple in nature, the authority in charge may be exempted from convening a meeting before posting a public notice for private participation and may adopt a resolution on such matter by obtaining the unanimous written consent of all Selection Committee members instead.

Article 8

The members of the Selection Committee shall attend the meetings in person.

Any meeting of the Selection Committee shall not begin before half or more of the total members are in attendance and at least five members are present. The decision of the Selection Committee meeting requires a simple majority consent among the members present. If the project to be evaluated is a major infrastructure project specified in Paragraph 2, Article 3, the members present shall not be less than seven people.

Among the members attending the meeting as specified in the preceding paragraph, at least half of them shall be outside experts and/or scholars.

At a vote of the meeting, the chairman may demand non-committee personnel to leave, unless the personnel is required to fully participate in accordance with Paragraph 3, Article 13.

Article 9

Under any of the following circumstances, the member of the Selection Committee shall avoid conflict of interests:

1. Where the application is involved with the interest of the member, the member's spouse, the member's relative by blood or marriage within three generations, or the member's relative who lives and shares assets with the member;

2. Where there is an employment, mandate or agency relationship between the member or the member's spouse and an applicant or the

responsible person of the applicant;
3. Where there are substantial facts indicating that the member may not be impartial in performing his/her duties ; or
4. Where the member or the authority in charge considers he/she may not be impartial in performing his/her duties.

Article 10

The members of the Selection Committee shall conduct the evaluation-related affairs in accordance with the laws and regulations and with impartiality. The members are forbidden to be involved in any of the following behaviors:
1. Using the membership to solicit commitment or receive bribery, kickback, gift, discount, or other unlawful interests;
2. Accepting banquets, accommodation, transportation, entertainment, tours, sightseeing or other treats for free or on discount in exchange for the member's favor in the evaluation process, unless the accommodation and transportation services are provided by the authority in charge and are necessary to conduct the member's duty;
3. Leaking confidential information of the evaluation process;
4. Taking advantage of the reviewer-applicant relationship to conduct unlawful affairs;
5. Using the confidential information obtained during evaluation to seek unlawful personal gains;
6. Being retained or commissioned by the applicant during the term of the committee member;
7. Using the reviewer-applicant relationship to request the applicant to offer employment, promotion, transfer or other similar benefits to a specific third person;
8. Taking advantage of the reviewer-applicant relationship to borrow/lend money from/to the applicant or conduct backchannel investment; or
9. Using the reviewer-applicant relationship to conduct or receive illegal requests or lobbying.
10. Being involved in affairs that would have a serious impact to the image of the Selection Committee, or cause the public to recognize the Selection Committee as unable to impartially conduct the affairs and operations regarding the evaluation.

Article 11

Where a member of the Selection Committee is involved in the behavior specified in Articles 9 or 10, the member should resign voluntarily. If not, the authority in charge shall dismiss the member from the Committee.

Where the total members of the Selection Committee or the number of outside experts and/or scholars is below the minimum as required in Paragraph 1, Article 4, because one or more members lost membership for reasons specified in the preceding paragraph or for any other reason, the authority in charge shall replenish the Committee by appointing one or more new members.

Article 12

The members of the Selection Committee shall not file a separate application in person or assist any other applicant in filing an application upon receiving relevant documents regarding the application concerned. Any violation to this provision shall invalidate the subject applicant for eligibility for best applicant or the applicant of the second best application ("the second best applicant").

Article 13

Upon the establishment of the Selection Committee, the authority in charge shall also organize a task force to assist in matters related to the evaluation.

The task force shall have at least a staff of three, who shall be the staff of the authority in charge or professional personnel designated by the head of the authority in charge or the persons authorized by the head of the authority in charge

At any meeting of the Committee, at least one staffer shall attend with full participation.

The staffer shall resign on the occasion involving any of the conditions specified in Articles 9 or 10. If not, the authority in charge shall dismiss the staffer from the task force.

Article 14

The task force shall, based on the need of evaluation operations, provide assistance during the process.

The task force shall, pursuant to evaluation items or the matters designated by the Selection Committee, submit its preliminary evaluation comments stating the following particulars along with the materials provided by the applicants to the Committee for reference:

1. Name of the subject project;
2. Name, position and expertise of each task force staffer;
3. Comments on whether the materials regarding evaluation items submitted by the applicant comply with the tender documents; and
4. Comparison of the applicants' qualifications in the evaluation items.

Article 15

Unless otherwise required for official use or provided for in accordance with relevant laws and regulations, the materials submitted by applicants for evaluation shall be kept confidential by the members of the Selection Committee and personnel participating in the evaluation process. The foregoing provision shall also apply where the evaluation is completed.

Article 16

Evaluation procedure, based on the character of the private participation in infrastructure projects, is divided into two stages: qualification review and comprehensive review.

Article 17

During the qualification review, the authority in charge shall review the documents submitted by the applicants and select qualified applicants based on the qualification requirements set forth in the tender documents.

If the applicant submits incomplete qualification documents but such applicant is in fact qualified, the authority in charge may notify the applicant to submit the omitted parts within a given time.

During the qualification review specified in the first paragraph, if the authority in charge considers the relevant documents submitted by the applicants to be not in conformity with the procedure or format requirements, or to contain ambiguous information, the authority in charge may inform the applicant to make corrections or clarification within a given time, unless otherwise provided in the tender documents.

Failure to complete resubmission, make corrections or address clarification within the time given by the authority in charge, as specified in the preceding two paragraphs, shall render such resubmission, corrections or clarification waived.

The authority in charge shall notify each applicant of the outcome of the qualification review specified in the first paragraph as soon as possible and no later than the time a best applicant is selected by the Selection Committee or the resolution not to select the best applicant is made. The authority in charge shall inform the disqualified applicants of reasons for such a decision.

Article 18

During the comprehensive review, the Selection Committee shall, according to the evaluation items, evaluation criteria and measures of selection specified in the tender documents, select the best applicant based on the investment proposal and relevant documents submitted by the qualified applicants selected from the

qualification review as specified in the preceding Article. If necessary, the Selection Committee may select the second best applicant.

During the comprehensive review specified in the preceding paragraph, if the Selection Committee considers the investment proposal and the relevant documents submitted by the applicants to contain ambiguity, the Committee may notify the applicants to make clarification within a given timeframe. Failing to make such clarification within the timeframe shall render the clarification waived.

Article 19

The comprehensive review will be conducted in phases or in groups, depending on the character of the project, as stated in the tender documents.

If the phase method specified in the preceding paragraph is adopted, the Selection Committee may select no more than three applicants as the nominated applicants based on the investment proposal and relevant documents submitted by the qualified applicants during the comprehensive review. The best applicant shall be selected in the comprehensive review. If necessary, a second best applicant may be selected.

If the group method is adopted, the authority in charge shall, depending on the character of the project, group the members of the Selection Committee according to their expertise to conduct a group review, then compile the results to conduct a comprehensive review.

Article 20

If it is stated in the tender documents that negotiations may be conducted during the comprehensive review, the Selection Committee shall, according to the evaluation criteria prescribed in Article 3, conduct the preliminary review based on the investment proposal and relevant documents submitted by the qualified applicants, and select no more than three applicants as the nominated applicants. The Committee shall then negotiate with the nominated applicants and select the best applicant depending on the investment proposals resubmitted by the nominated applicants. If necessary, the second best applicant may be selected.

The Selection Committee may authorize the task force to conduct the negotiations with the nominated applicants specified in the preceding paragraph. The task force shall append the results of negotiations to the investment proposal re-submitted by the nominated applicants and submit the documents to the Committee for further evaluation.

Article 21

The negotiations conducted according to the preceding Article shall meet the following principles:

1. No nominated applicant shall be discriminated against during the negotiation;

2. Where the negotiation involves amendable items specified in the original public notice, all nominated applicants shall be informed of the amendable items in writing;

3. Where the negotiation involves financing, the principal financing institution may participate in the negotiation;

4. Upon the completion of negotiation, the nominated applicants shall resubmit their investment proposals amended according to the outcome of negotiation within a specified time limit; and

5. The process and content of the negotiation shall be kept confidential.

If the nominated applicant fails to resubmit the amended investment proposal within the time limit as specified in Subparagraph 4 of the preceding paragraph, it shall be considered that the applicant chose not to amend and the Committee shall proceed in the evaluation process with the original investment proposal.

Article 22

When the Selection Committee conducts negotiation, the following matters shall be noted:

1. The items awaiting negotiation of the nominated applicants shall be listed with the advantages, disadvantages, mistakes or omissions indicated;

2. The negotiation procedure shall be planned;

3. The maximum number of representatives allowed to participate in the negotiation shall be stated;

4. The venue for negotiation shall be carefully selected;

5. Confidentiality measures shall be executed;

6. The nominated applicants shall be negotiated separately;

7. Unless otherwise provided in the tender documents, the application documents of the nominated applicant and the content of evaluation shall not be revealed to other nominated applicants; and

8. The negotiation shall be minuted.

Article 23

If the investment proposals and relevant documents submitted by the qualified or nominated applicants, selected by the Selection Committee pursuant to Article 18 to 20, are determined in the comprehensive review as being below the evaluation criteria or inconsistent with public interest, the Committee may choose not to

select the best and the second best applicant.

Article 24

Where the evaluation results of different Committee members contradict each other, upon the confirmation of Selection Committee, the chairman should refer the discrepancies to the Committee for the following resolution, and the proceedings shall be included in the meeting minutes:

1. Exclude the evaluation results of individual Committee members and recalculate the evaluation results;
2. Conduct a re-evaluation;
3. Decide not to select the best or the second best applicant.

If the re-evaluation still carries distinct discrepancies, Selection Committee may make the resolution pursuant to the subparagraph 1 or 3 in the preceding paragraph.

Article 25

The outcome of the comprehensive review shall be reported to the head of the authority in charge or personnel authorized by the head for approval and published on the information network of the competent authority and notification shall be given to each applicant in writing within two weeks of the approval.

Article 26

The meetings of the Selection Committee shall take minutes, which shall be signed by all attending members.

The meeting minutes specified in the preceding paragraph shall include the following items:

1. Name of the subject project;
2. Serial number of the meeting;
3. Time of meeting;
4. Venue of meeting;
5. Name of the chairman;
6. Names of members present and absent;
7. Names of observers at the meeting;
8. Names of the recorders of the meeting minutes;
9. Matters reported and subsequent decisions made;
10. Matters discussed and subsequent resolutions adopted;
11. Provisional motions raised and subsequent resolutions adopted; and
12. Other matters that should be recorded in the minutes.

Each meeting minutes of the Selection Committee shall be made public on the website of the authority in charge within two weeks after the announcement of the comprehensive review result.

The summary table compiled by the authority in charge following the

comprehensive review shall, except those involving trade secrets of individual applicants, be made available such that all applicants may apply for reviewing, transcribing, duplicating or photographing.

Unless otherwise provided by law, comprehensive review comments of the members attending the meeting shall be kept confidential and may not be applied for reviewing, transcribing, duplicating, or photographing.

Article 27

Where members of the Selection Committee have different opinions on the decision of the meeting, they may request their opinions to be included in or attached to the meeting minutes. The Selection Committee shall not reject such requests.

Article 28

If the Selection Committee needs to send official documents to external entities, the documents shall be sent in the name of the authority.

Article 29

These Regulations shall take effect from the date of promulgation.

The amended regulations shall take effect from the date of promulgation. The promulgation date of Article 6 amended on April 30, 2019 shall be decided by the Ministry of Finance.

Data Source：Ministry of Finance, R.O.C. Laws and Regulations Retrieving System