

N° 31836-MOPT

THE PRESIDENT OF THE REPUBLIC

AND THE MINISTER OF PUBLIC WORKS AND TRANSPORTATION

Exercising the powers conferred by article 140, subsections 3) and 18) of the Political Constitution, and based on the Law on Concessions of Public Works with Public Services, No. 7762 of 14 April 1998, the Law for the Creation of the Ministry of Public Works and Transportation, No. 4786 of 5 July 1971 and its amendments, and the General Law of Public Administration, No. 6227 of 2 May 1978 and its amendments.

Whereas:

- 1-That the country needs to make a huge investment in public works to rehabilitate, improve, and build infrastructure in accordance with the development requirements of the 21st century.
2. That the Government of the Republic has determined as a priority the cooperation between the public and private sectors to meet the growing demand for services and infrastructure required by the country.
3. That it is necessary to incorporate both national and foreign private resources to help develop projects for the required infrastructure works.
- 4 - That the General Law on Concession of Public Works with Public Services, No. 7762 of 14 April 1998, has as fundamental objective to establish the legal standards that regulate in a flexible and modern way these investment processes, constituting itself in a valuable instrument of development.
- 5 - That Article 20 of Law No. 7762 contemplates private initiatives regarding concession of public works with public services, in order to allow the subjects of private law to develop infrastructure projects of public interest.
- 6 - That in order to provide legal certainty, transparency, and efficiency in the procedures for the concession of public works with public services, it is necessary to have an adequate regulation of Article 20 of Law 7762, which complies with the constitutional principles and legal standards on administrative procurement for procedures regarding concession of public works with public services. **Therefore,**

ORDAINS:

Regulations for Private Initiative Projects for Concession of Public Works or Concession of Public Works with Public Services

CHAPTER I

General Provisions

Article 1°- **Scope of the Regulation.** This Regulation regulates the paperwork, procedures, and actions of the Granting Authority and of individuals interested in submitting private initiative projects for the concession of public works and public works with public services, in the terms defined in Article 20 of the General Concession Law on Public Works with Public Services, Law No. 7762.

Article 2°- **Private initiative projects.** Private initiative projects shall be understood to be those which the proposal and the set of documents that individuals or legal entities governed by public or private law submit to the granting authority and which contain a proposition for the design, modification, planning, financing, construction, conservation, extension, repair, or exploitation of a public work through the public works concession regime or of concession of public works with public service.

Article 3°- **Coverage.** All public works and public works with public services may be processed by the private initiative system governed by this Regulation, in accordance with Law 7762 and its amendments.

These may be granted under the aforementioned Law and if the granting Administration considers that it is of public interest to grant them.

Article 4°- Granting authority.

4.1 For the purposes of this regulation, the granting authority shall be understood to be the owner of works and services that may be granted in concession, pursuant to Law 7762 and the General Regulation for the Concession of Public Works with Public Services, which are the Executive Branch, public companies, and the decentralized territorial and institutional sector, under the terms established in Law 7762.

4.2 When the object of the concession project is within the scope of the Executive Power, it will act through the National Concessions Council, entity of maximum deconcentration attached to the Ministry of Public Works and Transportation, which must coordinate with the ministry or entity with jurisdiction over the asset or public service that is the subject of the concession.

4.3 Private initiative projects that are processed directly or through the National Concessions Council, of the decentralized, territorial, or institutional sector, or of public companies, will be governed by these Regulations and the related regulations determined by law.

Article 5°- Unit for processing private initiative projects.

5.1 Public enterprises and the decentralized, territorial, or institutional public sector shall establish a unit to process private initiative procedures, without this preventing that such competence be assumed by an existing office or agency. Without prejudice to the fact that through an agreement signed with the National Concessions Council, public companies or the decentralized sector may at any time agree with this body to process private initiatives as well as the corresponding tender and execution of the concession contract, pursuant to the provisions of Article 5.3 of Law 7762 and as defined in the aforementioned agreement.

5.2 The non-existence of the unit to process private initiatives will not prevent the presentation of this type of projects by individuals, and the granting authority will be obliged to process it according to the terms of this Regulation. The granting authority must inform the proponent of the office or agency that will handle the private initiative procedures. Likewise, this unit should collaborate with the proponent in order to provide him/her with the available information that the applicant could require for the development of the studies during the application or proposition of the project.

5.3 The proponent may request meetings with the granting authority for the discussion of the initiative, observations, corrections, and modifications related to the studies during the application or proposition phases, and the whole procedure will be governed by the principle of public cooperation established in this Regulation.

Article 6°- Advertising of projects in process of concession.

Under the principle of advertising and transparency, the Granting Authority will maintain a register of the projects selected to be developed by the authority under the public services concession contract or through another contractual mechanism, as well as projects that are being processed by the legal mechanism of the private initiative. In the event that new private initiatives are presented on projects of the same nature that are in process, the Administration will reject them, right away, applying the principle of "first in time, first in right".

Article 7°- Sectors and projects of interest.

7.1 Private initiative projects for the concession of public works and for the concession of public works with public services that conform to State policies, satisfy the needs of users, and that support public and private investment in Costa Rica shall be considered of public interest. To be considered of public interest, it must be demonstrated that the project is legal, and environmentally, technically, and economically feasible.

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7.2 The Granting Authority must identify and make public the sectors and projects that are of interest to it and which may be addressed through the concession figure regulated by Law 7762.

7.3 The Public Administration, together with business chambers and private organizations, will generate participation schemes and public-private partnerships for the purpose of promoting private initiative in projects of concession of public works or concession of public works with public services.

Article 8°- Applicable standards.

8.1 The legal relationship that originates between the respective granting authority and the proponent shall be governed by the General Law for the Concession of Public Works with Public Services, these Regulations, the General Regulation for the Concession of Public Works with Public Services, and the other standards and principles of the Costa Rican legal system.

8.2 In jurisdictional terms, national courts shall have sole jurisdiction to hear the legal situations and effects arising from the application of this Regulation, without prejudice to the application of alternative dispute resolution procedures.

8.3 In the private initiative procedure regulated herein, the parties may resolve their disputes by means of the mechanisms established in the Law on Alternative Conflict Resolution and Promotion of Social Peace, number 7727 of 4 December 1997 and its amendments.

8.4 The standards and principles enshrined in the General Law on Public Administration regarding the validity of the administrative activity and the responsibility of the Public Administration, will fully apply to the private initiative procedures regulated herein.

8.5 Once the final proposal is accepted, the concession project will be processed, tendered, awarded, and the eventual contract executed, in accordance with the rules and procedures of Law 7762 and the General Regulations for Concession of Public Works with Public Services.

Article 9°- Principles applicable in the private initiative procedures.

9.1 The private initiative procedure is part of the bidding process established in Law 7762, and as such is subject to the constitutional and legal standards and principles of publicity, efficiency, free competition, equality, and transparency that guide Costa Rican procurement procedures.

9.2 The granting authority shall at all times ensure compliance with these principles and shall ensure that the proposal of the private proponent allows for free competition in the future bidding process and in the concession contract to be formalized. To allow free competition and safeguarding the public interest, the Administration is empowered to make changes to the proposals it deems necessary, given the characteristics of the project. The principle of free competition shall not be considered violated when participation or eligibility requirements are established that aim to guarantee the satisfaction of the intended public interest with the project and are duly justified by the nature and characteristics of the project.

9.3 In application of the principle of efficiency, the different institutions and bodies of the Public Administration shall be obliged to review and improve their work systems in order to implement uniform systems, reduce instances, and simplify procedures in order to achieve efficiency and compliance with the objectives of private initiative procedures. The Administration shall cooperate with the proponent and coordinate with the rest of the public sector so that the intended project fulfils public interest that it seeks to satisfy in the best possible way.

9.4 Public-private cooperation will be considered as one of the guiding principles of private initiative in the field of concession of public works. The Public Administration will promote this type of cooperation for the realization of infrastructure projects and public services and will generate information mechanisms on areas of public interest that can benefit through the development of this type of projects as an alternative that contributes to solve the problems of public infrastructure and competitiveness of the country.

Article 10. - Formal aspects of the private initiative procedure.

10.1 Documentation and information required in these regulations must be presented in Spanish. The complementary technical documentation is exempted from the above; however, the granting authority may request that such additional information be freely translated into the Spanish language, under the responsibility of the proponent, in which case the cost of the translation will be borne by the latter.

10.2 In the various documents submitted by the proponent, the units and measures of the International Unit System, based on the metric system, shall be of mandatory use.

10.3 The documentation and information presented by the proponent must be free of alterations, deletions, or erasures, and it must be duly signed by the legitimate representative in case it is a legal entity, or in its absence, by the responsible individual. In order to amend these formal situations, additions, or corrections, these must be clearly indicated in the erratum and must be duly signed in the same document by those who have the authority to do so.

10.4 When the Administration has forms for the presentation of the required information, it must be provided on these forms and in the order established by the Administration.

10.5 The terms established in these Regulations will be computed in calendar days, unless otherwise stated.

Article 11. - Ownership of the initiative.

11.1 The proponent will not have exclusive rights over the idea of granting or over the general documents presented during the application phase, until the application by the Granting Authority has been accepted. The studies proposed during the proposition phase will belong to the proponent until the latter obtains reimbursement; nevertheless, the Granting Authority can use them in the tendering procedure. Once the reimbursement of the studies has been made pursuant to the terms herein, the proposal and the intellectual property rights on the project will be understood, transferred, and assigned in favour of the Granting Authority.

11.2 The proponent shall retain intellectual property rights over engineering technologies or any other technology that is legally and properly protected in his/her name or on behalf of a third party who has authorized to use it.

11.3 The proponent may, in highly qualified and duly justified cases, request the Granting Authority to treat any information supplied in a confidential manner. The Authority will only accept and keep confidentiality insofar as this does not affect the constitutional and legal principles of administrative contracting.

11.4 The violation of any intellectual property right established in national legislation in international conventions in force in the Costa Rican legal system will give rise to administrative actions in the Industrial Property Registry or the National Registry of Copyright and Related Rights and judicial actions ordered in the Law on Procedures for Enforcement of Intellectual Property Rights No. 8039.

Article 12. - Risks of project development costs. In private initiative procedures, the proponent will assume the risks related to the costs of developing the project. Except as provided in Article 32 of this Regulation, in the case of compensation, the proponent will only be entitled to have the development costs paid in accordance with Article 31 of these Regulations.

Article 13. - Notifications.

13.1 The communications or notifications that the Granting Authority makes will be directed to the place established by the proponent for notifications, by registered letter, fax, or any other means that allows acknowledgement of receipt. The place for notifications will have to be properly located within the national territory.

13.2 In order to be accredited, any communication in writing to the Granting Authority must be addressed to the competent body for the processing of private initiative procedures, referred to in Article 5 of these Regulations.

Article 14. - Phases of the private initiative procedure.

The presentation of the private initiative will be done according to the procedure established in the following articles and will comprise two phases. In the first, hereinafter "application", the proponent will deliver the information and preliminary studies of the project at the profile or pre-feasibility level, depending on the nature and scope of the project, so that the Granting Authority assesses whether the project is within its scope of competence, if it is likely to be granted in concession of public works or works with public service, and if there is public interest in its execution. In the event that the Granting Authority, through a duly reasoned resolution, shows that there is interest in the project in accordance with the terms approved by the Administration, a second phase, hereinafter "proposition", will begin, in which the proponent will present the indispensable studies for determining the technical and financial feasibility, as well as its social, environmental, and legal feasibility. In addition, the technical bases that will be used in the Request for Proposal for the concession originated by the private initiative, in the opinion of the Granting Authority, should be included.

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CHAPTER II

Application phase

Article 15. - Presentation of the project.

15.1 The presentation of the project in the application phase will contain, at least and in the order indicated, the following information and documentation:

- a) Name or corporate name, legal document, or identification document, address, telephone, fax, e-mail address, and name of the legal representative(s), when the proponent is a legal person, or even as a natural person, has appointed representatives. If the proponent is a legal entity, it must also accompany the evidence that proves its legal existence and the powers of representation of its agents, as well as a certification of legal status, of which the date of issue must not exceed one month. If there are several legal entities, in addition to the said certification, information must be provided for all of them, together with a document explaining the participation of each of these within the project.
- b) Name and general description of the project and reasons for considering that the Granting Authority should classify it in the public interest.
- c) Geographical location and area of influence of the project with a brief explanation of its effects in the area of influence.
- d) Affected properties, their ownership, and if there would be an eventual need to expropriate.
- e) General description of the works that are the object of the concession and of the services that would be rendered in concession.
- f) General estimate of the investment required for the concession project and the manner in which it is to be provided, and an overall estimate of the demand and revenues to be obtained as a result of the exploitation of the concession and the source of this revenue.
- g) Technical criterion that the project can be financed and the means initially proposed for that purpose.

- h) Study of financial, legal, and technical prefeasibility of the proposed project, allowing the information necessary for the Administration to assess the reasonableness of the proposed project and the present or future existence of the assumptions on which it is based.
- i) General information on the economic conditions that the concession contract would have such as a tariff scheme, concession term, payments to the State, subsidy level, and minimum guaranteed shared income. If payments from an institution or public company are considered, a detail must be presented to enable the Administration to determine the scope of this proposal.
- j) Preliminary Environmental Characterization (PEC), aimed at stating the environmental components to be considered in the project as well as the specifications to be complied with by the Environmental Impact study and the Environmental Management Plan of the project, according to the standards contained in the Organic Environmental Law No. 7554, the resolutions of SETENA and the characteristics of the proposed project.
- k) Identification of the public institutions involved and details of the activities that the Administration is in charge of and that are required for the development and execution of the project. For these purposes, it is necessary to specify what actions or investments are required from the public sector, identifying in each case the competent institution.
- l) Indication of the different risks of the private initiative proposal and the concession project, and the way in which it is proposed to be assumed by each intervening party.
- m) Description of the documents and feasibility studies that it is proposed to be presented during the proposition phase and its scope, in order to demonstrate the feasibility and viability of the project, as well as the maximum estimated time to present these studies in their definitive form. The proponent must accompany a timeline to present this information.
- n) Indication of the development costs of the project that the proponent requests to be paid in the event that, with a firm award and endorsement of the concession contract, the proponent is not awarded. The development costs will cover all costs associated with the preparation of the proposal, incurred by the proponent until its final elaboration, in the form required to tender it pursuant to the terms herein, in the General Concession Law of Public Works with Public Services, and in the General Regulation of Concession of Public Works with Public Services. The proponent will also request the form in which it is proposed that these development costs be reimbursed by the grantee. The amount of development costs requested must come as a lump sum duly justified by the proponent.
- ñ) Proof of the proponent's financial capacity to finance the preparation of all studies and other costs associated with the submission of the proposal until its final approval phase.
- o) Request from the proponent, in case it deems it necessary, to resort to the alternative dispute resolution procedure, in accordance with current legislation, indicating, if applicable, the procedure and arbitration tribunal or conciliation body proposed for these purpose.
- p) Type of support that will be required by the proponent of the Granting Authority during the proposition phase.
- q) Annexes: Any other information or documentation about the project that the proponent considers useful and necessary for its evaluation by the Granting Authority, for the purposes of these regulations and of Law 7662.

15.2 The professionals responsible for the preparation of technical, legal, and financial reports must sign them, indicating in an attached document the training and experience of these professionals.

15.3 The presentation of the private initiative project will be delivered in an original and two copies, in the procurement office or at the office of the Granting Authority, where the date and time of delivery will be recorded. In addition, it should contain an index referring to all the documentation provided and the sheets where the information should be linked and numbered consecutively. If there were differences between

the original and the copies, what is expressed in the first one shall be followed.

15.4 If available, the forms prepared by the Granting Administration must be used.

Article 16 - Rectification of errors or omissions.

16.1 Within a period of fifteen working days from the application of the private initiative project, the Granting Authority will review whether the background and preliminary studies are in accordance with the provisions of this Regulation and the internal regulations of the respective administration regarding these Procedures, and shall communicate it to the proponent. If the information or documentation submitted is found to be incomplete, or if some clarification or additional information is required for the purpose of clearly determining the scope and characteristics of the project, the proponent must provide the required information or clarification in the office of the granting Administration, for which there will be a term of no less than ten business days from the reception of the notification. In the event that additional information or documentation is not submitted within a term granted by the Granting Authority, the application for private initiative will be considered as not done.

16.2 For the purposes of the preceding paragraph, positive silence shall not operate.

Article 17. - Corrections to the submitted project. The submitted projects may be clarified and corrected after their submission by the proponent; however, such modifications may not directly or indirectly involve substantial changes to the submitted project, which would affect the principle of "first in time, first in right" that governs the presentation of private initiative projects. If the variation is substantial, the project must be submitted again complying with all the procedures stipulated in this regulation and in the other regulations that regulate this matter.

CHAPTER III

Application and Response Evaluation

Article 18. - Initial resolution of the Granting Authority.

18.1 Before qualifying if there is interest of the Granting Authority on the project that is processed under the private initiative procedure, and within fifteen calendar days from the receipt of the application or its clarifications, the other offices or competent public entities or those related to the object of private initiative projects must be consulted in order to establish the feasibility of the project. The response of these offices or public entities to the Granting Authority must be delivered within a period of fifteen business days after the receipt of the request from the Granting Authority. In the event that the project requires actions, services, or investments of the consulted public office or entity, they will be informed and in their response, the entities consulted must express their willingness to carry out the actions, services, or investments that the Project will need, as well as what will be required for that purpose. In case of opposition from any of the institutions directly involved with the project and discrepancy with the Granting Authority, the final decision will be the responsibility of the President of the Republic, pursuant to Articles 78 and 79 of the General Law of Public Administration.

18.2 In the case of projects within the competence of the Executive Branch, the National Concessions Council should consult the position of the related ministries or deconcentrated bodies, with competence in the project. This consultation must be done within a period of fifteen business days from the receipt of the application for the private initiative project or its clarifications.

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18.3 Notwithstanding what has been said in the two preceding paragraphs, the proponent may directly manage the information on the feasibility of the project for other offices or competent public entities or any other related to the purpose of the private initiative project, as well as the manifestation of these on

its willingness to carry out the actions, services, or investments that the project will need, in order to present this documentation with the project application.

18.4 The Granting Authority shall submit the environmental analysis provided by the proponent to the Ministry of Environment and Energy in order to determine, within the period established in Article 21.1 of Law 7762, the type of study to be carried out.

18.5 The Granting Authority shall estimate the extraordinary and non-budgeted costs to be incurred to analyse the project presented in case the application is accepted.

18.6 Within forty-five calendar days from the receipt of the application for the project or from the receipt of the clarifications or additional information requested, the Granting Authority will decide, in a motivated manner, whether or not there is interest in the proponent to continue with the proposed private initiative and the commitment of the latter to process it in accordance with these Regulations, and so shall declare it and notify it formally.

18.7 The term of the previous paragraph may be extended by a resolution founded by the Granting Authority for up to another 45 calendar days, if necessary, given the complexity of the project.

18.8 After a technical opinion, the initial resolution agreement shall be taken by the head of the public company or institution of the decentralized, territorial, or institutional sector, or by the National Concessions Council when it acts on behalf of the Granting Authority.

Article 19. - Rejection of the private initiative. If there is no interest in the project, the Administration will indicate the reasons why it rejects the proposed initiative, which will give the proponent the possibility of filing the ordinary appeals for revocation and remedy provided by the General Law of Public Administration, within ten business days after receipt of the notification. This does not prevent the proponent from submitting new projects.

Article 20. - Initial acceptance of the project by the Granting Authority.

20.1 With the initial acceptance of the project, the application phase is concluded, and the proposition phase begins. The initial resolution of the Granting Authority that communicates to the proponent the existence of interest in the private initiative proposal, will summarize the terms, conditions, and characteristics that the project must have to finally be accepted and will include at least the following:

- a) Indication of the minimum terms, conditions, and objectives to be met by the project so that the Granting Authority accepts the project at the end of the proposition phase and is obliged to submit it to public bidding, including specifications and minimum technical requirements for the design, execution, conservation, and exploitation of works and services, as appropriate.
- b) Indication of the distribution of risks related to the project that is finally approved by the Granting Authority to be applied in the processing of the private initiative procedure and in the concession contract. In all cases, the person assumes the risk of acceptance by the users, and the people or communities related to the project must be indicated.
- c) The technical, legal, financial, and environmental studies to be delivered at the proposition phase, their form, scope, and specifications.
- d) The costs of analysis of the project that the Granting Authority will require to be paid by the proponent, with the indication of the form and the term to do so. The analysis costs will be added to the project development costs that the proponent will be entitled to receive in case of award and endorsement of the concession contract.
- e) The proposal to be submitted by the proponent on the fee structure and the adjustment parameters to be included in the Request for Proposal, as well as the parameters that will be used to evaluate the quality

of the service, so that the Granting Authority may consult the Public Services Regulatory Authority pursuant to Article 21.2 of Law 7762.

f) Indication of what has been resolved by the Ministry of Environment and Energy as to the type of environmental study that the proponent must submit to the Granting Authority so that the latter may refer it to said Ministry for the purposes of approving it, in accordance with Article 21.1 of Law 7762.

g) The authorizations or agreements of other public agencies on which the execution of the project depends and which will be of the responsibility and risk of the proponent to obtain and to contribute. The Granting Authority will assist in the fulfilment of this requirement.

h) Term for delivery, if applicable, of the partial reports and of the final report. The deadline for delivery of the latter cannot exceed one hundred and eighty calendar days, unless due to the complexity of the studies or because they technically require it, more time is necessary, in which case it may be extended for another one hundred and eighty calendar days, after approval by the Administration.

i) Designation of a project coordinator who will represent the Granting Authority before the proponent in this phase.

j) Form, amount, and conditions of the security deposit referred to in Article 30 of this Regulation, if it is required in accordance with the terms of this Regulation.

k) Amount and form of the reimbursement to the proponent of the costs of development of the project, which will cover all the expenses incurred by the proponent for the presentation of the private initiative project until its final phase and to which the costs of the analysis established by the Granting Authority will be added.

l) The cases in which the Granting Authority is willing to apply the arbitration procedure and indicate which is the arbitral tribunal that proposes. For these purposes, the declaration of the Granting Authority shall be understood as an arbitration clause which, in order to be valid and effective between the parties, must be expressly accepted by the proponent and must comply with all the requirements established by the legal system, all of which must be carried out after this resolution has been notified to the applicant.

m) The way in which the Granting Authority may support the steps required to be taken by the proponent at the proposition phase.

n) Another one that the Granting Authority deems necessary, according to the characteristics of the submitted project.

20.2 The proponent may submit the ordinary resources of the General Law of Public Administration against the initial resolution or request clarification within a period of ten business days after being notified. The Granting Authority will have a maximum period of fifteen working days to resolve.

20.3 The resolution that the project initially approves will only grant the right to the proponent to make the proposition, and in no case will imply the obligation to accept the project in the proposition phase if it does not meet the minimum conditions accepted and required by the Administration in the initial resolution, or when the final studies determine that the project is not legally, economically, environmentally, or technically feasible.

20.4 Once the initial resolution approved by the private initiative is approved, the Granting Authority will publish a notice in the Official Gazette, indicating the place where the administrative file will be available to the interested parties.

20.5 With the resolution that initially approves the project, and in accordance with the principle of public-private cooperation, the Granting Authority undertakes to provide technical and administrative support to the project, assigning the necessary personnel for this purpose.

CHAPTER IV

Proposition Phase

Article 21 - **Extension of the term for delivery.** The proponent may request at any time an extension of the final delivery period of all studies requested by the Granting Authority during the proposition phase, requesting a maximum of up to one hundred and eighty additional calendar days, by means of a written communication addressed to the competent body of the respective Granting Authority. The Granting Authority will have a period of ten working days from the receipt of the request to decide whether or not to extend the period for the development of the studies, and to communicate it to the proponent. Only in cases of special complexity and by means of a duly motivated resolution, the Granting Authority may authorize a period of more than 360 days for the delivery of all the studies necessary to approve the project at the proposition phase.

Article 22. - **Further studies.**

22.1 In justified cases in which the project cannot continue to be processed without additional studies not foreseen in the application phase of the project, or which, if foreseen, require a greater scope or detail, the Granting Authority, ex officio or at the request of the proponent, may request the completion of such additional studies, duly motivating said request in accordance with the terms of this paragraph.

22.2 Upon request and justification of the proponent, the Granting Authority may review the authorized amount as project development costs when additional studies requested by the Administration are extraordinary and not typical of this type of project. Typical studies are understood as those that, under proper and normal conditions for the submitted project, should have been considered by the proponent within the development costs.

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22.3 The proponent may file ordinary administrative appeals to the Granting Authority against the administrative act ordering additional studies. These appeals must be lodged within ten working days of notification of the act requesting them.

Article 23. - **Corrections to the original project.** In order to achieve the feasibility of the project and the best fulfilment of the public interest, the proponent may modify those aspects of the project that do not directly or indirectly involve substantial changes in the content of the original project. However, the modifications will not grant the proponent the right to demand a reimbursement of development costs greater than that established by the Granting Authority in the initial resolution, unless it considers it indispensable and convenient for the public interest to recognize a greater sum to be recovered by the applicant as development costs in case of award of the tender and endorsement of the concession contract.

Article 24. - **Presentation of the proposition.**

24.1 The objective of the proposition is to determine that the project is viable and feasible, and to prepare the specifications for the tender. 2

24.2 The proponent must present all the documentation that is part of the proposition in an original and two copies, within the deadline set by the Granting Authority. After the deadline has expired without presenting the proposition in full, it is understood that the interested party gives up his/her application, which may be assumed by the Granting Authority or will be available for new presentations. If a bid bond has been requested, the Administration may execute it as a single indemnity.

24.3 The proposition shall contain the studies submitted by the proponent and requested by the Granting Authority, as well as all the background referring to the project requested in Article 15 of the present regulation, duly updated. It must also submit a proposal on the financial, technical, and legal requirements it proposes to be assessed in the qualification of the offers and on the methodology proposed to be used

for these purposes. The proponent must be strictly subject to the order and the forms established by the Administration for these purposes, in case these exist.

24.4 The studies and documents of the proposition shall be prepared and delivered in such a way as to facilitate their incorporation into the bidding rules and must come with the signature of the professionals responsible for their preparation.

24.5 The Granting Authority must establish the financial, technical, and legal requirements to be evaluated for the qualification of the offers and the evaluation methodology in the preparation of the concession tender.

Article 25. - Early rejection of the proposition. The Granting Authority, by means of a well-founded resolution, may at any time in the procedure reject the private initiative proposal when the studies or partial reports allow it to determine that the project does not conform substantially to what was approved in the initial resolution at the application phase. This affects the public interest intended by the project and defined by the Administration, or when it is determined that the project is not legal, environmental, economically, or technically feasible. Against this resolution, ordinary appeals for revocation and remedy will proceed, in accordance with the General Law of Public Administration, which must be filed within a period of ten business days after notification of the resolution.

Article 26 - Response to the proposition. The Granting Authority will respond to the proposition, which will have a maximum and non-extendable period of four calendar months from the receipt of the complete proposal.

Article 27 - Approval of the proposition.

27.1 If the Granting Authority accepts the proposal and it is considered to be of public interest, by means of a duly motivated decision, it will make the Request for Proposal available to the proponent, which will include the legal bases. The proponent will include within this model the technical and economic bases mentioned above. The Granting Authority will grant a period of sixty calendar days to the proponent to deliver the technical and economic bases of the project that will be incorporated into the Request for Proposal and the draft contract that will be included with the amendments that the Administration determines.

27.2 After the aforementioned period has passed without presenting the technical and economic bases in the Request for Proposal supplied by the Granting Authority, it is understood that the interested party gives up his/her application, which may be assumed by the Granting Authority or will be available for new presentations. If the Administration decides to accept the proponent's proposal, it must include in the Request for Proposal the amount to be paid, exclusively, for the duly verified costs actually incurred by the applicant, which will be paid in the event of the award and endorsement of the contract.

27.3 The Granting Authority will evaluate the technical and economic bases of the project within a calendar month from the reception of the documents and may make the changes and variations that it deems appropriate to guarantee a greater participation of bidders, respect for the principles of free competition, and compliance with the legal system, and the public interest. If the proposal for the technical and economic bases of the tendering is accepted, the Administration will grant final acceptance.

27.4 Notwithstanding that the documents of the proposal together with the drafting of the Request for Proposal are submitted by the proponent and approved by the Administration, the final preparation of said Request for Proposal shall be exclusively the responsibility of the Granting Authority, who shall respect the essential characteristics of the approved project. The Administration will proceed with the tender within a maximum period of one year from the final acceptance indicated in the previous section. This is a maximum period, and the Administration is obliged to use the greatest diligence in order to order to

publish the Request for Proposal in the shortest time possible within this period.

Article 28. - Rejection of the proposition.

28.1 The Administration may reject the proposition, without any liability to the proponent or third parties, in any of the cases referred to in Article 25. The proponent shall have the right to be indemnified pursuant to Article 190 et seq. of the General Law of Public Administration, when rejection of the proposal is due to any other reason or circumstance attributable to the Granting Authority or to any State institution, provided that the reason for rejection is not expressly contemplated in the resolution of the Granting Authority that approves the application of the project as one of the risks that the proponent must undertake.

28.2 If the proposition is rejected, the Administration may not use the studies submitted by the proponent to call for a public tender. Should this situation arise, the proponent may demand compensation for damages pursuant to Articles 190 et seq. of the General Law of Public Administration, for which the arbitration procedure may be applied or the partial or total reimbursement may be agreed upon by the Administration in case of award and endorsement of the contract, without prejudice of appealing before the competent courts.

28.3 The provision in the previous paragraph does not prevent other potential proponents from presenting new initiatives with similar objects.

Article 29. - Appeals against the final resolution of the proposition phase. The proponent may submit the ordinary appeals for revocation and remedy provided for in the General Law of Public Administration against the resolution that definitively approves or rejects the proposition of the private initiative project within a period of ten business days after being notified.

CHAPTER V

Guarantee of participation in private initiative procedures

Article 30. - Guarantee of participation

30.1 The Granting Authority, due to the characteristics of the project and the special importance it assigns to the public interest so as not to cause delays or possible non-compliance in the solution of infrastructure and public services required by the country, is empowered to request the proponent to provide a bid bond, pursuant to Article 33.1 of Law 7762, which will guarantee the seriousness of the application, the obligation to complete the studies within the time limit, and the adequacy of said studies.

30.2 In case the bid bond is requested, the proponent must deposit it within a period of fifteen working days from the notification of the initial resolution of the application phase. The Granting Authority, based on an estimate of the damages that could be caused by the breach by the proponent, will determine the amount of the bid bond. The amount established by the Granting Authority may in no case exceed one per cent (1%) of the estimated investment cost of the project. The term for which the guarantee must be extended must be equal to that established for the delivery of the technical and economic bases of the project by the proponent, plus thirty working days. This deposit will be returned within the following fifteen calendar days

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after the final resolution during the proposition phase referred to in paragraph 3 of Article 27 of these Regulations. The Administration will execute the bid bond as a single compensation in case the studies are not delivered timely or do not comply with the form and specifications offered by the proponent or the initial resolution of the Administration in the application phase. The guarantee cannot be executed if the studies reflect that the proposal is not viable in the opinion of the Administration.

30.3 The bid bond in the private initiative procedures shall be rendered pursuant to Article 23 of the General Regulation for the Concession of Public Works with Public Services.

30.4 A proponent supplying false information during the application or proposition phase shall lose the said bid bond, which may be executed by the Granting Authority, in which case the purpose of the initiative will be available for new applications.

CHAPTER VI

Development costs and analysis costs

Article 31 - Development costs.

31.1 In private initiative procedures, the proponent will cover all costs related to the preparation, presentation, and review of project studies until final approval in the proposition phase.

31.2 In the event that the tender is firmly awarded and the concession contract is endorsed, and in case the proponent does not appear to be the successful bidder or is part of the winning consortium, the applicant shall have the right to recover the amount that the Administration has accepted as development costs of the project and that is ultimately established in the Request for Proposal. Said Request for Proposal will provide for the way in which the grantee, if it is not the proponent, guarantees the payment of development costs, based on the request by the applicant and acceptance by the Granting Authority in the initial resolution referred to in Article 20.1 of this Regulation.

31.3 In order to determine the development costs of the project that the grantee will pay the proponent in the case set in the previous paragraph, the Administration, before issuing the resolution referred to in Article 20.1 of this Regulation, will consider the proponent's proposal, which will be accepted or adjusted in accordance with the market cost to develop projects of similar nature. Market cost is understood as the development of private investment projects in infrastructure and public services until the bidding phase, both nationally and internationally, in projects of similar nature.

31.4 The Granting Authority, when approving the development costs in the initial resolution referred to in Article 20.1 of these Regulations, shall ensure that they can adequately and proportionately pay the proponent, without this unjustifiably limiting competition in the bidding phase.

31.5 If the Granting Authority establishes a form other than that intended by the proponent of the form and term of payment of the development costs, the Administration may only agree that these are paid to the applicant in cash after endorsement of the contract and before the order of commencement of the concession.

31.6 The amount and form of payment of the development costs approved by the Granting Authority in the initial resolution referred to in article 20.1 or in the event of what is established in Article 22.2, both of these Regulations, shall be expressly included in the bidding. The amount included in the Request for Proposal may be challenged by potential bidders in the bidding process by means of an objection to the Request for Proposal, pursuant to Law 7762 and the General Regulation for the Concession of Public Works with Public Services. In that case, the proponent and the Administration will defend the amount, but will be subject to the ultimate resolution by the Comptroller General of the Republic in a justified manner. The proponent undertakes the risk and will not be entitled to any compensation if the Comptroller General of the Republic resolves to reduce the amount of development costs of the project to be established by the definitive Request for Proposal.

31.7 The project development costs may only be increased when, as a direct and particular consequence of unilateral measures or acts adopted by any competent public institution, the amount is increased in an extraordinary manner as established herein. In addition, the development costs will maintain their value

over time, for which the Granting Authority must use any mechanism allowed by the legal system that retains the present value of development costs.

31.8 The proponent undertakes the risks of the project if the final feasibility studies carried out determine that the project cannot be carried out in the form originally proposed by the proponent or when the tender is not awarded for any reason not attributable to a valid conduct of the Granting Authority or any institution of the Costa Rican State. In such cases, the costs of preparing the project will be borne directly by the proponent, without being entitled to any compensation.

31.9 The Administration, in the terms of the General Law of Public Administration, will be liable for damages caused to the proponent and will compensate it when, for causes attributable directly to the State and its institutions, the project could not be executed in the terms initially accepted by the Granting Authority in the initial resolution of the application phase, with the qualifications established herein. The proponent will undertake any delays or defaults attributable to force majeure or fortuitous events; however, such circumstances will exempt the latter from liability, and in case this causes the breach by the applicant, the Administration will not be entitled to execute the bid bond if it had been required. Judicial proceedings or judicial or administrative decisions that have been dismissed, prevent the execution of the project, delay it, render its conditions impossible or vary them in such a way that the project stops being viable will not be included within the concept of force majeure or fortuitous event. In such cases, the proponent will be entitled to compensation. For the purposes of determining the amount of a possible compensation, the alternative dispute resolution mechanisms established herein may be followed, or failing that, the corresponding jurisdictional and/or administrative channels shall be pursued.

Article 32. - Compensation for studies.

32.1 The amount of the approved development costs shall not be used for possible compensation by the Administration. In the case of compensations that the proponent is legally entitled to by the Administration, only the real costs incurred by the applicant will be indemnified, which must be demonstrated by the latter. For these purposes, the applicant must provide the documentation proving the expenses incurred and their settlement, duly certified by an authorized public accountant. When there is no effective expenditure, the value of the study will be determined based on market prices. The Administration will consider the certified amount but will not be obliged to accept it, if it justifiably objects to it based on market prices. Against the resolution by the Administration as to the final value of the studies that must be compensated to the proponent, the ordinary appeals of revocation and remedy, as provided by the General Law of Public Administration, shall be filed within five business days after the notification.

32.2 In case the Administration is liable for unlawful conduct, the proponent shall be indemnified pursuant to the General Law of Public Administration. In these cases, damages may not exceed the development costs approved by the Granting Authority in the initial resolution referred to in Article 20.1 or in the event of the provisions of Article 22.2, both in this Regulation.

32.3 In the event of a discrepancy as to the amount of compensation corresponding to this article, the parties may follow the procedures for alternate dispute resolution established in these Regulations, or failing that, go to the corresponding jurisdictional and/or administrative channels.

Article 33 - Reimbursement of development costs.

33.1 The grantee will reimburse the total development costs according to the amount, payment method, and term established in the Request for Proposal.

33.2 The Granting Authority may not order initiation or any other procedure of the grantee, when it has payments in arrears that must be made to the proponent according to the final terms of the RFP.

33.3 The delay in the payment by the grantee of the development costs will not grant the proponent any right against the Granting Authority; nevertheless, it will be considered a serious fault of the grantee, which will be sufficient reason to unilaterally resolve the concession contract.

33.4 In the event that the Administration resolves the concession contract due to failure of the grantee to pay development costs, part of the proceeds of the execution of the construction guarantee will be used to compensate the proponent pursuant to the rules of Article 32.1 herein. The same procedure will be applied, but with respect to the bid bond, if the tender involves a single bidder and does not subscribe the concession contract for causes absolutely attributable to the latter.

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Article 34. - Analysis costs.

34.1 The analysis costs shall be the estimate of the extraordinary and non-budgeted expenses that the Granting Authority considers will require the analysis of the proposed project.

34.2 The analysis costs shall be paid by the proponent in the form and term determined by the Granting Authority in the initial resolution indicated in article 20 herein.

34.3 The analysis costs requested by the Granting Authority must be duly substantiated and added to the development costs finally established in the definitive Request for Proposal to be recovered by the proponent.

34.4 Any balance of analysis costs not used by the Granting Authority shall be returned to the proponent in the event of an early rejection of the proposition or if the tender is not awarded. These will also be returned to the grantee in case of endorsement of the award or endorsement of the concession contract, and if the grantee paid development costs to the applicant.

CHAPTER VII

Final Provisions

Article 35 - Procedure for resolving conflicts among private initiative projects.

35.1 The National Concessions Council or the administrative head of the decentralized, institutional, or territorial administration, or the head of public companies will be the authority that will determine if a submitted project is similar or different from another one of private initiative that has been presented before or that is included in the register of projects in process pursuant to Article 6 herein. In the cases of the Decentralized Public Administration, the competent body will resolve this situation.

35.2 In the event of a conflict of private initiative projects, a project that has been submitted first in time in the institutional supplier or in the respective unit of the Public Administration or public company in question shall prevail, provided that it has not been rejected during its processing. For these purposes, the Administration will review the date and time recorded in the registry, as provided in Article 15.3 herein.

35.3 In cases of correction of errors in the application or clarifications or additional information requested by the Administration, the proponent will retain the right of priority if defects are corrected within the term granted for these purposes by the Granting Authority.

35.4 In the event of a conflict of a private initiative project with respect to any project that the granting Administration is processing by its own means, the Administration may, through an act duly motivated by public interest, authorize its processing through private initiative. In this case, the Granting Authority may

establish that the costs incurred by it are included within the development costs and recovered by the latter in the corresponding part in case there is an award and endorsement of the concession contract.

35.5 The proponents may establish the ordinary resources of the General Law of Public Administration, within a period of ten working days after being notified of the resolution of the rejection of the initiative due to conflict with another project.

Article 36. - Participation of the proponent in the tender.

Tenders of private initiative projects will be carried out in accordance with the procedure established in the General Law on the Concession of Public Works and its General Regulations and under the guiding principles of efficiency, publicity, equality, and free competition. If the proponent of a private initiative participates in the bidding, he will do so in the same terms and conditions as any other bidder, including one that can do it individually or in association with a third party and will be admitted to full rights, in case the prequalification is held.

Article 37. - Amendments. Article 2 is amended as regards to the definition of Private Initiative and Article 8 of Executive Decree No. 27098-MOPT, "General Regulations for the Concession of Public Works with Public Services," of 12 June 1998, which should read as follows:

Article 2- Definitions (...)

Private initiative: Set of documents that, pursuant to the provisions of Article 20 of the Law on the Concession of Public Works with Public Services, No. 7762 of 14 April, nineteen hundred ninety-eight, agrees with the "Regulation of the Private Projects Initiative for Concession of Public Works or Concession of Public Works with Public Services and its amendments. (...)"

Article 8- Private Initiative Projects.

"The presentation of private initiative projects authorized by Article 20 of the General Law of Concession of Public Works with Public Services is regulated in the "Regulation of Private Initiative Projects of Concession of Public Works or Concession of Public Works with Public Services" and its amendments.

Article 38. - Validity. In effect upon its publication. Issued by the Presidency of the Republic. - San Jose, on the tenth day of June, two thousand four. To be published.

ABEL PACHECO DE LA ESPRIELLA - The Minister of Public Works and Transportation, Javier Chaves Bolaños.-1 time .- (Request No. 7183) .- C-294545 .- (D31836-51417).