

Guidelines on PFI Projects Implementation Process

1. Status of the Guidelines

The guidelines, in addition to outline the flow of a series of processes related to the implementation of a PFI project, shows the points to be considered in each procedure as one of the practical indicator for the national government in the implementation of PFI projects. When the national government implements, it is desirable to implement PFI projects in accordance with the Act on Promotion of Private Finance Initiative (Act No. 117 of 1999; hereinafter referred to as the “Act”) and the Basic Policy on the Implementation of Projects on the Private Finance Initiative (Cabinet Decision of October 23, 2018; hereinafter referred to as the “Basic Policy”), and in line with these guidelines. The guidelines can also serve as a reference in PFI projects implemented by persons other than the national government.

The guidelines do not prevent each ministry and agency from devising methods according to the situation in accordance with the Act and Basic Policy for the smooth implementation of PFI projects, and implementing of the PFI projects by methods other than those indicated in the guidelines.

The PFI projects involving the collection of user fees, such as the public facility, etc., operating project, has yet to be implemented in full-scale, and based on the implementation status thereof and the progress, etc. of investigations and studies pertaining thereto in the future, a part or all of the guidelines will be changed as necessary or new guidelines will be provided. The implementation process of the public facility, etc., operating project shall be implemented in accordance with the Guidelines on the Right to Operate the Public Facility, etc. and the Public Facility, etc., Operating Project.

Unless otherwise provided herein, the terms used herein shall have the meanings as provided in the Act and the Basic Policy.

2. Service purchase type: Simplification of procedures in PFI projects

Given that a lot of experience in service purchase type PFI projects has been accumulated, it is possible to simplify the project implementation procedures provided in these guidelines by referring to past examples, etc. if many similar PFI projects have been implemented in the past. Details on the simplification of procedures for local governments are as shown in the "Manual for Service Purchase Type PFI Projects Implementation Procedures for Local Governments.”

Process of PFI projects

Selection of a qualified project

Step 1. Business Proposals
(including proposals from private businesses)

Administrator, etc. of the public facility, etc.

- Study of implementation as PFI projects, and active handling of proposals from private businesses
- Establishment, etc. of a system to receive and evaluate private-sector proposals, etc.
- Providing information necessary for private-sector proposals and publicizing the plans of projects that may be implemented as projects in the future
- Start procedures such as formulating an implementation policy, from those projects deemed to be highly appropriate as PFI projects and that are judged to be started early in light of the needs of the citizens

Step 2. Formulation and Publication of the Implementation Policy

- Publicize the prospect of formulating an implementation policy in accordance with Article 15 of the Act
- Formulate and publicize an implementation policy at an early stage that considers fairness and transparency
- Specify details that take into account the participation of private businesses, and allow for the sequential elaboration and supplementation of details as the study progresses
- Clarify as concretely as possible the involvement of the administrator, etc. of the public facility, etc., the assumed risks and their sharing
- Clarify as much as possible the necessary permits and licenses, etc., the scope of maintenance or operation of the public facility, etc. that can be carried out by the private business, and the specifics of applicable subsidies, loans, etc.

Step 3. Evaluation, Selection, and Publication of Qualified Projects

- The criterion is that the project can be implemented efficiently and effectively by implementing it as a PFI project (e.g., Reduction of public financial burden under the same level of service, improvement of public service level under the same level of burden, etc.)
- Evaluate by converting the total amount of public financial burden into present value (after making required appropriate adjustments)
- The principle of quantitative evaluation and qualitative evaluation after ensuring objectivity in cases where the evaluation is difficult
- Ensure transparency in the publication of the selection results, etc.

Call and selection of private businesses, etc.

Step 4. Call, Evaluation, Selection, and Publication of Private Businesses

Administrator, etc. of the public facility, etc.

- Secure competition and transparency of the procedures
- Pay attention to the use of ingenuity by private businesses, and ensure a preparation period for proposals
- Utilize a competitive discretionary contract such as competitive bidding, proposals on open invitation for participation, etc. (competitive dialogue procedures)
- Utilize a comprehensive evaluation of an open competitive bidding when there is no need for a competitive discretionary contract
- Ensure objectivity of evaluation standards when conducting a “comprehensive evaluation” that takes into account conditions other than the price
- Utilize the technical proposal system
- Emphasis on so-called performance-based ordering
- Provide fair information in response to questions from private businesses
- Provide an appropriate evaluation, such as weighted evaluation, taking into account the extent to which private-sector proposals contributed to the formulation of the implementation policy
- The extent of the contribution will be evaluated by taking into account the advanced nature of the proposal, etc. In principle, intellectual property is subject to evaluation; however, a wide range of evaluation is available depending on the individual project
- Ensure transparency in the publication of the selection results, etc.

Step 5. Conclusion, etc. of Project Contract, etc.

Administrator, etc. of the public facility, etc. and the appointed business

- Provisions in the project contract, etc. and their publication
 - Specific and clear agreements on the rights and obligations between the parties
 - Provisions to ensure appropriate public service provision
 - Monitoring of the level of public services
 - Reporting on the status of implementation and financial status
 - Reporting of any problems and the submission of investigations and reports by third-party experts
 - Necessary and reasonable measures to ensure proper and reliable provision of public services, etc.
 - Involvement of the public to the extent necessary to ensure safety, protect the environment, etc.
 - Clarification of risk allocation and measures to mitigate or eliminate risks, taking into consideration the appropriateness of risk allocation
 - Specific and clear provisions on contract cancellation at the end of the project or in case of difficulty in continuing the project
 - Appropriate agreements according to type of the selected project, etc.
 - Specific and clear provisions for cases, etc. where there are doubts about the interpretation of project contracts, etc.

Implementation of PFI projects

Step 6. Implementation and Monitoring, etc. of the Project

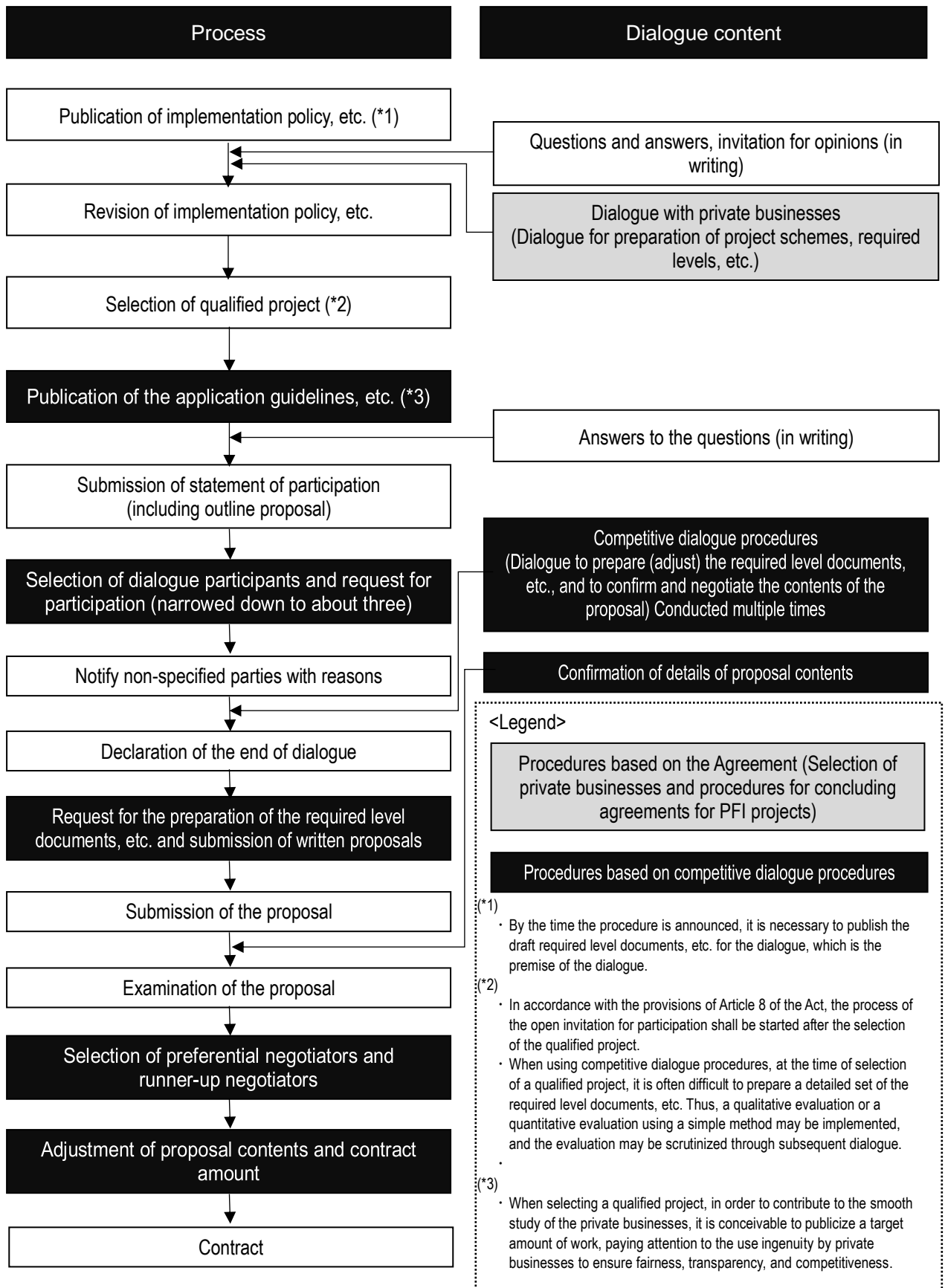
Administrator, etc. of the public facility, etc. and appointed business

- Implementation of a project in accordance with project contract, etc.
- Monitoring of the level of public services provided, etc.

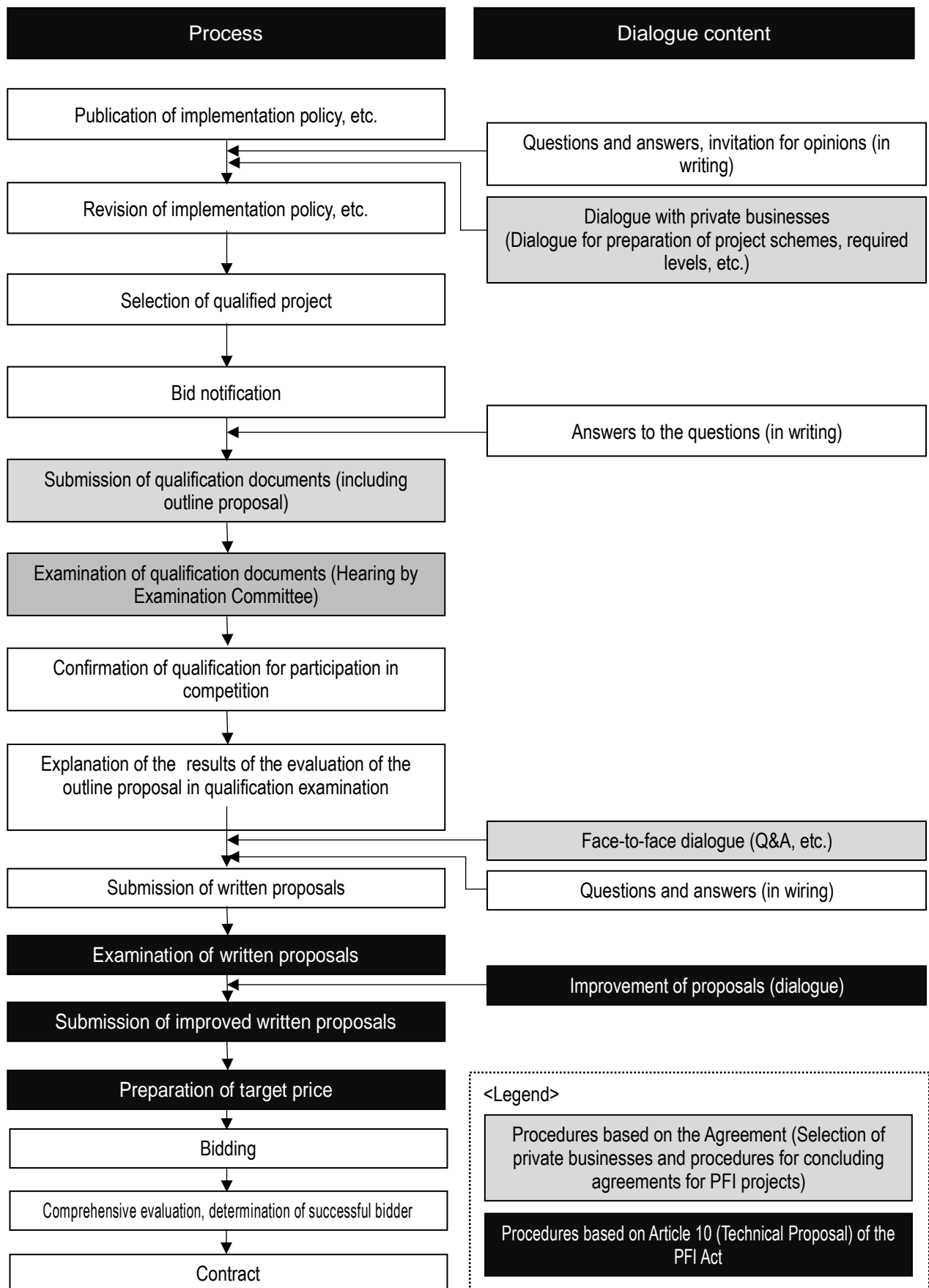
Step 7. Termination of the Project

- Measures taken in accordance with the handling of assets specified in the project contract, such as surrendering the land, etc.

Flow of the business selection process (Step 4. 4-1 (i)-2 Competitive dialogue procedures)



Flow of the business selection process (Step 4. 4-1 (ii) Comprehensive evaluation of an open competitive bidding (technical proposal system))



Step 1. Business Proposals

1-1 Study of PFI projects

- (1) PFI is one of the implementation methods for a project related to the provision etc., of the public facility, etc. Therefore, when examining a PFI project, first of all, it is assumed that there are projects related to the provision etc., of the public facility, etc. that should be implemented, and then the possibility of PFI will be studied.
- (2) When evaluating whether to implement a project as PFI, the implementation of the project should be entrusted to a private business as much as possible, if (i) the project can be implemented efficiently and effectively by utilizing the private finance, management abilities and technical capabilities, and (ii) it is appropriate to let private businesses carry out the project. Therefore, it is necessary to actively study how to implement such a project as a PFI project. Act 2(2)
Act 3(1)
- (3) When implementing a project related to the provision etc., of the public facility, etc., it is customary to study the basic concept and master plan, etc. before the project implementation. It is more desirable to study multiple project methods, including PFI, even in the preliminary stage of project implementation. This will allow the decision on the project method for the provision etc., of the public facility, etc. at an early stage, and even when a project is selected to implement as a PFI project to implement the provision etc., of the public facility, etc., it is considered possible for the public sector to proceed with the project with the same or earlier in-service schedule as when it implements the project itself.
- (4) Also, from the perspective of promoting the smooth implementation of a PFI project, among projects that should be performed by the administrator, etc. of the public facility, etc. (hereinafter referred to as the "administrator, etc.") in relation to the provision etc., of the public facility, etc., procedures, etc. such as the formulation of an implementation policy shall be initiated in a project that is judged to be highly compatible as a PFI project in view of the field, form, and scale, etc. of the project, and that should be initiated as soon as possible in light of the needs of the citizens. Basic 2 1(1)

(Note) In these guidelines, where there are provisions in the Act or the Basic Policy, the relevant sections are indicated outside the right column for reference. The relevant sections of the Act are indicated with Arabic numerals for articles, the circled Roman numerals for paragraphs after the word "Act," and the relevant sections of the Basic Policy are indicated with the item number of the Basic Policy after the word "Basic."

(5) PFI projects are not simply the procurement of facilities, but rather the procurement of services from private businesses. Based on this recognition, it is important to clarify the scope of public services and PFI projects that are going to be procured through the PFI project.

Also, if the PFI project is accompanied by a private profit-making facility, the management risk of the private profit-making facility may interfere with the implementation of the PFI project. Therefore, it is necessary to separate the both as much as possible. However, it should be noted that even if they cannot be completely separated, appropriate measures should be taken in accordance with the project contract, etc. (the project contract provided in Article 5, paragraph (2), item (v) of the Act or the implementation agreement provided in Article 22, paragraph (1) of the Act; the same shall apply hereinafter) to minimize the management risk of private profit-making facilities.

(6) If the procedures for the granting of subsidies, etc., are required for PFI projects, it is necessary to take into account the scheduling to sign the contract and to implement the PFI projects.

(7) When studying a PFI project, it is also effective for the administrator, etc. to use external consultants, etc. or advisors with expertise (hereinafter referred to as "consultants, etc."), as it requires specialized knowledge and know-how in finance, law, technology, etc. In this case, if related companies, etc., such as consultants used by the administrator, etc., apply for or participate in the project, special attention shall be paid to ensure confidentiality and credibility of fairness. In this case, several measures may be taken in the contract, etc. with the consultants, etc., such as ensuring that no information is provided or exchanged between consultants, etc. used by administrators, etc. and related companies, etc., regarding the relevant PFI project.

In addition, from the perspective of conflict of interest, etc., it is not appropriate for a consultant, etc. used by an administrator, etc. to become simultaneously a consultant, etc. of a private business applying for or participating in the project.

(8) When studying the PFI projects, it is assumed that private businesses will propose the formulation of a project implementation policy in accordance with Article 6 of the Act, as described below. It is necessary to actively take up the project that has been proposed, evaluate their public nature, needs, and priorities, etc., and study whether it is appropriate to implement it as a PFI project.

Basic 2 1(1)

Basic 2 3

1-2 Proposals from Private Businesses

In accordance with Article 7 of the Act, a qualified project (*1) may be selected after a private business makes proposals to an administrator, etc. for a PFI project, or makes a proposal for a project for which an implementation policy has already been issued pursuant to Article 6 of the Act; and as a result of the study and evaluation by the administrator, etc., the proposal is adopted in whole or in part, and the required implementation policy has been formulated or modified.

In order to encourage active proposals from private businesses, the "Manual for the Promotion of Private-sector PFI Project Proposals," which shows the procedures for implementing private sector proposals, proposal forms (example format), etc., shall be taken into account to respond to the proposals.

Voluntary proposals not based on the PFI Act (ideas) should be handled in the same manner as private proposals. In this case, it is desirable for the administrator, etc. and the proposer to confirm in advance whether the proposal is a private-sector proposal based on the PFI Act or not.

Also, from the viewpoint of effective use of public real estate, it would be beneficial for both the administrator, etc. and private businesses to utilize ingenuity of the private sector through the private-sector proposal system and private-sector ideas.

(1) Providing Information and Developing Systems for an Administrator, etc.

(i) In order to properly receive, evaluate, notify, and publish, etc. proposals from the private businesses, it is necessary to clarify the contact point and develop an internal study system within the agency.

(ii) In order to accept proposals from the private sector in a positive and efficient manner, an administrator, etc. may publish a list of potential projects that could be implemented in the future as short- and long-term plans.

In addition, in order to promote private-sector proposals, it is also effective for local governments to actively disclose information on the public facility, etc. in their plans for promoting the comprehensive and systematic management of the public facility, etc. (Comprehensive Management Plan for Public Facilities, etc.)(*2).

(iii) If a private business asks for information, in order to encourage useful proposals it is necessary to provide appropriate information, to the extent possible, on materials that will be used as a reference for calculating the PSC (Public Sector Comparator: the present value of the estimated public financial burden over the entire project period in the case where the public sector implements the project on its own). In particular, when making a private-sector proposal for operating an existing public facility, etc. and a request for information is made, it would be desirable to provide historical financial data and business forecasts, etc. for the public facility, etc.

(iv) In addition to (i) and (iii) above, it is also effective in promoting private-sector proposals

Basic 2 3(1)

to make the information widely available to the public through websites, etc., when the information needed for the proposal (such as plans for the construction etc. of the public facility, etc.) becomes clear during the provision of information.

- (v) Also, in order to promote PFI projects, it is important to promote proposals from the private businesses and their utilization by administrators, etc., while taking into account the perspectives of regional revitalization and local employment creation. It is also considered effective to promote the formation of industry-government-academia-funded platforms for local companies to acquire know-how and develop the local human resource and create, etc. a network of administrators, etc. to improve business performance.

(2) Documents Required for Private-sector Proposals

The following contents should be considered as the basis of feasibility study, which is usually conducted.

Act 6(1)

(i) Proposal for qualified project

- a. Type of the public facility, etc.
- b. Conditions for the establishment of the public facility, etc.
- c. Outline of the public facility, etc.
- d. Outline of maintenance, and operation of the public facility, etc.
- e. Assumed project scheme
- f. Project schedule
- k. Risk allocation

* At the discretion of the private business, it is also possible to submit specific issues (e.g., regulations and restrictions and the implementation, etc. of the qualified project) that the private business is aware of at the time of proposal.

(ii) Results of the evaluation on the effectiveness and efficiency of the qualified project

(iii) Process and method of evaluation

- a. Process and method of evaluation for payment (e.g., in the case of a stand-alone-type, evaluation of the profitability of the project)
- b. Process and method of evaluation of service level

(3) Study Process for Private-sector Proposals

Basic 2 3(2)

(i) Administrators, etc. should study the following points.

- a. Necessity of provision etc., of the public facility, etc. for the proposal
- b. Feasibility of the proposal
- c. Appropriateness of using the PFI method
- d. Impact on public finances
- e. Possibility of using alternative methods for the provision etc., of the public facility, etc.
- f. Others (If there are special circumstances, consider as appropriate)

Furthermore, if it is determined that there is no need for provision, etc. based on the study in (a), other studies are unnecessary.

(ii) The following points shall be taken into consideration for study. Also, the use of consultants, etc. may be considered as necessary.

a. Protect intellectual property (*3)

Basic 2 3(3)

b. Hold a dialogue with the private business who made the proposal (However, consideration shall be given so as not to impose an excessive burden on the private businesses concerned).

c. Request for submission of additional materials to the private business who made the proposal (However, consideration shall be given so as not to impose an excessive burden on the private business concerned).

d. Conduct the study as soon as possible within the scope that does not interfere with the execution of the work.

Basic 2 3(2)

e. The concept of the study period may vary depending on the project and the administrator, etc. Notify the expected time frame if the study is to take a considerable amount of time (e.g., more than one year).

Basic 2 3(6)

(4) Evaluate the proposals of a private business in accordance with the procedures in (3) above and it is deemed appropriate to formulate an implementation policy, the implementation policy, etc. shall be done in the same manner as a project proposed by the private business.

Basic2 3(4)

(5) Protection of Intellectual Property Included in the Proposal

Basic2 3(4)

(i) Intellectual property shall not be disclosed, except in the case of (iv).

(ii) There is no objective and uniform standard as to whether or not the information in question falls under the category of intellectual property. In light of this, in cases where it is difficult to determine whether or not to make a public announcement, both the administrator, etc. and the private business who made the proposal shall clarify the scope of intellectual property, decide on publication, and strive to protect the rights and other legitimate interests of the private business.

(iii) At the time of proposal, it is also possible to request the private businesses who made the proposal to clearly indicate that the information falls under the category of intellectual property.

(iv) If the implementation policy cannot be formulated unless the relevant information is publicized, the information will be made public after obtaining approval of the private business who submitted the proposal including the information. In this case, consider giving a certain evaluation to the person concerned when selecting a private business.

(6) Upon receiving a proposal from a private business, if it is determined that it is not necessary to establish an implementation policy within a reasonable period of time, a notice to that effect and the reason shall be promptly given to the concerned private business.

Basic2 3(5)

In this case, if it is deemed appropriate to provide a reference to the private business who intends to make a new private sector proposal, or if it is otherwise deemed particularly necessary, the outlines of the following shall be publicized after considering the rights and other legitimate interests of the relevant private business and the influence on the implementation of provision etc., of the public facility, etc.

- a. Outline of the project proposal, and
- b. The summary of the results of and reasons for the decision by the administrator, etc. of the private sector proposal.

*1 The term "qualified project" refers to a project related to the provision etc., of the public facility, etc., which can be efficiently and effectively implemented as a PFI project.

Act 2(2)

The term "Selection of a qualified project" refers to the selection of a project that the administrator, etc. deems appropriate to be implemented as a PFI project, based on a basic policy and an implementation policy. The qualified project selected refers to a "selected project."

Act 7

Act 2(4)

*2 Guidelines for Formulating Comprehensive Management Plan for Public Facilities, etc. (April 22, 2014 SOZAIMU No. 75)

II. Matters to be Considered in Formulating the Comprehensive Management Plan

In formulating a comprehensive management plan, the following matters should be studied as necessary.

V. Utilization of PPP/PFI

When renewing the public facility, etc., it may be effective to utilize the technology, know-how, and funds, etc. of the private sector. For this reason, it is recommended that the active use of PPP/PFI be considered in the study of a comprehensive management plan.

Also, given that the wide public disclosure of information on the public facility, etc. is expected to lead to the utilization of private sector vitality, efforts shall be made to proactively disclose information on the public facility, etc.

*3 The term "intellectual property" refers to information that is useful for business activities, including advanced technology, know-how, advanced and high original ideas, or trade secrets, etc. and the publication of which may harm the rights, competitive position, or other legitimate interests of a private business who has made a proposal.

Step 2. Formulation and Publication of the Implementation Policy

2- 1 Publication of the Prospects of Formulation of the Implementation Policy

In accordance with Article 15 of the Act, the administrator, etc. shall publish the prospect of the formulation of the implementation policy. The publication may be made at the same time of publication of the prospect of orders for public works, or at the same time it is conceived, etc.

Also, local governments often publish their implementation policies prior to the act of incurring debt burden.

. For this reason, the publication of the forecast should not be limited to the beginning of the fiscal year, but should be done without delay when the outlook for announcement is good.

Act 15(1), (2)

Basic 4 3

2-2 Formulation and Publication of the Implementation Policy

(1) When a qualified project under the Article 7 of the Act is to be selected through a study of PFI projects, the implementation policy must be formulated and publicized prior to the selection. There is no provision as to the extent of clarity required for being selected as a selected project prior to the formulation and publication of an implementation policy. However, from the perspective of ensuring transparency and fairness, it is important to formulate and publish the implementation policy as early as possible in order to ensure the project is widely known at the earliest possible stage. Also, it is advisable to indicate a policy on share transfer at an early stage by being included in the implementation policy, etc. The project outline shall be included in the implementation policy at an early stage, which will allow private businesses to have a preparation period and thus contribute to thoroughly informing the local residents thereof.

Act 5(1), (3)

Basic 2 1(2)

(2) The implementation policy shall specify the following matters.

- (i) The matters on the selection of the qualified project;
- (ii) The matters on the call and selection of a private business;
- (iii) The matters necessary to ensure the appropriate and reliable implementation of the project such as the clarification, etc. of the responsibilities of private businesses;
- (iv) The matters on the location, scale, and allocation of the public facility, etc.;
- (v) The matters on the measures to be taken if there is any doubt about the interpretation of the implementation agreement, etc.;
- (vi) The matters on measures to be taken when difficulties arise in the continuation of the project; and
- (vii) The matters on legislative and tax measures, and fiscal and financial supports.

Act 5(2)

2-3 Points to be Noted When Formulating the Implementation Policy

The following points to be noted when formulating the implementation policy.

(1) In formulating the implementation policy, the involvement of the administrator, etc., in the selected project, the risks and their allocation, etc., shall be clarified as concretely as possible, and the following items, etc. shall be described in as much detail as possible to enable private businesses to easily study the possibility of entering a qualified project.

Act 5(1), (2)

Basic 4 2

Basic 2 1(3)

Basic 7 2

- a. Project details of the qualified project
- b. Selection method of the private businesses
- c. If the project schemes are to be proposed by a private business operator, a description thereof
- d. If a policy on the transfer of shares has already been formulated,, that policy
- e. Necessary permits and approvals for the implementation of the selected project, etc.
- f. The scope of maintenance or operation of the public facility, etc. that the appointed business may undertake
- g. Applicable subsidies, loans, etc. to the appointed business

In this case, the implementation policy may be supplemented with a considerable amount of specific content at the time of publication, and then gradually elaborated as the study of the project details of the qualified project progresses.

(2) In formulating an implementation policy and selecting a qualified project, a market survey may be conducted to obtain the necessary information. In this case, depending on the content and method of the survey, there is a risk that the information on the relevant PFI project may be provided only to a specific private business, so due consideration shall be given when conducting the market survey. In order to effectively reflect the opinions, etc. of private businesses, etc., it is desirable to conduct a market survey prior to the formulation of the implementation policy.

(3) After publication of the implementation policy, it is appropriate to accept opinions from the private businesses, etc. and reflect them in the selection of qualified projects and call of private businesses, if necessary. For this reason, it is necessary to set a schedule that takes these factors into consideration.

Also, based on the market survey after the publication of the implementation policy, proposals and opinions from private businesses, etc., the content of the implementation policy (project details, risk allocation, etc.) may be reviewed before the selection of a qualified project, and the implementation policy may be revised.

(4) In general, after the publication of the implementation policy, it is effective to accept opinions from private businesses, etc., as well as to accept questions, prepare answers, and publish them in order to communicate with the private businesses, etc.

On the other hand, by formulating the implementation policy based on market research prior to the publication of the implementation policy and precedents of similar projects in past PFI projects, it will be possible to efficiently provide the information required by the private business. In such a case, it is considered acceptable to skip the question and answer and only accept opinions from the viewpoint of reducing the procedural period and administrative burden.

(5) If the implementation policy in (1) above is gradually elaborated and supplemented, and if the implementation policy in (3) above is changed, that fact shall be publicized without delay. Act 5(4)

(6) By publicizing that the proposal is based on a private sector proposal at the time of publication of the implementation policy, the existence of the person who made the private sector proposal will be revealed, which may result in incentives for the person concerned.

Step 3. Evaluation, Selection, and Publication of Qualified Projects

3-1 Evaluation and Selection of the Qualified Project

After the formulation and publication of the implementation policy, it is necessary to evaluate whether to select a qualified project in accordance with Article 7 of the Act. As a result of this evaluation, a project, recognized as appropriate to be implemented as a PFI project taking into account its feasibility, etc., will be selected as a qualified project. The following shows the concept of this evaluation. (For details, please refer to the Guidelines on Value For Money (the VFM).)

Act 7
Basic 2 2

(1) Basic Concept of Selection Standards

Basic 2 2(1)

In the evaluation of whether or not to select a qualified project, the selection standards involving the implementation of the project as a PFI project will allow for an efficient and effective implementation of the provision etc., of the public facility, etc.

Specifically, the following can be expected by entrusting private businesses;

- a. Reduction in the public financial burden can be expected throughout the project period when public services are at the same level; or
- b. Improvement in the level of public services can be expected when the public financial burden is at the same level.

(2) Calculation of the Estimated Amount of Public Financial Burden

Basic 2 2(2)

As for the calculation of the expected amount of public financial burden, based on the following factors, the amount of future costs and the expected public financial burden are totaled and converted to present value for evaluation.

- (i) If expenditures related to financial support, tax revenue and other income, etc. from private businesses are actually expected, appropriate adjustments shall be made by adjusting, etc. these expenditures.
- (ii) Risks to be transferred to private businesses shall be taken into account in the most reasonable manner possible.

(3) Evaluation of the Level of Public Services

Basic 2 2(3)

It is desirable to evaluate the level of public services as quantitatively as possible. However, when evaluating items that are difficult to quantify, qualitative evaluation shall be conducted after ensuring the objectivity.

(4) Concept of VFM Calculation

The VFM is calculated by comparing the PSC and the LCC of the PFI projects. In normal

PFI procedures, the LCC of PSC and PFI projects is calculated by accumulating the costs at each stage of design and construction, etc. of the project, and then recalculating them to obtain the present value.

In the case of projects where facility construction operations account for a significant part thereof or projects with routine maintenance and operation work, it is considered that an objective evaluation can be made by using the actual results, etc. of VFM in the past PFI projects. Therefore, it should be noted that too much effort should not be put into the calculation of VFM itself.

(5) Utilization of the Results of the Study of Multiple Project Methods

For the evaluation of whether or not to select a qualified project, if the study of multiple project methods, including PFI, is conducted at the same time as the study of the basic concept and basic plan, etc., the results of the study can be used for the evaluation. (See 1-1(3))

3- 2 Publication of Selection Results, etc.

(1) Publication of Selection Results, etc.

- (i) When a qualified project has been selected, the result of the decision, together with the contents of the evaluation, shall be announced promptly. In this case, the expected amount of the public financial burden in 3-1(2) above shall be disclosed in principle. However, in cases, etc. where there is a risk of hindering legitimate competition in subsequent bidding, etc. by disclosing the expected amount, it is also acceptable to indicate only the estimated amount or percentage of the reduction in public financial burden in 3-1 (1) (a) above.
- (ii) When the level of public services has been evaluated qualitatively, the method and results of the evaluation shall be disclosed.
- (iii) The publication shall be made with due consideration to its influence on the selection of private businesses and the provision etc., of the public facility, etc.
- (iv) When a qualified project has not been selected based on the results, etc. of objective evaluation of the project feasibility, etc., it shall be so publicized.
- (v) From the viewpoint of reduction of procedural period and administrative burden, it is considered to be an effective measure to make the publication at the same time as the start of invitations to private business operators.

Act 11
Basic 2 2(5)

Basic 2 2(5)

Basic 2 2(5)

Basic 2 2(5)

(2) Publication of Detailed Materials

Besides the materials publicized in (1) above, detailed information on the results of the evaluation regarding the selection or non-selection shall be publicized at an appropriate time, taking into consideration to its influence on the selection of private businesses and the provision etc., of the public facility, etc.

Basic 2 2(6)

3-3 Improvement of Objectivity and Transparency in the Calculation of the Expected Amount of Public Financial Burden and the Evaluation of the Level of Public Services

Based on their experience, etc. with PFI projects, administrators etc. shall make efforts to gradually improve the objectivity and transparency of the calculation of the expected amount of public financial burden required for the selection of a qualified project and the evaluation of public services.

Basic 2 2

Step 4. Call, Evaluation, Selection, and Publication of Private Businesses

4- 1 Call, Evaluation, and Selection of Private Businesses

(Basic Concept)

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| (1) Following the selection of a qualified project, private businesses to implement the project will be invited, evaluated and selected. In the process of call, evaluation and selection of private businesses, the current legal system, if any, shall be applied separately, but in any case, the following points shall be taken into consideration: | Act 8(1)
Basic 3 1 |
| (i) Implement the process in accordance with the "Principle of Fairness" to ensure competition, and based on the "Principle of Transparency" to ensure transparency of the procedures. | Basic 3 1(1) |
| (ii) Care shall be taken to ensure that the ingenuity of private businesses are utilized as much as possible. Therefore, in principle, the evaluation shall be made based on the price, the quality of services provided to the citizens, and other conditions, so that the technology and managerial expertise, and ingenuity, etc. of private businesses are fully utilized, and affordable and good service are provided to the citizens. | Basic 3 1(1) |
| (iii) Take into consideration the time required to prepare the proposal and to conclude the contract. | Basic 3 1(1) |
| (iv) Consider reducing the burden on the applicant. | |
| (2) To select the optimal selection method and selection process that can make use of the ingenuity of the private sector while ensuring fairness, transparency, and competitiveness, and comprehensively considering the scale, content, and characteristics, etc. of the project. In this case, it is considered a useful method to carry out market sounding and take into account the results thereof. | |
| (3) In order to demonstrate the ingenuity of private businesses as described in (1) (ii) above, it is required to adopt the concept of so-called performance-based ordering, which indicates the extent of public services to be provided, and specifies the minimum necessary specifications of structures and buildings. Also, it is appropriate to eliminate conditions that inhibit the ingenuity of the applicants and leave it to the ingenuity of private businesses in terms of methods and means, etc. for procuring services to achieve the level of public services to be provided.
In addition, it is important to present the specific requirements for the performance to be ordered as clearly as possible so that the applicants can have a common understanding. | Basic 3 1(6) |
| (4) In order to implement performance-based ordering, it is necessary to evaluate the results of | Basic 3 1(3) |

ingenuity of private businesses in an appropriate and objective manner. For this reason, an objective evaluation standard needs to be established to evaluate the proposals of private businesses. Furthermore, when the use of qualitative evaluation standards is unavoidable for the level of public services, etc., objectivity must be ensured by quantifying the evaluation results.

When conducting the evaluation, the following matters shall be considered.

- (i) In principle, the evaluation shall be based on price, quality of services provided to the citizens, and other conditions. In that case, the evaluation items, evaluation standards, scores, etc. shall be clearly indicated in advance at the time of call.
 - (ii) In the specifications that indicate the level of public services to be provided, etc., the matters to be evaluated as additional proposals shall be clearly indicated in advance at the time of call. In principle, no evaluation shall be made for any matters that are not explicitly stated.
 - (iii) For qualitative evaluation items, the evaluation standards shall be presented as concretely as possible. Depending on the project, the superiority of qualitative evaluation items such as design, for example, may play a major role in the evaluation and selection of a private business. In such a case, if it is considered inappropriate that the selection of a private business who will implement the entire project is affected by the evaluation items, then it is possible that only the part related to the evaluation items will be determined in advance by public solicitation, etc., and then presented as specifications at the time of call of private businesses, and private businesses will be invited, evaluated, and selected.
 - (iv) In the evaluation process, each proposal shall be evaluated individually according to the established evaluation standards, rather than by the ranking among applicants.
- (5) For securing the period in (1) (iii) above, the following considerations are necessary: when a private business applies for the project, it is necessary to study the specifications for performance-based ordering, ingenuity, and the business plan for a long project period, etc. and that, in concluding the contract, it is necessary to prepare a contract based on the business plan proposed by a selected private business etc.
- (6) Regarding the reduction of the burden on applicants in (1) (iv) above, it is considered needed to clearly state that the evaluation will not be conducted based on evaluation items or standards other than those specified at the time of call, as well as to clarify the required contents of the proposal and not to ask for more than what is required, etc.
- (7) In order to accurately convey the intentions of the administrator, etc. regarding the contents of the call to applicants, it is necessary to attach a draft contract to the call, or to indicate the basic concept of the contract conditions as specifically as possible in the bidding instructions

or application guidelines, etc. If, at the discretion of the administrator, etc., the terms and conditions, etc. are to be added to the share transfer, the bidding instructions or the application guidelines, etc. shall specify the policy on share transfer, the period during which shares may or may not be transferred, the percentage of shares that may be transferred, and the terms and conditions of the transferee. In this case, it is desirable to clarify the minimum necessary conditions for the appropriate implementation of the project according to the role to be played by each business operator in the selected project. Also, if the project schemes of the appointed business are to be proposed by the private sector, it is necessary to specify so in the bidding instructions or the application guidelines, etc.

Furthermore, it is important to indicate in advance the method of payment to the private business and the penalty to be imposed on the private business as well. On the other hand, the payment methods and penalties may be clearly indicated in advance at the time of invitation, as those that can be proposed by the private business, and may be included in the evaluation items for the selection of the private business.

- (8) It is appropriate to give private businesses the opportunity to ask questions and to publish the answers to those questions to other applicants in order to ensure fairness. However, publishing the questions and answers pertaining to the applicant's special technology, know-how, etc., shall be refrained if the publications may harm the applicant's rights, competitive position, or other legitimate interests.

Also, it is desirable to provide multiple opportunities for questions and answers whenever possible to avoid conflicts of understanding between administrators, etc. and applicants.

The questions shall be answered after giving due consideration. However, the answers required by the private business must be provided in time for the private business's study of the application.

- (9) In order to properly carry out the procedures leading up to the conclusion of a contract, it is desirable to have the applicant report on the financing plan and methods, etc. for ensuring its effectiveness, in addition to the submission of proposals.

- (10) In the event that it is anticipated that the applicant private business will establish a new corporation in order to implement a PFI project after the selection thereof, it is necessary to specify at the time of call that when inviting private businesses, the applicant private business may establish a new corporation to implement the PFI project, and, provided that the private business plays a role in the proper and reliable implementation of the relevant PFI project, including the establishment of the relevant legal entity.

Until now, most of the appointed businesses were assumed to be a stock company under the Companies Act. In the future, it is expected that the selected project will be implemented by

an appointed business that adopts project schemes based on legal personalities other than stock companies due to the need, etc. to raise funds. In this case, the following points need to be ensured.

- (i) The project can be implemented under the applicable laws of the project schemes and the individual laws governing the project.
- (ii) As a party to the project contract, etc., the project scheme must ensure that the project implementation capacity is sufficient and sustainable.

(When Accounting Laws and Regulations are Applicable)

(11) The following methods can be considered for projects to be implemented through contracts subject to accounting laws and regulations. It is necessary to ensure consistency with the Government Procurement Agreement (*) in the selection, etc. of these private businesses and other procedures.

* "Government Procurement Agreement" means the Agreement on Government Procurement made in Marrakech on April 15, 1994.

(i) Competitive discretionary contracts

(i)-1 Basic Concept

- a. In the case where it is necessary to request a wide range of proposals for open invitation for participation from various perspectives, such as project schemes, financing schemes, and operation methods, etc. since it is difficult for the administrator, etc. alone to set a method and a required level, etc. that can meet project purpose and needs, and where a discretionary contract provided in Article 29-3, paragraph (4) of the Public Accounting Act (Act No. 35 of 1947) may be adopted, it may be possible to adopt the so-called competitive discretionary contract such as competitive bidding and proposals on open invitation for participation.
- b. In the case of the adoption of a competitive discretionary contract, it will be judged and operated individually in accordance with the criteria for adopting proposals on open invitation for participation and competitive bidding.
- c. If it is not considered necessary to adopt a competitive discretionary contract, a business will be selected by a comprehensive evaluation of an open competitive bidding.
- d. The following points shall be taken into consideration.
 - If necessary, a multi-stage selection process to narrow down the number of participants, utilization of competitive dialogue procedures, the use of expert advisors and a committee of external experts, and the business selection process with a view to

Basic 3 1(7)

negotiating with the next applicant, etc. shall be considered.

- The business selection process shall be conducted in a neutral and fair manner.
- In accordance with the Basic Policy, objective evaluation standards shall be established.
- In principle, the content of the dialogue shall be kept confidential while it is being held. However, if there are any changes to the requirements, etc., presented at the time of the public solicitation that need to be announced from the perspective of ensuring fairness, transparency, and competitiveness, they shall be publicized at an appropriate time.
- After the conclusion of the contract, the contents of the dialogue shall be publicized in principle, except for those that may harm the rights, competitive position, or other legitimate interests of the dialogue participants.

Basic 3 1(1)

Basic 3 1(9)

(i)-2 Utilize Competitive Dialogue Procedures

(i)-2- 1 Basic Concept

- a. If it is necessary to request a wide range of proposals from various aspects, such as project schemes, schemes for procurement of funds, and operation methods, etc. to prepare (adjust) the required level documents, etc., it may be possible to utilize competitive dialogue procedures at the determination of the administrator, etc.
- b. Specifically, it may be possible for (i) the administrator, etc. to confirm and negotiate the proposals with the applicants, and to prepare (adjust) the required level, etc. based on the results thereof; (ii) after the dialogue in (i), to make a request to submit proposals; and (iii) to narrow down the number of dialogue participants to approximately three as necessary.
- c. For example, the following process can be considered for the dialogue between the administrator, etc. and the applicant to prepare (adjust) the required level documents, etc., and the submission of proposals based on the dialogue. In the case of a contract to which the Public Accounting Act applies, that contract should be a competitive discretionary contract (such as proposals on open invitation for participation and competitive bidding, etc.). In addition, it is necessary to specify the target price in accordance with the provisions of Article 99-5 of the Cabinet Order on Budgets, the Settlement of Accounts, and Accounting (Imperial Ordinance No. 165 of 1947).
 - (a) Publication of the implementation policy, etc.
 - (b) Questions and answers regarding the implementation policy, etc., and invitations for opinions
 - (c) Selection of qualified projects
 - (d) Publication of the commencement of the procedure (delivery of relevant documents for call, questions and answers (written))

- (e) Preparation and submission of the Statement of Participation, etc. by applicants
- (f) Confirmation of eligibility, selection of participants for dialogue, and invitation (if necessary, narrowing down to about three participants)
- (g) Preparation (adjustment) of the required level documents, etc., and dialogue (multiple times) to confirm and negotiate the contents of the proposal
- (h) Declaration of the end of the dialogue
- (i) Request for submission of proposals
- (j) Confirmation of details of proposals, examination, and selection of preferential negotiators
- (k) Adjustment of proposal contents and contract amount
- (l) Conclusion of a basic agreement
- (m) Conclusion of a project contract, etc.

(i)-2-2 Points to be Noted for the Competitive Dialogue Procedures

The following points shall be taken into consideration when utilizing the competitive dialogue procedures method.

- a. In cases where the conditions for quantitative evaluation have not been established at the time of selection of a qualified project, a qualitative evaluation or quantitative evaluation using simple methods may be performed, and the evaluation may be closely studied through subsequent dialogue.
- b. In publishing the application guidelines, etc., in order to contribute to the smooth study of private businesses, it is conceivable that a reference for the amount of work shall be publicized to ensure fairness, transparency, and competitiveness, while allowing private businesses to exercise their ingenuity.
- c. The dialogue shall be conducted in order to prepare (adjust) the required level documents, etc., which are acceptable to the dialogue participants' proposals, and to confirm and negotiate the contents of the proposal.
- d. It is conceivable that the details of the proposal may be confirmed as necessary. Based on the results, the administrator, etc. may request the submission of supplementary materials.
- e. It is inappropriate to use the suggestions of dialogue participants to improve the suggestions of other participants or to combine the suggestions of multiple dialogue participants.
- f. Consideration shall be given to ensuring fairness, transparency, and competitiveness. Academic experts and consultants, etc. may be utilized.
- g. In principle, the contents of the dialogue shall be kept confidential during the dialogue. However, if there are any changes in the required standards, etc., presented at the time of public solicitation that need to be publicized from the viewpoint of ensuring fairness, transparency, and competitiveness, they shall be publicized at an appropriate time.

Basic 3 1(1)(4)

- h. After the contract is concluded, the contents of the dialogue shall be publicized in principle, except for those that may harm the rights, competitive position, or other legitimate interests of the dialogue participants.
- i. The “Selection of Private Businesses for PFI Projects and Procedures for Concluding Agreements” (Agreement of the Executive Committee of the Liaison Conference of Relevant Ministries and Agencies on the Promotion of Private Finance Initiative (November 22, 2006)) shall assume an open competitive bidding.

(ii) Comprehensive Evaluation of an Open Competitive Bidding

(ii)-1-1 Basic Concept

A private business shall be selected through a competitive bidding process, unless it is deemed necessary to adopt a competitive discretionary contract in accordance with the accounting laws and regulations. In an open competitive bidding, in principle, selection shall be made based on the price, the quality of the services provided to the citizens, and other conditions, so that the technology and managerial expertise, and ingenuity, etc. of private businesses are fully utilized and affordable and good service are provided to the citizens (so-called "comprehensive evaluation of an open competitive bidding").

(ii)-1-2 Points to be Noted for Comprehensive Evaluation of an Open Competitive Bidding

- a. When setting the qualification requirements for participants in an open competitive bidding, it is necessary to set appropriate qualification requirements and examination standards for participants in the open competition according to the type and content of the services to be procured, including requirements such as capabilities related to fund procurement, and long-term risk management and management capabilities, etc. It should be noted that the qualifications for participation in competition under Article 73 of the Cabinet Order on Budgets, the Settlement of Accounts are set to the extent particularly necessary to ensure that competition is conducted in an appropriate and reasonable manner.

In addition, in order not to limit the participation opportunities of motivated private businesses, it is considered necessary for the time being to devise a method that does not excessively evaluate applicants' PFI performance as a qualification requirement.
- b. In addition to the above requirements, prior to the bidding, a private business's proposed business plan will be studied to determine whether or not it has a certain level of performance with respect to the relevant project by considering the reduction of the burden on applicants. It is considered appropriate to allow only a private business, who is capable of properly implementing the project, to participate in an open competitive

bidding, after preparing a more detailed business plan, etc. The materials to be submitted for the examination shall be limited to the minimum necessary.

In order to enable the applicants to prepare bid proposals that are more in line with the needs of administrators, etc., the results of the evaluation of the outline proposal of the business plan in the qualification examination may be explained to the applicants.

- c. Although it is possible to narrow down the number of participants through a multistage selection process, it is not possible to narrow down the number of participants, for example, to three, because the first selection is to confirm eligibility through absolute evaluation.
- d. The content of the submitted bid proposal originally presented may be changed based on the results of the evaluation by the administrator, etc. of the outline of the business plan that the applicant submitted in the qualification examination. However, the changes shall be limited to the extent that the fairness of the examination is not compromised.
- e. A committee consisting of experts, etc. who can objectively study and evaluate proposals from a neutral and fair standpoint may be employed.
- f. If there is a risk that the private business who is to be the counterparty to the contract will not be able to perform in conformity with the proposal at the price offered, it is necessary to confirm the feasibility of the proposal.
- g. It should be noted that after the bidding, the successful bidder's bid price and the contents of the contract indicated in the bidding instructions, etc. cannot be changed when concluding the contract, except for the matters clearly indicated in advance at the time of call as those that can be proposed by private businesses and miscellaneous matters.

In the event that there are no bidders, no successful bidders, or the successful bidders do not enter into a contract as a result of the competition, it is possible to conduct a new bidding or to enter into a discretionary contract in accordance with the accounting laws and regulations.

(ii)-2 Dialogue

(ii)-2-1 Basic Concept

- a. An administrator, etc. is required to clearly convey the needs to the private business, and to devise ways to ensure that the private business submits a proposal that meets the needs. Therefore, after the announcement of the implementation policy, the following questions and answers (hereinafter referred to as "dialogue") are required to communicate between the administrator, etc. and the private business on matters that will be used as a basis for decision making in the bidding or public offering.
- b. In addition to the implementation policy, which is required to be announced before the publication of bidding, etc. or the start of public solicitation, the level of requirements,

the draft contract, selection standards, etc. can be considered as items to be used as a basis for decision making at the time of bidding or public solicitation. In order to facilitate a dialogue, it is desirable to disclose these items as much as possible from the stage before the public notice for bidding or the start of public solicitation. Among these items, for example, risk allocation and the facility design envisioned by the applicant may be considered as individual items for which it would be particularly effective to hold a dialogue.

- c. When conducting a dialogue, in order to ensure fairness and transparency, etc., it is essential to clearly state this in the implementation policy, etc., and to conduct the dialogue in a common manner for all applicants by means of written questions and answers, holding a briefing session, etc., as well as recording and sharing the contents in writing. In some cases, a face-to-face dialogue with each applicant may increase the possibility of obtaining a proposal that meets the needs of the administrator, etc. Therefore, a face-to-face dialogue with each of the applicants may be considered if necessary.

(ii)-2-2 Points to be Noted for Dialogue

- a. In the case of an individual dialogue, there is a possibility that each private business will provide information on the proposal. Special attention shall be paid not to leak the information to a third party without consent of the source party, or not to hint of the contents only to a specific private business.
- b. If, through an individual dialogue, for example, the administrator, etc. becomes aware of new needs or conditions, it is necessary to notify all applicants thereof each time. Furthermore, when changing the contents presented in the public notice or public offering, it is necessary to note that a public notice period specified in accounting laws and regulations, etc. shall be followed after the change.
- c. In addition to the above, dialogues shall be conducted based on the “Selection of Private Businesses for PFI Projects and Procedures for Concluding Agreements” (Agreement of the Executive Committee of the Liaison Conference of Relevant Ministries and Agencies on the Promotion of Private Finance Initiative (November 22, 2006)).

(ii)- 3 Technical Proposal System

(ii)-3- 1 Basic Concept

- a. In the case of a qualified project where it is expected that there are several major methods to meet the required level, and that a wide range of proposals, including advanced technology and superior ingenuity will be made, and it is difficult for the administrator, etc. alone to confirm the validity of the proposal's contents, technical evaluation, etc., and

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whether or not the required level has been reached using the proposal, if the private business will be selected by the comprehensive evaluation bidding method, it may be possible to utilize the technical proposal system introduced pursuant to the Act on Promoting Quality Assurance in Public Works (Act No. 18 of 2005).

- b. In this case, by requesting the applicants for proposals on the technology or ingenuity related to the qualified project (hereinafter referred to as the "technical proposal"), and in cases where an excellent technical proposal can be made by improving a part of the contents of the technical proposal, etc., it may be possible to seek a wide range of proposals including advanced technology and excellent ingenuity of the private businesses by requesting improvement or providing an opportunity to propose improvement of the technical proposal (technical dialogue), or making a target price based on the most excellent proposal.

Basic 4 1(3)

(ii)-3-2 Points to be Noted for the Technical Proposal System

The following points shall be noted when conducting a technical dialogue and preparing a target price using the technical proposal system.

- a. It shall be specified in the bidding instructions, etc. that the target price may be prepared based on a technical dialogue and the best proposal.
- b. Prior to the implementation of the technical dialogue, the technical proposal shall be studied, and the items for improvement to be sought from each applicant in advance to prevent only certain applicants from being favored.
- c. A technical dialogue shall be held with all applicants who have submitted technical proposals, and it shall be ensured that applicants are not made aware of the applications of others.
- d. Matters related to the technical proposal shall be the scope of technical dialogue, and other items shall not be subject to the dialogue.
- e. No information regarding other parties, such as the contents of their technical proposals or the number of participants, etc. shall be presented.
- f. In the event that the content of a technical proposal does not meet the required standard, the applicant shall be requested to make improvements as necessary after confirming the applicant's intentions during the technical dialogue, and if no improvements are made, the applicant shall be notified of its ineligibility to participate in the competition.
- g. When preparing the target price based on the best proposal, opinions of academic experts on the appropriateness, etc. of the technical proposal to be adopted shall be obtained in the examination of the technical proposal.
- h. In preparing the target price, the technical proposal submitted by each applicant shall not be partially combined, but the entire best technical proposal shall be adopted.

(Examination method)

(12) In selecting a private business, it is effective to utilize external consultants, etc. who have objective judgment skills. Another way is to set up an examination committee consisting of experts, etc. to study the contents of the project proposal and obtain their opinions.

(i) In cases, etc. where it is effective to use external consultants, etc. when the administrator, etc., conducts an examination of the project proposal to determine whether it meets the requirements, it shall be noted that in this case, it is necessary to take into account the above 1-1(7) above.

(ii) Also, when an Examination Committee is established, the following points shall be taken into consideration.

a. Publicize the members of the Examination Committee in advance.

b. Clarify the position of the Examination Committee and the items to be studied by the Examination Committee, and publicize them in advance.

c. Measures shall be taken to ensure the objectivity of the evaluation, such as quantification of the technical evaluation of design, etc., and evaluation by those members of the Examination Committee selected for each item, etc.

d. Regarding matters to be studied by the Examination Committee that are highly specialized, the Examination Committee shall select Examination Committee members based on their expertise in the matter and conduct examinations in each specialized field, etc., to ensure an examination process suitable for the expertise of the matter, depending on the scale, etc. of the project.

e. In conducting the examination by the Examination Committee, allow sufficient time for the examination. In addition, in order to ensure the efficiency and effectiveness of the examination by the Examination Committee, a summary version of the contents of the proposal shall be presented to the applicant as necessary, etc. In addition, when the applicant is provided with the summary version, the burden on the applicant shall be taken into consideration, and the position of the summary version shall be clarified.

f. In general, prior to the examination for the selection of a private business as indicated above, it is considered effective to bring the implementation policy and the selection, etc. of the qualified project to the Examination Committee in order to deepen the understanding of the project by the Examination Committee members and to conduct an appropriate examination of the selection of the private business.

On the other hand, from the perspective of reducing the procedural time and administrative burden, it may be effective to limit the number of meetings of the Examination Committee to a minimum by narrowing down the matters to be discussed to those related to the selection of a private business.

In any case, it shall be noted that the responsibility for decision-making and accountability for the selection of private businesses falls on the administrator, etc.

(Evaluation of Private-sector Proposals)

- (13) The extent to which the private-sector proposals contributed to the formulation of the implementation policy shall be evaluated appropriately, taking into account the advanced nature, etc. of the proposals and ensuring fairness, transparency, and competitiveness, by giving weighted evaluation to the proposals. In principle, proposals that fall under the category of intellectual property shall be subject to evaluation, however, a wide range of proposals not falling under this category may also be subject to evaluation, depending on the content, etc. of the individual project, with due consideration given to ensuring fairness, transparency, and competitiveness in the business selection process.
- (14) Proposals that contribute to the development of an implementation policy shall be determined on a case-by-case basis, but may include, for example, the following:
- (i) When an excellent proposal is made that will allow the implementation of a PFI project in a field or operation that has not been implemented in the past because it was considered difficult to implement.
 - (ii) When outstanding proposals are made that will allow for more effective and efficient project implementation in fields or operations where PFI projects have been implemented.
- (15) Appropriate evaluation will also be made in cases where information or proposals that ought to be protected as intellectual property are publicized with the consent of a private business.
- (16) When studying the evaluation standards, ensure appropriate evaluation by, for example, asking the experts for their opinions.

Basic 3 1(8)

4- 2 Publication of the Results of the Selection of Private Business

- (1) When the private businesses have been selected, the results will be promptly publicized
- (2) In the publication, also publicize the evaluation results, evaluation standards and the necessary materials to ensure the transparency of the selection process according to the selection method; provided, however, that the publication excludes any information that may harm the rights of the private businesses, competitive position, and other legitimate interests.
- (3) It is necessary to provide an opportunity to explain the reasons for non-selection to applicants that were not selected from the viewpoint of appropriate promotion of PFI.
- (4) Publicize a reduction, etc. of public financial burden based on the business plan of the appointed business.
- To ensure the transparency of the project, etc., after the selection of the private business, it is appropriate to publicize the expected amount, etc. of reduction in the public financial burden

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Basic 3 1(9)

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based on the business plan of the appointed business,, and it is permissible to use the method of publication that is the same procedure as the publication of normal bidding results, etc.

4-3 If the Selection of a Qualified Project is Cancelled without Selecting a Private Business

- (1) In the process of call, evaluation, and selection of a private business, if, in the end, it is determined inappropriate to implement the project as a PFI project because there are no applicants, or because none of the applicants can be expected to achieve a reduction, etc. in the public financial burden, it is necessary to cancel the selection of the qualified project without selecting a private business, etc.

When inviting a private business to participate in a project, it is important to clearly indicate in advance that such a case may occur.

- (2) In case the selection of a qualified project is cancelled, its reason shall be promptly publicized with necessary materials to ensure the transparency of the decision. However, the publication excludes matters that may harm the rights, competitive position, or other legitimate interests of private businesses.

Basic 3 1(10)

- (3) Even after the selection of a qualified project is cancelled, take appropriate measures if it is necessary to restudied the necessity of the project, its content, implementation method, etc.

Step 5. Conclusion, etc. of Project Contract, etc.

Finalize the project contract, etc. with the private business selected in Step 4.

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5- 1 Points to be Noted for in Project Contracts, etc. and Other Arrangements

The following shall be taken into consideration when arranging project contracts, etc.

(1) Specific and Clear Agreements

A project contract, etc., shall specify the allocation of responsibilities and risks related to the selected project and other rights and obligations of the parties, etc., and shall be as specific and clear as possible, avoiding ambiguity.

Basic 4 4(1)

(2) Details of Obligations to be Owed by Both Parties such as Project Contract, etc. and Method of Performance, etc.

The project contract, etc., shall specify following items on the details of obligations of both parties and the method of performance, etc.

Basic 4 4(2)

- a. Content and quality of services provided by the appointed business
- b. Measurement and evaluation method of the level of services provided by the appointed business
- c. Fees and calculation methods

In addition to the above, the following items shall be specified regarding measures to be taken in the event that a party breaches the provisions of a project contract, etc.

- a. Appropriate and reasonable measures necessary to remedy the selected project
- b. Healing defaults and remedies for the parties

(3) Involvement of the Administrator, etc. in the Private Business

In order to ensure the provision of appropriate public services, while giving consideration to minimizing the involvement of administrators, etc. in private businesses, the following matters, etc. shall be considered and agreed upon in the project contract, etc.

Basic 4 4(3)

- a. The administrator, etc. shall be able to monitor the level of public services provided by the appointed business.
- b. The administrator, etc. may request the appointed business to submit regular reports on the implementation of the project related to the fulfillment of obligations under of the project contract, etc.
- c. The administrator, etc. may request the appointed business to submit regular reports on the financial status audited by a certified public accountant etc. (limited to the extent that it may affect the implementation of the selected project).

- d. The administrator, etc. may request the appointed business to report any situation that may have a serious adverse effect on the implementation of the selected project. The administrator, etc. may also request a third-party expert to conduct an investigation and submit a report on the investigation.
- e. In order to ensure the proper and reliable provision of public services, provide necessary and reasonable measures and means for the redress of the administrator, etc.
- f. Regarding the involvement of the administrator, etc. in the selected project, other than the involvement in the above items (which shall be based on the provisions of the project contract etc.), the scope of the project shall be limited to the reasonable extent necessary to ensure the proper and reliable implementation of the selected project, including inspection and monitoring, etc. to ensure safety and environmental protection.

(4) Risk allocation, etc.

The following matters regarding risk allocation, etc. shall be specified in the project contract, etc. (Details are given in the "Guidelines on Risk Allocation, etc. in PFI Projects.")

Basic 4 4(4)

- a. Risk allocation in selected projects (Risk allocation for selected projects shall be determined based on the based on the idea that "the person who can best manage the risk will bear the risk" after clarifying the assumed risk to the greatest extent possible.)
- b. Scope and details of risks for which measures are to be taken as risks that can be mitigated or eliminated by economically rational means

As in the case of the conventional projects related to the provision etc., of the public facility, etc., which are not subject to PFI, when the national government is required to bear liabilities exceeding those borne by the initial budgetary measures due to the emergence of risks, the burden for the liabilities shall be included in the new budgetary allocations.

(5) Handling at the Termination of a Selected Project, etc.:

In the project contract, etc.

Basic 4 4(5)

- a. The termination date of the selected project shall be clearly specified.
- b. The handling of assets related to the project, such as the surrender, etc. of land, etc. at the end of the project, shall be specified as specifically and clearly as possible in consideration of economic rationality.

(6) Measures, etc. to be Taken in the Event of Business Continuity Difficulties

The project contract, etc., shall specify the following matters regarding measures, etc. to be taken in the event of difficulties in business continuity.

Basic 4 4(6)

- a. Reasons for difficulties in continuing the business (list them as concretely as possible)
- b. Measures to be taken by the parties to a project contract, etc., in the event that reasons that make it difficult to continue business have occurred or are deemed likely to occur

(Specific and clear provisions shall be made in accordance with the existence or nonexistence of reasons attributable to the parties.)

- c. Measures necessary for business restoration in the event that there is a possibility of business restoration and it is reasonable to continue the business (Specific and clear provisions shall be made in accordance with the existence or nonexistence of reason attributable to the business.)
- d. Appropriate measures shall be taken to ensure the provision of public services in the event of a business failure, depending on the nature of the business (including the handling of assets related to the business as provided in (5) above).

(7) Conditions for Cancellation, etc. of Project Contracts, etc.

The project contract, etc. shall specify the requirements for the events that will be the conditions for the cancellation of the project contract, etc. and the measures to be taken by the parties to the project contract, etc. when the events occur (Pay attention to (5) and (6) above, and provide specific and clear provisions.).

Basic 4 4(7)

(8) Consideration of the Effect on Fund Procurement

It shall be noted that the actions of the parties to the project contract, etc., as provided in (4) through (7) above, will have a significant impact on the amount, duration, cost, and other conditions of the financing of the selected project, and the content of the contract shall be appropriate and clear.

Basic 4 4(8)

(9) Arrangements for Direct Negotiation with Lending Financial Institutions, etc.

In the event of bankruptcy of a selected project, when it is deemed appropriate to negotiate directly with the administrator, etc., and the lending financial institution, etc., regarding the disposal of the project and assets, arrangements appropriate to the nature of the selected project shall be made in advance, while giving consideration to the protection, etc. of the rights of the finance lending institutions, etc., including the preservation of their claims

Basic 4 4(8)

(10) Arrangements for the Succession Request of a Selected Project by a Third Party

By means of a financial mechanism structured under the responsibility of an appointed business, in the event that a third party, such as a financial institution, etc., requests to take over the selected project due to the bankruptcy of the appointed business, appropriate arrangements shall be made in advance in the project contracts, etc., in so far as they are reasonable to ensure the continuous provision of public services from the perspective of public nature and fairness.

Basic 4 4(9)

(11) Procedures, etc. to Eliminate Doubts, etc. about the Project Contracts, etc.

In the event of any doubt about the interpretation of the project contract, etc. or its provisions, or any dispute arises concerning any matter not provided in the project contract, etc., procedures and other measures to resolve these issues shall be provided in advance in a specific and clear manner according to the type of the selected project.

Basic 4 4(10)

5-2 The Publication of Project Contracts, etc.

In addition to the provisions of Article 15, paragraph (3) and Article 22, paragraph (2) of the Act, the administrator, etc. shall publicize the contents of the project contract, etc., except for matters that may harm the rights, competitive position or other legitimate interests of the private business.

Basic 4 4(11)

Also, it is desirable to disclose the arrangements between the administrator, etc. and the financial institution as described in 5-1(9) above as well.

5- 3 Special Consideration when the Appointed Business is in the Third Sector

In the case where the appointed business is in the third sector (a corporation in which the national or local government has invested or contributed, including a corporation in which the corporation has invested or contributed), the administrator, etc. shall give special consideration to maintain transparency by clarifying the specific and clear division of responsibilities to the appointed business and other interested parties.

Basic 4 5

5-4 Measures to be Taken when an Appointed Business is Engaged in a Business, etc. Other than the Selected Project, or a Separate Agreement in the Case of a Newly Established Corporation

(1) In the event that the appointed business is engaged in business, etc. other than the selected project, and if there is a risk that the risk associated with the projects may affect the provision of public services related to the selected project, appropriate measures shall be taken to avoid or minimize this impact, such as establishing necessary provisions in the project contract, etc.

Basic 4 6

(2) In the case where an appointed business establishes a new legal entity to implement a selected project, and it is necessary to resolve concerns about the implementation of the selected project, the administrator, etc. shall separately agree with the investors of the newly established legal entity on the necessary measures to ensure the proper and reliable implementation of the selected project, taking into account the economic rationality of the project.

Basic 4 6

Step 6. Implementation and Monitoring, etc. of the Project

- (1) A selected project is carried out in accordance with its project contract, etc. pursuant to the Basic Policy and the relevant Implementation Policy. Act 14(1)
- (2) The administrator, etc. monitors the following projects within the scope specified in the project contract etc. Basic 4 4(3)
- a. Monitor the level of public services provided by the appointed business;
 - b. Submit a regular report on the implementation of the project related to the fulfillment of obligations under the project contract, etc. of the appointed business;
 - c. Submit regular reports (limited to the extent that it may affect the implementation of the selected project) on the financial status of the appointed business, audited by a certified public accountant, etc.
 - d. Request the appointed business to report any situation that may have a serious adverse effect on the implementation of the selected project, and also request that a third-party expert conducts an investigation and submits a report on it.
- (3) In order to ensure transparency in the implementation of the selected project, it is desirable for the administrator, etc. to publicize the results of the monitoring, etc. described in (2) above to the local residents, etc. as necessary. However, any matter that may harm the rights, competitive position, or other legitimate interests of a private business by disclosure shall be excluded as agreed upon in advance in a project contract, etc.
- (4) In the implementation of a selected project, when it is necessary for a private business to provide high quality public services, such as at the request of an appointed business, the administrator, etc. shall provide human resources assistance to it, such as dispatching staff (*), traveling staff, holding seminars, etc., on the premise that they will return to the government office after a certain period of dispatch, etc., within the scope of the existing system for dispatching staff, etc. Basic 6
- (*) The following existing systems for personnel exchange are conceivable; however, their application must conform to the purpose and requirements of each dispatch service.
- Personnel exchange system between the public and private sectors in which officials are dispatched to private businesses for a period not exceeding three years (maximum five years) for the purpose of human resource development (Act on Personnel Exchange Between the Government Sector and Private Enterprises (Act No. 224 of 1999)) -

- A system of research leave that allows employees to take administrative leave for a period not exceeding three years (maximum of five years) when they are engaged in research, study or teaching academic matters that are deemed relevant to their duties at public facilities such as schools, laboratories and hospitals. (Rule 11-4 of the National Personnel Authority (Guarantee of Status of Officials)) (Rules of the National Personnel Authority 11-4, 1952) Article 3, paragraph (1), item (i))

- A system of leave for assistance to the establishment that allows employees to take leave for a period not exceeding three years. Based on the temporary necessity accompanying the establishment of public organizations for which the national government is supposed to provide necessary assistance or consideration pursuant to the provisions of laws and regulations, and to these public organizations when engaged in work deemed to be related to the current duties of the employee in an organization designated by the National Personnel Authority. (Rule 11-4 of the National Personnel Authority (Guarantee of Status of Officials)) (Rules of the National Personnel Authority 11-4, 1952) Article 3, paragraph (1), item (iv))

Step 7. Termination of the Project

When a selected project, as specified in the project contract, etc., ends, it is declared terminated. The land, etc. is surrendered, and other actions are taken in accordance with the handling of assets specified in the project contract, etc.

Basic 4 4(5)

Supplementary Provisions

This guideline will come into effect as from October 23, 2018.