

PPPs with LGUs and GOCCs

Alberto C. Agra

Certified PPP Specialist™

Certified Regulation Specialist™

PPP Consultant and Practitioner

PPP Law, Local Government Law Professor and Political Law
Bar Reviewer, Ateneo Law School

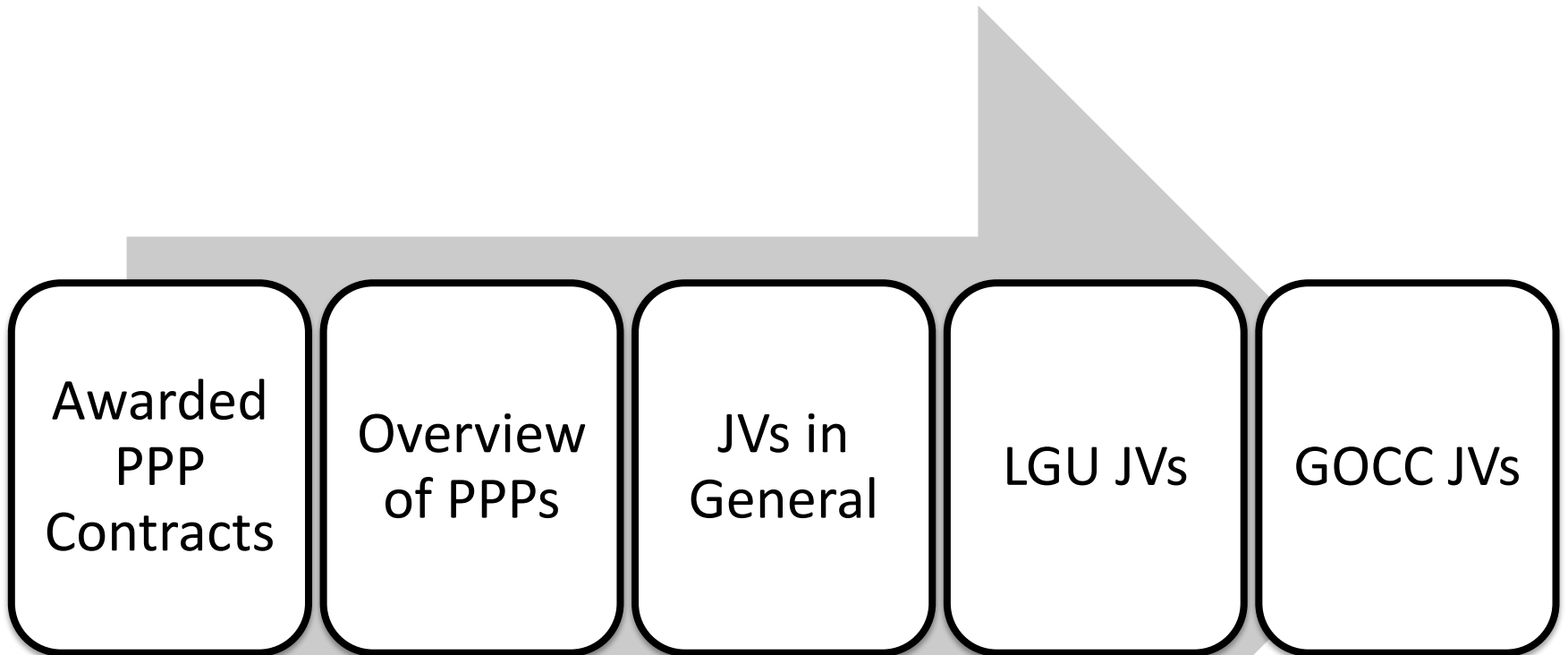
President, Forensic Solutions

Columnist, PPP Lead, BusinessMirror

PhD Candidate, Leadership Studies major on Public
Management, Ateneo School of Government

Former Acting Secretary of Justice, Acting Solicitor General
and Government Corporate Counsel

Flow of Briefing



Awarded PPP Contracts



AWARDED PROJECTS

12 PROJECTS

USD 4.45 BILLION

PHP 200.48 BILLION

(AS OF FEBRUARY 2016)



DAANG-HARI-SLEX LINK
ROAD PROJECT



PPP FOR SCHOOL
INFRASTRUCTURE PROJECT
(PSIP) PHASE I



NAIA EXPRESSWAY (PHASE II)
PROJECT



PPP FOR SCHOOL
INFRASTRUCTURE PROJECT
(PSIP) PHASE II



MODERNIZATION OF THE
PHILIPPINE ORTHOPEDIC CENTER
(MPOC) PROJECT



AUTOMATIC FARE COLLECTION
SYSTEM (AFCS) PROJECT



MACTAN-CEBU INTERNATIONAL
AIRPORT (MCIA) PASSENGER
TERMINAL BUILDING PROJECT



LRT LINE 1 CAVITE EXTENSION AND
O&M PROJECT



SOUTHWEST INTEGRATED
TRANSPORT (ITS) SYSTEM



CAVITE-LAGUNA EXPRESSWAY
(CALAX) PROJECT



SOUTH INTEGRATED TRANSPORT
SYSTEM PROJECT



BULACAN BULK WATER
SUPPLY PROJECT



PROJECTS UNDER PROCUREMENT

14 PROJECTS

PHP 556.56 BILLION

USD 12.37 BILLION

(AS OF JANUARY 2016)



LAGUNA LAKESHORE
EXPRESSWAY DIKE PROJECT

PHP 122.8 BILLION
USD 2.73 BILLION



NEW CENTENNIAL WATER
SOURCE - KALIWA DAM PROJECT

PHP 18.72 BILLION
USD 416 MILLION



OPERATION & MAINTENANCE
OF LRT LINE 2 PROJECT

NO CAPEX



LRT LINE 6 PROJECT

PHP 65.09 BILLION
USD 12.367 BILLION



NEW BOHOL (PANGLAO)
OPERATIONS, MAINTENANCE
& DEVELOPMENT PROJECT

PHP 2.34 BILLION
USD 52 MILLION



LAGUINDINGAN AIRPORT
OPERATIONS, MAINTENANCE &
DEVELOPMENT PROJECT

PHP 14.62 BILLION
USD 324 MILLION



DAVAO AIRPORT
OPERATIONS, MAINTENANCE &
DEVELOPMENT PROJECT

PHP 40.57 BILLION
USD 901 MILLION



BACOLOD AIRPORT
OPERATIONS, MAINTENANCE &
DEVELOPMENT PROJECT

PHP 20.26 BILLION
USD 450 MILLION



ILOILO AIRPORT
OPERATIONS, MAINTENANCE &
DEVELOPMENT PROJECT

PHP 30.40 BILLION
USD 675 MILLION



REGIONAL PRISON FACILITIES
THROUGH PPP PROJECT

PHP 50.18 BILLION
USD 1.115 BILLION



DAVAO SASA PORT
MODERNIZATION PROJECT

PHP 18.99 BILLION
USD 422 MILLION



NORTH-SOUTH RAILWAY PROJECT
(SOUTH LINE)

PHP 170.70 BILLION
USD 3.79 BILLION



ROAD TRANSPORT INFORMATION
TECHNOLOGY INFRASTRUCTURE
PROJECT (PHASE II)

PHP 298 MILLION
USD 6.63 MILLION



CIVIL REGISTRY SYSTEM -
INFORMATION TECHNOLOGY
PROJECT (PHASE II)

PHP 1.59 BILLION
USD 35.27 MILLION

JV/ PPP Projects by GOCCs/ GIs

1. Boracay Water Distribution (PTA)
 2. North Bonifacio Land Development (BCDA)
 3. Cagayan Airport (CEZA)
 4. Land Development (NHA)
 5. [Paper Supply (PCSO)]
 6. Broadcast City Land Development (IBC 13)
 7. Reclamation (PEA)
 8. Land Development Privatization (FTI)
 9. UP Technohub (Lease)
 10. UP Town Center (Lease)
 11. Traffic Information Board System (MMDA)
 12. Clark Green City (BCDA)
 13. SCTEx Concession (BCDA)
1. Bulk Water Supply (Zamboanga City WD)
 2. Bulk Water Supply (Davao WD)
 3. Bulk Water Supply (Butuan WD)
 4. Develop, Rehabilitate and O&M (Lingayen WD)
 5. Develop, Rehabilitate and O&M (Lemery WD)
 6. Develop, Rehabilitate and O&M (San Carlos WD)
 7. Develop, Rehabilitate and O&M (Tarlac WD)
 8. Develop, Rehabilitate and O&M (Daraga WD)
 9. Develop, Rehabilitate and O&M (San Pedro WD)
 10. Develop, Rehabilitate and O&M (Camiling WD)
 11. Bulk Water Supply (Tagum WD)
 12. Bulk Water Supply (Metro Iloilo WD)

9 LGU PPP (Non-JV) Projects

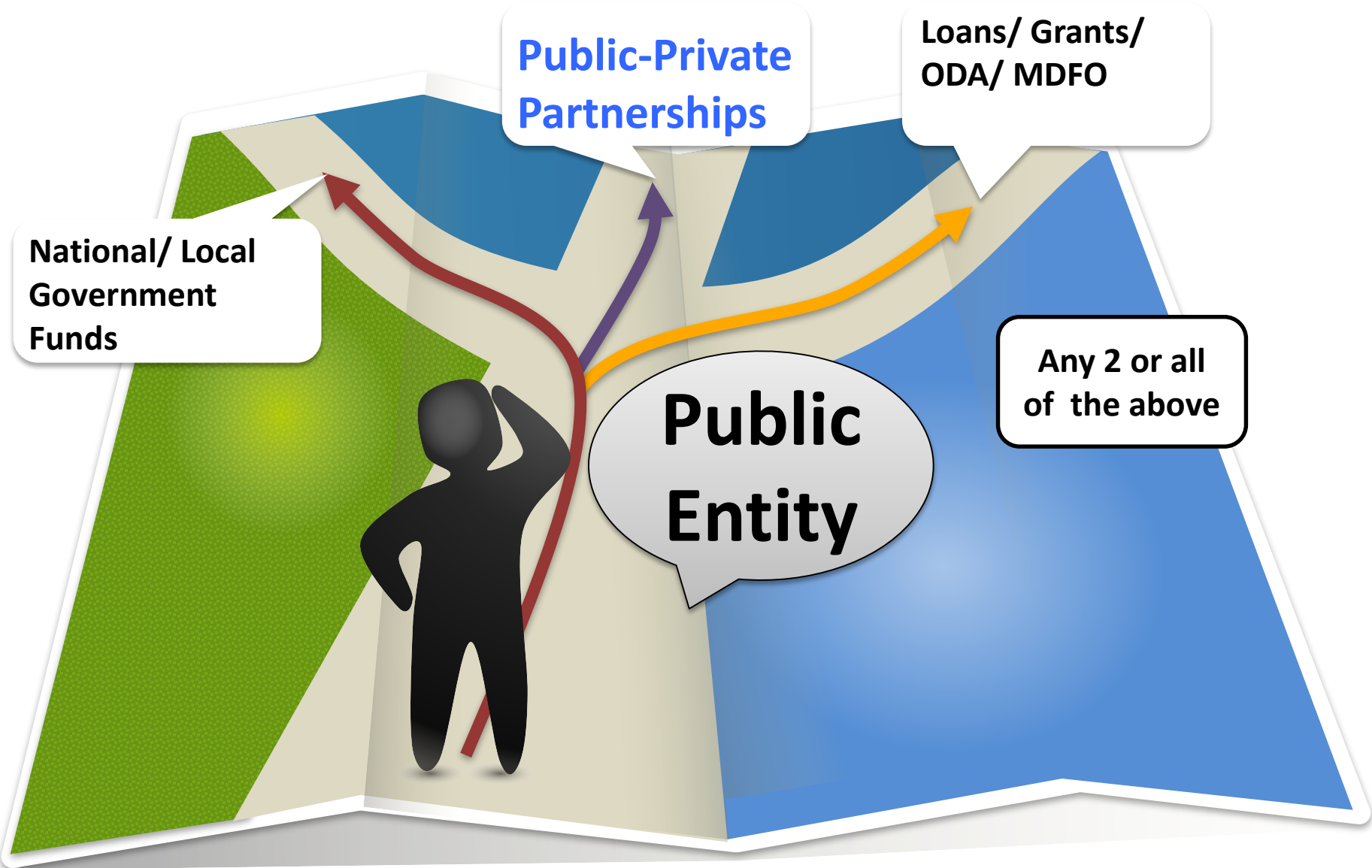
1. Mandaluyong City Marketplace (BT/ BOT)
2. Cebu Property Ventures Development (Corporatization)
3. Northern Samar Provincial Hospital Pharmacy (Lease, O&M)
4. Legazpi City Bus Terminal (Lease, BOT)
5. Tarlac City Slaughterhouse (ROT)
6. Tarlac City Common Terminal (DOT)
7. Tarlac City Business Licensing Division Building (BOT)
8. Passi City CityMall (Lease)
9. Batangas Terminal (Lease)

30 LGU JV Projects

1. Cavite Province Housing
2. Camarines Sur Water
3. Camarines Sur Wind Power
4. Iloilo City Ferry Terminal
5. Pasay City Reclamation
6. Paranaque City Reclamation
7. General Tinio Reservoir
8. Calamba Regional Government Center
9. San Juan City Columbarium
10. Nueva Ecija Business Hub
11. Valenzuela City Center
12. Valenzuela City Market
13. Bataan Transport Mall
14. Bataan Capitol Redevelopment
15. Cordova Reclamation
16. Tiwi Water Supply Improvement
17. Davao Port Development
18. Malabon Socialized Housing
19. Manila Dialysis Center
20. Manila Harrison Plaza
21. Manila Quinta Market
22. Manila Sta. Ana Market
23. Manila San Andres Market
24. Manila Trabajo Market
25. Manila Sampaloc Market
26. Manila New Antipolo Market
27. Manila Reclamation
28. Quezon Bulk Water, Hydro Power and Wind Power
29. Cebu-Cordova Bridge
30. San Luis Hydropower

Overview of PPPs

Implementation/ Funding Schemes



Nature of PPPs

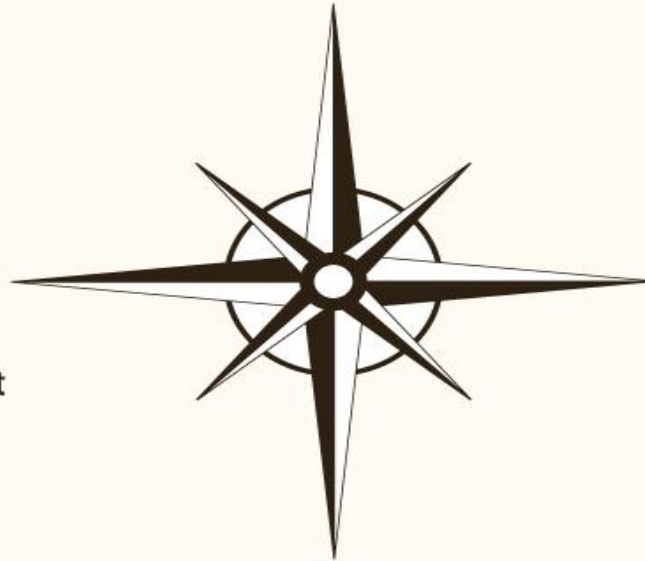


- Components:*
- Project
 - Design
 - Finance
 - Construction
 - Operations
 - Governance
 - Risk-Allocation
 - Period
 - Performance
 - Payments
 - Liabilities
 - Procedures

PPP'S TRUE NORTH



Better Quality of Life



Hard and Soft
Projects



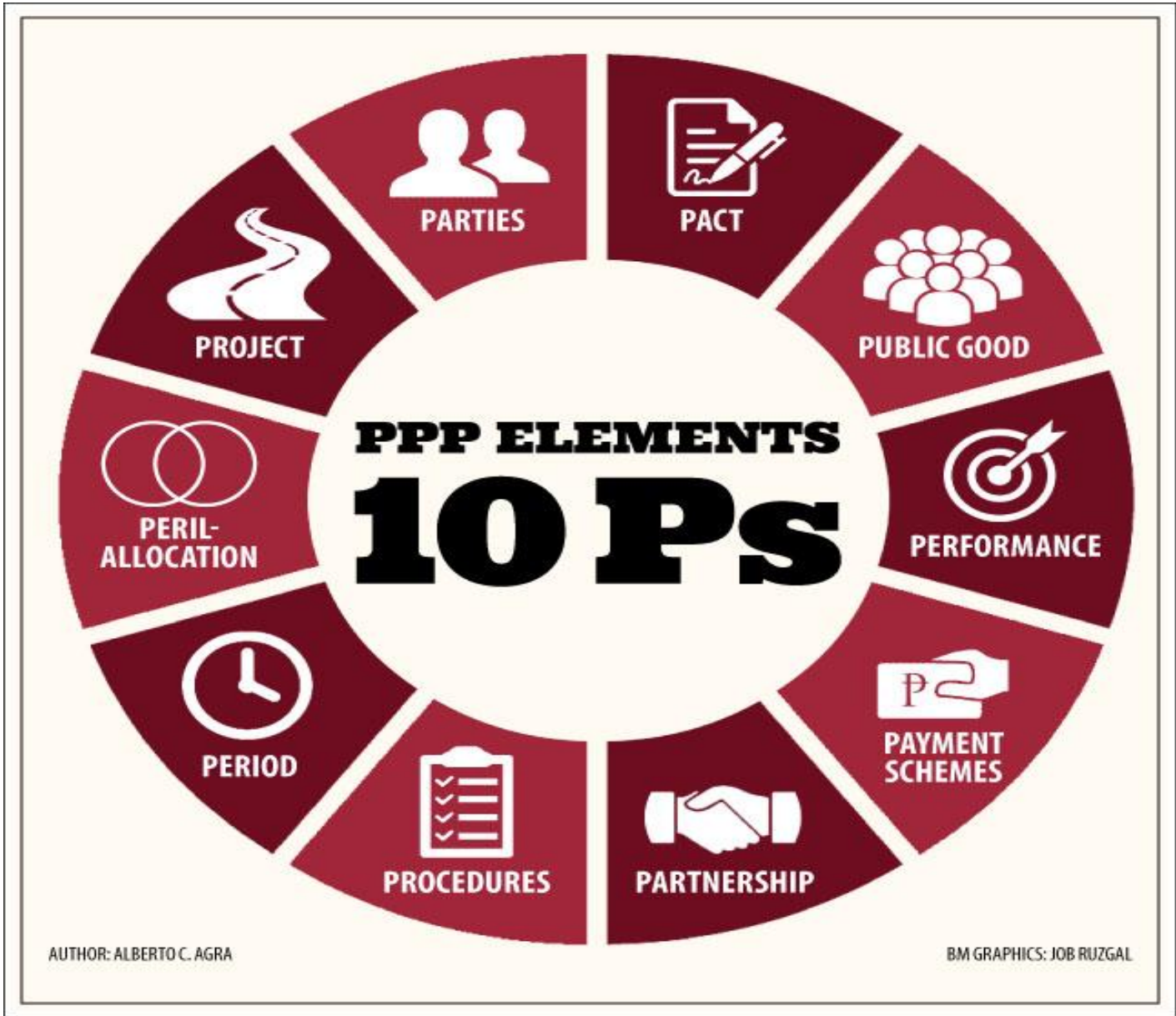
Sustaining
Partnerships



More Revenues

AUTHOR: ALBERTO C. AGRA

BM GRAPHICS: JOB RUZGAL



WHY PPP?

THE 7 MAIN VALUE DRIVERS



**IMPLEMENT
CHANGE
POLICY**



**ENCOURAGE
INNOVATION**



**SERVE THE
PEOPLE**



**PROVIDE
BETTER
VALUE-FOR-
MONEY**



**ACCELERATE
DELIVERY OF
SERVICES**



**SOLVE
RESOURCE
SCARCITY**



**SPREADING
RISKS**



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HARD

INFRASTRUCTURE ASSETS

- | | |
|---|--|
|  Road |  Terminal |
|  Water |  Government Buildings |
|  Power |  Parks |
|  Ports |  Information Technology |
|  Reclamation |  Cemetery |
|  Sports Complex |  Solid Waste Management |
|  Markets |  Bridges |
|  Transport Systems |  Malls |

SOFT

SOCIAL ASSETS AND SERVICES

- | | |
|---|---|
|  Classroom |  Housing |
|  Hospital |  Evacuation Center |
|  Agriculture |  Prisons |

BUNDLED

- | | |
|---|---|
|  +  |  +  |
| Hard and Hard | Soft and Soft |
|  +  |  +  +  |
| Hard and Hard | Hard, Soft and Soft |
|  +  |  +  +  |
| Hard and Hard | Hard, Hard and Soft |

Types of Projects

Infrastructure Assets “Hard”

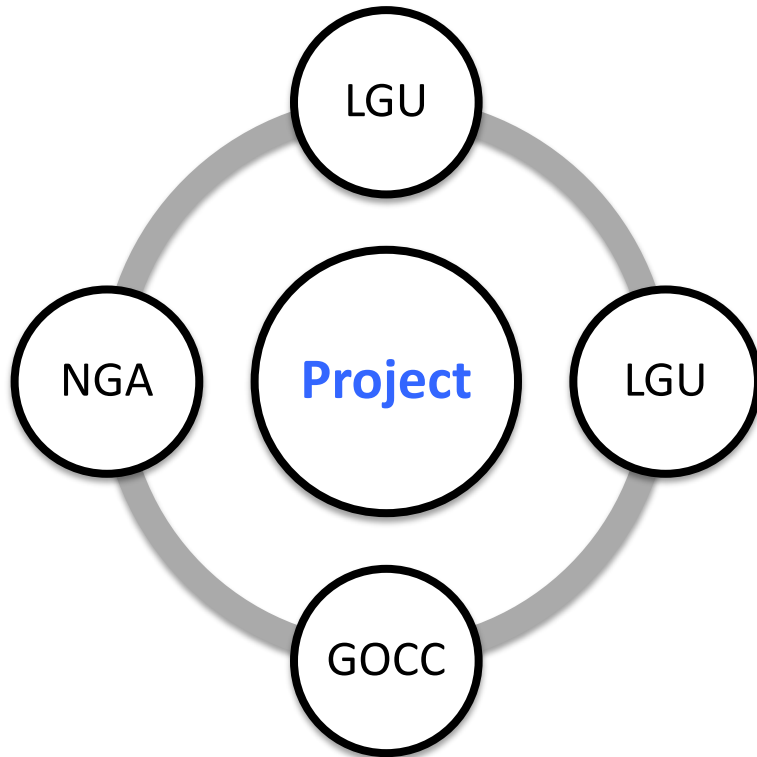
- Roads, Bridges, Water, Power, Ports, Solid Waste Management, Reclamation, Platform Settlements, Land Development, Commercial Centers, Sports Complex, Markets, Slaughterhouses, Transport Systems, Mining, Tourism, Government Buildings, Parks, Information Technology, Cemetery, etc.

Social Assets and Services “Soft”

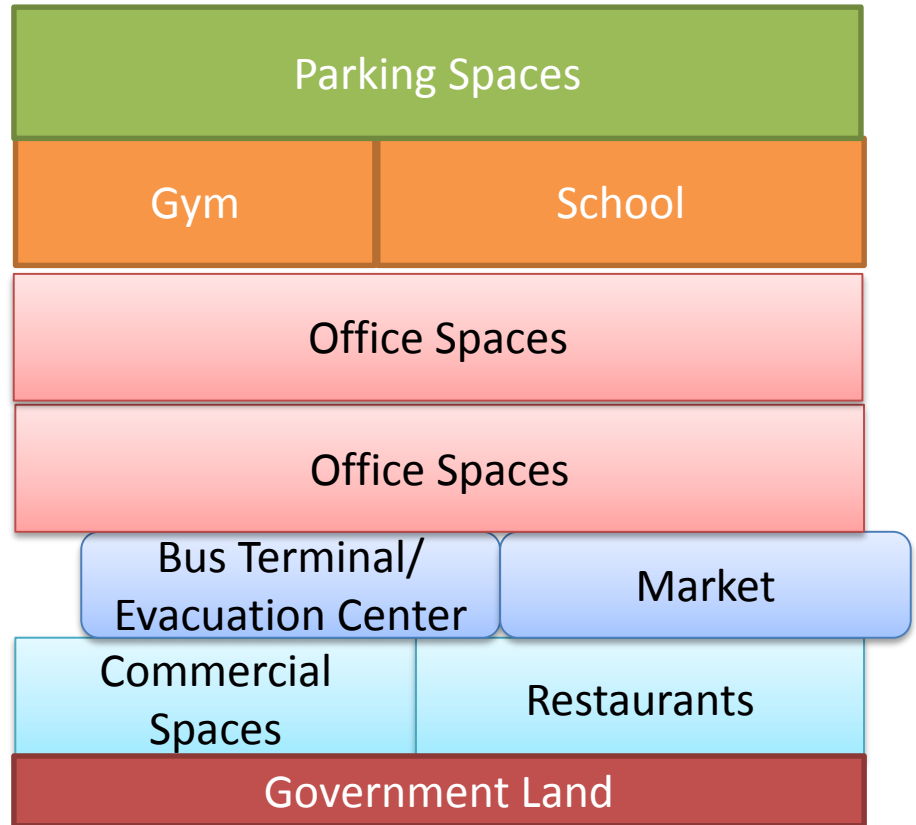
- Education, Health, Agriculture, Accommodation, Rehabilitation, Prisons, and Social Services

Implementation Options

(1) Multi-Party

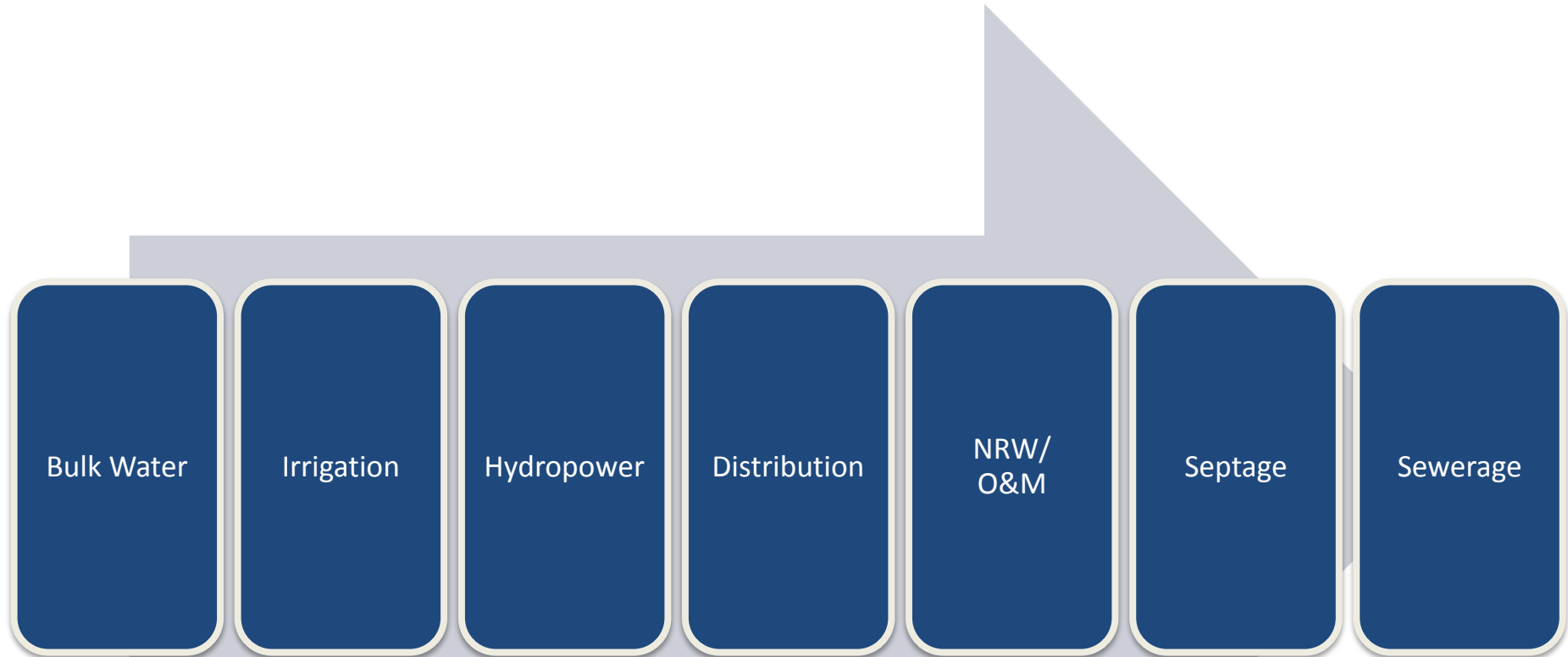


(2) Multi-Use (Bundling)



(3) Multi-Type (Hard and Soft)

Water-Related PPP Projects



24+ PPP Modalities

1. Build-Transfer
2. Build-Lease-Transfer
3. Build-Operate-Transfer
4. Build-Own-Operate
5. Build-Transfer-Operate
6. Contract-Add-Operate
7. Develop-Operate-Transfer
8. Rehabilitate-Operate-Transfer
9. Rehabilitate-Own-Operate
10. Rehabilitate-Lease-Transfer*
11. Rehabilitate-Transfer*
12. Rehabilitate-Transfer-Operate*
13. Concession Arrangement
14. Joint Venture
15. Lease or Affermage
16. Management Contract
17. Management Contract (No Public Funds)
18. Service Contract
19. Service Contract (No Public Funds)
20. Divestment or Disposition
21. Corporatization
22. Subsidiary with Private Equity
23. Onerous Donation
24. Gratuitous Donation
25. Others

Governing Laws/ Rules

PPP Modality	Governing Law
BOT Law Variants (9+)	BOT Law
Concession	Special Laws/ Local Ordinance
Joint Ventures	NEDA JV Guidelines/ Local Ordinance
Management and Service Contract*	GPRA/ Local Ordinance
RT, RLT and RTO	Local Ordinance
Lease/ Affermage/ Donations	Civil Code/ Local Ordinance
Divestment/ Disposition	Commission on Audit Circular No. 89-296
Corporatization	Corporation Code

Joint Ventures in General

Need for a JV Framework

2013 NEDA JV Guidelines

LGU PPP and JV Ordinances

68 LGU PPP CODES

46 LGUs PPP CODES REFERRING TO AGRA TEMPLATE

16 PROVINCE

- Cavite
- Camarines Sur
- Northern Samar
- Pangasinan
- Nueva Ecija
- Bataan
- Bohol
- Agusan Norte
- Southern Leyte
- Pampanga
- Zambales
- Tarlac
- Davao Norte
- Quezon
- Cebu
- Aklan

21 CITIES

- Butuan
- Olongapo
- Batangas
- Cauayan
- Paranaque
- San Juan
- Pasay
- General Santos
- Quezon City
- Imus
- Passi
- Catbalogan
- Navotas
- Malabon
- Legazpi
- Davao
- Antipolo
- Bayawan
- Puerto Princesa
- Baguio
- San Fernando, La Union



9 MUNICIPALITIES

- General Tinio, NE
- Cordova, Cebu
- Cainta, Rizal
- Tiwi, Albay
- Consolacion, Cebu
- Dinalupihan, Bataan
- La Trinidad, Benguet
- Coron, Palawan
- Kalibo, Aklan

10 LGU JV ORDINANCES REFERRING TO AGRA TEMPLATE

1 PROVINCE

- Camarines Sur

3 CITIES

- Manila
- Valenzuela
- Caloocan
- San Fernando, La Union

4 MUNICIPALITIES

- Opol, Misamis Or
- Mendez, Cavite
- Tuburan, Cebu
- San Luis, Aurora

10 LGU JV ORDINANCES REFERRING TO 2008 NEDA GUIDELINES

- Cebu Province
- Cebu City
- Lapu-Lapu City
- Mandaue City
- Iloilo City

- Pasay City
- Tacloban City
- Calamba City
- Laguna Province
- Argao, Cebu

1 LGU ORDINANCE BASED ON OWN VERSION

- Albay Province

1 LGU PPP REFERRING TO PPP CENTER TEMPLATE

- General Santos

JV not a BOT Law Variant

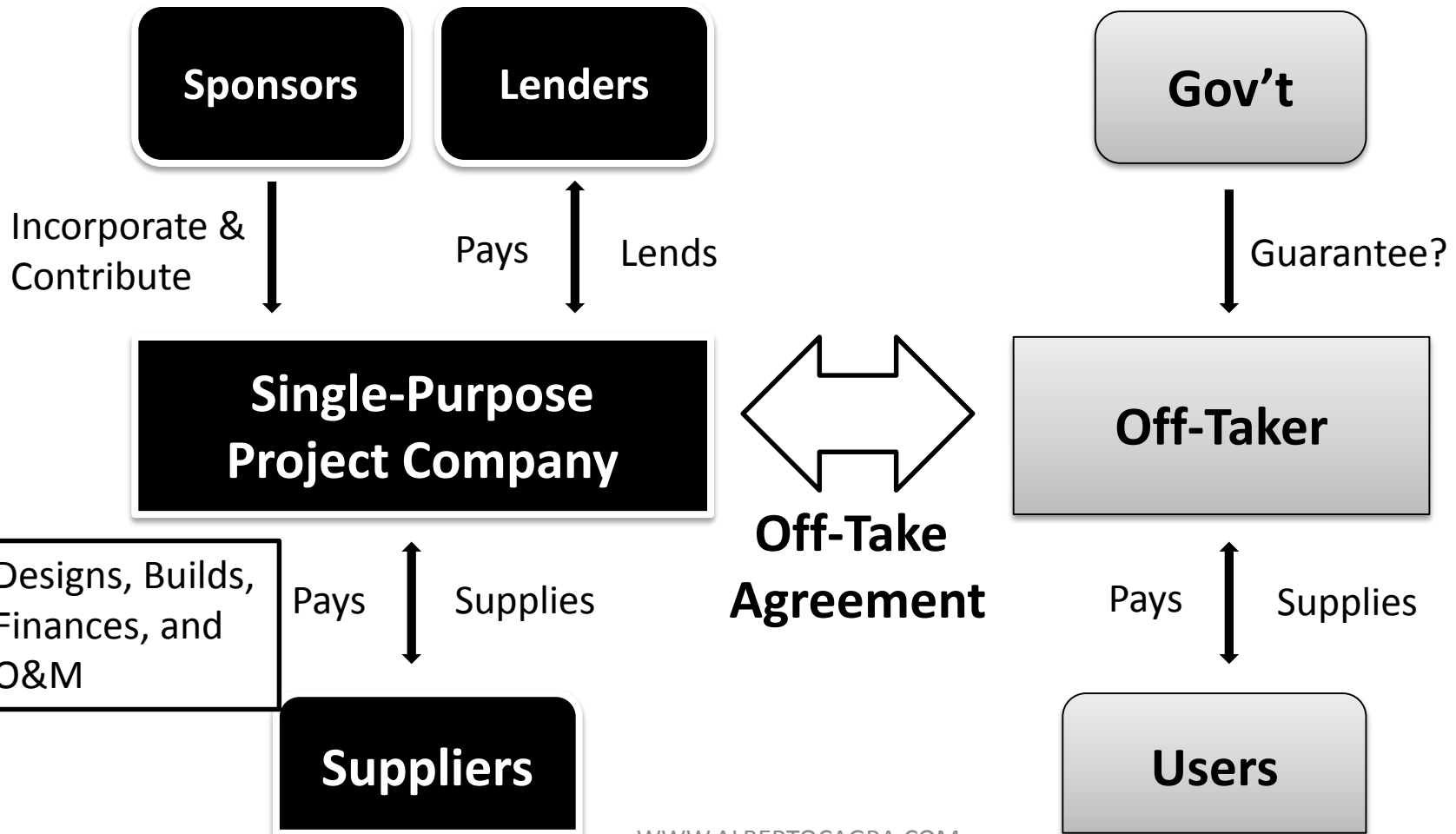
Differences

- Community/ Pooling of Resources (JV); not purely private (BOT)
- Active participation (JV); minimum gov't intervention (BOT)
- Proportionality (JV); not distinct assumption of benefits and obligations (BOT)
- LGU contributes (JV); LGU not contribute as a rule (BOT)
- JV Company by Parties (JV); not just by Private Sector (BOT)

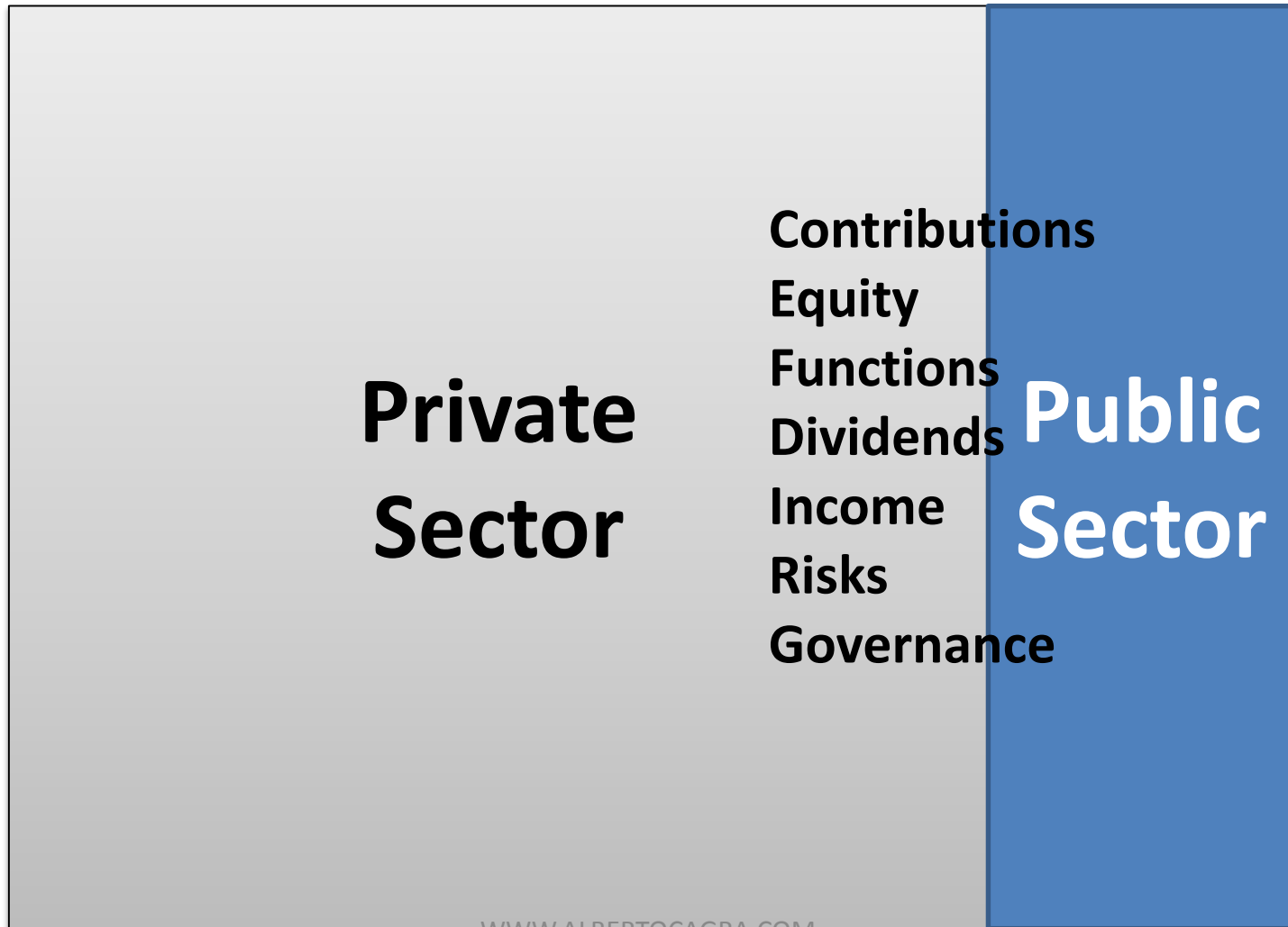
Inapplicable Provisions in BOT Law

- Only for Projects traditionally provided by LGU
- Approval Processes (20-50-200 thresholds)
- Debt-Equity Ratio (75-25%)
- Maximum Rate of Return (12%)
- Restrictions on Unsolicited Proposals
 - Priority Projects
 - New Technology
 - Guarantee, Subsidy or Equity

Build-Operate-Transfer



Joint Ventures



JV Vehicle: 2 Options

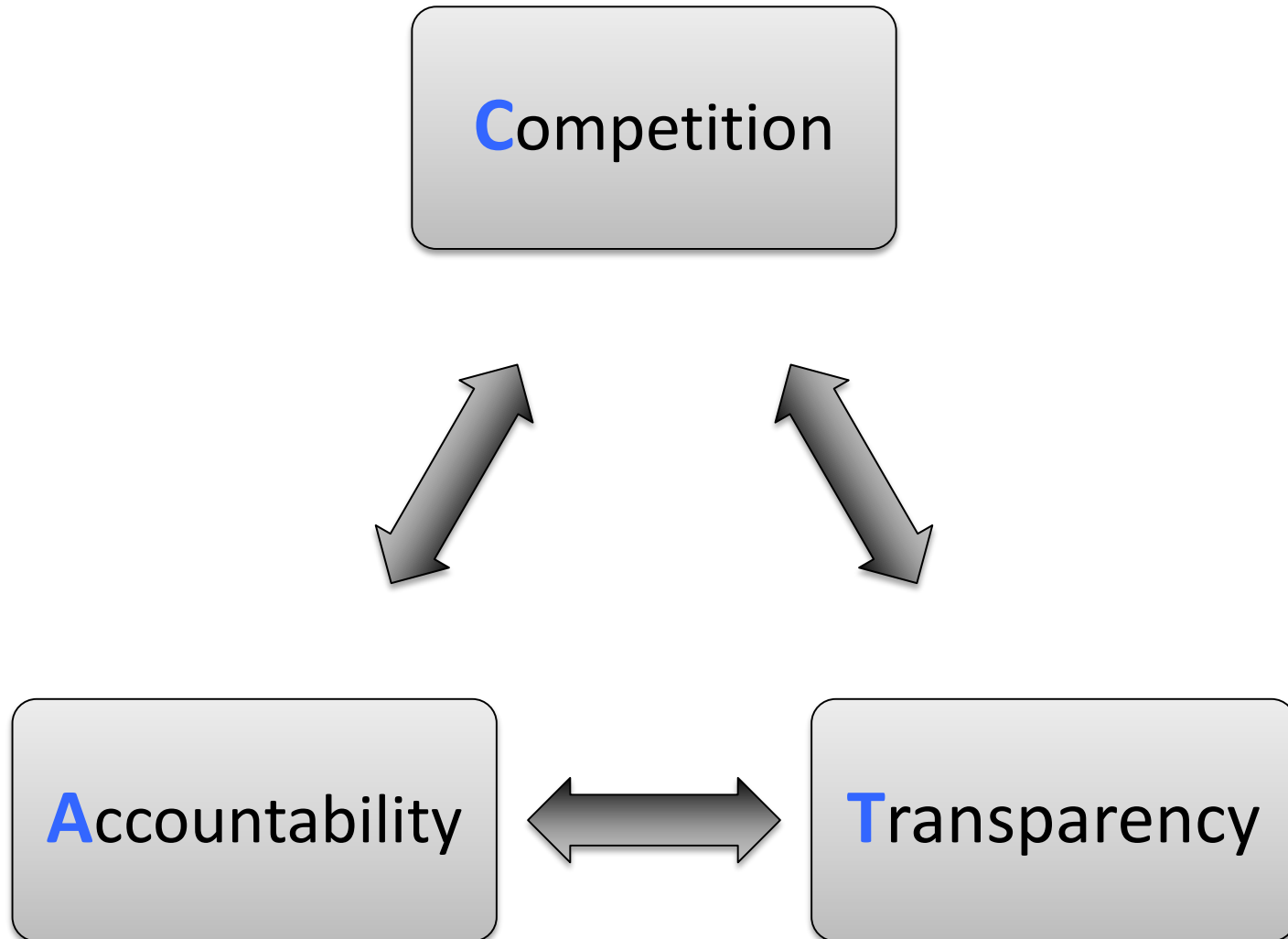
**JV Company or
Corporate JV**

1

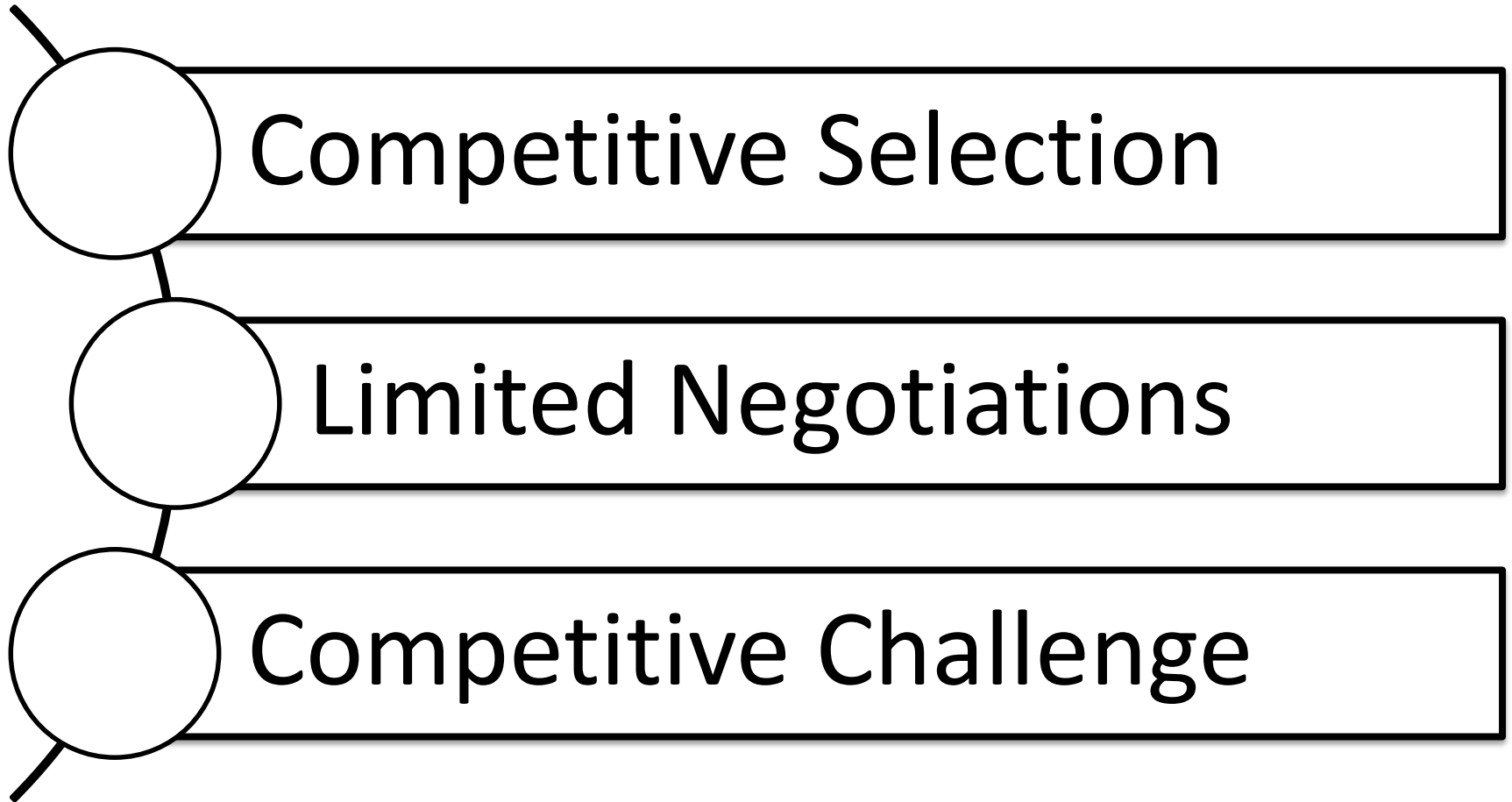
**Unincorporated
JV or
Contractual JV**

2

Selection Requirements for PSP



Selection Procedures



LGU JVs

LGU Contributions

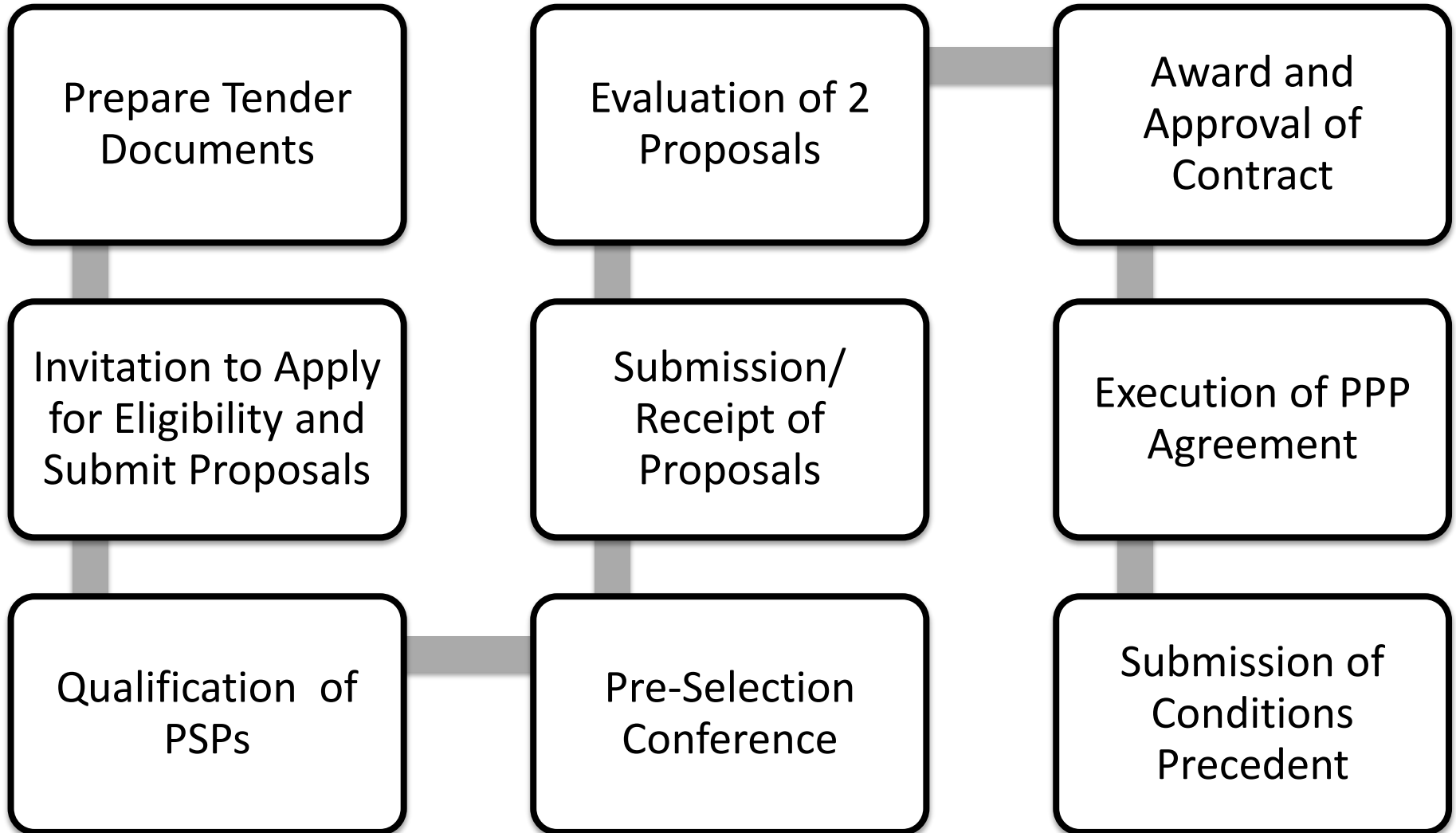
Money and Capital

- Regular and Special Funds, IRA, RPT, SEF, Share in National Wealth, Calamity Fund, Development Fund, Loan Proceeds, Grants, Bonds, Securities, Subsidy, Equity, Cost-Sharing, Viability Gap Funding, Cost Avoidance or Savings (*actual/ current or future/ monetized*)

Non-Cash (Anything of Value)

- Services, Personnel, Intellectual Property, Usufruct, Land (own or expropriated), Minimum Revenue Guarantee, Right-of-Way, Goodwill, Franchise, Concession, Credit Enhancement, Tax Incentives/ Holidays, Police Power

(1) Competitive Selection



(2) Competitive Challenge

- Submission of UP with Project Study and Draft Contract)
- Initial Evaluation (Eligibility, Project Acceptability and Completeness)
- Letter of Acceptance (or Rejection)
- Conferment of Original Proponent (OP) Status

Stage 1

Unsolicited Proposal

Stage 2

- Negotiations (Technical and Financial Terms)
- Public Consultations on Draft Contract
- Certification of Successful Negotiations (or Failed Negotiations)

Detailed Negotiations

- Tender Documents
- Invite Challengers
- Post Security
- Proposals Evaluated
- Right to Match
- Council Authorization
- Sign Contract
- Reimbursement of Project Study Cost if OP not get Award

Stage 3

Challenge/ Right to Match

LGU Structures

Local Chief
Executive

Vice-
LCE/Sanggunian

PPP-Selection
Committee (7)

PPP-Regulatory
Authority (9)

GOCC JVs

Nature of 2013 NEDA JV Guidelines

Classification	Guideline-Framework-Rule Supplementary, Substantive and Procedural Rule
Legal Basis	Section 8 of EO 423-2005 No specific statute (Law on Partnerships)
Issuing Authority	NEDA Director General in consultation with GPPB, OGCC and GCG; approved by NEDA Infracom and Economic Development Cluster

2013 NEDA JV Guidelines

Coverage

Included

1. Government-Owned and - Controlled Corporations (GOCCs)
2. Government Instrumentalities with Corporate Powers (GICPs)
3. Government Corporate Entities (GCEs)
4. Government Financial Institutions (GFIs)
5. State Universities and Colleges (SUCs)

Excluded: Transactions of:

1. GFIs in the ordinary course of business as part of their normal and ordinary banking, financial or portfolio management operations
2. (JV activities) GCEs in the exercise of their primary mandate to dispose government assets or properties
3. Local Government Units (LGUs)

Definition

JV is "[a]n **arrangement** whereby a **private sector entity** or a group of private sector entities on one hand, and a **Government Entity** or a group of Government Entities on the other hand, **contribute** money/capital, services, assets (including equipment, land, intellectual property or **anything of value**), or a combination of any or all of the foregoing to undertake an **investment activity**. The investment activity shall be for the purpose of accomplishing a **specific goal** with the end view of facilitating private sector initiative in a particular industry or sector, and **eventually transfer the activity** to either the private sector under competitive market conditions or to the government. The JV involves a **community or pooling of interests** in the performance of the investment activity, and each party shall have the right to direct and **govern the policies** in connection therewith with the intention to **share both profits and risks and losses** subject to agreement by the parties. A JV may be a **Contractual JV or a Corporate JV** (JV Company)."

JV Projects-Sectors

power plants • highways • (sea)ports •
airports • canals • dams • hydropower
projects • water supply • irrigation,
telecommunications • railroad and railways •
transport systems • land reclamation projects •
industrial estates or townships • commercial/ real
estates • housing • government buildings •
tourism projects • public markets •
slaughterhouses • warehouses • solid waste
management • information technology networks
and database infrastructure • education facilities •
health facilities • sewerage • drainage •
dredging • others GE may authorize

Eligibility Requirements

Legal
(capacity
and
ownership)

1. Legally capacitated
2. If JV activity, requires a public utility franchise
 - SEC-registered
 - At least 60% Filipino-owned
3. Compliance with nationality/
ownership requirements

Eligibility Requirements

Technical
(possess
Track Record
to carry out
JV activity)

1. completed a project similar or related to the JV activity
2. whose value, adjusted to current prices using the NSO CPI, must be at least 50% of the cost of the JV activity
3. Disclosure of related ongoing and completed projects

Note: Cost of JV activity is the total amount of the contributions of the parties to the JV activity/ project in present value with discount rate

Eligibility Requirements

Financial
(capacity to
fund JV
activity)

1. Audited FS for past 3 years
2. If Filipino JV partner, submit:
 - BIR-stamped FS
 - Latest tax returns
3. Measured in terms of:
 - proof of ability of the prospective JV Partner to provide a minimum amount of equity to the JV activity (net worth of the company, or equivalent deposit)
 - Bank good financial standing certificate

Eligibility Requirements

Others

1. If consortia, overall capability
2. Waiver, Representations and Undertakings
 - a) Acceptance of qualification criteria
 - b) Commitment not to file suit to restrain JV from selection to JV implementation (excludes assailing lawfulness of disqualification or rejection of proposal)

JV Vehicle: 2 Options

**JV Company or
Corporate JV**
(Preferred/ Best
Option)

1

**Unincorporated JV or
Contractual JV**
(Alternative Option;
discretion of
Government Entity)

2

Government Contribution

Asset

Money

Equipment

Land

Intellectual
Property

Services

- (1) Anything of (pecuniary) value
- (2) Subject to 3rd party independent valuation

JV Activities and Operations

- Procurement**
 - Financed by Government, governed by GPRA
- Audit**
 - JV activity subject to audit (COA and private)
- Incentives**
 - Approved by Board of Investments
- Termination**
 - Breach of major JVA conditions
 - Forfeiture of performance security optional

Role of Administrative Agencies

Roles and Responsibilities

- Head of Government Entity
- NEDA Board – Investment Coordination Committee
- JV-Selection Committee
- Privatization Council
- Governance Commission for GOCCs
- OP, DOF, DBM, DENR, BOI
- OGCC, OSG and DOJ
- Regulatory and Audit Agencies

NEDA Board – Investment Coordination Committee

As Approving Authority

Projects where government contribution
amounting to P150m or more:

- 1) Infrastructure or Development (Section 5.9 of 2013 Guidelines)
- 2) Public Utilities
- 3) Negotiated JVs
- 4) Not primary mandate of public entity

Head of Government Entity

1. Approving Authority
 - a) Projects related to primary mandate of public entity and non-infrastructure projects
 - b) Projects not subject to approval by NEDA ICC
2. After Approving Authority, approves draft JVA
3. Prescribes its participation in JV activity
4. Creates JV-Selection Committee
5. Chooses JV Partner selection procedure
6. Decides whether JV Company or Contractual JV

JV-Selection Committee

Composition: **Regular Members** (voting)

1. Chairman: at least 3rd ranking officer
2. Secretary: legal officer
3. Member: officer knowledgeable in finance
4. Member: officer knowledgeable in JV O&M
5. Member: officer knowledgeable in technical aspect

Note: Quorum is majority of all voting (3); Chair only votes to break ties

JV-Selection Committee

Composition: **Provisional Members** (non-voting)

1. Technical officer from regulatory agency
2. Observer: Counsel from Statutory Counsel
3. 2 Observers: 2 representatives from private sector from:
 - a) Association related to JV project
 - b) Facility user or accounting firm
4. Observer: Representative from COA

Privatization Council

Approves/ clears divestment of government asset or property to private partner

Governance Commission for GOCCs

1. Approves formation of JV Company
2. Approves/ clears divestment of government equity that is not in the form of asset or property

President

1. Approves JV activities if required by law
2. Approves creation of JV Company

DOF and DBM

Approves/ clears provision for national government undertakings, subsidies or guarantees

DENR

Issues appropriate clearances prior to actual implementation

OGCC, OSG or DOJ

1. Issues Counsel's opinion prior to execution of JVA
2. Attends JV-SC as Provisional Member

Board of Investments

Approves/ grants investment incentives

Regulatory and Audit Agencies

e.g. ERC, TRB, NEA, (LWUA), NTC; COA

Issues concessions, administrative franchises, approvals

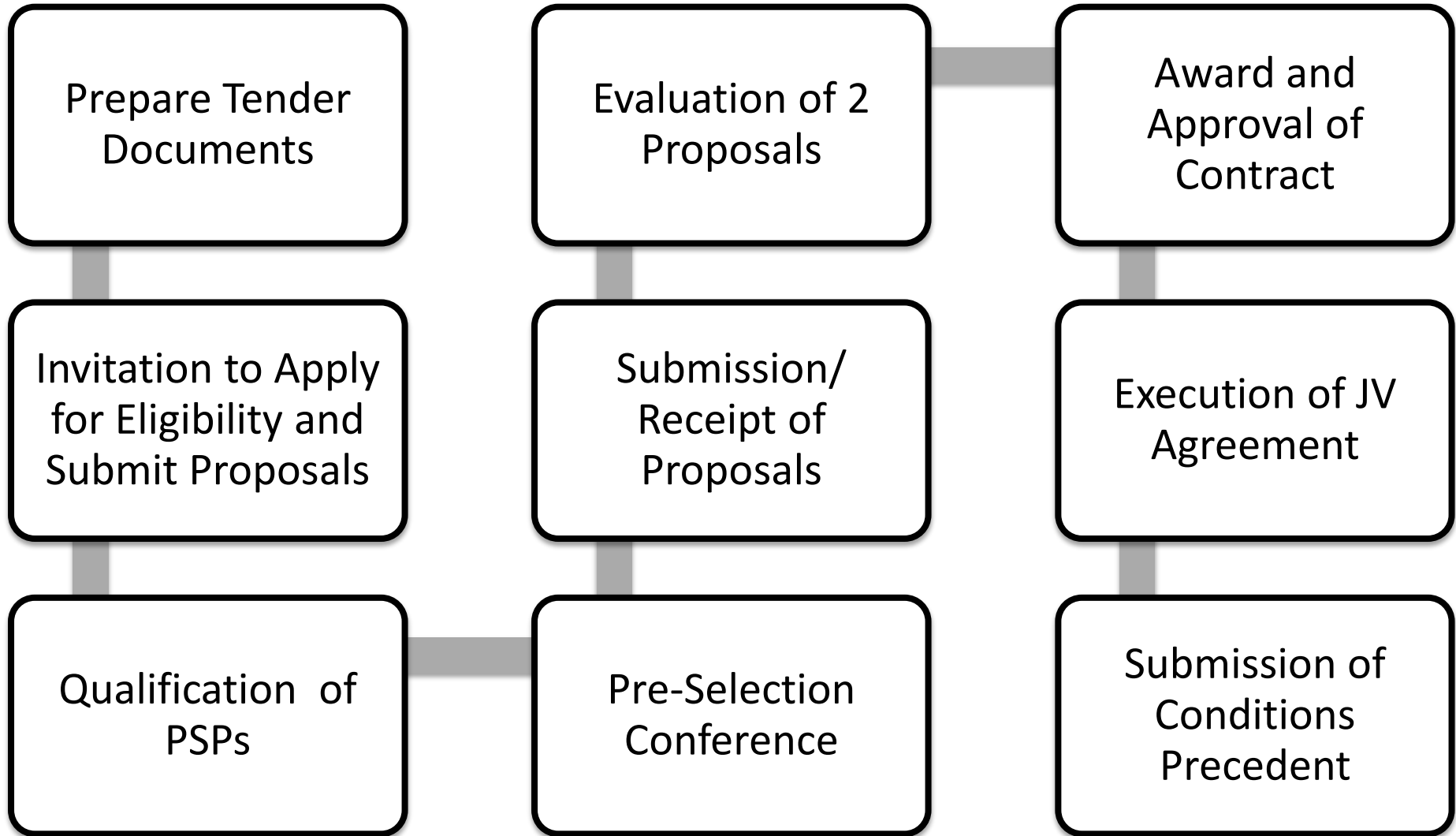
**Selection
Procedures
(Private JV
Partner)**

**Competitive
Selection (A)**

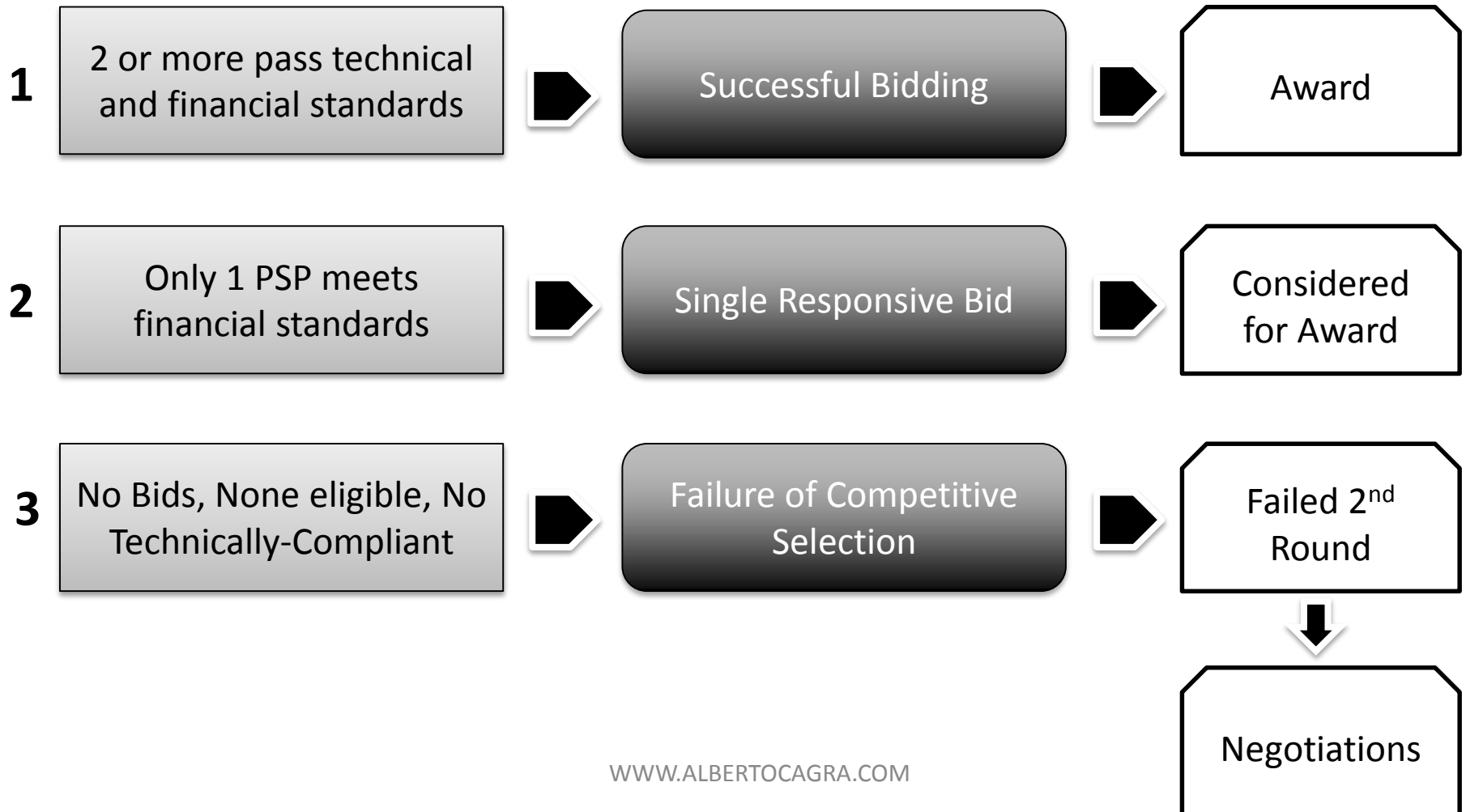
**Direct-Limited
Negotiations (B)**

**Competitive
Challenge (B)**

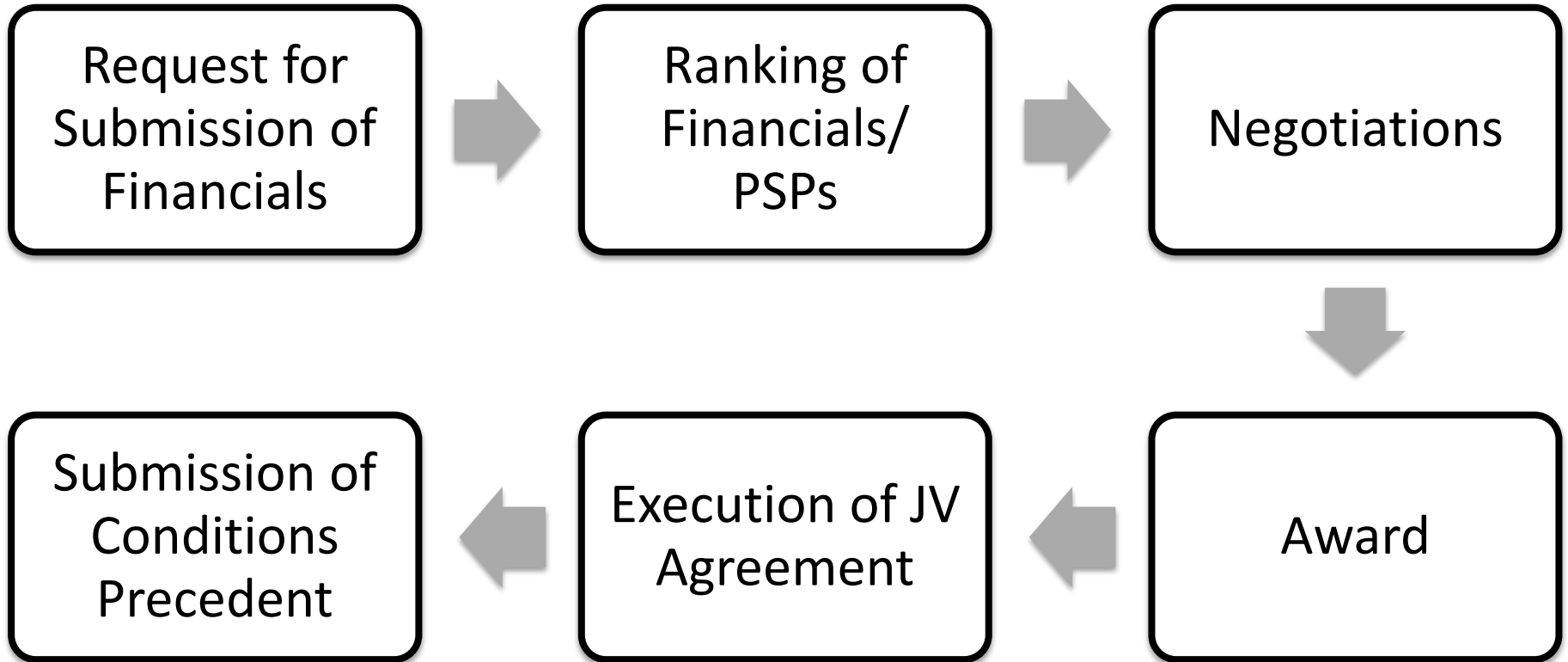
Competitive Selection



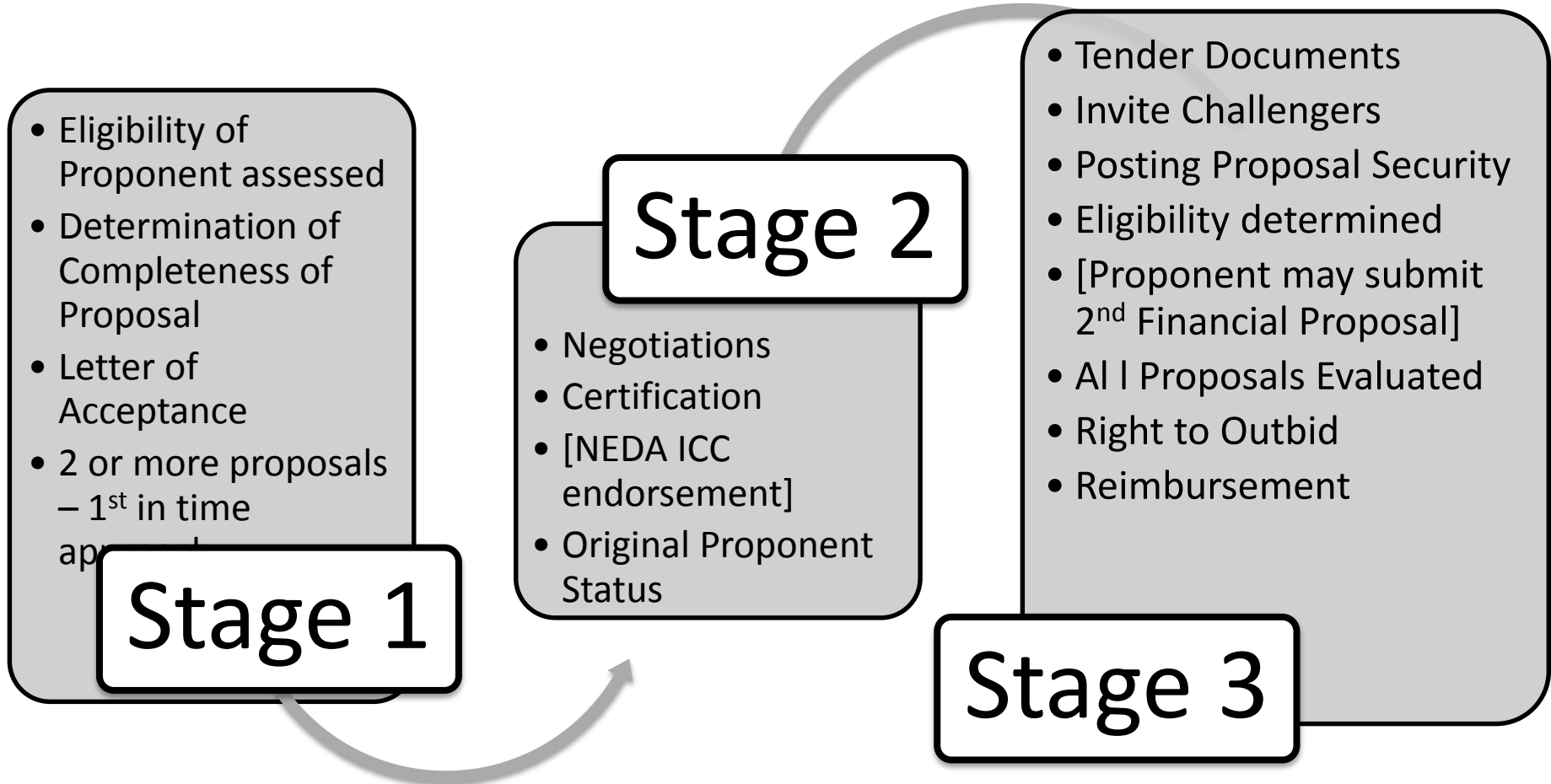
Scenarios in Competitive Selection



Direct-Limited Negotiations



Competitive Challenge



10 (Legal) Ways to Shorten Process

1. Government contribution to JV activity less than P150 million (No NEDA ICC)
2. No government asset or non-asset equity divestment (No PC or GCG)
3. No national government guarantees, undertakings or subsidies (No DBM or DOF)
4. Not form a JV Company (No GCG and OP)
5. Project does not require Presidential approval
6. GE adopts shorter periods
7. Simultaneous evaluation of technical and financial proposals
8. Well-prepared feasibility study/ Pre-FS/ business case
9. Statutory counsel involved in drafting of JVA
10. 3rd party valuation of GE contribution by Government

PPP/ JV Contract Provisions

Project

Modality

Term

Roles and
Obligations

Contributions

Governance

Risks

Warranties

Amendments

0917-5353823

alberto.c.agra@gmail.com

THANK YOU.