



# Local Government Public-Private Partnerships

## Alberto C. Agra

Chairman of the Board, Philippine Reclamation Authority  
Certified PPP and Regulation Specialist™

PPP Law and Local Government Law Professor  
Political Law Bar Reviewer

Principal Author, *Amicus Imperiorum Locorum*

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

President, Pilipinas Obstacle Sports Federation  
and Obstacle Sports Federation Asia-Pacific

# Seminar Flow

## Current Events

- Direction of Current Administration
- Awarded LGU PPP Projects

## Local Government Law x PPPs

- 20 Policies
- Legislative Options
- Agra PPPP Template

## Overview of PPPs

- Definition
- 26+ Modalities
- Requirements
- Procedures

# **Current Events**



# Public-Private Partnership is a Priority

## My Takeaways from PBBM's 1<sup>st</sup> SONA

1. Continue and expand the **Infrastructure Development (Build Build Build) Program** of President Duterte
2. Pursue **amendments to the Build-Operate-Transfer Law** to remove ambiguities and bottlenecks, and provide a more competitive and enabling environment
3. Explore **100% foreign ownership of public services** under amended Public Service Act
4. Not suspend **ongoing projects** of the previous Administration
5. Undertake **hard and soft projects** through PPPs:
  - Roads
  - Rails
  - Bridges
  - Airports
  - Seaports
  - Water Supply
  - Nuclear Energy
  - Renewable Energy
  - Economic Zones
  - Agriculture Development
  - Health Centers
  - Specialty Hospitals outside NCR
  - Fiber Optic
  - Information Technology





## **List of Priority Projects Proposed for Implementation under the Implementing Rules and Regulations of Build-Operate-Transfer law:**

1. Central Luzon Link Expressway (CLEX)
2. Metro Cebu Expressway
3. Rehabilitation/ Reconstruction/ Improvement, Operation and Maintenance of Kennon Road
4. North Luzon Expressway East, Phase II
5. Mindoro-Batangas Super Bridge (“Floating Bridge”)
6. Pacific Eastern Seaboard Expressway (“Luzon Eastern Seaboard”) Infanta-Atimonan Segment
7. Naawa-Opol-Cagayan de Oro City – Villanueva Expressway
8. Pangasinan – Nueva Ecija Expressway
9. Iloilo-Capiz-Aklan Expressway
10. Dingalan-Capas-Botolan Expressway



- North-South Commuter Railway System
- Metro Manila Subway Project
- North-South Commuter Railway System
- LRT-1 Cavite Extension
- MRT-7
- Common Station LRT-1-MRT-3-MRT-7
- Mindanao Railway Project
- Panay Railway Project
- Cebu Railway System
- Cebu Bus Rapid Transit
- Davao High Priority Bus System
- Ilocos Norte Transportation Hub
- El Nido Transport Terminal

# PPPs by LGUs

## PBBM at LCP Meeting

- Mode of financing projects
- Digitalization needed for economic recovery and digital transformation
- Increased focus on infrastructure
- LGU, generally, cannot do it by itself

## Speaker Romualdez/ Iloilo Projects

- Market redevelopment through lease
- Toll roads
- Hospitals
- Irrigation
- Housing
- Diversion Roads



No. 9  
08.15.22

# Awarded Local Government Public-Private Partnership Projects

- **Bridge** connecting Cebu City and Cordova Municipality (*Joint Venture*)
- **Subway** by Makati City (*Joint Venture*)
- **Ferry** by Bataan Province (*Joint Venture*)
- **Transport Terminal** by Batangas City (*Lease*)
- **Seaport** by Aklan Province (*Lease*)
- **Water Supply and Distribution** by Camarines Sur Province (*Joint Venture*)
- **Mini-Hydro** by San Luis Municipality (*Joint Venture*)
- **Public Market** Redevelopment by Iloilo City (*Lease*)
- **Public Market** Redevelopment by Tanuan City (*Build-Transfer-Operate*)
- **Public Market** by Mandaluyong City (*Build-Transfer and Build-Operate-Transfer*)
- **Town Center** by Valenzuela City (*Joint Venture*)
- **Slaughterhouse** by Tarlac City (*Rehabilitate-Operate-Transfer*)
- **Reclamation** by Pasay, Paranaque and Manila Cities (*Joint Venture*)
- **Property Ventures Development** by Cebu Province (*Corporatization*)

# **Local Government Law x PPPs**

# 20 Relevant Local Government Policies

1. 5 LGU Levels/ Kinds
2. Intramural
3. Dual Capacity
4. Dual Agency
5. Diversity
6. Active
7. Local Autonomy  
(Liberalist or Centralist)
8. Fiscal Autonomy
9. Corporate Succession
10. Non-Impairment of  
Contracts
11. Separation of Powers
12. Executive Supervision
13. Legislative Control
14. Judicial Review
15. Private Sector  
Participation
16. Local Legislation
17. LGU Contracts
18. Subordinate Legislation
19. Accountability
20. Liability

# PPP Frameworks: 3 Options

Own Ordinance

DILG Template Ordinance\*

“Parent” PPP Framework

\* PPPP or JV

# 116 LGUs with PPPP Ordinance

## *(referred to Agra Template)*

**PPP Ordinance Template: 99** LGUs: **23** provinces – Cavite, Camarines Sur, Northern Samar, Nueva Ecija, Pangasinan, Bataan, Bohol, Agusan del Norte, Southern Leyte, Pampanga, Tarlac, Zambales, Davao del Norte, Quezon, Cebu, Aklan, La Union, Batangas, Negros Oriental, Oriental Mindoro, Lanao del Norte, Palawan and Capiz ; **48** cities – Quezon, Paranaque, Pasay, Makati, Navotas, Malabon and San Juan, Metro-Manila, and Batangas, Olongapo, Butuan, Imus, Cauayan, General Santos, Passi, Catbalogan, Legazpi, Davao, Antipolo, Bayawan, Puerto Princesa, Baguio, San Fernando (La Union), San Jose Del Monte, Bacoar, Kabankalan, Naga (Cebu), Tabuk, Tayabas, Alaminos, Cabuyao, Santa Rosa, Panabo, Surigao, Zamboanga, Bais, Talisay and Cadiz (Negros Occidental), Talisay (Cebu), Calapan, San Carlos, Carcar, Munoz, Sorsogon, Danao, Binan, Tagaytay, Dumaguete and Bacolod; and **33** municipalities – General Tinio, Nueva Ecija; Cordova and Consolacion, Cebu; Tiwi, Albay; Cainta, Binangonan and Taytay, Rizal; Dinalupihan, Abucay and Samal, Bataan; La Trinidad, Benguet; Coron, Palawan; Kalibo, Aklan; Villasis and Bolinao, Pangasinan; Tayabas and Gumaca, Quezon; Lemery and Talisay, Batangas; Boac and Santa Cruz, Marinduque; Mabalacat and Magalang, Pampanga and Sogod, Southern Leyte; Rosario, Cavite; Piddig, Ilocos Norte; Tapaz, Capiz; Alangalang and Palompon, Leyte; Pateros, Metro-Manila; Masinloc, Zambales; Malalag, Davao del Sur; Maco, Compostela Valley;

**Joint Venture Ordinance Template: 10** LGUs: **7** cities – Manila, Valenzuela and Caloocan, Metro-Manila, and Puerto Princesa, Palawan; San Fernando, La Union; and Naga and Danao, Cebu; and **5** municipalities – Opol, Misamis Oriental; Mendez, Cavite; Tuburan, Cebu; Bauan, Batangas; and San Luis, Aurora)

# Outline of Proposed PPP/ JV Code

Principles and  
Authorities

Value Drivers

Projects

Modalities

Selection  
Procedures

Contract  
Contents

Governing  
Structures

Regulation  
and Contract  
Management

Accountability  
Mechanisms



# Overview of PPPPs

# True or False

1. The Philippines has only **one PPP law**.
2. The **DILG** has no PPP policy.
3. LGUs cannot enact their own **PPP ordinances**.
4. There are only **9 PPP modalities** available for LGUs.
5. All LGU PPPs must be approved by **NEDA** prior to award.
6. All LGU PPP projects are **single-purpose**.
7. A **feasibility study** is required in a PSP selection process.
8. An LGU must contribute **cash** in a PPP in order to have a share/ equity in a PPP project.
9. The winner, in any PPP selection process, is always the proponent with the **highest bid**.
10. LGU PPPs must always be subjected to **open bidding**.



# **PUBLIC SECTOR PPP PROPONENTS**

**NATIONAL  
GOVERNMENT**

**GOVERNMENT  
CORPORATIONS**

**STATES** 

**AUTONOMOUS  
REGIONS**

**PROVINCES**

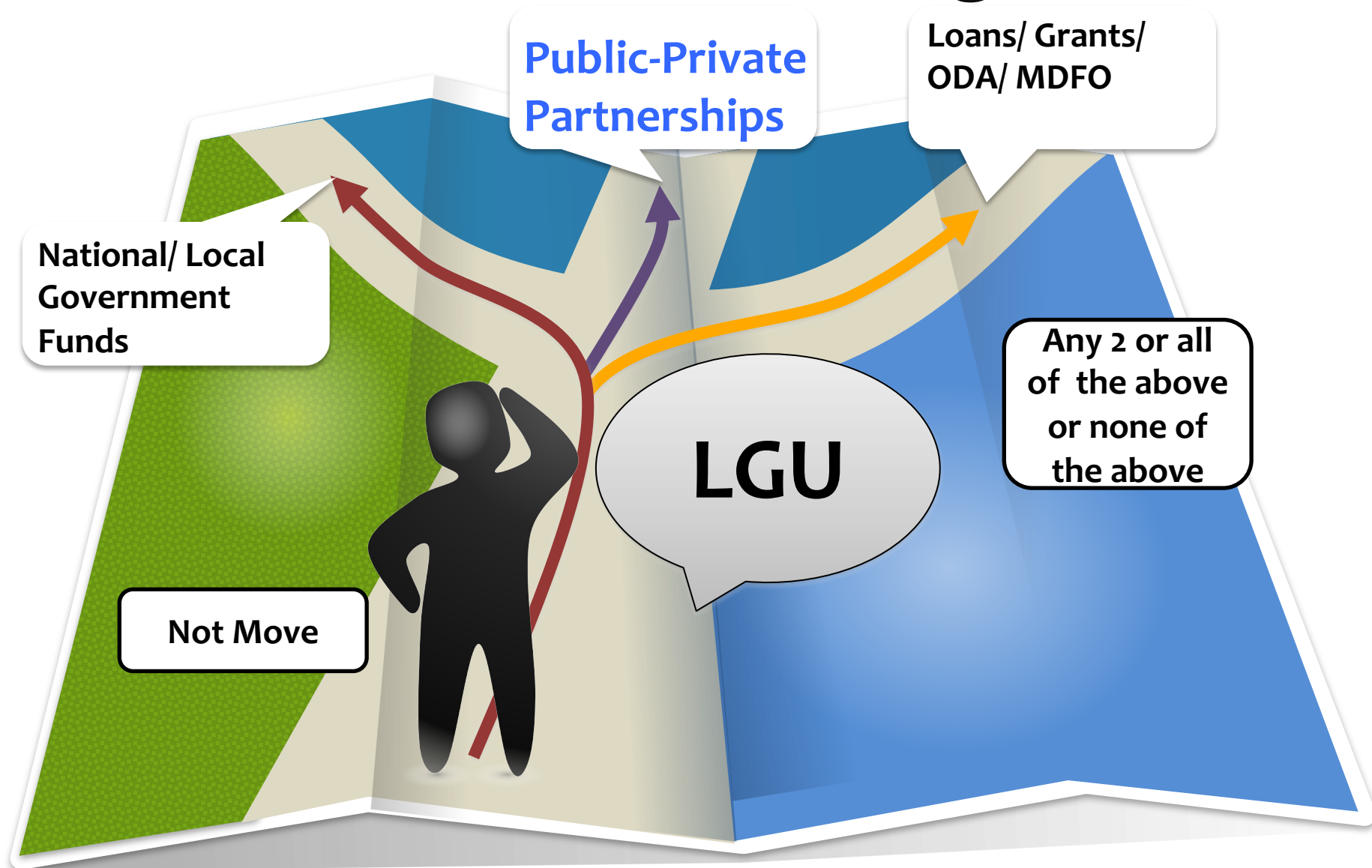
**CITIES**

**MUNICIPALITIES**

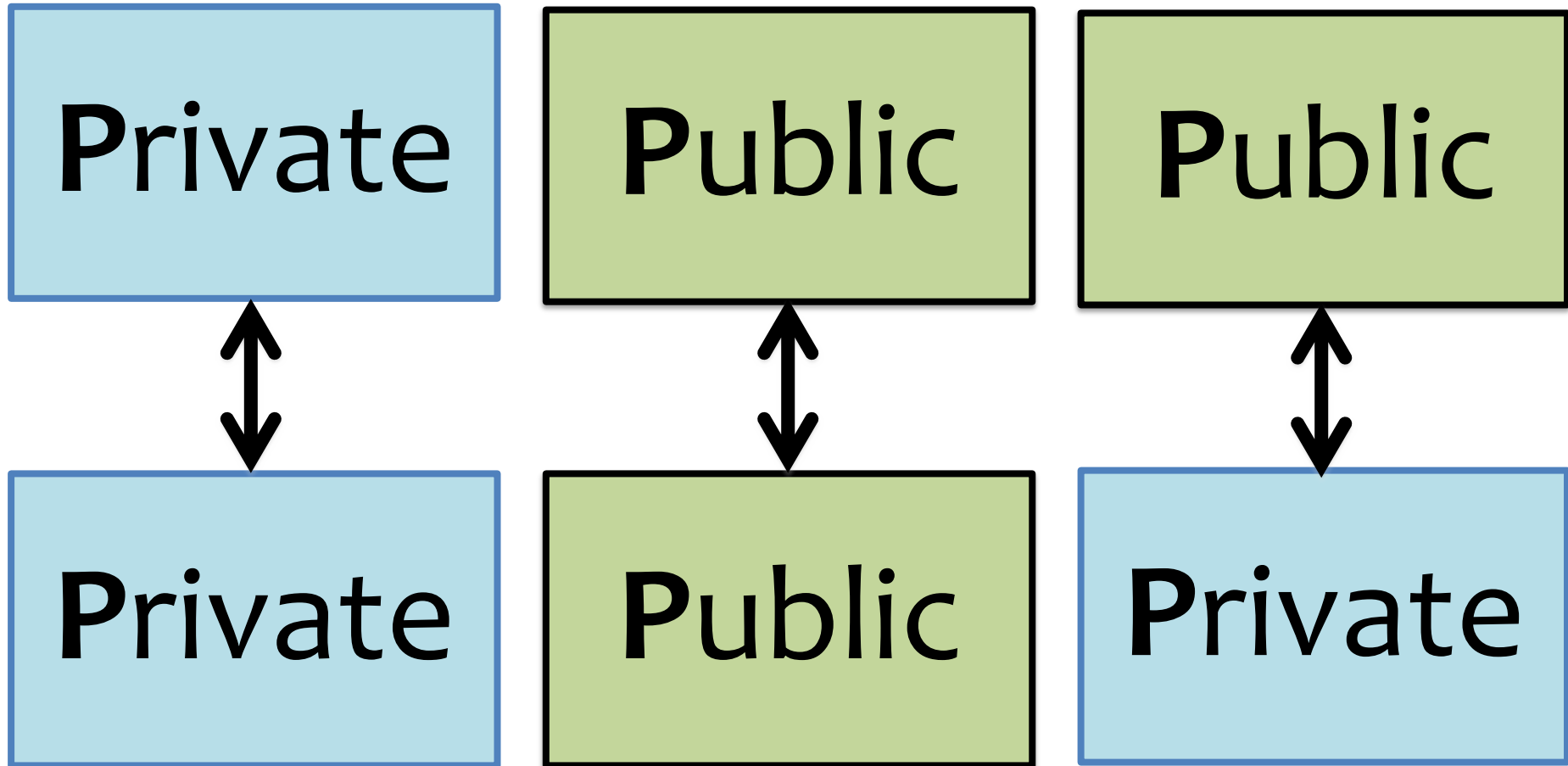
**BARANGAYS**

PPP is  
Decentralized  
(Horizontally  
and Vertically)

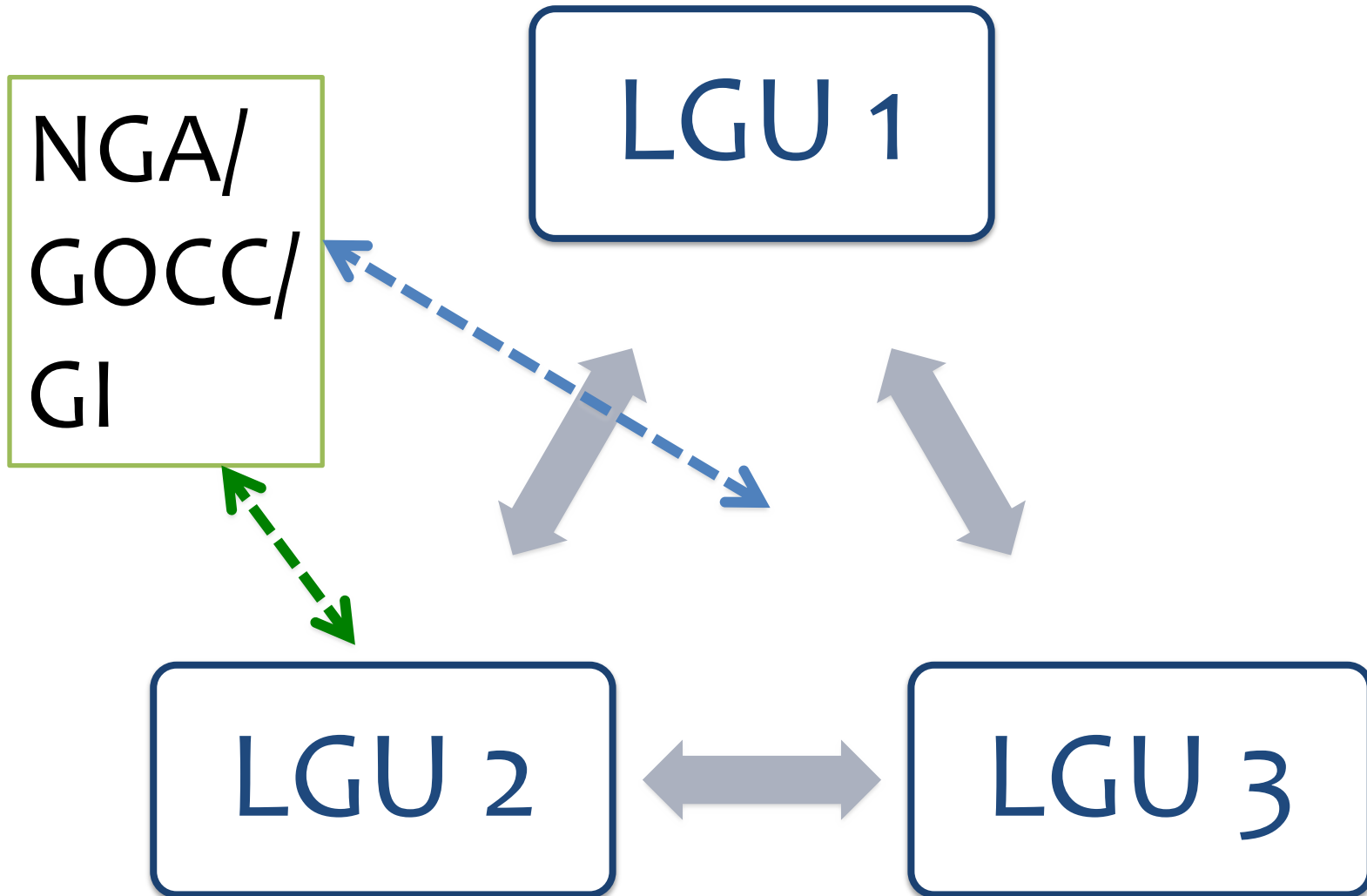
# Implementation/ Funding Schemes



# 3 Levels of PPPs



# Inter-Agency: Public-Public



# Nature of PPPs



## *Components:*

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

# 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**





## HARD

### INFRASTRUCTURE ASSETS



Road



Water



Power



Ports



Reclamation



Sports Complex



Markets



Transport Systems



Terminal



Government Buildings



Parks



Information Technology



Cemetery



Solid Waste Management



Bridges



Malls

## SOFT

### SOCIAL ASSETS AND SERVICES



Classroom



Hospital



Agriculture



Housing



Evacuation Center



Prisons

## BUNDLED



+



Hard and Hard



+



Hard and Hard



+



Hard and Hard



+



Soft and Soft



+



+



Hard, Soft and Soft



+



+



Hard, Hard and Soft

# 26+ 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. Lease-to-Own
17. Real Property Swap
18. Management Contract
19. Management Contract (No Public Funds)
20. Service Contract
21. Service Contract (No Public Funds)
22. Divestment or Disposition
23. Corporatization
24. Subsidiary with Private Equity
25. Onerous Donation
26. Gratuitous Donation
27. Others

# How to Distinguish/ Choose from the 26+

























Split of  
Functions

Governing  
Law

Approvals

Time

# PPP RESOURCE EXCHANGE

Modality	Government		Private Sector	
Build-Operate-Transfer				 
Joint Venture		 		
Concession				 
Management Contract		 		
Public Land Lease				 
Policy-setting		Building		
Financing		Operating		

# 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

# Governing Laws/ Rules

PPP Modality	Governing Law
BOT Law Variants (9+)	BOT Law
Concession	Special Laws/ <a href="#">Special Guidelines</a> / <a href="#">Local Ordinance</a>
Joint Ventures	2013 NEDA JV Guidelines/ <a href="#">Special Guidelines</a> / <a href="#">Local Ordinance</a> / <a href="#">DILG-PPPC JC 2019-01</a>
Management and Service Contract*	GPRA/ <a href="#">Local Ordinance</a>
RT, RLT and RTO	[BOT Law]/ <a href="#">Local Ordinance</a>
Lease/ Affermage/ Lease-to-Own/ Realty Swap/ Donations	Civil Code/ <a href="#">Special Guidelines</a> / <a href="#">Local Ordinance</a>
Divestment/ Disposition	Commission on Audit Circular No. 89-296 and COA Decision 2009-064
Corporatization	Corporation Code

# NEDA Checkpoints

4-pass	3-pass	2-pass	1-pass	0-pass
(1) BOT-UP	(1) BOT-Sol, Nat'l P300m up	(1) BOT-Sol, Nat'l P300m (2) BOT-Local P200m up (3) JV-GOCC P150m and up	Any project Rejection	(1) BOT-Local P200m low (2) JV-local (3) JV-GOCC P150m low (4) JV-other GOCCs (5) lease, concession (6) Divestment
NEDA-ICC-TB NEDA-ICC (IRR) NEDA-ICC (Nego) NEDA-Board	NEDA-ICC-TB NEDA-ICC NEDA-Board	NEDA-ICC-TB NEDA-ICC	NEDA-ICC-TB	NA

# LGU Structures

Local Chief  
Executive

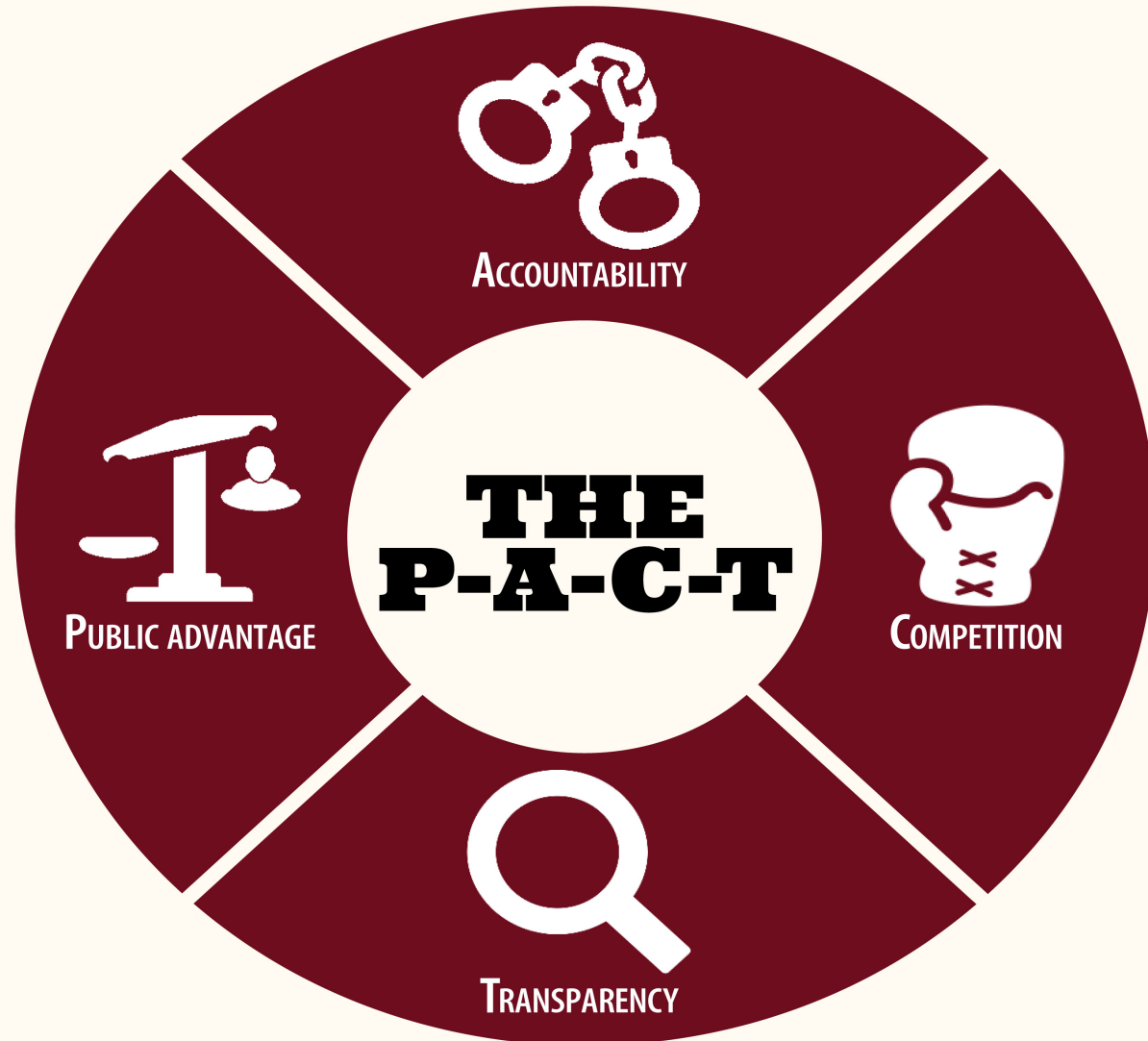
Vice-LCE/  
Sanggunian

PPP-Selection  
Committee  
(7)

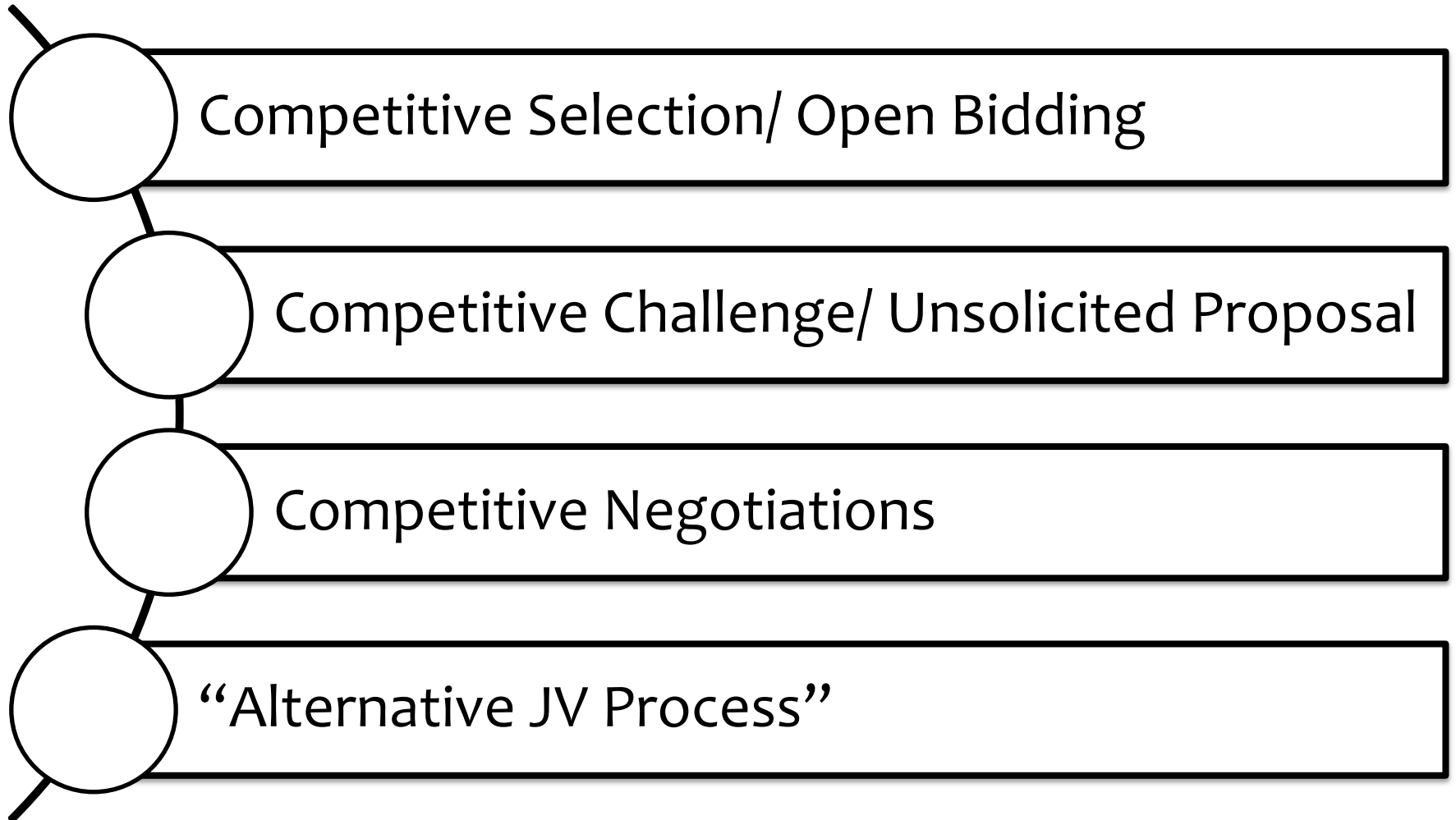
PPP-  
Regulatory  
Authority (9)



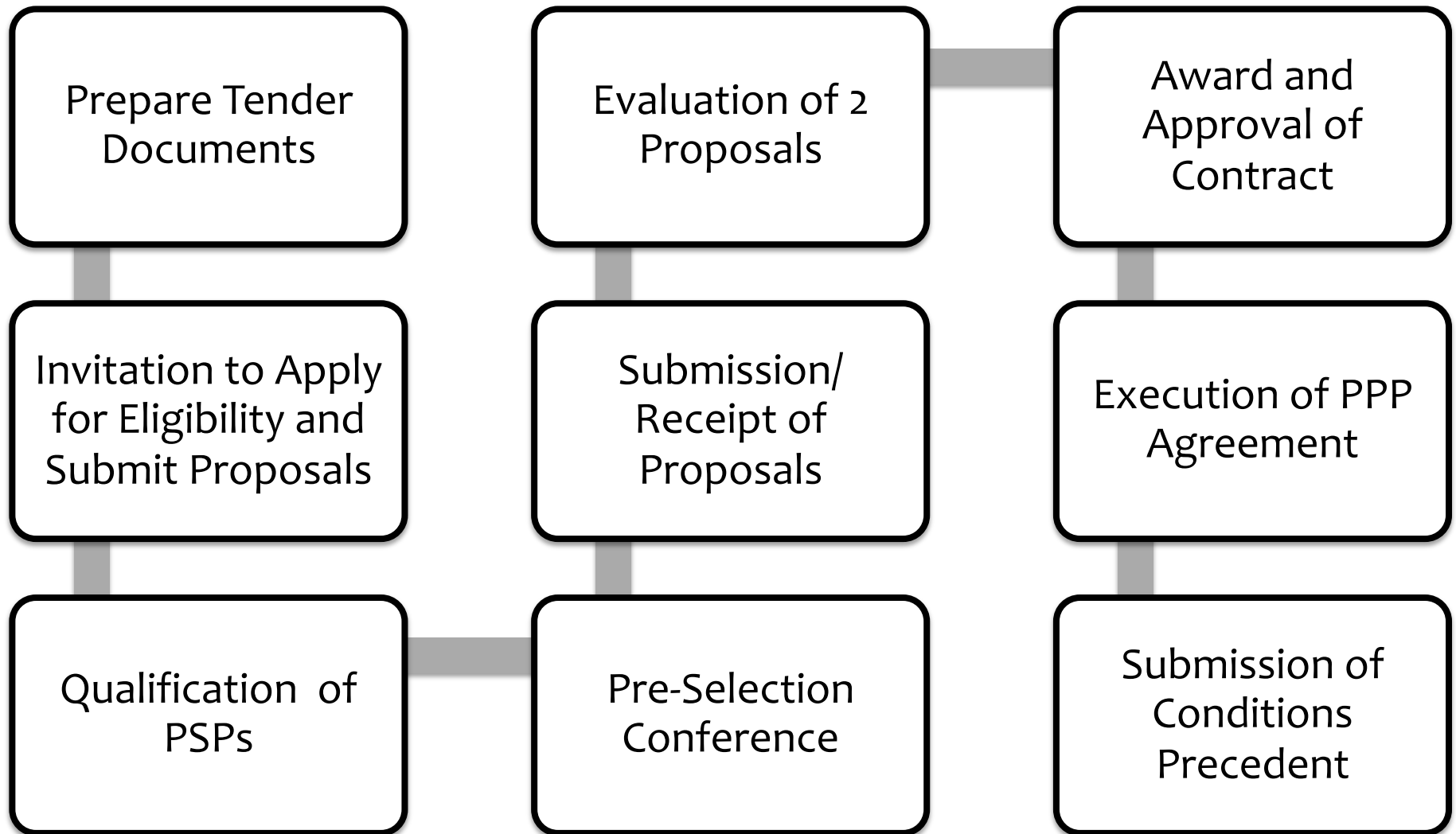
# PPP SELECTION REQUIREMENTS



# PACT Procedures



# (1) Competitive Selection



# And the **winner** is ...

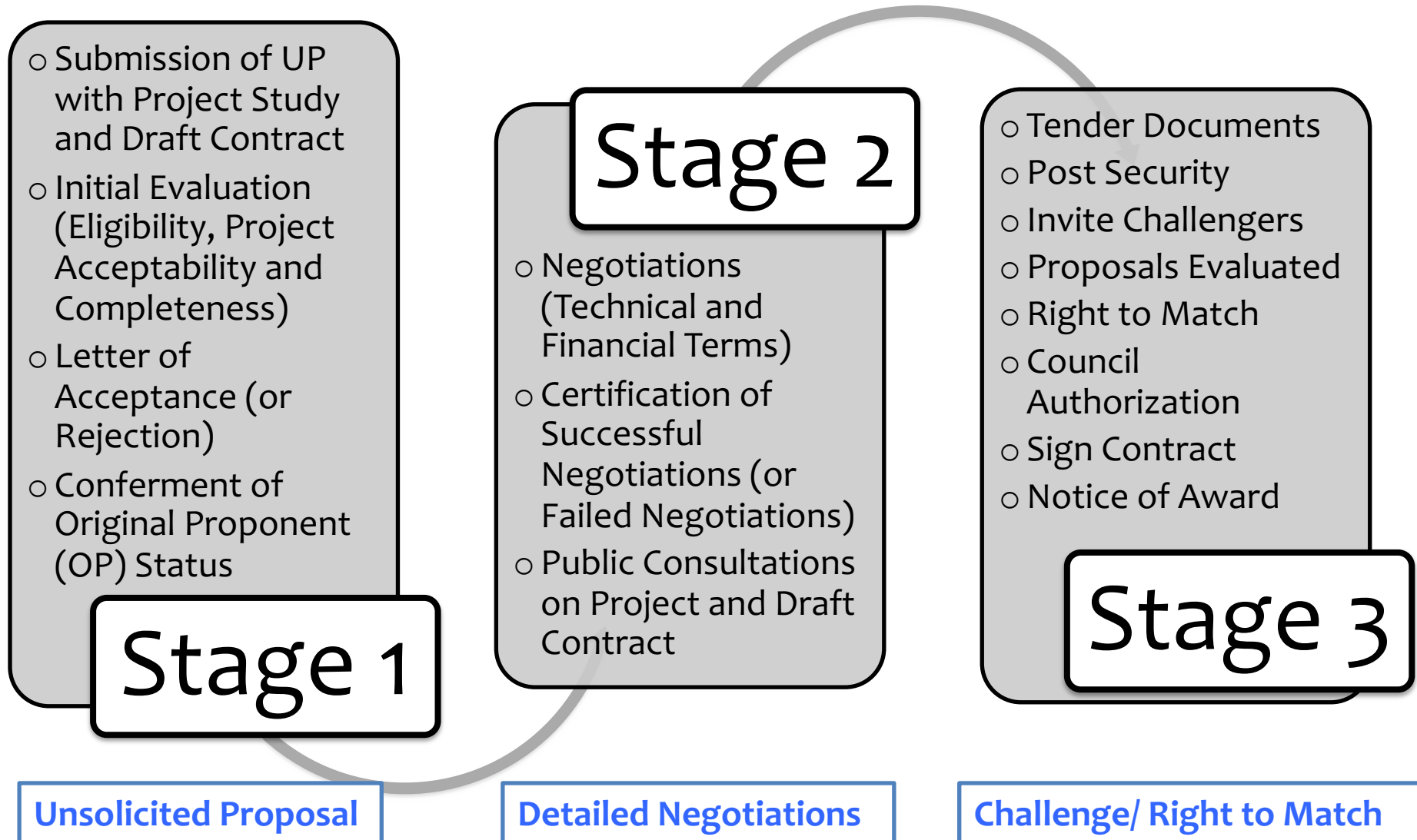
## Highest

- Payment to Government (BOT Law)
- Share in Revenues (JV)
- Purchase Price (Divestment)
- Rated Bid (Service/ Management Contract)
- Rental Payment to Government (Government as Lessor)

## Lowest

- Government Subsidy (BOT Law)
- Tariff by End-User (BOT Law)
- Calculated Bid/ Price (Procurement of Goods and Infrastructure)
- Rental Payment by Government (Government as Lessee)

## (2) Competitive Challenge



## PPP CONTRACT:

# 10 SECTIONS



**PARTIES**



**PROJECT**



**MODALITY**



**TERM**



**CONTRIBUTIONS**



**RISKS**



**GOVERNANCE**



**APPROVALS**



**AMENDMENTS**



**ROLES**

## 10 PPP POST-AWARD REQUIREMENTS

### 1. INCORPORATION



### 2. FINANCIAL CLOSURE



### 3. LGU PERMIT



### 4. ENVIRONMENTAL CLEARANCE



### 5. FRANCHISE



### 6. REGULATORY APPROVALS



### 7. RIGHT-OF-WAY



### 8. SUPPLY CONTRACT



### 9. INSURANCE



### 10. PEOPLE'S SUPPORT





[www.albertocagra.com](http://www.albertocagra.com)



09175353823



alberto agra



[alberto.c.agra@gmail.com](mailto:alberto.c.agra@gmail.com)

Thank you.

