



Republic of the Philippines
OFFICE OF THE PRESIDENT

METROPOLITAN MANILA DEVELOPMENT AUTHORITY

Doña Julia Vargas Avenue corner Molave St., Barangay Ugong, Pasig City

The PPP Code and its **IRR**

Atty. Alberto C. Agra

Law Professor, PPP Law, Local Government Law and Administrative Law

Advocate and Author, PPP Law-for-All

Certified Specialist, Certified PPP and Regulation Specialist™

Former Public Servant, Former Acting Secretary of Justice, Acting Solicitor General, Government Corporate Counsel and Chairman of the

Philippine Reclamation Authority

June 24, 2024

PPP Projects Everywhere



Quizzer: True or False



1. MMDA can no longer enter into PPPs since it is one of the Administrative Agencies (AAs) mentioned in the Repealing Clause of the IRR of PPP Code.
2. All PPP arrangements by MMDA and the Component LGUs are governed under the PPP Code.
3. MMDA can adopt its own PPP Guidelines and the Component LGUs can enact their own PPP Ordinances.
4. All MMDA PPP Projects must be approved by the NEDA Board.

Quizzer: True or False



5. All LGU PPP Projects must be approved by NEDA Board.
6. MMDA and a Component LGU can jointly implement a PPP project.
7. The maximum PPP contract duration is 50 years.
8. Subsidies, like paying for a portion of the project cost, are allowed for PPP Projects.
9. In all PPPs, MMDA shall award a project procured through bidding to the bidder with the highest offer.

Quizzer: True or False



10. The PPP Center can determine if an unsolicited proposal is complete.
11. The PPP Center can determine if an unsolicited proposal contains false or erroneous assumptions.
12. The Mayor approves City/ Municipal PPP Projects.
13. Atty. Al Agra can be a voting member of the PPP PBAC.
14. A PPP Contract cannot be amended.
15. MMMDA can takeover a PPP project.

Presentation Flow: 7 Ps



1
Policies

2
Parties

3
Projects

4
Partnership
Schemes

5
Permissions

6
Procedures

7
Pact

At the end: Features of Proposed Guidelines on JVs/ Leases for Purely Commercial Arrangements



(1) Policy

PPP Code and IRR



Dates	Milestones/ Activities
December 5, 2023	Republic Act No. 11966 (Public-Private Partnership Code) signed into law.
December 23, 2023	PPP Code became effective.
March 22, 2024	IRR published.
April 6, 2024	IRR became effective.

PPP Policies



<i>BOT Law and IRR</i>	Repealed or modified accordingly <i>IRR: Repealed</i>
<i>NEDA JV Guidelines</i>	Repealed or modified accordingly <i>IRR: Repealed</i>
<i>AA PPP Guidelines</i>	Repealed or modified accordingly
<i>LGU PPP Ordinances</i>	Repealed or modified accordingly



PPP Existing Contracts

<i>Existing Contracts</i>	Governed by the agreements <i>(PPP Code suppletory application)</i>
<i>Existing Franchises</i>	PPP Code Section on Variation/ Expansion/ Extension applicable <i>(provided not impair substantive rights)</i>

Special Laws



Laws	Administrative Agencies	Repealed (R)/ Modified (M) Provisions
RA 7227	Bases Conversion Development Authority	Turnkey or Build-Operate-Transfer of Major Conversion Projects (M)
RA 8292	State Universities and Colleges	Joint Ventures of Economic Assets (R)
RA 9500	University of the Philippines	Leases of Land and Joint Ventures (M)
RA 10844	Department of Information and Communications Technology	Issuance of PPP Guidelines for ICT Projects of Government Agencies (R)
PD 1112	Toll Regulatory Board	Construction, Operate and Maintain Toll Facilities (R)
PD 1113	Construction and Development Corporation of the Philippines	Right to Construct, Operation and Maintenance of Toll Facilities (R); Franchise (M)
PD 1894	Philippine National Construction Corporation	Construction, Operation and Maintenance of Extensions, Linkages, Stretches and Toll Facilities (R)

Special Laws and PPP Guidelines



Policy	Administrative Agencies	Repealed/ Modified Provisions
PD 857	Philippine Ports Authority	Prescribe Rules for Construction, Operation and Maintenance of Ports; Lease of Land, Port, Wharf or Quay (R)
EO 74	Philippine Reclamation Authority	Delegated authority to the PRA Governing Board to approve reclamation projects (M)
EO 74 IRR	Philippine Reclamation Authority	PPP for reclamation projects (R)
---	Tourism Infrastructure and Enterprise Zone	JV Guidelines (R)
---	Metro Manila Development Authority	Alternative PPP Guidelines (R)
Various Laws	GOCCs, GIs and SUCs	Issuance of PPP Guidelines (financing, designing, constructing, operating, and maintaining) (R)



(1.1) PPP Defined

PPP defined



- A **contractual** arrangement between an **Implementing Agency (IA)** and a **Private Partner (PP)**
- to **finance, design, construct, operate, and maintain**, or any combination or variation thereof,
- **infrastructure or development projects** and services which are **typically provided by the public sector**,
- where each party **shares in the associated risks** and
- where the **investment recovery** of the PP is **linked to performance**.



Rationale of PPP

- **Indispensable role of the private sector**, encourage private enterprise, and provide incentives to needed investments
- Enabling environment for the private sector to **mobilize its resources** to finance, design, construct, operate, and maintain infrastructure or development projects and services
- **Public interest** by providing affordable, accessible, and efficient public services
- **Financing** infrastructure and other development projects and services through all means available to effectively meet the objectives of the government



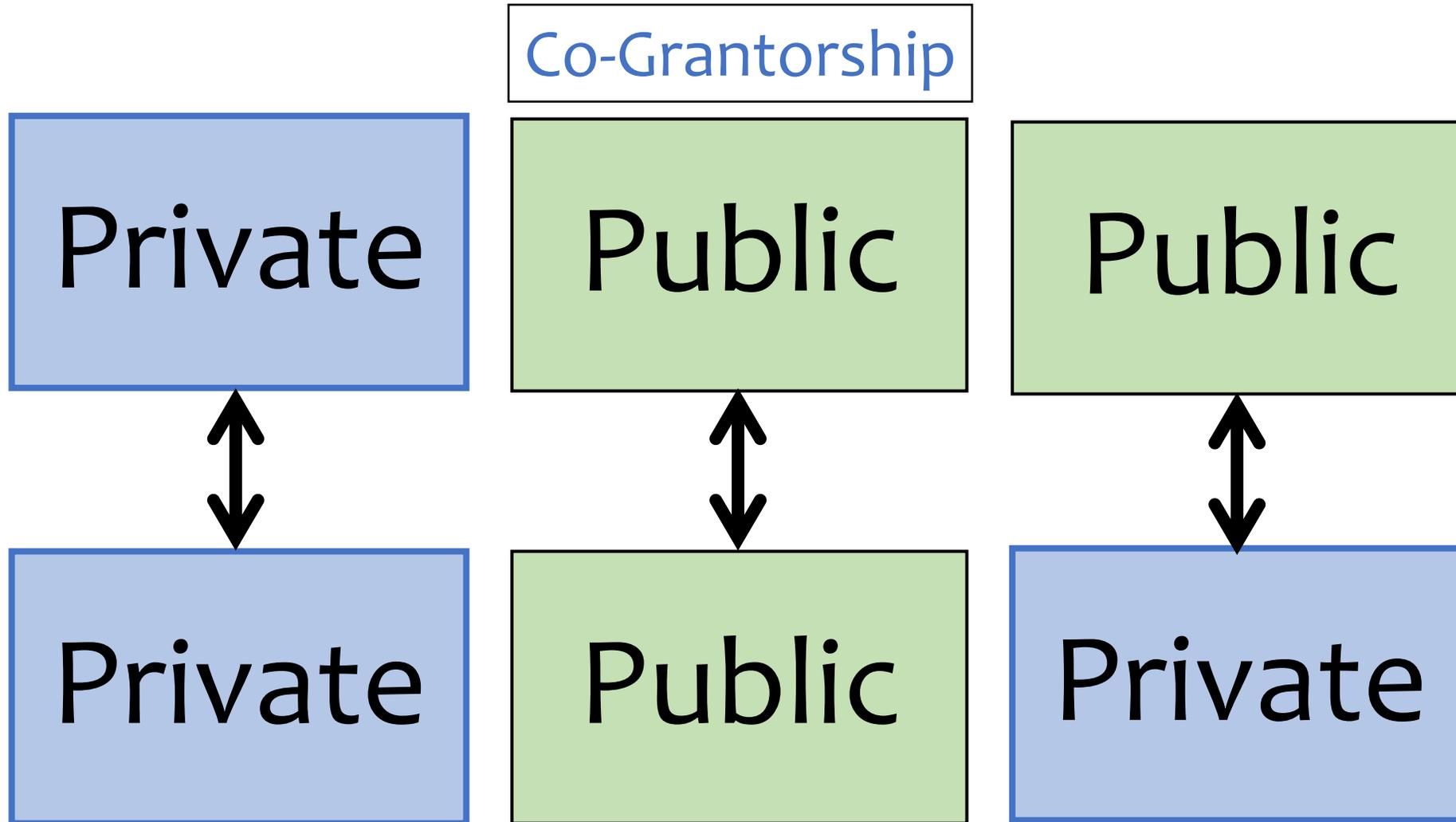
Rationale of PPP

- **Better quality of PPP Projects** at lower costs
- **LGU local autonomy**, as self-reliant communities, more effective partners in the attainment of national goals
- **Integration** of climate resilience, sustainability, and gender and development policies and programs
- Open, fair, transparent, and competitive **selection** as the central tenet for securing private investment in PPP projects
- Subject partnerships that have **not been submitted through the administrative process** defined as PPPs under the Code under its jurisdiction and rules



(2) Parties

3 Levels of PPPs





IAs: *Public Partners*

National

1. National Government
2. State University and College
3. Government-Owned and -Controlled Corporation
4. Government Instrumentality with Corporate Powers
5. Water Districts
6. Government Financial Institutions
7. Economic Zones

Local

1. Local Government Unit
2. Local University and College



Co-Grantorship: **Inter-National IAs**

- Joint Implementation
 - National PPP Projects that encompass beyond jurisdictional boundaries
 - Bundling of similar projects can:
 - benefit from economies of scale
 - increase the viability of a proposed PPP Project
- If 3 or more National IAs, approved by IAs or NEDA-ICC

Co-Grantorship: National IA and LGU



- Joint Committee or
- NEDA ICC and Sanggunian/ LUC Board



Co-Grantorship: Inter-LGU PPPs

May be implemented by the:

1. National government, subject to the approval process for National PPP Project
 2. Next higher level of LGU
 3. LGUs concerned, subject to the approval process for Local PPP Projects
- Approved by the local Sanggunians of the LGUs concerned (**may establish a joint Sanggunian**)
 - Respective RDCs may assist in the coordination of LGUs in the development, approval, and implementation of the Local PPP Project



Regulatory Bodies

PPP Code

No **IA** shall implement a PPP Project **that it regulates:** Provided, That any regulatory body which shall implement a PPP Project pursuant to its mandate shall adopt a **conflict mitigation and management plan.**

IRR

A **Regulatory Body, exercising quasi-judicial functions,** shall not be allowed to undertake PPP Projects in the **sector or industry that it is mandated to regulate** except where there are **no available alternative IAs** which have the capacity to undertake such projects.



Private Party

- **Private Partner** - private sector entity determined to be **financially, legally, and technically capable** to undertake obligations under an awarded PPP contract
- **Private Proponent** - private sector entity which has **submitted bid** in relation to a Solicited Project, or a private sector entity which has **submitted an Unsolicited Proposal**; may be **Filipino or foreign-owned**, and may engage the services of a foreign Contractor or foreign Facility Operator, subject to requirements and limitations provided under the Constitution, existing laws, rules, and regulations



Private Party

- **Facility Operator** - any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the Private Partner, that shall be responsible for **operating and/or maintaining a facility**
- **Contractor** - any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the Private Partner, that shall be responsible for the **construction and/or supply of equipment or services for PPP Projects**



(2.1) Public Governance



PPP Governing Board

1. Chairperson: NEDA
Secretary
2. Vice-Chairperson: DOF
Secretary
3. Secretariat: PPP Center
4. DBM
5. DOJ
6. DTI
7. DILG
8. DENR
9. CHED
10. ES
11. PPP Center ED
12. Private Sector
Representative from
Infrastructure Sector



PPP Governing Board

- **Overall policy-making body** for all PPP-related matters
- Responsible for setting the **strategic direction** of the PPP Program and PPP Projects
- Responsible for creating an **enabling policy** and institutional environment for PPP
- Promulgate PPP **policy matter opinions**
- Issue the **IRR** (Members form part of IRR Committee)

Prescribe guidelines on:

- improving **ease of doing business**
- **reviewing and approving Local PPP Projects**
- **negotiations** for unsolicited proposals
- monitoring the **compliance of the parties with PPP contracts**
- determination of **Termination Payments** and related reportorial requirements
- **Project Development and Monitoring Facility**
- **LGU PPP Risk Management Fund**

Approving Bodies



NEDA
Board

NEDA
ICC

Cabinet
Secretary

GOCC/ GI
Board

Sanggunian

LUC Board

National Economic and Development Authority (NEDA) Board



- Approve National Projects (\geq P15B Project Cost)

Investment Coordination Committee (ICC)

- Recommend to Board (\geq P15B)
- Approve National Projects ($<$ P15B) **subject to conditions**
- Approve Local Projects with **Government Undertakings** using national government funds (disapproval shall not be construed as a disapproval of the Local PPP Project)
- Approve **Availability Payments**
- Formulate guidelines, forms, and templates that shall be used by IAs and Approving Bodies in **reviewing and approving the PPP Project**
- Review, evaluate and **update P15B** Threshold (prudence & reasonableness)
- Issue **Generic Preferred Risk Allocation Matrix (GPRAM)**



Department of Finance (DOF)

- The processing of **ODA agreements** shall adhere to policies, rules, and procedures, and/or guidelines applied for the purpose, including those issued by or that may be issued by the DOF
- The Approving Body/ LDC may consult with the DOF prior to approval in respect of the feasibility of the **Government Undertakings and/or Availability Payments**
- Reviewing Body for National PPP Projects and Local PPP Projects with National Government Undertaking or Availability Payments (**initial comments on PPP Contract and clearance**)
- IA may also involve the DOF to assist in the **negotiation process**
- DOF must be informed of **changes to PTCs** of draft PPP Contract

PPP Center



1. Assist IAs in identifying, prioritizing, developing, and maintaining a pipeline of **PPP Projects**
2. Provide project **advisory services** and technical assistance to IAs, Approving Bodies
3. Facilitate the **appraisal and approval** of PPP Projects by **NEDA**
4. Review **contracts** for National PPPs
5. Require the submission of PPP Project **documents** from IAs
6. Provide **regular monitoring** and status reports on the implementation of all PPP Projects
7. Manage and administer the **Project Development Management Fund**
8. Manage and administer the **PPP Risk Management Fund**
9. Serve as **Secretariat for IRR Committee**
10. Coordinate with NEDA-ICC in formulation of **guidelines, forms, and templates** that shall be used by IAs and Approving Bodies in **reviewing and approving** the PPP Project
11. Coordinate with Regulatory Agencies in the drafting of **guidelines, frameworks, or mechanisms** for consultation, review, and approval of initial **tolls, fares, fees, rentals, and other charges**
12. Determine **completeness** of unsolicited proposals and appropriate Approving Body
13. Assist IAs during **negotiations** of unsolicited proposals
14. Issue **non-policy matter opinions**
15. Act as **Procurement Agent**

Pre-qualification/ Quali, Bids and Awards Committee (PBAC) Composition (Min.)



National IAs

1. Chairperson – At least a third ranking IA official
2. Secretary – A legal IA officer
3. IA officer knowledgeable in finance
4. IA officer knowledgeable in procurement
5. IA officer knowledgeable in the management/ operation in the technical aspects or requirements of the PPP Project

Local IAs

1. Chairperson – the Administrator or at least a third ranking permanent official of the local IA
2. IA Treasurer or Accountant
3. IA Planning and Development Coordinator or Engineer of the Implementing
4. Legal officer of the LGU (if none, external legal advisor or higher LGU)
5. A representative from and selected by the local *Sanggunian* or by the LUC Board designated through a resolution

Nos. 2-5: can be external consultants/ entities

PBAC Non-Voting Members and Observers (National)



Non-Voting

1. Statutory Counsel
2. Philippine Competition Commission
3. PPP Center
4. Regulatory Body
5. Facility User

Observers

1. COA
2. SEC-registered association related to PPP Project

PBAC Non-Voting Members and Observers (Local)



Non-Voting

1. Local Economic Development and Investment Promotion officer
2. PPP Center
3. 2 representatives from CSOs, POs, and NGOs (members of the LDC)
4. Regulatory Body

Observers

1. COA
2. DILG Field Unit
3. NEDA Regional Office
4. SEC-registered association related to PPP Project



IA PPP Units

- IA may create PPP Units (planning, overseeing, implementing, and monitoring the PPP Projects)
 - New unit or office
 - Existing unit or committee
- PPP Center to assist

Composition (minimum for National while discretionary for Local; may be outsourced)

1. Senior Official (at least 3rd ranking)
2. Technical – Project Development
3. Technical – Planning
4. Technical – Contract Management
5. Finance
6. Legal

Regulatory Agencies

TRB, CAAP, LTFRB, etc.



Mandate (defined by Charters)

- Issue and publish **guidelines**, frameworks, or mechanisms for consultation, review, and approval of **initial tolls**, fares, fees, rentals, and other charges and adjustments thereof
- Approve and uphold the **initial tolls**, fares, fees, rentals, and other charges and adjustments thereof
- Approve any **decrease in IA revenues or profit**
- Adopt a **conflict mitigation and management plan** if will implement a PPP Project that it regulates
- Approve **Alternative Sources of Funding** like bonds

Considerations

- When **no appropriate regulatory body** – regulation by contract
- LGUs may create a local rate-setting body
- Regulatory action is considered a **contingent liability event**
- **MAGA** includes unanticipated regulatory risks



Courts

- Courts (except the SC) cannot issue temporary restraining order, preliminary injunction, preliminary mandatory injunction, temporary environmental protection order, or similar **temporary or provisional reliefs or remedies**
 - Against any **IA or the PPP Center**, its officials or employees, or any person or entity, whether public or private acting under the government direction
 - Applies in all cases, disputes, or controversies instituted by any **person**, including cases filed by bidders or those claiming to have rights through such bidders
- Not apply when the matter is of **extreme urgency** involving a **constitutional issue**, such that unless a temporary restraining order is issued, **grave injustice and irreparable injury** will arise



Courts: Covered PPP-related Acts

1. Evaluation, acceptance, and rejection of USPs
2. Bidding, rebidding, or declaration of failure of bidding
3. Awarding of any PPP contract
4. Acquisition, clearance, and development of the ROW, site, or location of any PPP Project
5. Construction, operation, and maintenance of any PPP Project
6. Commencement, execution, implementation, termination, or rescission of any PPP contract
7. Undertaking or authorization of any other lawful activity necessary for such PPP Project



(3) Projects



PPP Projects

- **Infrastructure or development projects** and services which are **typically provided** by the **public sector**
- Consistent and responsive to national, local, and sectoral **development and investment plans**
- Part of list **submitted** to appropriate oversight agencies, NEDA, RDC, Sanggunian and the PPP Center
- Included in the **Consolidated List of Investment Programs (CLIPs)**
- All PPP Projects which will **interconnect or interface** with a local or national facility shall be required to submit a MOA containing an interconnection and/or interface plan

Consolidated List of Investment Programs (CLIPs)



Requirements

- All plans must be submitted to NEDA and PPP Center within 30 days from IRR effectivity
- Without prejudice to UPs
- If not submitted, excluded from list of PPP Projects
- Allows for updating of list
- For National Projects: NEDA, RDCs and PPP Center
- For Local Projects: NEDA, RDCs, PPP Center and Local Sanggunian

Information Needed

- Name and brief description of the project
- Indicative Project Cost
- Project location
- Plan or investment program where the PPP Project is included
- Status of the Project
- Development costs
- Recommended objectives, goals and desired outcomes

Infrastructure or Development Projects and Services -

construction, improvement, rehabilitation, repair, and/ or maintenance of facilities or provision of services for **use by the public** that underlie and enable, sustain, and enhance the economic and social development of the country.

PPP PROJECTS

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





29+ Eligible Types of Projects

1. Highways, including expressways, roads, bridges, interchanges, tunnels, viaducts, and related facilities
2. Land transportation systems, including railways, road-based transportation systems, bus rapid transit, high priority public utility vehicle systems, active transportation, transit-oriented developments, public utility vehicle stations, transport plazas, intermodal terminals, park and ride, and related facilities
3. Transport and traffic management projects, including transportation databases, automated fare and toll collection systems, traffic signaling, traffic monitoring systems, traffic enforcement systems, congestion and management systems, and related facilities
4. Port infrastructure like piers, wharves, quays, storage, handling, roll-on roll-off facilities, and other related facilities



29+ Eligible Types of Projects

5. Maritime infrastructure like navigable inland waterways, shipping and ferry services, shipping vessels or components thereof, shipping and freight enterprises, and related facilities
6. Airports, air navigation, and related facilities
7. Power generation, transmission, sub-transmission, distribution, including hydropower plants, and related facilities
8. Downstream oil and gas industry facilities, and other energy-related facilities
9. Energy efficiency and conservation, renewable energy, and electric vehicle charging stations, and related facilities
10. Telecommunications, backbone network, terrestrial, aerial, and space infrastructure, and related service facilities



29+ Eligible Types of Projects

11. Information technology networks and database infrastructure, geo-spatial resource mapping, cadastral survey for resource accounting and planning, and related facilities
12. Irrigation and related facilities
13. Water supply, sewerage, drainage, waste water and water treatment, desalination, and related facilities
14. Educational infrastructure, including technological equipment used to facilitate learning and teaching, and related facilities
15. Health infrastructure, hospitals, clinics, research facilities, clinical laboratories, and other related facilities
16. Multi-purpose water resources projects covering a combination of irrigation, power, water supply, flood control, and related facilities



29+ Eligible Types of Projects

17. Land reclamation, dredging, flood control projects, and related facilities
18. Industrial and tourism estates or townships, including ecotourism projects such as terrestrial and coastal/marine nature parks, among others and related infrastructure facilities and utilities
19. Government buildings, convention centers, and other related facilities
20. Urban redevelopment, townships, and housing projects
21. Heritage preservation and adaptive reuse projects
22. Markets, slaughterhouses, trading posts, and related facilities
23. Warehouses and post-harvest facilities
24. Public fish ports and fishponds, including storage and processing facilities



29+ Eligible Types of Projects

25. Agri-fishery industrial hubs, agribusiness facilities, agricultural research facilities, agricultural estates, agrilogistics systems, contract farming, and related facilities
26. Cold chain systems or centers, and related-facilities
27. Prisons, lease of security-related government assets, O&M of military facilities and equipment, and other national defense or security-related facilities
28. Environmental and solid waste management related facilities such as but not limited to waste collection, transportation and disposal facilities, transfer stations, composting plants, material recovery, landfill, and tidal barriers, among others



29+ Eligible Types of Projects

29. Climate change adaptation and mitigation and disaster risk reduction and management infrastructure projects, biodiversity conservation projects, and related facilities
30. Other Infrastructure or Development Projects and Services, as may be authorized by the IA pursuant to the Code and this IRR, and following applicable laws, rules, and regulations

(Related facilities may include commercial spaces within the project scope)



Value for Money (VfM)

- Effective, efficient, and economic **use of resources**, which requires the evaluation of relevant costs and benefits, along with an assessment of risks, and of non-price attributes and/or life cycle costs, as appropriate.
- **Price alone** may not necessarily represent VfM
- All PPP Projects must yield sufficient VfM
- IAs shall identify, develop, and prepare their respective lists of PPP Projects guided by VfM
- Approving Body shall assess PPP Project based on VfM



(4) Partnership Schemes

Universe of PPP Arrangements



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

PPP RESOURCE EXCHANGE



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

Delineation of Functions
("Division of Labor")



PPP Code-Covered Arrangements

PPP as defined/ satisfies elements or as may be approved by Approving Body

1. Joint Ventures
2. Toll operation agreements or supplemental toll operation agreements, or any contractual arrangements involving the Construction, O&M, or a combination or variation thereof, of toll facilities
3. Lease
4. BOT, BT, BLT, BOO, BTO, CAO, DOT, ROT and ROO
5. Operate and Maintain



10 Exclusions

1. Procurement of Infrastructure Projects (GPRA)
2. Exclusively ODA-Funded Infrastructure Projects
3. Management Contracts which do not possess PPP elements (excludes O&M PPP contracts)
4. Service Contracts (coal service, petroleum, mining, renewable energy and per COA and DBM)
5. Divestments or Dispositions (taking away, depriving, withdrawing of an authority, power or title over a government asset)



10 Exclusions

6. Corporatization or transfer of government assets into a public corporation
7. Incorporation of Subsidiaries with Private Sector Equity
8. Onerous Donations (subject to burdens, charges, or future services equal to or more in value than the thing donated)
9. Gratuitous Donations (disposed by a person without charge, in favor of another who accepts it)
10. JV Agreements and leases involving **purely commercial arrangements** that neither provide nor include public infrastructure or development services



(5) Permissions



Approval of National PPPs

≥ P15B Project Cost

- NEDA Board Approval (120 days) (**non-delegable**)
- NEDA-ICC favorable Recommendation to NEDA Board
- If SUC and no Government Undertaking, Green Lane



Project Cost

Total cost to be expended to **plan, develop, and construct the PPP Project to completion stage**, including cost of Feasibility Studies, engineering and design, construction, equipment, land or right-of-way (ROW), taxes imposed on said cost, and development cost. For this purpose, “completion stage” shall refer to completion of Construction, as defined under the Code and this IRR. For avoidance of doubt, interest charges and other financing costs incurred during Construction shall be considered as part of the Project Cost.

For **O&M PPP Projects without initial capital expenditures**, the present value of costs incurred in delivering the contracted service, including any reinvestment requirements shall be considered as the Project Cost. For this purpose, “initial capital expenditures” shall refer to capital expenditures expended during Construction, as defined under the Code and this IRR. The government borrowing rate shall be the discount rate used in determining the present value of costs incurred in delivering the contracted service, including any reinvestment requirements.



Approval of National PPPs

< P15B Project Cost

- Governing Board, Department or Agency Head (if Attached Agency has no Board) (120 days to decide, approval by inaction)
- NEDA-ICC if PPP Project (**non-delegable**):
 - Physically **overlaps** with government-approved project or developed project per national/ sectoral plans (**same alignment/ catchment**)
 - **Negatively affects** economic benefits, demand, and/or financial viability of government-approved project or developed project per national/ sectoral plans (**PPP project caters to affected markets/ groups**)
 - Requires financial **government undertakings** (*under GAA*)
 - Involves **Availability Payments** (*under GAA*)
 - With Government JV contribution which **exceeds 50%** of its entire assets based on its latest audited financial statements (**and valuation reports by 3rd party Appraisers, development plans, financial performance reports, and management reports**)



Approval of National PPPs

Regardless of Project Cost, Clearance from ...

- PPP Center
 - Assess compliance with the approved PTCs
 - Determination of completeness of unsolicited proposals
- Statutory Counsel - compliance with applicable laws, rules, and regulations
- DOF - National Government Undertaking under the PPP contract



Government Undertakings

Not allowed for Unsolicited Proposals

Any form of contribution and/or support, which the **Government** may extend to a PP for the implementation of PPP Projects:

- Viability Gap Funding and other forms of subsidy
- Payment of ROW related costs (allowed if gov't received appropriate compensation but not lower than value of costs)
- Performance undertaking (undertaking by government other than the IA in assuming responsibility for the performance of the Implementing Agency's obligations under the contractual arrangement including the payment of monetary obligations, in case of default)

Government Undertakings

Not allowed for Unsolicited Proposals



- Additional exemptions from any tax **specifically provided for the PPP Project through a legal issuance other than those provided for by law**
- Guarantee on Demand
- Guarantee on Loan Repayment
- Guarantee on Private Sector Return
- Government Equity (allowed for JVs)

Government Undertakings

Not allowed for Unsolicited Proposals



- Contribution (allowed for JVs) of assets, properties, and rights (compensation shall be considered appropriate if the value of the compensation is at least equal to the value of the contribution or undertaking as determined by a Third-party Appraiser)
- Monetary payment of Contingent Liability through the PPP Risk Management Fund of the national government, in the case of Local PPP Projects
- Credit Enhancements (support to PPP Project and Service contingent upon the occurrence of certain events and/or risks, e.g. government guarantees on the performance, or the obligation of the IA)



Not Government Undertakings

- Availability Payments
- Permits, clearances, licenses, or endorsements from national government agencies required for Local PPP Projects

[Allowed for Solicited Projects and Unsolicited Proposals]



Approval of Local PPPs *Regardless of Project Cost*

- Approved by **Sanggunian** (if LGU) or **Board** (if LUC)
(*non-delegable*)
- Confirmation/ *endorsement* by **LDC** prior to approval
(*30 days, approval by inaction*)
 - Review if aligned/ consistent with local development plans
 - Review project and identify concerns
 - Submit confirmation and results of review



Approval of Local PPPs *Regardless of Project Cost*

- Approved by **NEDA-ICC** (RDC endorsed) - Government Undertakings using national government funds
- Endorsement by **National Government** (through RDC) - Local PPP Projects affecting national or sectoral development plans and national projects (**once RDC endorsement secured, LDC shall endorse**)
- Clearance from **Statutory Counsel** - compliance with approved PTCs and applicable laws
- Clearance from **DOF** - if there is national government undertaking (**prior to LDC confirmation**)



Approval of PPPs: Completeness

- Complete feasibility study
- Traceable economic and financial models in electronic copy
- Proposed parameters, terms, and conditions (PTCs)
- VFM analysis
- Valuation report, as applicable
- Documentation of the stakeholders' consultations conducted, including the participating sector or communities consulted
- Other documents, information, or materials that may be required by the ICC in its approval guidelines, including the forms and templates, needed to commence project evaluation

Complete Feasibility Study



1. Problem Definition/ Objectives
2. Project Description
3. Project Context
4. Sectoral Program
5. Regional and Spatial Context
6. Expected Outcomes and Key Success Indicators
7. Analysis of Technical Solutions
8. Project Costs
9. Legal Due Diligence
10. Demand and Supply/ Market Analysis
11. Market Sounding Feedback (for Solicited)
12. Proposed Tariff Structure
13. Financial Analysis
14. Economic Analysis
15. Social and Environmental Analysis
16. Risk Allocation
17. VfM Analysis (for Solicited)
18. Contractual Arrangement Options
19. Job Creation Information
20. Land Acquisition/ Resettlement Action Plan
21. Heritage Impact Assessment
22. Geotechnical Report
23. Description of Products or Services to be provided
24. Description of the Geographic and Catchment Area

Parameters, Terms & Conditions (PTCs)



1. Project Scope
2. Contractual Arrangement
3. Contract Duration
4. Rights and Obligations of Parties
5. Performance Standards and Key Performance Indicators
6. Safeguards for Government and Public
7. Investment Recovery Schemes
8. Revenue share, if any
9. Government Undertakings
10. Proposed Risk Allocation
11. Contingent Liabilities
12. Bid Parameter
13. Ceiling for Debt-to-Equity Ratio
14. Proposed Public Bidding Process – single or 2-stage (if solicited)
15. Proposed Period for Comparative Challenge (90 days to 1 year)



(6) Procedures

PPP SELECTION REQUIREMENTS

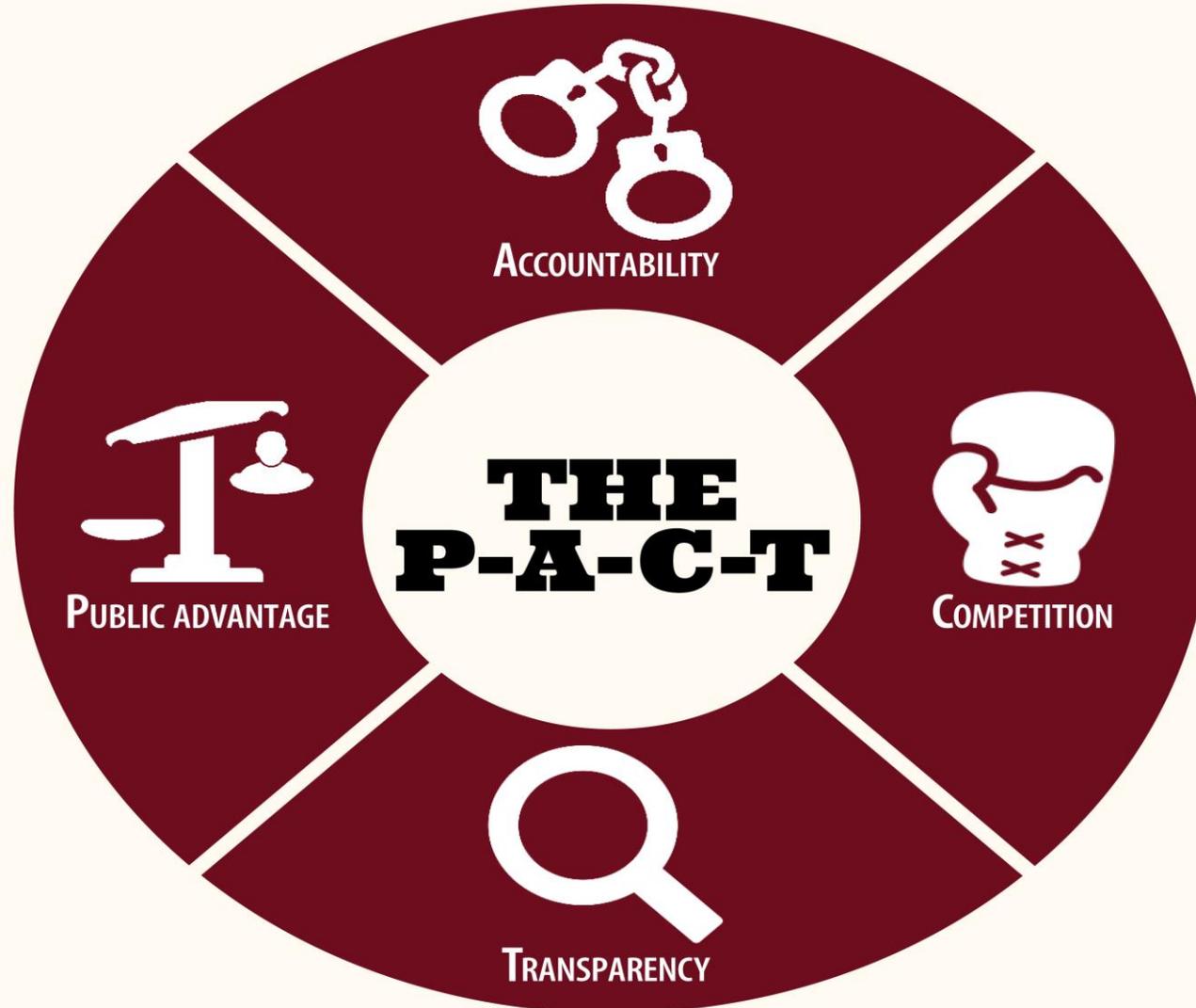


Requirements

1. Open
2. Fair
3. Transparent
4. Competitive

Procedures

1. Solicited/
Bidding
2. Unsolicited/
Challenge





Solicited Project: **Tender Documents**

- Instructions to Bidders
- Draft PPP contract reflecting the PTCs as approved by the appropriate Approving Body
- “Bid Form” reflecting the required information to properly evaluate the bid proposal
- Forms of bid and performance securities
- Requirements and timelines/ milestones of agencies concerned in granting of franchise, if applicable
- Other documents as may be deemed necessary by the IA



Solicited Project

- Public bidding initiated by IA
 - Stages: Single-Stage or Two-Stage (qualification requirements and/ then bid proposals – sequential or simultaneous)
 - Manner: Manual or Electronic
 - IA right to reject any and all bids, waives any defect which do not constitute a material deviation, reservation or omission
- Private Partner/ Awardee
 - Satisfies all pre-qualification and eligibility requirements
 - Submitted the most responsive bid to the bid parameter proposed by the IA (next most responsive)
 - Complied with PTCs
 - Allows substitution in composition of pre-qualified PP prior to bid submission (substitute has equal or better qualified)



Solicited Project: Most Responsive Bid

Highest

- Payment to Government (Revenue-based)
- Share in Revenues (JV)
- Rental Payment to Government (IA as Lessor)

Lowest

- Government Subsidy/ Support
- Tariff by End-User
- Rental Payment by Government (IA as Lessee)

MRB: bid that conforms, in all material respects, to the bid solicitation requirements and approved bid parameters, and the one that is most advantageous to the government



Solicited Project

Failure of Bidding

- No bids are received
- No eligible bidder
- No complying bids
- Winner bidder refuses to accept award
- IA unable to execute PPP Contract
- Non-agreement on resulting terms after negotiations when single complying bid

Single Complying Bid

- After advertisement
 - >1 bidder applied for pre-qualification but only 1 met the pre-qualification requirements
 - 1 bidder applied for and met the pre-qualification requirements
- After pre-qualification
 - >1 bidder, only 1 submitted a bid
 - >1 bidder submitted bids but only 1 compliant

Unsolicited Proposal (USP): 7 Stages

PPP Code and IRR



- USP Completeness
- Appropriate Approving Body
- If complete, endorsed to Implementing Agency (IA)
- No decision = USP incomplete

- Successful (or failed) negotiations
- If successful, PP conferred Original Proponent Status (OP) valid for 1 year
- USP and PTCs submitted to Approving Body for approval (120 c. days)*
- If Local PPP, LDC endorsement (30 c. days)*

- Awarded to OP (no challenger or OP able to match superior offer) or Challenger (OP not match)
- NOA subject to conditions (20 days)

(1) Private Proponent (PP) prepares USP

(2) PPP Center checks USP (10 c. days)

(3) IA undertakes Detailed Evaluation (90 c. days)*

(4) IA and PP negotiate (30 – 80, ≥150 c. days)

(5) IA conducts Competitive Challenge (90-365 c. days)

(6) IA issues Notice of Award (NOA) (7 c. days)

(7) IA and PP execute PPP Contract (5 c. days from notice)

PP submits to PPP Center

IA accepts or rejects

Right to Match by OP

PP compliance with conditions

* = approval by inaction

USP Completeness



1. Complete Feasibility Study
2. Traceable Economic and Financial Models
3. Minimum Parameters, Terms and Conditions
4. Certification that USP has no Government Undertakings
5. Valuation Report
6. Proposed IA
7. Information on the qualifications of the Private Proponent
8. Draft PPP Contract
9. Project Site Plan
10. If UP involves ROW, ROW and resettlement plan

Information: not older than 3 years from submission (for valuation report, not older than 1 year)



(7) Pact

PPP Contract



- The law between the parties and the parties shall perform their respective **prestations, obligations, and undertakings** thereunder with **utmost good faith** with the end in view of **attaining the objectives** hereof.
- Once a PPP Contract is executed by the PP and the IA, a presumption arises that the **public interest** will be served by the implementation of the PPP Project covered thereby, and immediately upon application by the PP in accordance with the guidelines of the Regulatory Body concerned.

Mandatory Provisions in a PPP Contract



1. specific contractual arrangement, term, and scope of work
2. minimum performance standards and specification
3. KPIs (to measure the progress or success of the PP), targets, and procedures for measuring and reporting results
4. implementation milestones, including those for securing other approvals and the project completion date
5. cost recovery scheme via proposed tolls, fares, fess, rentals, and other charges, as the case may be
6. obligation of the PP to disclose loan or financing documents

Mandatory Provisions in a PPP Contract



7. liquidated damages
8. performance security requirements, including their validity and top-up mechanism procedures, contemplated under this IRR
9. minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workmen's compensation, third party liability, force majeure, or comprehensive general liability insurance, as may be applicable
10. acceptance tests and procedures
11. warranty period and procedures (after transfer) and warranty security
12. lock-in periods, as applicable

Mandatory Provisions in a PPP Contract



13. grounds for and effects of contract termination, including formula for termination payment
14. conditions and procedures for lender step-in rights
15. conditions for acceptable permitted security interest
16. manner and procedures for the resolution of corruption
17. procedures for resolving disputes as detailed in this IRR
18. wind-up and transfer measures
19. compliance with all other applicable laws, rules, and regulations

Mandatory Provisions in a PPP Contract



20. total cost of the project, project specifications and features
21. Gender, social, disability and environment safeguards
22. provisions on the use of dispute avoidance and ADR mechanisms
23. ownership or retention of patents, technology and consultant reports
24. monitoring, evaluation and reporting scheme/ plan for all safeguard-related mandatory provisions of the PPP Contract
25. a period within which Financial Close shall be achieved by the PP

21 Important PPP Code Provisions



1. Risk Allocation
2. Sources of Financing
3. Financial Close
4. Investment Recovery Schemes
5. Tolls, Fares, Fees, Rentals and Other Charges
6. Availability Payments
7. Reasonable Rate of Return
8. Land Value Capture Strategies
9. Contingent Liability
10. Viability Gap Funding
11. 3 Guarantees
12. Subsidy
13. Government Undertakings
14. Divestment and Lock-in
15. **Government Takeover**
16. Wind-Up and Transfer Measures
17. Alternative Dispute Resolution
18. Material Adverse Government Action
19. Variation, Expansion or Extension
20. Termination
21. Accountability/ Liability



Risk Allocation

- **Equitable and optimal risk allocation** between/ among the PPP Parties
- **Each party** shares in the associated risks
- NEDA-ICC shall publish the **Generic Preferred Risk Allocation Matrix (GPRAM)**
- **All PPP contracts** to be entered into by the IA shall adhere to the principles stipulated under the GPRAM, to the extent applicable
- Any **deviations** to the preferred risk allocation shall be justified by the IA and approved by the appropriate Approving Body
- Adoption of **contract management and risk mitigation plans** (*execution plan, all risks assumed by the government under the PPP contract, risks assumed by the IA, risk mitigating measures, estimated costs to be incurred, target timeline to have each measure in place, and the appropriate action plan by the IA to manage each type of risk*)



Sources of Financing

Private

- Solely or partially
- Debt and Equity
- Project Finance

Government

- Direct government appropriations
- Official Development Assistance

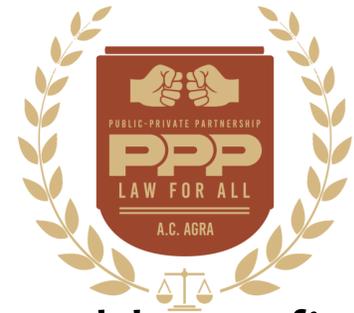
Blended Financing

- Partner government, bilateral or multilateral agency, local or international quasi-sovereign entities or international or multilateral lending institution
- May mobilize financing from private or commercial institutions for one or more components of a PPP Project
- Procurement activity under GPRA



Financial Close

- Specific milestone in a PPP contract where the PP successfully secures all necessary project and **financing agreements**
- The achievement of such milestone confirms that all prior **conditions have been met**, allowing the PP to **draw down** the financing to commence work on the PPP Project
- Period stated in **PPP contracts**
- **Failure** to achieve Financial Close within such period, without the fault of the government, shall subject the PP to **penalties** under the signed PPP contract



Investment Recovery Schemes

Private Partner shall be allowed to recover its investments and earn reasonable profit

1. Revenue-based - refers to a scheme where the PP is authorized to charge and collect, in whole or in part, from the users **reasonable tolls, fares, fees, rentals, and other charges** subject to appropriate regulation; Where applicable, the PP may likewise be repaid in the form of a share in the revenue of the PPP Project
2. Availability-based - refers to a scheme where the IA commits to make **predetermined payments**, which do not take the form of charges paid by the users of the works or of the service, but of regular payments by the IA in **exchange of delivering an asset or service** in accordance with the PPP contract.
3. Supplementary/ Other investment recovery schemes:
 - a) Commercial **development rights**
 - b) Grant of a portion or **percentage of a reclaimed land**, subject to the constitutional requirements on land ownership and fair valuation



Tolls, Fares, Fees, Rentals and Other Charges

- **Initial** tolls, fares, fees, rentals, and other charges and adjustments thereof shall be as stipulated in the PPP contract (for revenue-based investment recovery scheme)
- **Regulatory Agencies** to issue **guidelines, frameworks, or mechanisms** for consultation, review, and approval of said initial tolls, fares, fees, rentals, and other charges and adjustments thereof
- In the case of Local PPP Projects, the IA may also opt to create and establish a **local rate setting body**
- **Changes** in tolls, etc. must be approved by Approving Body



Reasonable Rate of Return (RRoR)

- **Net gain of an investment** over a specified time period, expressed as an annualized percentage as prescribed by the appropriate Approving Body and reflected in the PPP contract
- Where the realized rate of return exceeds the prescribed RRoR, the **excess** shall be remitted to the National Treasury (“Clawback”)
- **Setting of RROR shall:**
 - Only be applicable to **single complying and responsive bids for a Solicited Project**
 - Consider **prevailing market conditions, risks** to be assumed by the PP, and **duration** of the project
- Prescribed by **Approving Body** and stated in **PPP Contract**
- Considered by Regulatory Agency in assessment of **public interest**



Contingent Liability

- An obligation that may arise from events specified in a PPP contract, the occurrence, timing, and amount of which are **uncertain**
 - Regulatory action
 - Force majeure
 - Breach of government warranties
 - Material Adverse Government Action (MAGA)
 - Others
- Payment of CL from PPP Risk Management Fund



Divestment

By IA

- Divest ownership, rights or interest in a PPP Project (*full or partial*)
- Approval of Approving Body

By PP

- Divest ownership, rights or interests in a PPP Project
- Approval of IA
- After a holding or lock-in period as indicated in the PPP contract
- New PP must have equal or better qualifications as previous PP

Government Takeover

Temporary

- During a temporary takeover, the IA shall retain the tolls, fares, fees, rentals, and other charges from the PPP Project and shall be responsible for the corresponding costs to rectify, operate and maintain the PPP Project
- Contract term shall be suspended until the PPP Project or operations thereof is returned to the Private Partner
- When returned to PP
 - Compensation due to the PP
 - Adjustment of KPIs to the extent that defects in the PPP Project cannot be rectified
 - Warranty in favor of the PP that the PPP Project is capable of meeting the KPIs as adjusted



Permanent

- Private Partner shall be entitled to claim Termination Payments
- Minimum period to be defined in the PPP Contract from the date of receipt by the Private Partner of a written takeover notice shall be deemed to be a permanent takeover



Alternative Dispute Resolution

- Include provisions on the use of dispute avoidance and ADR mechanisms (*Republic Act No. 9285 otherwise known as the “Alternative Dispute Resolution Act of 2004*)
- Contracting parties shall be given complete freedom to choose which ADR mechanisms

Material Adverse Government Action (MAGA)



- Any act of the government which the PP had no **knowledge** of, or could not be reasonably expected to have had knowledge of, prior to the effectivity of the PPP contract, and that **occurs after the effectivity** of the PPP contract, other than an act which is authorized or permitted under the PPP contract, which:
 - specifically **discriminates** against the sector, industry, or project, and
 - has a **significant negative effect** on the ability of the PP to comply with any of its obligations under the approved PPP contract
- MAGA may include **unanticipated regulatory risks**
- CL covered by National/ LGU Risk Management Fund



Termination

PPP contract shall:

- Define **all events** that may lead to its termination, including but not limited to, either party event of default, force majeure and other no-fault termination events, and other termination events, as may be agreed upon by the parties to the PPP contract.
- Provide for **remedies**, curing periods, lender step-in rights, remittance procedures, default interest rates, and written notice requirements agreed upon by both parties
- Indicate the **Termination Payment** (amount payable by the government or the PP on the occurrence of an event or series of events)

Restrictions

- No termination without **exhausting** the corresponding remedy or curing period
- **Termination** shall take place only upon failure to remedy or cure the default in accordance with the PPP contract



“Amendments”

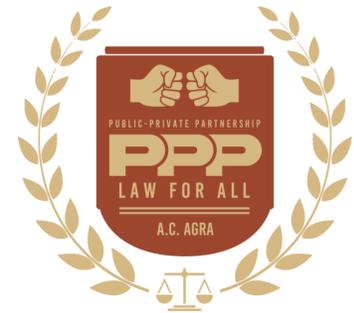
PPP Contract Variation, Expansion or Extension

- a. Changes in the agreed **schedule** or **parametric formula** to calculate tolls, fares, fees, rentals, and other charges and adjustments thereof, as stipulated in the PPP contract
- b. Decrease in the **IA’s revenue or profit share** derived from the project, except as may be allowed under a formula approved by the relevant regulatory or Approving Body
- c. Change in the approved **scope of works**, decrease in the performance standards, deferment of committed service levels or change in the contractual arrangement
- d. Extension in the **contract term**
- e. **Any variation that will result in an increase in the financial liabilities** of the government under the PPP Project
- f. **Any allowable amendments and waivers which have same effect or consequence as (a) to (e)**



Accountability

- **All PPP contracts** - clearly **define the scope** of each party's accountability under the PPP contract
- **IA Head** shall at all times be accountable to PPP Projects
- **PP** shall likewise be held accountable for the works it has delivered and services it has rendered for a PPP Project



Audit

IA/ Government

- All **revenues**, share, and/or receipts pertaining to or accruing to the IA or to the government, derived from any PPP Contract
- including expenditures or uses of funds and property, owned or held in trust by the Government
- shall be subject to examination/audit by **COA**,
- for purposes of ensuring that such revenues, share, and/or receipts are **fully and properly accounted for and remitted** to the IA or the government

Private Partner

- All revenues and receipts pertaining to or accruing to the PP in a PPP arrangement
- may be remitted directly to the PP
- as may be stipulated in the contract and subject to applicable laws, rules, and regulations



Liability

- Imprisonment (3 – 6 years) and fine (P1M – P5M)
 - **Downgrading** the category of the Project Cost for purposes of evading the required approvals
 - Submitting of any **false information** or falsified documents
 - Neglecting or refusing to act upon an USP within the **prescribed period**
 - Performing any act which restricts **transparency** or tend to restrain the natural rivalry of parties or operates to stifle or suppress competition in the PPP process
 - **Withdrawing a bid**, after it shall have been declared the winner, or refusing award, without just cause for the purpose of forcing the IA to award the PPP contract to another bidder
 - **Violating provisions** on Approval of Projects, Solicited and Unsolicited Proposals, JVs, Amendments, Divestment, Conflict of Interest, Confidentiality of Information
- Anti-Graft and Corrupt Practices Act



Proposed Guidelines on JVs and Leases for Purely Commercial Arrangements

“Purely Commercial” Defined

Coverage. The [•] Guidelines shall apply to all JVs and leases between the [•] and PPs:

- a. Involving purely commercial arrangements that **neither provide nor include public infrastructure or development services;**
- b. For projects such as, but not limited to, **shopping malls, paid parking, commercial office spaces, private buildings, retail or wholesale spaces, casinos, industrial or warehouse spaces, condominium development, entertainment centers, non-socialized housing units, golf courses and real estate development,** with no public infrastructure or development services;
- c. For projects or activities where [•] or Government shall **not charge any tariff or user fees** by the end users or the public;
- d. Where the property of [•] or activity will **solely be used by, or benefit, the PP or is limited to pre-defined users,** and no component thereof shall be for public use;
- e. Where the **use of the property** by [•] is **optional** and subject to **commercial rate charges** applicable to pre-defined users;
- f. In arrangements where the **use or entitlement** of [•] over the property or portion thereof is the **consideration under the JV or lease contract;** and
- g. Where the property or activity will have **no component** falling under eligible projects under the IRR of R.A. No. 11966 unless the same falls under any of the above considerations and activities.

Comparison



Features	PPP Code/ IRR	AA Guidelines/ LGU Ordinance
/NEDA Board or ICC approval	<ul style="list-style-type: none"> ○ MMDA - Project Cost \geqP15B: NEDA-Board ○ MMDA - Project Cost $<$P15B: MMDA ○ MMDA - Project Cost $<$P15B with certain conditions: NEDA-ICC ○ LGU - Government Undertakings: NEDA-ICC 	AA Board/ Sanggunian as Approving Bodies in all instances
PPP Center	<ul style="list-style-type: none"> ○ USP submitted to PPP Center ○ PPP Center determines if USP complete 	<ul style="list-style-type: none"> ○ USP submitted to AA/ LGU ○ AA/ LGU determines if USP complete
Procedures	Solicited and Unsolicited	Solicited and Unsolicited
Timelines	Prescribed/ mandated periods (Completeness, Evaluation, Negotiations, Challenge, etc.)	To be determined by the AA/ LGU
Government Undertakings	Only allowed for solicited projects (not for USPs)	Allowed for Solicited Projects and USPs
Rate of Return Excess	<ul style="list-style-type: none"> ○ Remitted to National Treasury ○ Trust Fund created 	Shared between AA/ LGU and Private Party

You may now download this presentation from the website.



www.albertocagra.com



09175353823



alberto agra



attyagra



alberto.c.agra@gmail.com

Together, let us learn-unlearn-relearn.

Thank you.