



The PPP Code and its **IRR**

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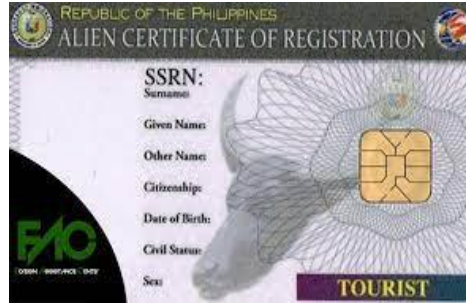
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PPP Projects Everywhere



Presentation Flow: 7 Ps



1
Policies

2
Parties

3
Projects

4
Partnership
Schemes

5
Permissions

6
Procedures

7
Pact



(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 will take effect.

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	Repealed or modified accordingly 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IRR: Repealed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	Repealed or modified accordingly 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IRR: Repealed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	Repealed or modified accordingly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	Repealed or modified accordingly
<i>Existing Contracts</i>	Governed by the agreements (<i>PPP Code suppletory application</i>)

LGU Legislative Authority



“Upon effectivity of this Code, **no other JV guidelines, PPP guidelines, codes, or ordinances, whatsoever may be enacted, issued and/or used by any government entity to enter into PPPs, except those that are enacted, issued, and/or used in accordance with this Code and its IRR.**” (*Last paragraph, Section 35, PPP Code*)

- Under the **Principle of Subordinate Legislation and Hierarchy of Policies, AA guidelines/ LGU ordinances must not be inconsistent** with statutes such as the PPP Code.
- This is an **implied restriction** in local legislation and rule-making.
- AAs/ LGUs can issue guidelines/ enact ordinances on **specified PPP arrangements** that **not covered** the PPP Code.



(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**.

Nature of PPPs



Aspects:

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



Rationale of PPP

Private Sector

- Indispensable role
- Mobilize its resources
- Financing

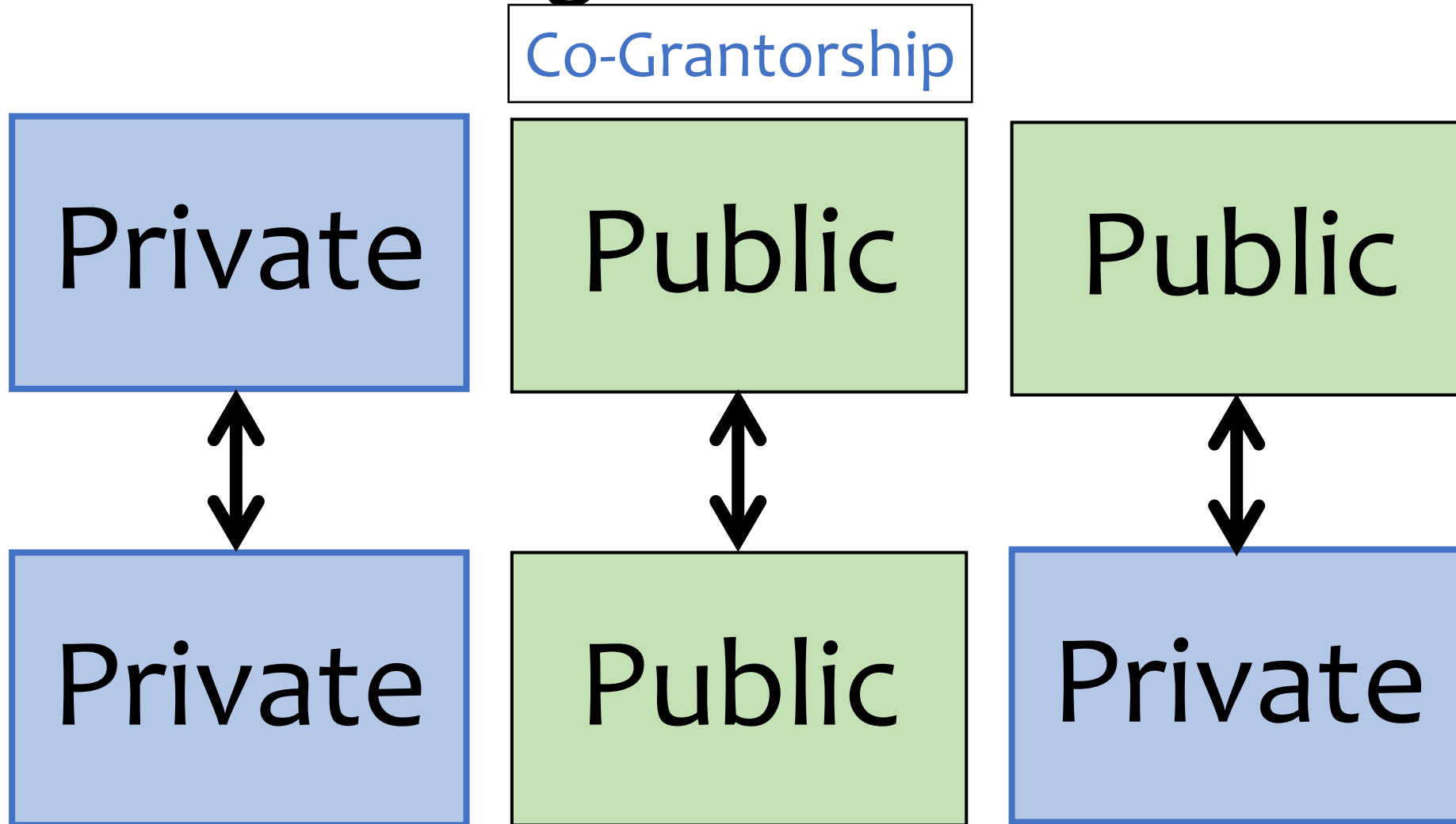
Impact and Values

- Public interest
- Better quality of PPP Projects
- LGU local autonomy
- Program Integration
- Open, fair, transparent, and competitive selection



(2) Parties

3 Levels of Arrangements



Implementing Agencies: *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-LGU

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

National IA and LGU

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



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

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.)**



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

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

PBAC Non-Voting Members and Observers



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 PBAC: Functions



- Responsible for all aspects of pre-bidding and bidding process in solicited proposals
 - preparation of the tender documents
 - publication of the Invitation to Pre-qualify and Bid
 - pre-qualification of prospective bidders
 - conduct of pre-bid conferences and issuance of supplemental notices
 - interpretation of the rules regarding the bidding
 - conduct of bidding
 - evaluation of bids
 - resolution of disputes between bidders
 - recommendation for the acceptance of the bid and/or for the award of the PPP contract



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



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 (evaluation to selection to award to implementation)**
 - 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



(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 |  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 |

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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 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



Delineation of Functions
("Division of Labor")

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



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 or NGPA)
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 Local PPPs *Regardless of Project Cost*

- Approved by **Sanggunian** (**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
- **LGU Legal Officer**
- **NEDA-ICC** if with Availability Payment (from GAA) and Government Undertakings
- 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**)



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)



2 Required Traceable Models

Economic Model

1. Assumptions
2. Economic Benefits and Costs
3. Conversion of Financial Costs to Economic Costs
4. Calculation of Economic Viability (economic internal rate of return; economic net present value; benefit-cost ratio)

Financial Model

1. Assumptions
2. Balance Sheet
3. Income Statement
4. Cash Flows (full life)
5. Calculations on Financial Viability (debt service coverage ratio, free cash flows to firm and equity holders; project and equity internal rates of return; project and equity net present value; and weighted average cost of capital)



Government Undertakings

Not allowed for Unsolicited Proposals

- Viability Gap Funding
 - Subsidy
 - Payment of ROW related costs
 - Performance undertaking
 - Additional exemptions from any tax
 - Guarantee on Demand
 - Guarantee on Loan Repayment
 - Guarantee on Private Sector Return
 - Government Equity (allowed for JVs)
 - Contribution (allowed for JVs)
 - Monetary payment of Contingent Liability
 - Credit Enhancements
- Not GUs:
- Availability Payments
 - Permits from national government agencies for Local PPP Projects

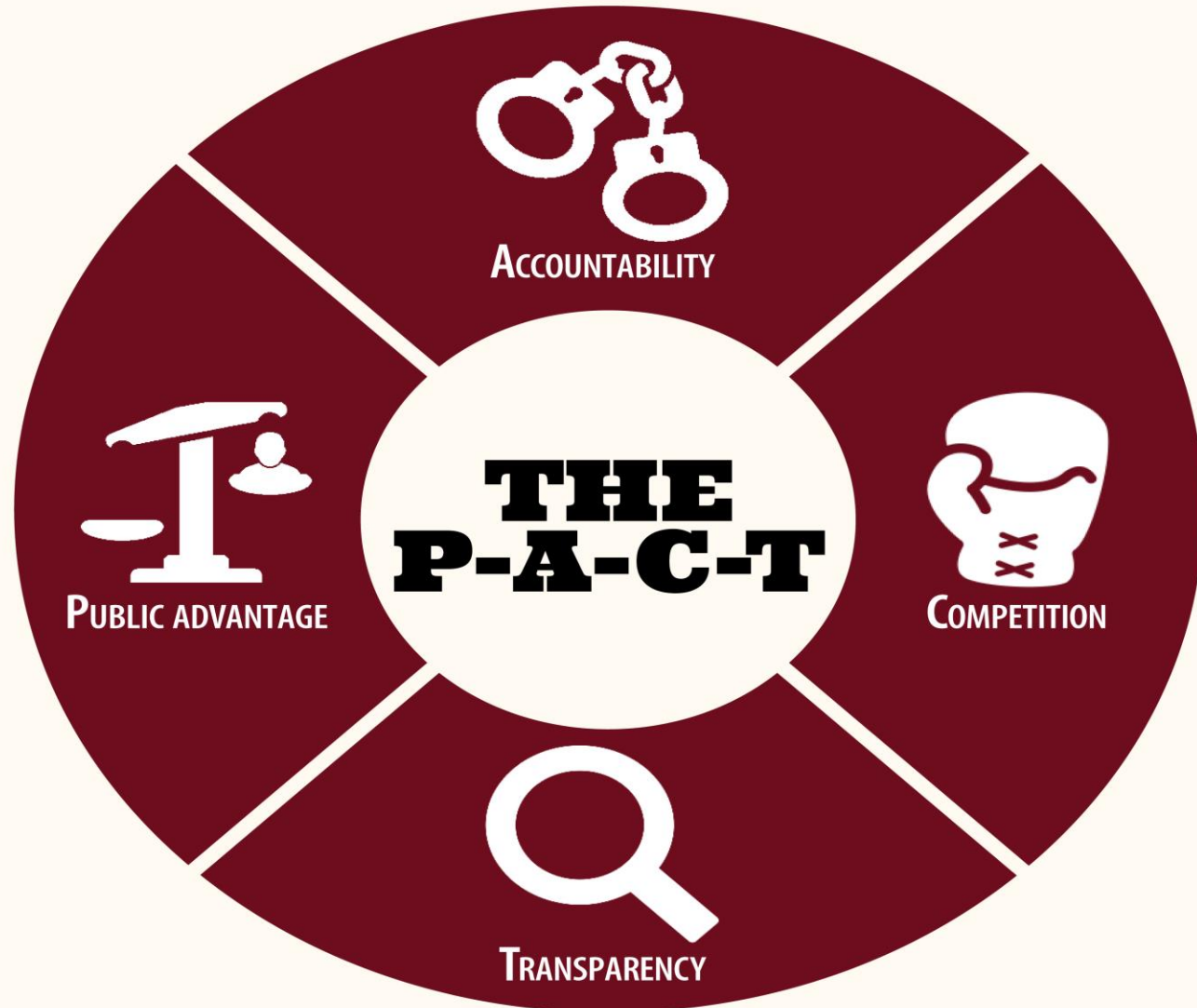


(6) Procedures

PPP SELECTION REQUIREMENTS



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





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 x 2)*

(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:
1st 90: Continues or not
2nd 90: Accepts or rejects

Right to Match by OP

PP compliance with conditions

* = approval by inaction



(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



“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)



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 Amendments to PPP Ordinance: JVs and Leases for Purely Commercial Arrangements



PPP Code and IRR Application

Covered	Not Covered
<ul style="list-style-type: none">○ Joint Ventures○ Leases○ Operations and Maintenance○ Build-Operate-Transfer, etc.	<ul style="list-style-type: none">○ JVs for purely commercial purposes○ Leases for purely commercial purposes○ Divestment○ Donations○ Procurement○ Corporatization

PNOC can issue its guidelines on:

1. PPP arrangements covered under the PPP Code for as long as not inconsistent with the PPP Code, and
2. PPP arrangements not covered under the PPP Code even if inconsistent with the PPP Code.

Purely Commercial Arrangement



Not for Public Use

Malls, Commercial
Office, Warehouse,
Condominiums,
etc.

Tariff-free

3rd Party Single/
Defined-Use

Use of
Improvement by
IA

Optional Use
subject to
Commercial Rates

Unsolicited Proposal (USP): Ordinance



- LGU determines completeness
- LGU accepts or rejects
- If/ when LGU accepts, PP becomes Original Proponent

- LGU issues Notice of Award

(1) Private Proponent (PP) prepares USP

(2) LGU evaluates

(3) LGU and PP negotiate

(4) LGU conducts Competitive Challenge

(5) LGU and PP sign contract





Right to Match by OP

Comparison



Features	PPP Code/ IRR	PPP Ordinance Amendments
NEDA Board or ICC approval	<ul style="list-style-type: none"> ○ NEDA-ICC: Availability Payment (GAA) ○ LDC: Prior endorsement ○ National Government/ RDC: If LGU project affects national/ sectoral plans 	LGU is the Approving Body in all instances
PPP Center	<ul style="list-style-type: none"> ○ USP submitted to PPP Center ○ Determines if unsolicited proposal complete 	<ul style="list-style-type: none"> ○ USP submitted to LGU ○ LGU determines if USP complete
Study	Complete Feasibility Study	FS, Pre-FS or Business Case
Procedures	Solicited and Unsolicited	Solicited and Unsolicited
Timelines	Prescribed periods (Completeness, Evaluation, Negotiations, Challenge, etc.)	N/A
Government Undertakings	Only allowed for solicited projects (not for unsolicited)	Allowed for Solicited and Unsolicited
Rate of Return Excess	<ul style="list-style-type: none"> ○ Remitted to National Treasury ○ Trust Fund created 	Shared between LGU and Private Party



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Together, let us learn-unlearn-relearn.
Thank you.