



Public-Private Partnerships

The PPP Code and its **IRR**

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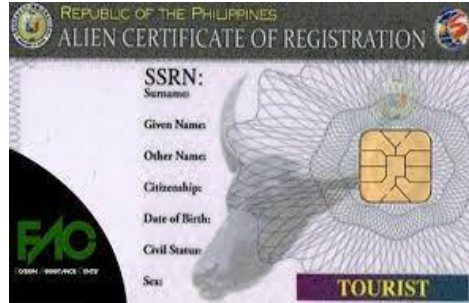
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13 December 2024

PPP Projects Everywhere



Presentation Flow: 7 Ps



1
Policies

2
Parties

3
Projects

4
Partnership
Schemes

5
Permissions

6
Procedures

7
Pact

Quizzer: True or False



1. All arrangements between Government and a Private Company are covered under the PPP Code.
2. All PPPs must be approved by NEDA.
3. Government Subsidies are allowed for all PPP projects.
4. Lowest price is the only basis for awarding a project to a bidder.
5. Your resource person can be a voting member of a PBAC.
6. Unsolicited proposals are submitted to an Agency.
7. PPP Contracts cannot be amended.



(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	Repealed or modified accordingly 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IRR: Repealed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	Repealed or modified accordingly 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IRR: Repealed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	Repealed or modified accordingly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	Repealed or modified accordingly



(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



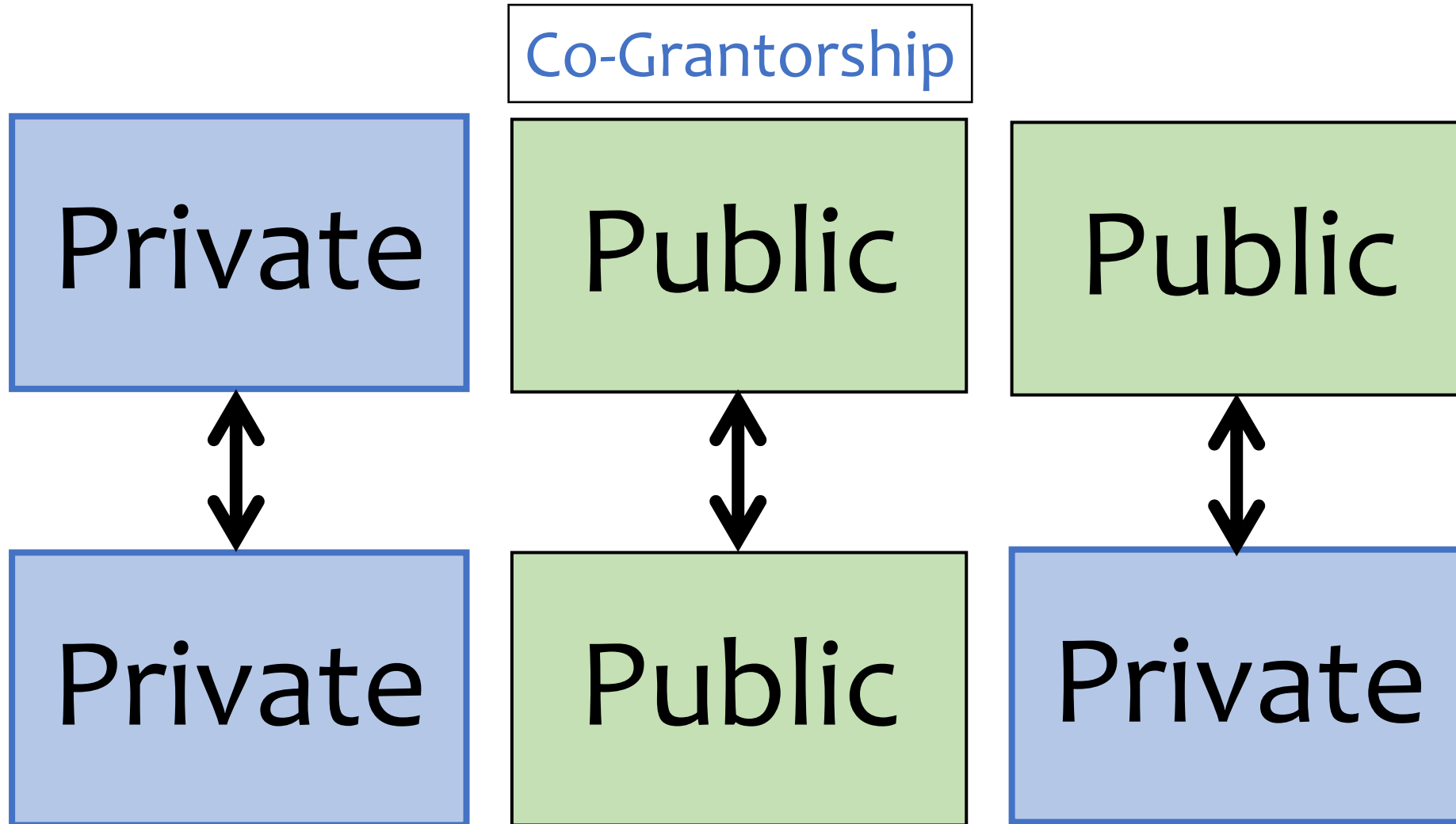
Rationale of PPP

- **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



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)**

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**

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



(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

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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BM GRAPHICS: JOB RUZGAL





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



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 (NGPA or 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

\geq 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**):
 1. Physically **overlaps** with government-approved project or developed project per national/ sectoral plans (**same alignment/ catchment**)
 2. 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**)
 3. Requires financial **government undertakings** (*under GAA*)
 4. Involves **Availability Payments** (*under GAA*)
 5. 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**)



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



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
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)

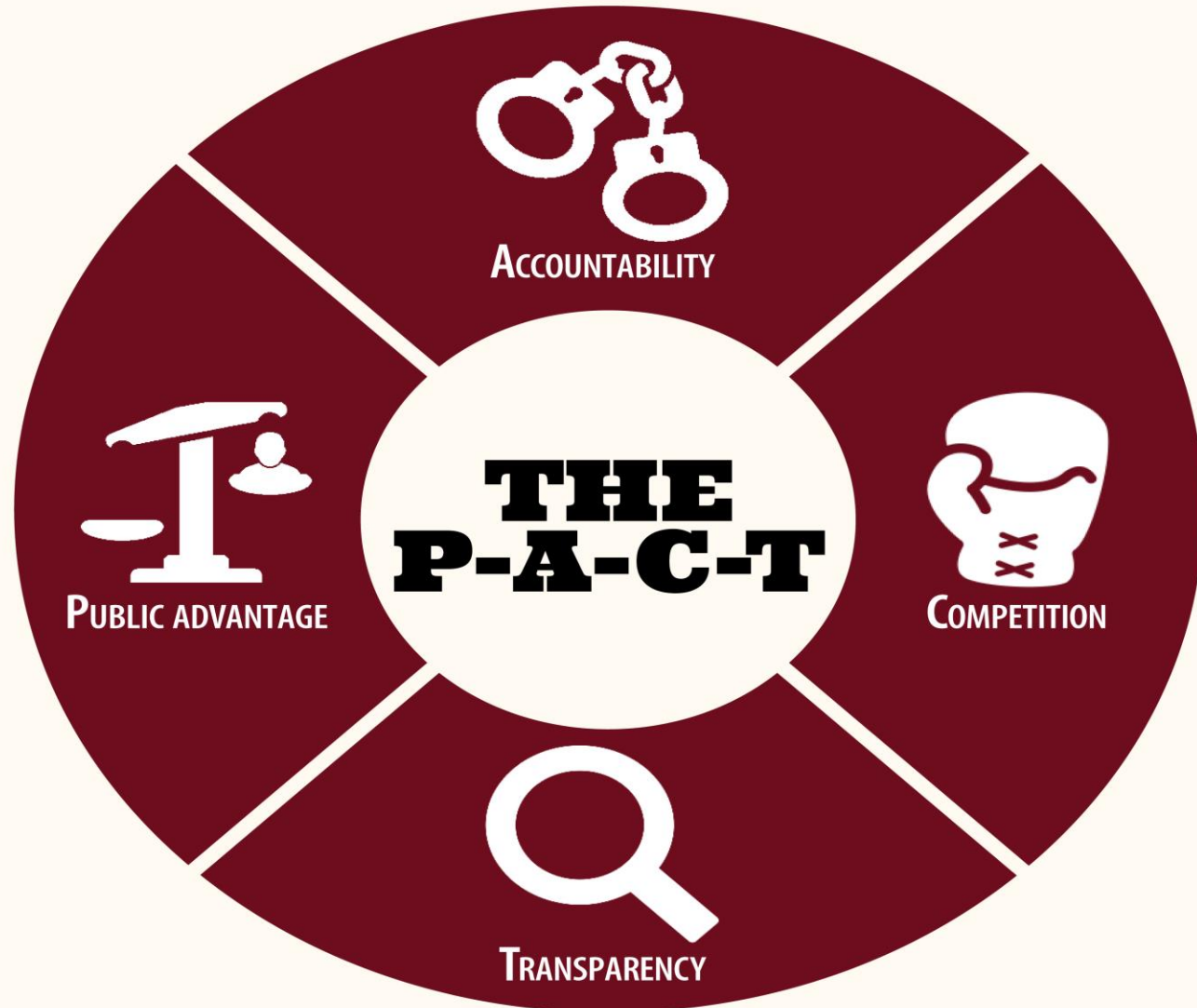


(6) Procedures

PPP SELECTION REQUIREMENTS



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: 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

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



22 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. Audit
22. 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

Audit

- Projects subject to Government Auditing Code and 2009 COA Revised Rules of Procedure
- COA, in coordination with PPP Center, to issue PPP Audit Guide
- Audit of Revenues and Receipts
 - Implementing Agency
 - Including share and expenditures
 - Subject to audit by COA: ensure proper accounting and remittance
 - Private Partner
 - Remittance
 - Subject to relevant laws and regulations



5 PPP AUDIT SCHEMES



**PUBLIC GOOD
AUDIT**



**REGULARITY
AUDIT**








**PERFORMANCE
AUDIT**



**FORENSIC
AUDIT**



**PARTICIPATORY
AUDIT**

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Thank you.

