



*Public-Private Partnership Opportunities
for the Presidential Communications Office
and its Attached Agencies*

The PPP Code and its **IRR**

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PPP or not?



Quizzer: True or False



1. All arrangements between Government Agencies and Private Companies 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 1st submitted to Agencies.
7. PPP Contracts cannot be amended.

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 became effective.



(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
- Resource Mobilization
- Public Interest
- Financing infrastructure
- Better Quality
- LGU Local Autonomy
- Program Integration
- Open, Fair, Transparent, and Competitive Selection

Infrastructure Projects: Procurement or PPP



Aspects	Procurement	Public-Private Partnership (PPP)
Governing Law	RA 12009 (2024)	RA 11966 (2023)
Role of Government	Procuring Entity (Procurer/ Buyer)	Implementing Agency (Partner/ Implementer)
Role of Private Sector	Contractor/ Builder	Partner (Financier, Builder and Operator)
Ownership of Project	Government/ Procuring Entity	Government (Transfer) or Private Sector (Divestment)
Funds Involved	Public Funds to Procure	Private Capital to Finance (Public Funds for Government Undertaking, Contribution or Availability Payment allowed)
Inputs	Specifications by Procuring Entity	Minimum Parameters, Terms and Conditions
Modes/ Arrangements	1 (Procurement of Infrastructure)	13 (JV, Lease, Build-Operate-Transfer, etc.)
Selection Procedures	12 (Bidding, Dialogue, Limited Source, Negotiated, Small Value and Design-Build, etc.)	3 (Solicited, Unsolicited and Negotiations)
Financial Parameter	Price, Quality, Most Advantageous	Most Responsive/ Advantageous (Highest or Lowest)
Payment to Private	Contract Price	Investment Recovery Schemes/ Reasonable Rate of Return
Approving Bodies	Head of Procuring Entity	NEDA Board/ ICC, Agency Head, Board or Sanggunian
Overall Policy-Making/ IRR/ Secretariat	Government Procurement Policy Board and TSO-DBM	PPP Governing Board and PPP Center



(2) Parties

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

Presidential Communications Office



1. APO Production Unit
2. Bureau of Communications Services
3. Intercontinental Broadcasting Corp (IBC-13)
4. National Printing Office
5. News Information Bureau
6. People's Television Network Inc (PTV)
7. Philippine Information Agency
8. Philippine Broadcasting Service - Bureau of Broadcast Services
9. Presidential Broadcast Staff - Radio Television Malacañang

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
- **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**

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



(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
- Yields **Value-for-Money** (Effective, Efficient and Economic use of resources)
- 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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29+ Eligible Types of Projects

1. Highways
2. Land transportation systems
3. Transport projects
4. Port infrastructure
5. Maritime infrastructure
6. Airports
7. Power
8. Energy efficiency
9. Telecommunications
10. Information Technology
11. Irrigation
12. Water
13. Educational infrastructure
14. Health infrastructure
15. Multi-purpose water resources
16. Land reclamation
17. Industrial and tourism estates
18. **Government buildings**
19. **Urban redevelopment**
20. Heritage preservation
21. Markets
22. Warehouses
23. Public fish ports
24. Agri-fishery industrial hubs
25. Cold chain systems
26. Prisons and national defense or security-related facilities
27. Solid waste management
28. Climate change adaptation
29. **Other Infrastructure or Development Projects**



(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		



13 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

\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



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**)



Government Undertakings

Not allowed for Unsolicited Proposals

- Viability Gap Funding
 - Subsidy
 - Payment of ROW
 - Performance undertaking
 - Additional tax exemptions
 - Guarantee on Demand
 - Guarantee on Loan Repayment
 - Guarantee on Private Sector Return
 - Government Equity
 - Contribution of assets
 - Monetary payment of Contingent Liability
 - Credit Enhancements
- Not GU:

 1. Availability Payment
 2. National Permits for Local PPPs



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)

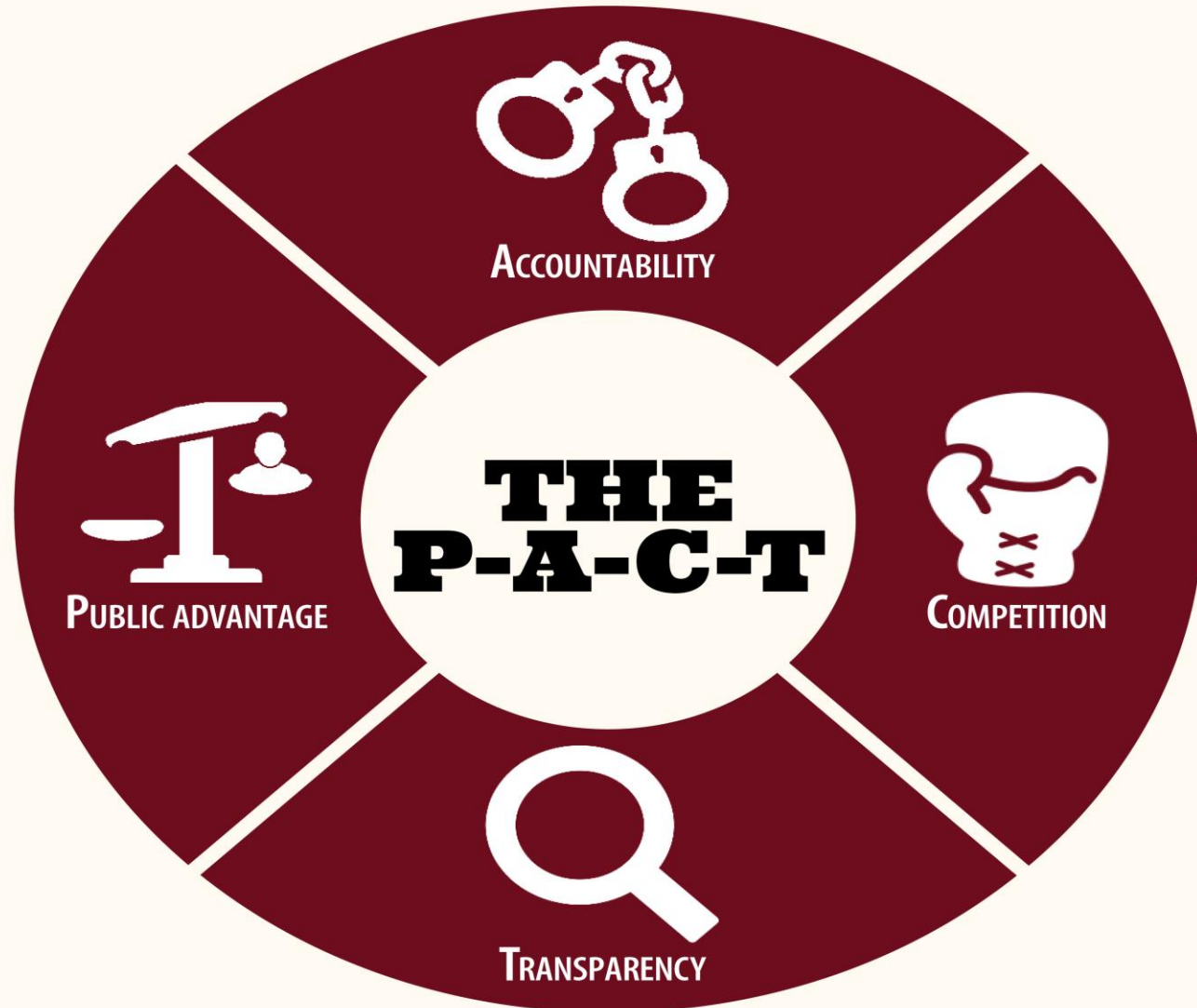


(6) Procedures

PPP SELECTION REQUIREMENTS



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



Solicited Project



Preparation of Documents

Advertisement/
Invitation

Pre-
Qualification

Submission of
Proposals
(Technical and
Financial)

Bid Evaluation

Award of
Contract

1. Feasibility Study
2. Draft Contract
3. PTCs
4. Consultation
5. Instructions/ Forms
6. Proposal Securities

- 3 Tests
1. Legal
 2. Technical
 3. Financial

Most
Responsive/
Advantageous

- 3 Scenarios
1. 2 or more
 2. Single/ only 1
 3. Failed/ 0



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 Proposals: 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)

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 continues or not (10 c. days)

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 PPP Contracts



1. Contractual Arrangement
2. Term
3. Scope of work
4. Project Cost
5. Minimum Performance Standards
6. Key Performance Indicators
7. Implementation Milestones
8. Cost Recovery Scheme
9. Disclosure of Financing Documents
10. Liquidated Damages
11. Performance Security
12. Minimum Insurance Coverage
13. Acceptance Tests and Procedures
14. Warranty Period and Procedures
15. Lock-in Periods
16. Contract Termination
17. Lender Step-in Rights
18. Acceptable Permitted Security Interest
19. Anti-Corruption
20. Alternative Dispute Resolution
21. Wind-up and Transfer Measures
22. Gender and Environment Safeguards
23. Ownership or retention of patents
24. Monitoring, Evaluation and Reporting
25. Period for Financial Close
26. Compliance with Laws



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



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Thank you.

