Government Contracting Mechanisms

Procurement, Public-Private Partnerships and Privatization

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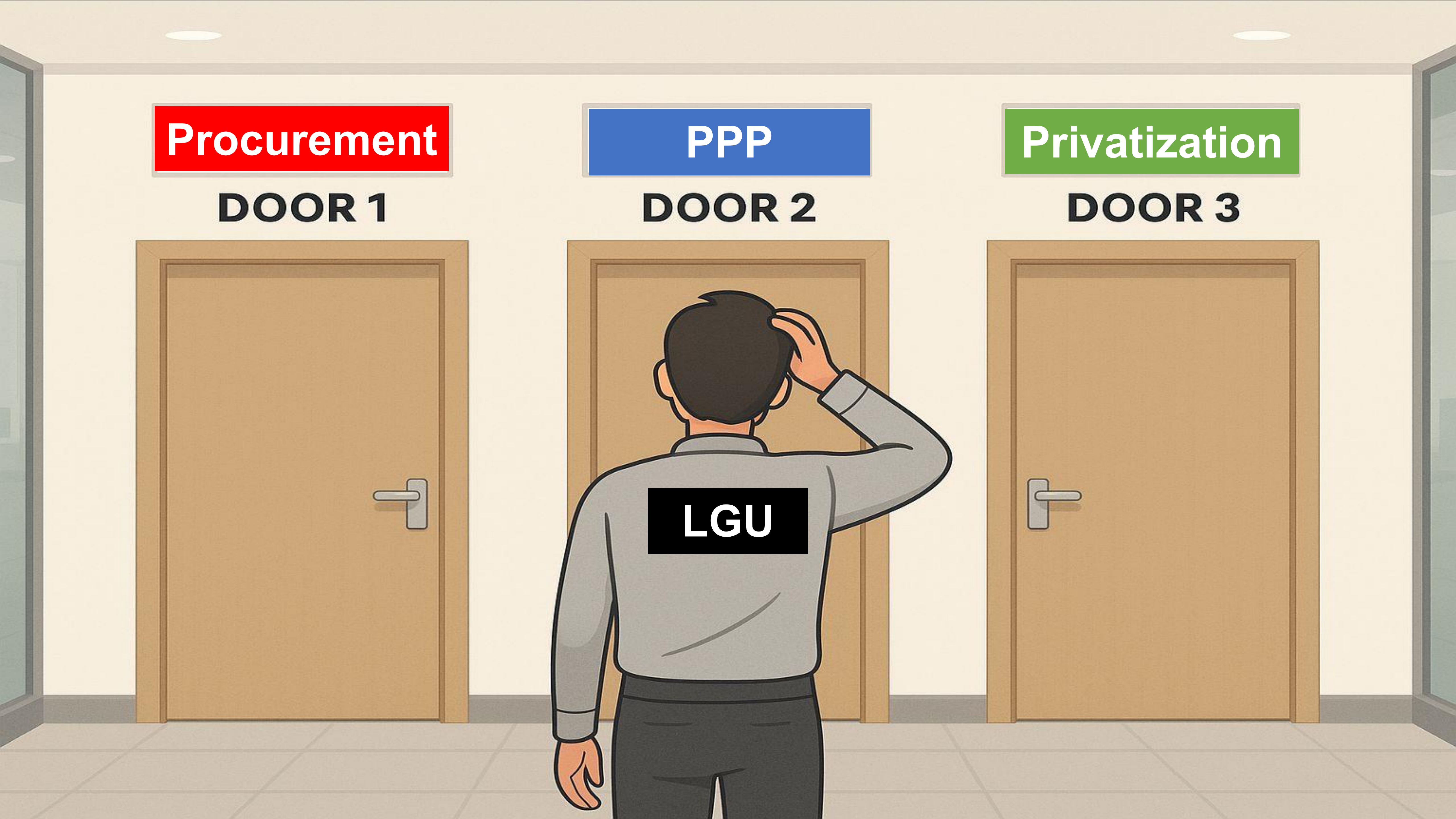
Government Projects


Procurement
DOOR 1
PPP
DOOR 2
Privatization
DOOR 3
LGU

Quizzer:
Mechanisms/ Options/ Governing Law

1. Your **LGU** wants to:
   a) Undertake a **transport terminal** project and it has **enough funds**?
   b) Construct a **road project** but it has **no funds** yet it wants to earn **revenues**?
   c) Implement a **commercial mall** project and it has **no funds**?
   d) Sell its **public market and land** to a private company?
2. For the 4 options, who **approves** the project?
3. Can the LGU accept **unsolicited proposals** for the 4 projects?

Procurement of Infrastructure Projects

New Government Procurement Act (R.A. No. 12009)
which took effect on August 13, 2024
and its IRR which took effect on February 25, 2025

3 Key Elements of Procurement

- Procuring Entities (Government)
- Objects of Procurement
- Public Funds

8 Procuring Entities

All Branches/ Instrumentalities	Departments	Bureaus, Offices and Agencies	Government Financial Institutions
Government-Owned and -Controlled Corporations	(Government Instrumentalities)	State University and Colleges	**Local Government Units**

Private Sector

Suppliers	Manufacturers	Distributors
Contractors	Service Providers	Consultants

Infrastructure Projects

Construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of (with detailed engineering):

1. Road and bridges
2. Airports and seaports
3. Communication facilities
4. Civil works components of IT
5. Irrigation
6. Flood control and drainage
7. Water supply, sanitation and sewerage
8. Solid waste management
9. Shore protection
10. Energy/ power and electrification
11. National buildings
12. School buildings
13. Hospitals
14. Other related construction projects

Public Funds

regardless of source (local or foreign)

NGAs: GAA/ Others	*GOCCs/* (GIs)/ *GFIs:* Corporate Budgets
SUCs: Corporate Budgets	***LGUs:*** Appropriations Ordinance

Annual Procurement Plan (APP)

- **All procurement** should be within the **approved budget** of the Procuring Entity
- Crucial to the **efficient discharge of governmental functions**
- **No government procurement** shall be undertaken unless it is in accordance with the **approved APP** or Indicative APP of the Procuring Entity
- APP shall be **approved by the HoPE**
- **Contents**
  1. Name of the project/ procurement
  2. Project management office (PMO)/ end-user unit
  3. General description of the project/ procurement
  4. Procurement methods to be adopted
  5. Criteria for bid evaluation
  6. Time schedule
  7. Source of funds
  8. Approved Budget for the Contract

Approved Budget for the Contract (ABC)

- Refers to the **budget for the contract**
- **Approved** by the **HoPE**
- Reflects the **most advantageous prevailing price** for the government
- **Basis** or reference for **Total project cost** reflected in the **Multi-Year Contractual Authority** (MYCA)
- Indicated in **Invitation to Bid**
- The **upper limit or ceiling for the Bid prices** *(bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding)*

Financial Parameters
Infrastructure Projects

- **Before invitation**, BAC to decide if:
  1. Lowest Calculated Responsive Bid (LCRB)
  2. Most Economically Advantageous Responsive Bid (MEARB)
  3. Most Advantageous Responsive Bid (MARB)
- 1st meet **pass/ fail technical** components
- **ABC** is upper limit/ ceiling

- **Bid Evaluation**

1. LCRB
   - Ranked from lowest to highest
   - Lowest calculated **price** shall be referred to as the Lowest Calculated Bid (LCB)
2. MEARB
   - predetermined **quality-price** ratio (*quality 60-85%/ price 15-40%*)
   - criteria (*qualitative, environmental, and/or social aspects*)
3. MARB (*fit-for-purpose*)

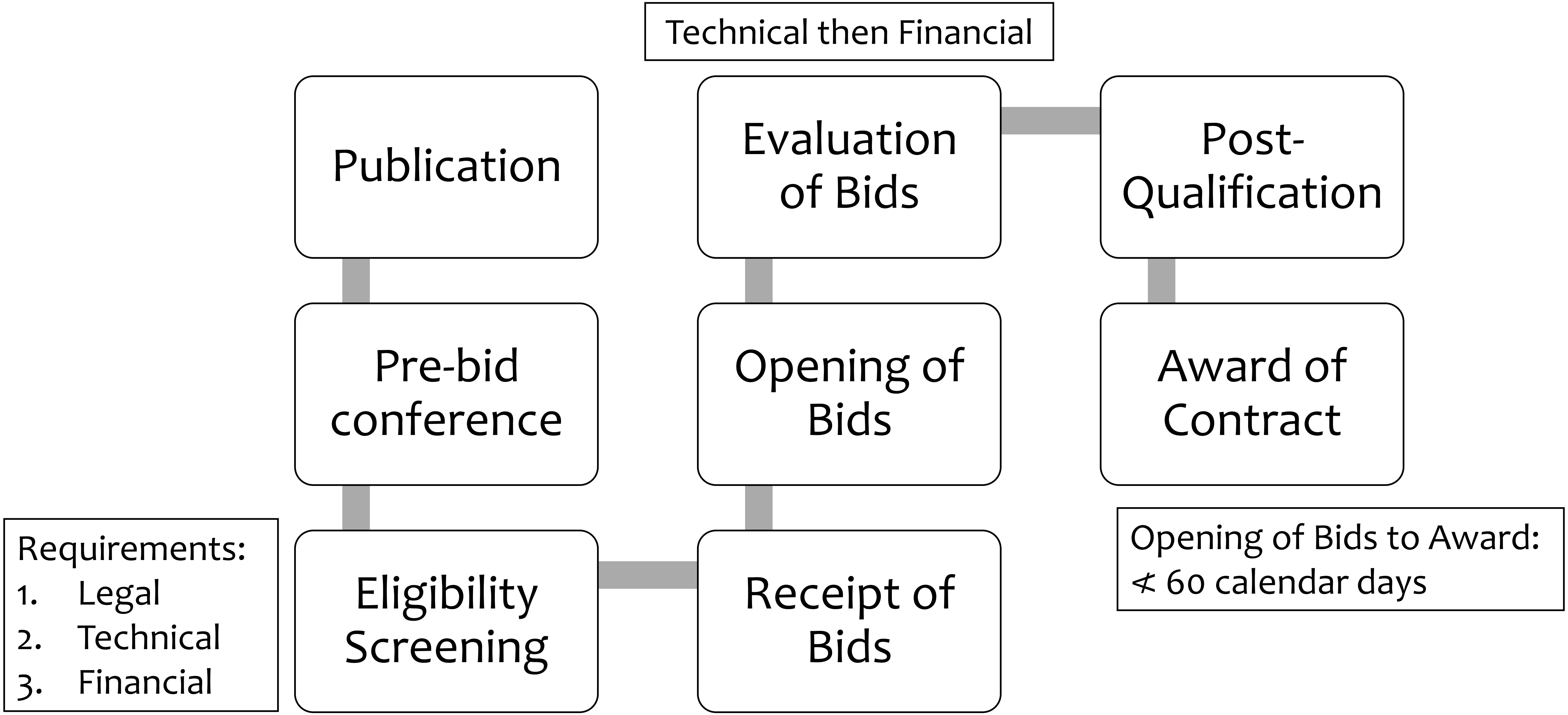
Fit-for-Purpose

- an approach to procurement
- that applies the most suitable mechanism or strategy designed to address the **specific needs** of the Procuring Entity and **each project**
- while promoting **flexibility** and **responsiveness** to different conditions and scenarios,
- based on **factors** or situations, such as, but not limited to,
  - the **nature and complexity** of the project
  - **market condition** and readiness
  - **urgency** or **risks**
  - in order to ensure and achieve **value for money**

Modes of Procurement for Infrastructure

1. Competitive Bidding
2. Limited Source Bidding
3. Competitive Dialogue
4. Small Value Procurement
5. Negotiated Procurement
6. Design-Build
7. Agency-to-Agency

Competitive Bidding: Process



Limited Source Bidding

- **Direct invitation** to bid by the Procuring Entity
- To a set of **pre-selected suppliers or consultants** with known **experience and proven capability** relative to the requirements of a particular contract
- Procurement of **highly specialized Infrastructure Projects** involving and affecting **national security**

Competitive Dialogue

- **2-stage** bidding process

1. Invitation (propose solutions)
2. Dialogue
   a. submission of **initial technical proposals** then dialogue to **finalize the project requirements**
   b. Submission of technical and financial **proposals**
   c. bid **evaluation** and **post-qualification** processes

- **Conditions**

1. Involves **innovative design or solutions** involving procurement of complex purchases
2. The contract **requires prior negotiations** because of specific circumstances related to the nature, complexity, legal and financial issues, or risks attached to the procurement
3. The **technical specifications** cannot be sufficiently established or precisely defined

Small Value Procurement

- Procuring Entity requests for the submission of at least **3 price quotations** (receipt of **1 quotation** is sufficient to proceed with the evaluation of bidders)
- The amount involved does **not exceed P2,000,000**

Negotiated Procurement

1. 2 failed biddings
2. Emergency Cases (*state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage)*
3. Take-over of Contracts (*rescinded or terminated under the contract to prevent damage to or loss of life or property, or to restore vital public services)*
4. Adjacent or Contiguous (*ongoing Infrastructure Project)*
5. Agency-to-Agency (*Agency mandate and absorptive capacity to undertake the project)*

7. Defense Cooperation Agreements and Inventory-Based Item
8. Lease of Real Property and Venue (*preferred that government agencies lease publicly-owned real property or venue from other government agencies)*

Design-Build

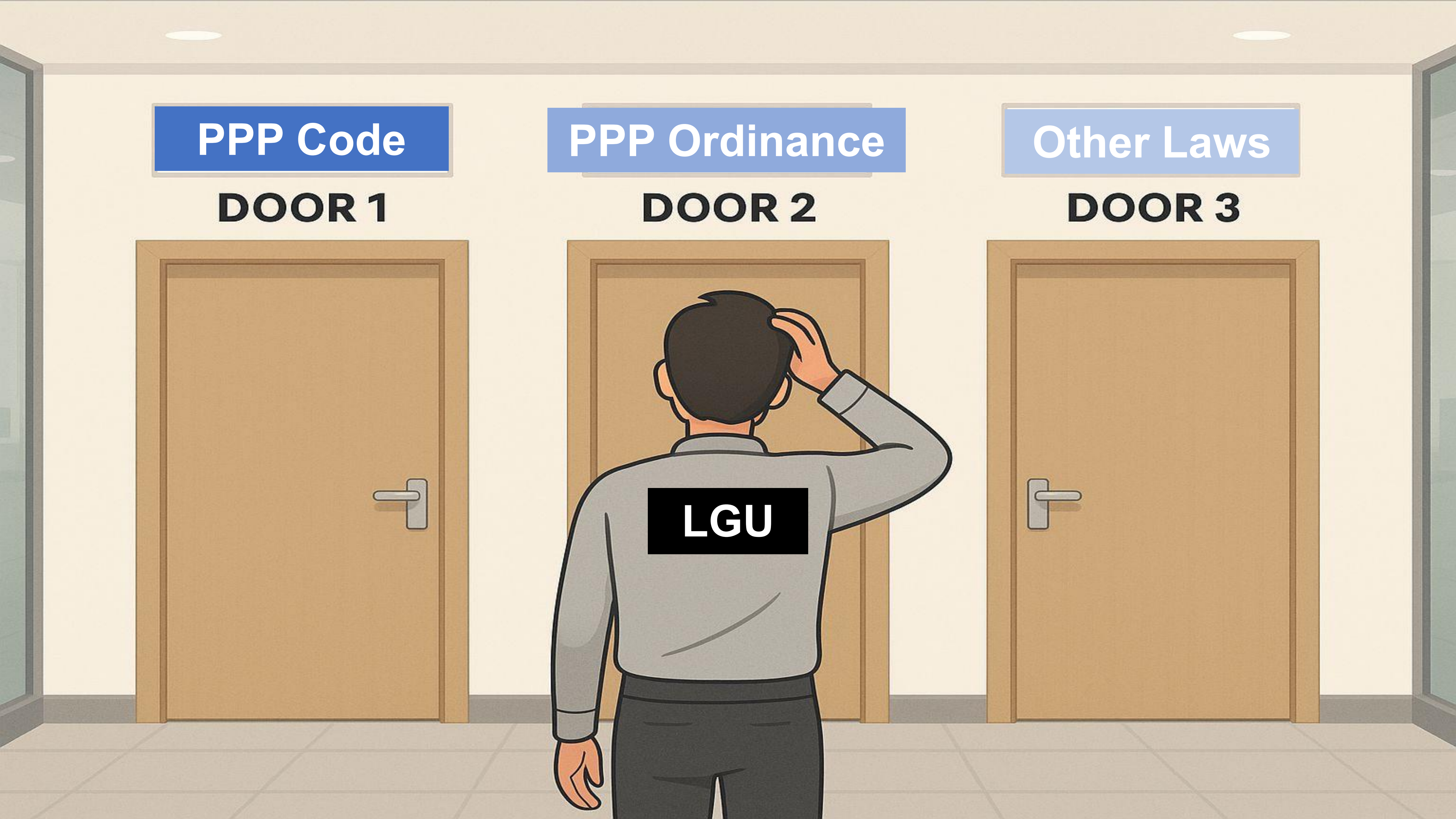
- A **single contractor** is responsible for **both design and construction** of the government building
- Allows **quality assurance, effective cost** and **schedule management**
- **Not** require **detailed engineering investigations,** surveys, and designs for the project which shall consider among others, the impact on the environment

Agency-to-Agency

The **Servicing Agency** (MOA with HoPE):

- Has **mandate**
- Has **absorptive capacity** to undertake the project
- Owns or has access to the necessary **tools and equipment** required for the project
- May implement the Infrastructure Project **in-house, by job-order**, or through the *pakyaw* contracting system (not sub-contract)
- Must have a **track record** of having completed, or supervised a project, by Administration or by contract, similar to and with a cost of at least 50% of the project at hand

Public-Private Partnerships


PPP Code
DOOR 1
PPP Ordinance
DOOR 2
Other Laws
DOOR 3
LGU

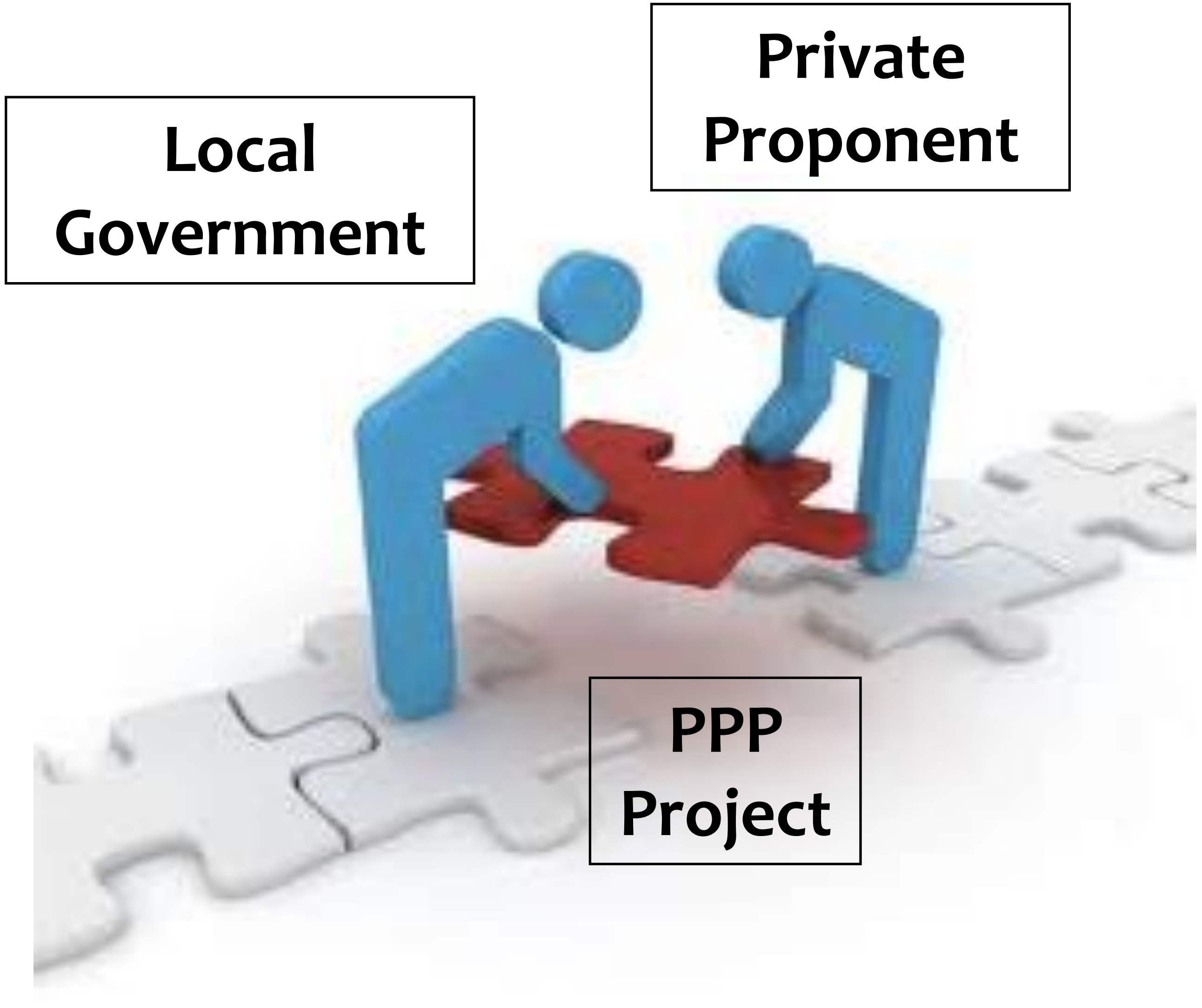
Public-Private Partnerships

PPP Code (R.A. No. 11966) which took effect on December 23, 2023 and its IRR which took effect on April 6, 2024

PPP defined

- A **contractual** arrangement between a **Local Government Unit** (LGU) as 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

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
- 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

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

Approving Bodies

ED Council	ICC	Cabinet Secretary
GOCC/ GI Board	**Sanggunian**	LUC Board

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. DEPDev 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 (discretionary)

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

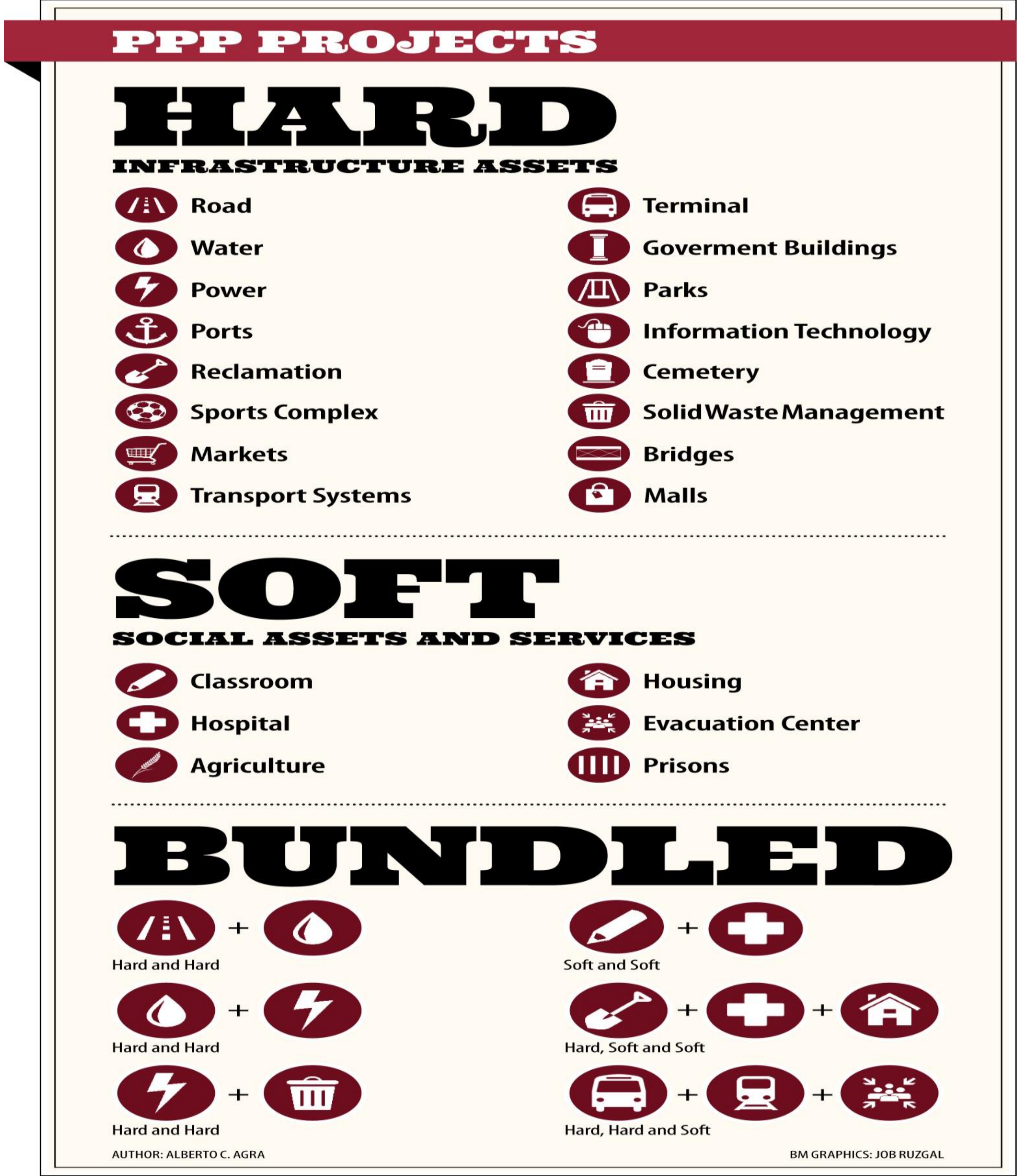
PPP Center

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 **DEPDev**
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 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**

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, DEPDev, 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.



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 LGU-IA pursuant to the Code and this IRR, and following applicable laws, rules, and regulations

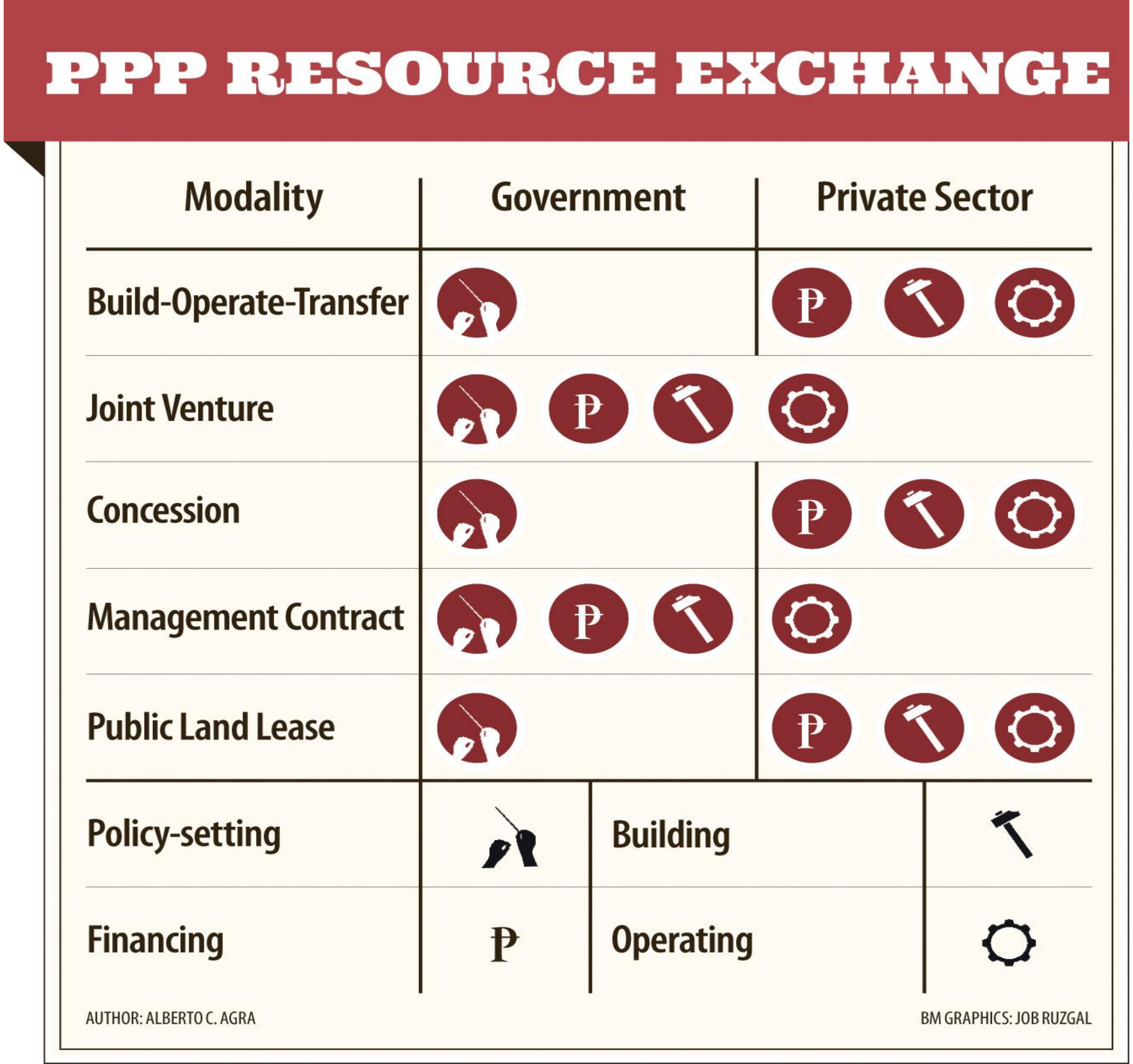
(Related facilities may include commercial spaces within the project scope)

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

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



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 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

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**
- **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
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

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

Unsolicited Proposal (USP): 7 Stages

- 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

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

PPP Code vs. PPP Ordinance

Aspects	PPP Code	PPP Ordinance
Application	All LGUs	Specific (adopting) LGU/ Sanggunian
Covered Arrangements	1. JVs for Public or Mix of Public and Commercial purposes 2. Leases for Public or Mix of Public and Commercial purposes 3. BOT, BT, BLT, BOO, BTO, CAO, DOT, ROT and ROO 4. Operate and Maintain	1. JVs for purely commercial purposes 2. Leases for purely commercial purposes 3. Donations (Onerous and Gratuitous) 4. Divestment (COA Circular) 5. Subsidiary (Corporation Code) 6. Corporatization (Corporation Code)
Study	Feasibility Study	Feasibility or Pre-Feasibility Study
Approving Body	Sanggunian	LGU: LCE and Sanggunian
Unsolicited Prop.	Government Undertakings not allowed	N/A
Other Agencies	PPP Center (for completeness) and ICC (when GAA)	N/A

Proposed/ Template PPP Ordinance

Divestment and Disposal of Property

Commission on Audit Circular No. 89-296 January 27, 1989

Privatization and Disposition of Government Assets

Guidelines adopted by the Privatization Council
which took effect on March 11, 2025

2 Levels of Privatization

Straight/ Direct

1. Privatization
2. Disposition
3. Divestment

Intermediate

1. PPP (BOO, JV, Lease)
2. Long-Term Lease
3. Lease-Purchase

Defining Terms

Privatization *PrC Guidelines*	○ *Activities:* Selling, transferring, conveying, or assigning ○ *Object:* Government Asset ○ *Intent:* Transfer ownership of Asset to the private sector
Disposition *PrC Guidelines*	1. Selling, transferring, conveying, or assigning of the Government Asset with the intention of transferring ownership to the winning bidder 2. Leasing the Government Asset on a long-term basis 3. Any other activities of similar nature wherein the government's ownership, possession, or enjoyment of the Government Asset will be limited or transferred whether fully or partially, on a permanent or long-term basis.
Divestment *COA Circular*	Taking away, depriving, withdrawing of an authority, power or title

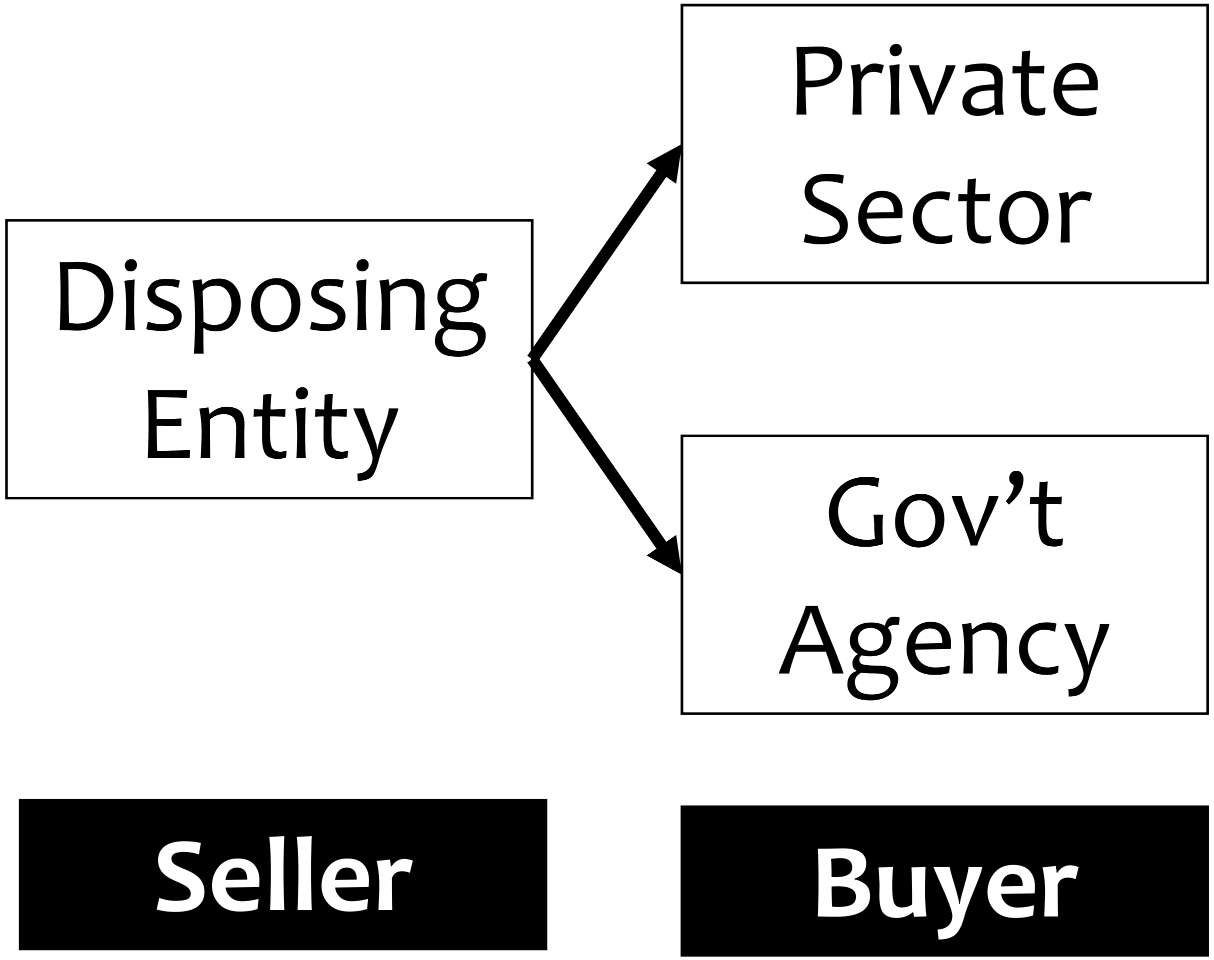
Defining Terms

Lease *PrC Guidelines*	○ Right to use/ possess by DE (lessor) in return for rent (lessee) ○ Lease preferred mode ○ $1 < x \leq 25$ years ○ Lease rate $\geq$ 4% of Base Price ○ More profitable and advantageous to National Government ○ Asset more marketable ○ Subject to approval of PrC

Parties
PrC Guidelines

Disposing Entity *(DE):*

- Government institution
- Designated by the PrC, upon recommendation by the PrC-TC
- To dispose of Government Assets
- Including but not limited to the PMO, PCGG, NDC, and other government institutions identified by the OP



Government Assets

- **Real or personal property** of any kind owned or held by the government institutions, directly or indirectly, through foreclosure or other means, in settlement of such obligations
- **Receivables** and other obligations due to the government institutions under credit, lease, indemnity, and other agreements, together with all collateral security and other rights granted to such Institutions by contract or operation of law to secure or enforce the right of payment of such obligations
- **Shares of stocks** and other investments held by government institutions
- The **government institution** themselves, whether as parent or subsidiary corporations
- Other Government Assets that may be deemed **underutilized, idle**, or not being used for the specific purpose of the possessors' charter and function
- **Property and other assets** (not merchandise or inventory for sale, and foreclosed assets or collaterals acquired in regular course of business)

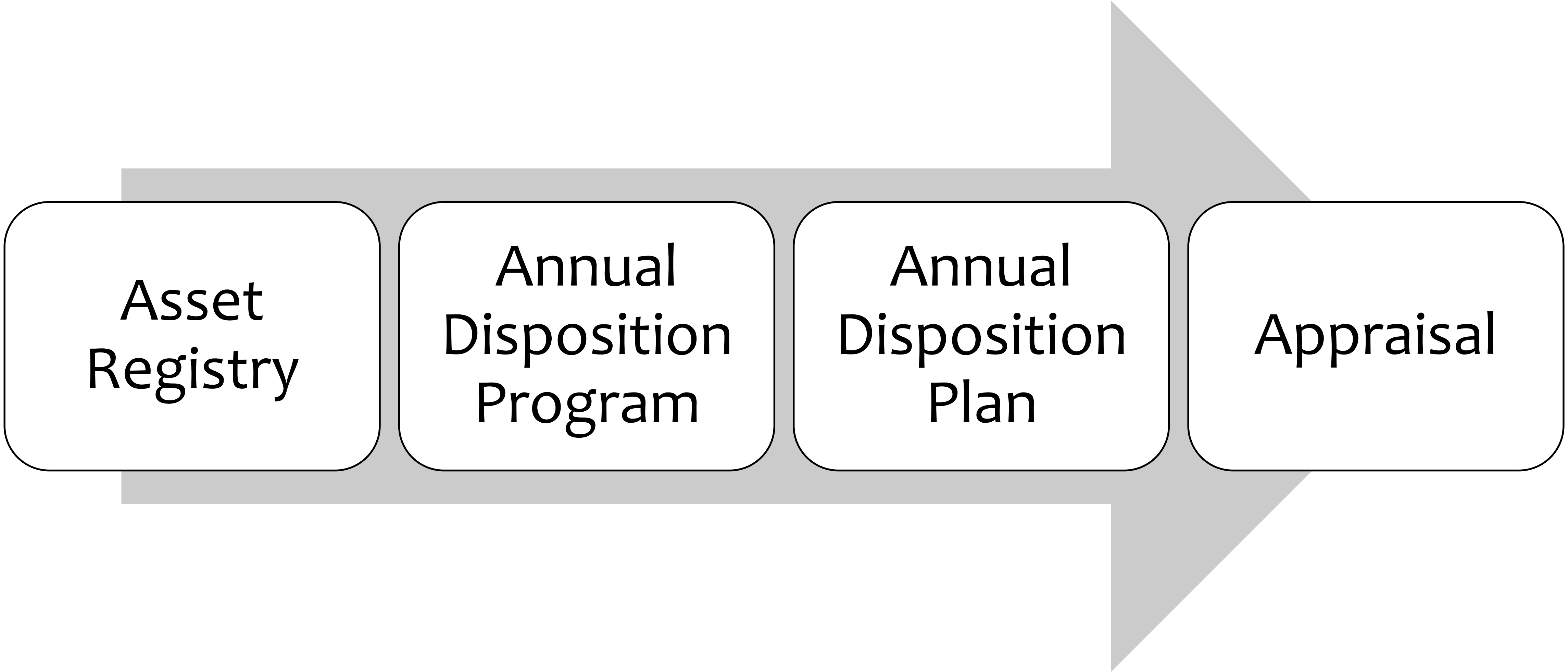
Consideration/ Payment
PrC Guidelines

Base Price	**Minimum amount** or floor price approved by PrC
General Rule	Paid in **cash** and in **lump sum** *Transfer of Ownership:* Upon full payment
Exception	**Installment or deferred payments** may be allowed only under **meritorious** circumstances subject to the **approval of the PrC** *Transfer of Ownership:* Allowed if balance is fully secured by a mortgage on the Assets or by standby letter of credit issued or confirmed by a bank or a government financial institution

Requirements
PrC Guidelines

As Is Where Is	○ **Physical condition** of the Asset ○ Its **contents or inclusions** at the time of the sale, conditions of the owner's title or other evidence of ownership ○ Extent and state of whatever **rights, interests**, and participation over the Asset the DE may have at the time of the sale ○ Buyer's assumption of all **unpaid taxes**, fees, charges, assessments, encumbrances, liens, and the like accruing on the Asset in order to transfer the Certificate of Title ○ **All attendant faults** of the Asset, if any, whether or not immediately apparent and without any express and implied warranty
Appraisal/ Valuation	Estimating the **value** of an Asset as of a **specific date** for a **given purpose**, usually the **market value or value**

Pre-Disposition Activities
PrC Guidelines



Modes of Disposition

PrC Guidelines

Requirements

1. Transparency
2. Competition
3. Efficiency

Public Auction

Sale through Negotiation

Unsolicited Proposal

Gov't-to-Gov't Transactions

Public Auction

- Attract greatest number
- Inspection
- COA as responsive and articulate witness

Invitation to Bid

Publication/ Posting

Pre-Bid Conference

Bid Submission

Bid Opening/ Evaluation

DE Report

PrC Confirms

DE Award

Payment and CPs

Sale through Negotiation
PrC Guidelines

Failed Bidding

1. No bids
2. All bids ineligible
3. Only one offer or tender
4. Winning Bidder withdraws/ refuses, without justifiable cause
5. Winning Bidder fails to settle the full/ installment payment

Sale through Negotiation

Offeror(s): Written Offer(s) → DE: Publish Notice → Offeror(s): 10% Deposit → DE: Evaluation of Offer(s) → DE: Report → PrC: Approval

1-on-1 basis or group

- 1 Offer: ≥ Base Price
- >1 Offer: consider ≥ Base Price

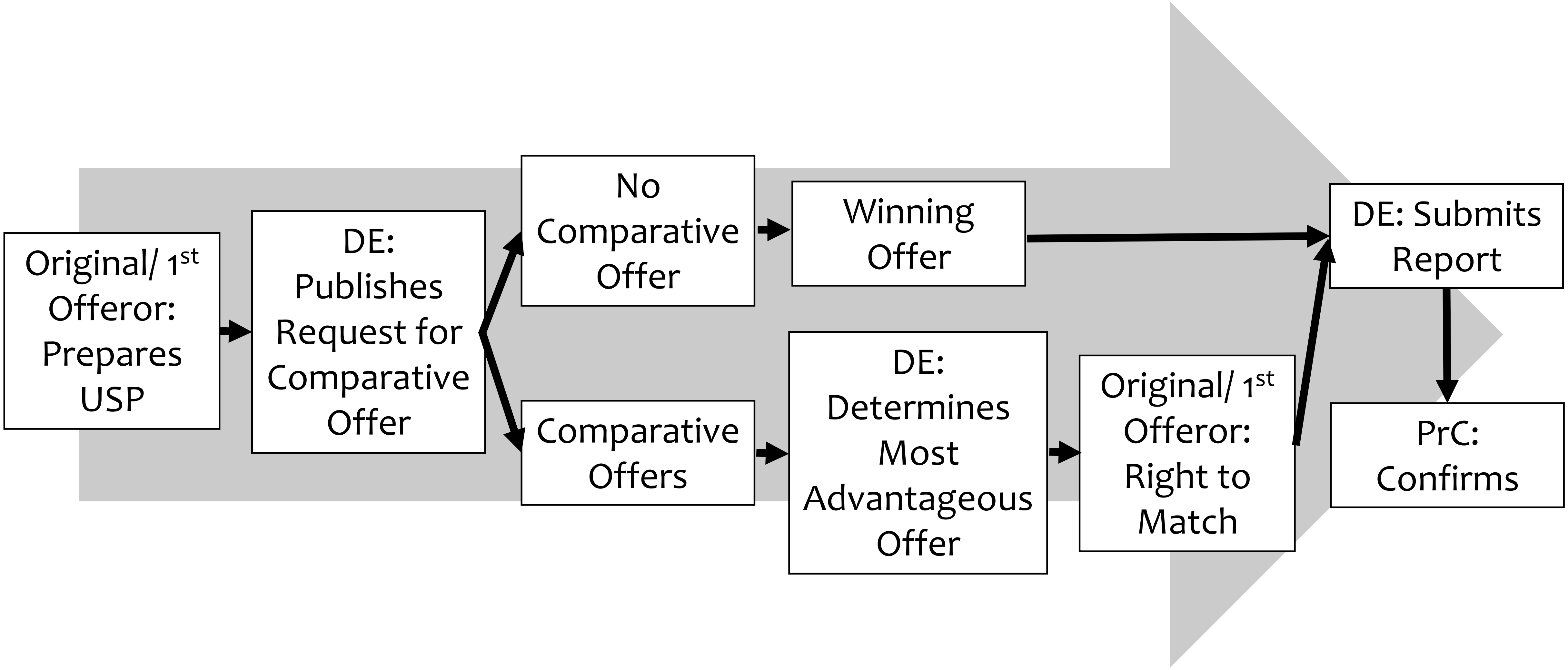
Unsolicited Proposal: *Contents*

PrC Guidelines

Property Description	Price Offer (≥Base Price)	Payment Terms
10% Deposit	*Valuation*	*Disposition Plan*

Unsolicited Proposal: *Procedure*

PrC Guidelines



Government-to-Government Transactions

Proposal from a Government Agency	o DE: may dispense with publication o PrC: may confirm sale without considering other comparative offers
Proposals from a Government Agency and Private Sector	Preference to highest financial offer
Transfer without cost or appraised value	Asset no longer serviceable/ needed

Contrasting the 3 Ps

Aspects	Procurement	PPP	Privatization
Governing Law	RA 12009 (2024)	RA 11966 (2023) or PPP Ordinance	COA Circular 89-296 (1989)/ PrC Guidelines (2025)
Role of Government	Procuring Entity (Buyer)	Implementing Agency (Partner/ Implementer)	"Divestor"/ Disposing Entity (PrC-designated)
Role of Private Sector	Contractor/ Builder	Partner (Financier, Designer Builder, and Operator)	Buyer
Project	Infrastructure	Infrastructure or Development (typically provided by Government)	Property/ Government Assets (real/ personal property, stocks or receivables)
Ownership of Project	Government	Government (Transfer) or Private Sector (Divestment)	Private Sector
Funds Involved	Public Funds	Private Funds (Public Funds for Government Undertaking, Contribution or Availability Payment allowed)	Private Funds (or Public Funds if Government is Buyer)
Inputs	Specifications by Procuring Entity	Minimum Parameters, Terms and Conditions	As Is Where Is

Aspects	Procurement	PPP	Privatization
Modes/ Arrangements	1	13 (JV, Lease, Build-Operate-Transfer, etc.) (10 excluded)	1
Selection Procedures	6 (Bidding, Dialogue, Limited Source, Negotiated, Small Value and Design-Build)	3 (Solicited and Unsolicited)	3 (Public Auction, Negotiated Sale and Unsolicited Proposal)
Financial Parameter	Price, Quality, Most Advantageous	Most Responsive/ Advantageous (If financial, Highest or Lowest)	Price (Advantageous)
Payment to Private	Contract Price	Investment Recovery Schemes/ Reasonable Rate of Return	N/A
Approving Bodies	Head of Procuring Entity (HoPE)	ED Council/ ICC, Agency Head, Board or Sanggunian	LGU Head/ PrC (DE Recommends)
Overall Policy-Making/ Secretariat	GPPB and TSO-DBM	PPP Governing Board and PPP Center	COA/ PrC and PrC-TC

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Together, let us learn-unlearn-relearn.

Thank you.