Public-Private Partnerships for Local Universities and Colleges

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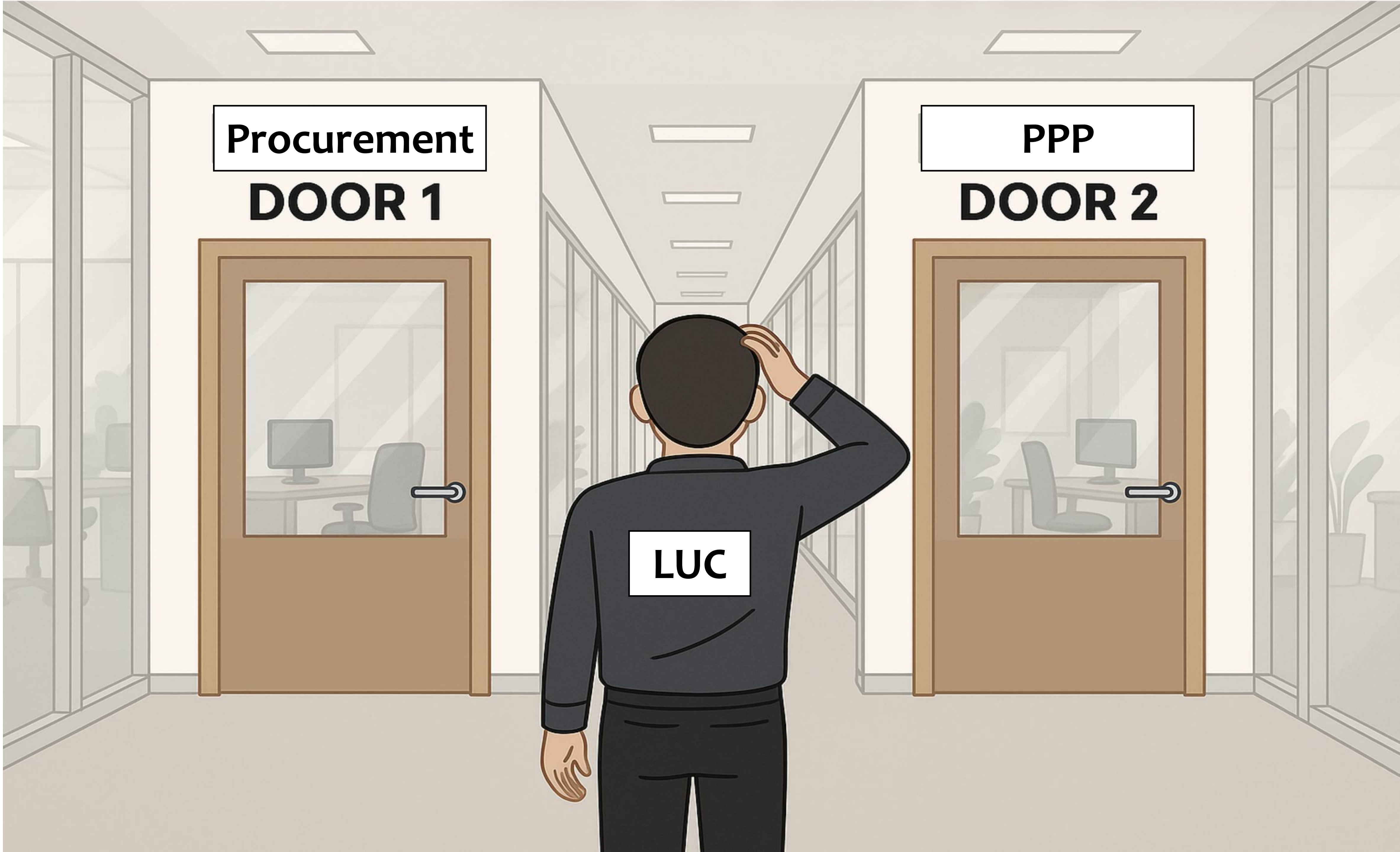
28 October 2025

Government Projects


Procurement
DOOR 1
PPP
DOOR 2
LUC


PPP Code
DOOR 1
LUC Guidelines
DOOR 2
LUC

Matching Type

Project/ Consideration

1. Undertake a **classroom** project using its **funds.**
2. Build a **hospital** and it has **no funds**.
3. Implement a **commercial mall** project and it has **no funds**.

Contracting Mechanism

a) Procurement

b) Public-Private Partnership

Governing Law

x) New Procurement Law

y) PPP Code

z) Other Policy

Presentation Flow: 7 Ps

1. Policies
2. Parties
3. Projects
4. Partnership Schemes
5. Permissions
6. Procedures
7. Pact

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 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

Private Sector

- Indispensable role
- Mobilize its resources
- Financing
- Additionality

Impact and Values

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

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

- LUC – LUC
- LUC – LGU
- LUC – National

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

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 LUC official
2. LUC Treasurer or Accountant
3. LUC Planning and Development Coordinator or Engineer
4. LUC Legal officer
5. A representative from and selected by the LUC Board designated through a resolution

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

LUC PPP Units

- LUC 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**
- **Typically provided** by the **public sector**
- Used by the **public**
- Consistent and responsive to national, local, and sectoral **development and investment plans**
- Part of list **submitted** to appropriate oversight agencies, DEPDev, RDC, and the PPP Center
- Demonstrate **Value for Money** (VfM) - Effective, efficient, and economic use of resources

PPP PROJECTS

HARD
INFRASTRUCTURE ASSETS

- Road
- Water
- Power
- Ports
- Reclamation
- Sports Complex
- Markets
- Transport Systems
- Terminal
- Goverment Buildings
- Parks
- Information Technology
- Cemetery
- Solid Waste Management
- Bridges
- Malls

SOFT
SOCIAL ASSETS AND SERVICES

- Classroom
- Hospital
- Agriculture
- Housing
- Evacuation Center
- Prisons

BUNDLED

Hard and Hard

Hard and Hard

Hard and Hard

Soft and Soft

Hard, Soft and Soft

Hard, Hard and Soft

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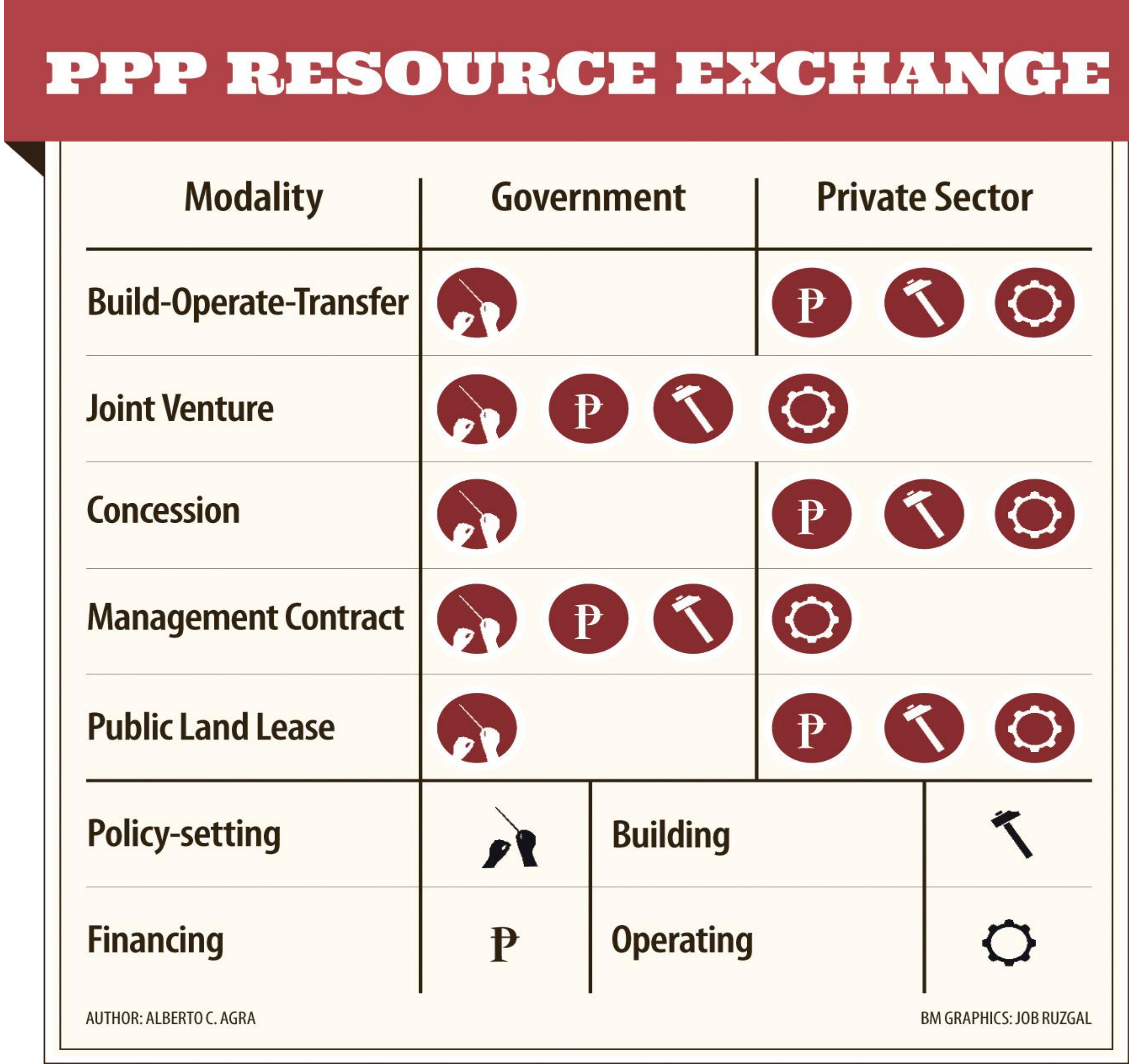
BM GRAPHICS: JOB RUZGAL

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**

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 Venture for public or public-commercial schemes
2. Lease for public or public-commercial schemes
3. BOT, BT, BLT, BOO, BTO, CAO, DOT, ROT and ROO
4. Operate and Maintain
5. 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

10 Exclusions

1. Procurement
2. Exclusively ODA Projects
3. Management Contracts
4. Service Contracts
5. Divestments or Dispositions
6. Corporatization
7. Incorporation of Subsidiaries
8. Onerous Donations
9. Gratuitous Donations
10. JV Agreements and leases involving purely commercial arrangements

2 Types Projects

Public

- Capitol Building
- Water Supply
- Public Roads
- Public Bridges
- Public Hospitals
- Public Market
- Socialized Housing

Commercial

- Hotel
- Commercial Space
- Commercial Sports Facilities
- Paid Parking
- Specialty Private Clinics
- Shopping Malls
- Condominiums

Approval of Local PPPs
Regardless of Project Cost

- Approved by the **LUC Board** (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
- LUC **Legal Officer**
- **ICC** if with Availability Payment (from GAA) and Government Undertakings

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)

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

Government Undertakings

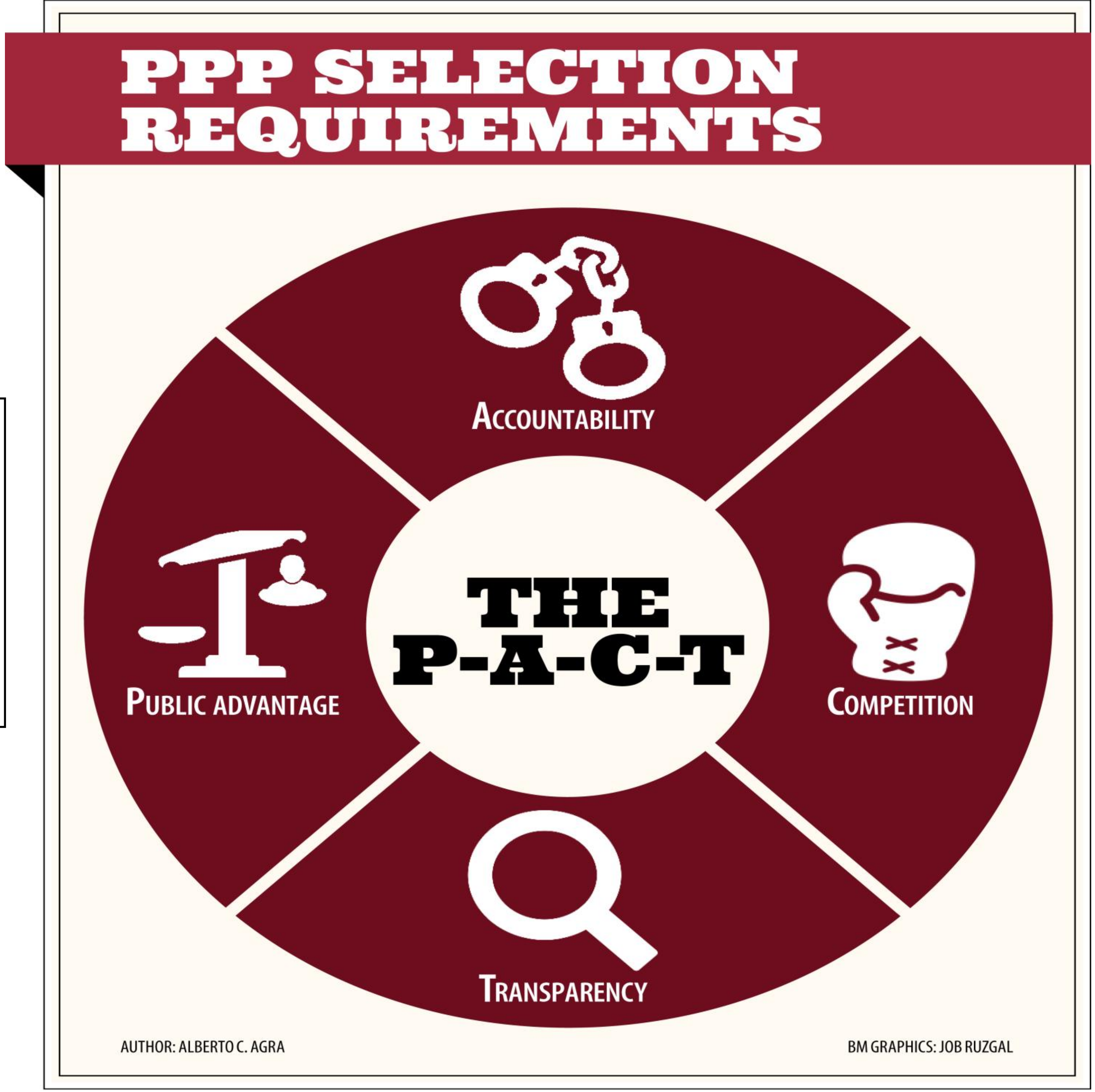
Not allowed for Unsolicited Proposals

- 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

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



Solicited Project: Process

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 Proposal (USP): 7 Stages

(1) Private Proponent (PP) prepares USP

PP submits to PPP Center

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

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

(3) IA undertakes Detailed Evaluation *(90 c. days x 2)**

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

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

- 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)**

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

Right to Match by OP

(6) IA issues Notice of Award (NOA) *(7 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)*

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

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. LUC Guidelines

Aspects	PPP Code	LUC Guidelines
Application	All LGUs	Specific LUC
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	LUC Board	LUC Board
Unsolicited Prop.	Government Undertakings not allowed	N/A
Other Agencies	PPP Center (for completeness) and ICC (when GAA)	N/A

Proposed/ Template LUC Guidelines

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Together, let us learn-unlearn-relearn.

Thank you.