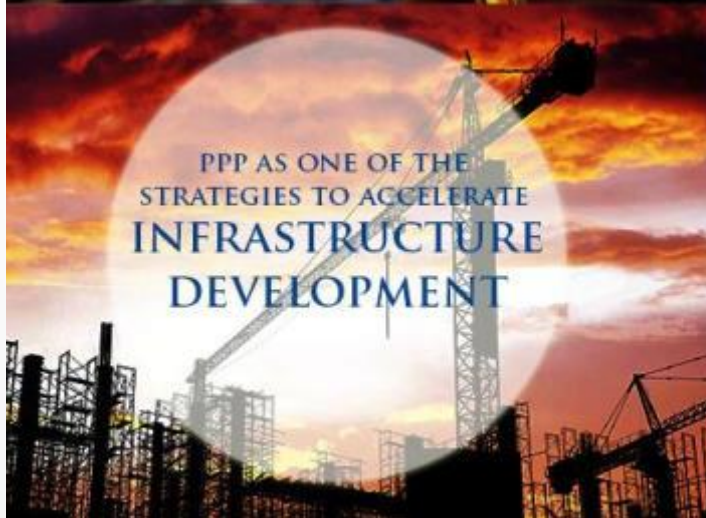




# Philippine PPP Procurement: Processes, Accountabilities and Fraud Challenges



# The Philippine PPP Program



# Outlook: Infrastructure Spending

Government  
Appropriations Act  
(GAA)

Official Development  
Assistance (ODA)

Public-Private  
Partnerships (PPPs)

Part of the proposed 10 point socio-economic agenda of the incoming administration is to ***accelerate annual infrastructure spending to account for 5% of the GDP with PPPs playing a key role***

On top of public spending, ***PPPs*** will bring in private sector capital and expertise to address the infrastructure gap.

# The PPP Program

- A PPP is a **contractual arrangement** between the government (Implementing Agency) and private sector partner to accelerate provision and/or implementation of **infrastructure and/or development projects or services**.
- **Private sector** role:
  - State's partner in development
  - Efficiency gains in technology and innovation
  - Financing, design, construction, operation of facility, authority to collect fees
- **PPP** as a:
  - Development strategy
  - Financing option
  - Procurement option





# Legal and Regulatory Framework

- **1987 Philippine Constitution**

“The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

- **RA 6957, as amended by RA 7718:**

The Amended Build-Operate-and-Transfer (BOT) Law and its IRR

- **Revised NEDA JV Guidelines**

- **Other Major Laws**

**RA 10752** (*Right of Way Acquisition Act*)

**RA 8975** (*Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders*)

**RA 7160** (*Local Government Code*)



REPUBLIC OF THE PHILIPPINES  
PUBLIC-PRIVATE PARTNERSHIP  
CENTER

# Philippine Modes of Procurement

	GPRA	BOT	JV
<b>LEGAL BASIS</b>	RA 9184	RA 6957/7718 and its IRR	EO 243, NEDA JV Guidelines
<b>FINANCING</b>	GAA/ODA	Private Sector	Joint
<b>TERM</b>	Short Term	Long Term	Short or Long Term
<b>OWNERSHIP</b>	Government	Government	Government or Private
<b>APPLICATION</b>	All	All	GOCCs / GFIs / GCEs / GICPs / SUCs



# Philippine Modes of Procurement

	GPRA	BOT	JV
<b>ENTITIES / PARTIES INVOLVED</b>	BAC	PBAC	No counterpart provision
	Head of Procuring Entity (HOPE)	Head of Agency	Head of office (government) / Private sector partner
	Procuring Agency	Implementing Agency	LGUs, GOCCs, GCEs, GFIs, GICPs, and SUCs
	BAC Secretariat/ TWG	No counterpart provision / By common practice these parties are also formed	No counterpart provision
<b>MONITORING</b>	GPPB	PPP Center	NEDA/PPP Center



# Philippine Modes of Procurement

	GPRA	BOT	JV
<b>TENDER PROCESSES</b>	Competitive bidding and alternative methods	Competitive bidding (solicited); Swiss Challenge (unsolicited)	Competitive selection; Negotiated JV and competitive challenge
<b>BID PARAMETER</b>	Lowest calculated and responsive bid	Highest concession fee, Lowest government share. Lowest cost to consumer, highest/lowest lease fee, etc.	Highest concession fee, Lowest government share. Lowest cost to consumer, highest/lowest lease fee, etc.





# RA 9184 vs. RA 7718

	IRR OF THE GPRA	REVISED IRR OF THE BOT LAW
<b>Scope and Application</b>	All procurement, except projects funded by foreign grants, acquisition of real property, and PPP procurement	Public-Private Sector Infrastructure or Development Projects
<b>Basis of Procurement</b>	Annual Procurement Plan (APP)	Eligible types of projects and Priority projects
<b>Approval</b>	APP shall be approved by the HOPE or the second-ranking official designated by the HOPE	Approving Bodies per Project Cost
<b>Bids and Awards Committee</b>	5-7 members; defined ranking of members	6 members; no specified ranking except the Chairman
	Responsible for all aspects of the bidding process, from advertisement or invitation to bid up to the recommendation of the award of contracts to the HOPE	Responsible for all aspects of the <u>pre-bidding</u> (e.g. the preparation of the bidding/tender documents) and bidding process

## RA 9184 vs. RA 7718

	IRR OF THE GPRA	REVISED IRR OF THE BOT LAW
<b>Advertisement of the ITB/ITPB or REOI</b>	At least once in 1 newspaper of general nationwide circulation	Once every week for 3 consecutive weeks, in at least 2 newspapers of general circulation and in at least 1 local newspaper of general circulation in the region, province, city or municipality in which the projects are to be implemented
<b>Qualification Process</b>	No pre-qualification process	No post-qualification process
<b>Supplemental Bid Bulletin/ Supplemental Notices</b>	To clarify or interpret bidding documents	To interpret any data or requirements on any part of the bidding documents
<b>Pre-bid Conference</b>	ABC equal to or greater than 1million	Mandatory

## RA 9184 vs. RA 7718

	IRR OF THE GPRA	REVISED IRR OF THE BOT LAW
<b>Time for preparation and submission of bids</b>	<50M within 50 cd >50M within 65 cd from the last day of posting of the ITB/REOI up to the submission and receipt of bids	<300M within 30 cd >300M within 60 cd from the date of issuance of tender documents to prequalified bidders
<b>Submission and Receipt of Bids</b>	2 separate sealed bid envelopes 1) technical component / eligibility requirements 2 ) financial component of the bid	2 separate sealed envelopes 1) technical proposal 2) financial proposal -or- 3 envelopes (simultaneous qualification) 1) qualification requirements 2) technical proposal 3) financial proposal.

# RA 9184 vs. RA 7718

	IRR OF THE GPRA	REVISED IRR OF THE BOT LAW
<b>Opening of Bids</b>	Nondiscretionary “pass/fail” criterion for the first envelope (technical proposal)	Technical proposal shall only be opened to ascertain whether the same is complete in terms of the data required under Section 7.1 (b).
	Only the Second envelope/Financial proposal rated “passed” / passed the Technical Evaluation criteria shall be opened for further evaluation	
<b>Bid Evaluation</b>	Determining the Lowest Calculated Bid	Evaluation of technical, operational, environmental, and financing viability (1 <sup>st</sup> envelope); Evaluation of financial proposals of the bidders (2 <sup>nd</sup> envelope)
<b>Bid Validity</b>	120 cd from the date of the opening of bids	180 cd following the opening of bids
<b>Contract Execution</b>	within 10 cd	within 5 cd
<b>NTP/NTCI</b>	within 3 cd from the contract execution	within 5 cd from the contract execution

## SOLICITED

- part of the list of priority projects (identified in the PIP for national projects and the RDIP/PDIP/LDIP for regional, provincial and local projects)

## UNSOLICITED

- refers to project proposals submitted by the private sector, not in response to a formal solicitation /request issued by an agency/Agency
- Involves new concept or technology and/or is not part of the list of priority projects
- No direct government guarantee, subsidy or equity is required



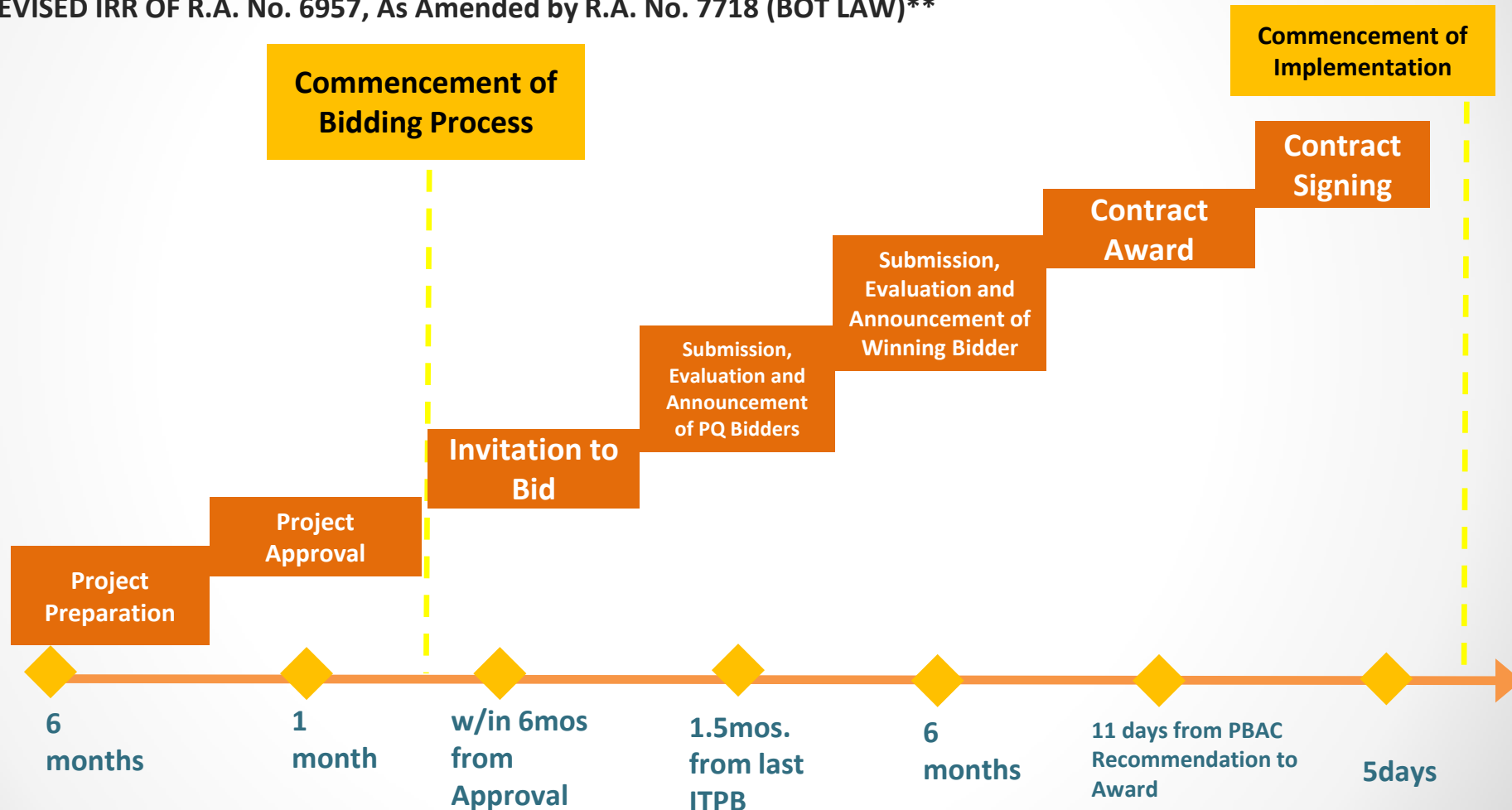
# PPP Procurement

	SOLICITED	UNSOLICITED
<b>Scope/Projects covered</b>	List of priority projects	Submitted by the private sector; a new concept or technology
<b>Approval of projects by the approving body</b>	Approving body per project cost	Mandatory ICC determination of ROR; Approving body per project cost
<b>Negotiations after project approval and prior to tendering</b>	No such negotiations; unless cases of direct negotiations (Sec 9.1)	Negotiations by the agency/LGU with the original proponent are conducted after receiving advice from the ICC/approving body of the project approval. (Sec. 10.8 (3))
<b>Approval of contracts</b>	Review/Approval by DOF or statutory counsel (Sec 2.8)	Review/Approval by DOF or statutory counsel (Sec 10.9)
<b>Submission of bids</b>	<ul style="list-style-type: none"> <li>• 2-stage (1. Pre-qualification stage; 2. Technical and financial bids' submission)</li> <li>• Single stage or simultaneous qualification.</li> </ul>	Single stage only, 3 envelopes – qualification documents, technical proposal, financial proposal.



# Solicited Projects

TIMELINES FOR **SOLICITED PROJECTS** UNDER THE  
REVISED IRR OF R.A. No. 6957, As Amended by R.A. No. 7718 (BOT LAW)\*\*

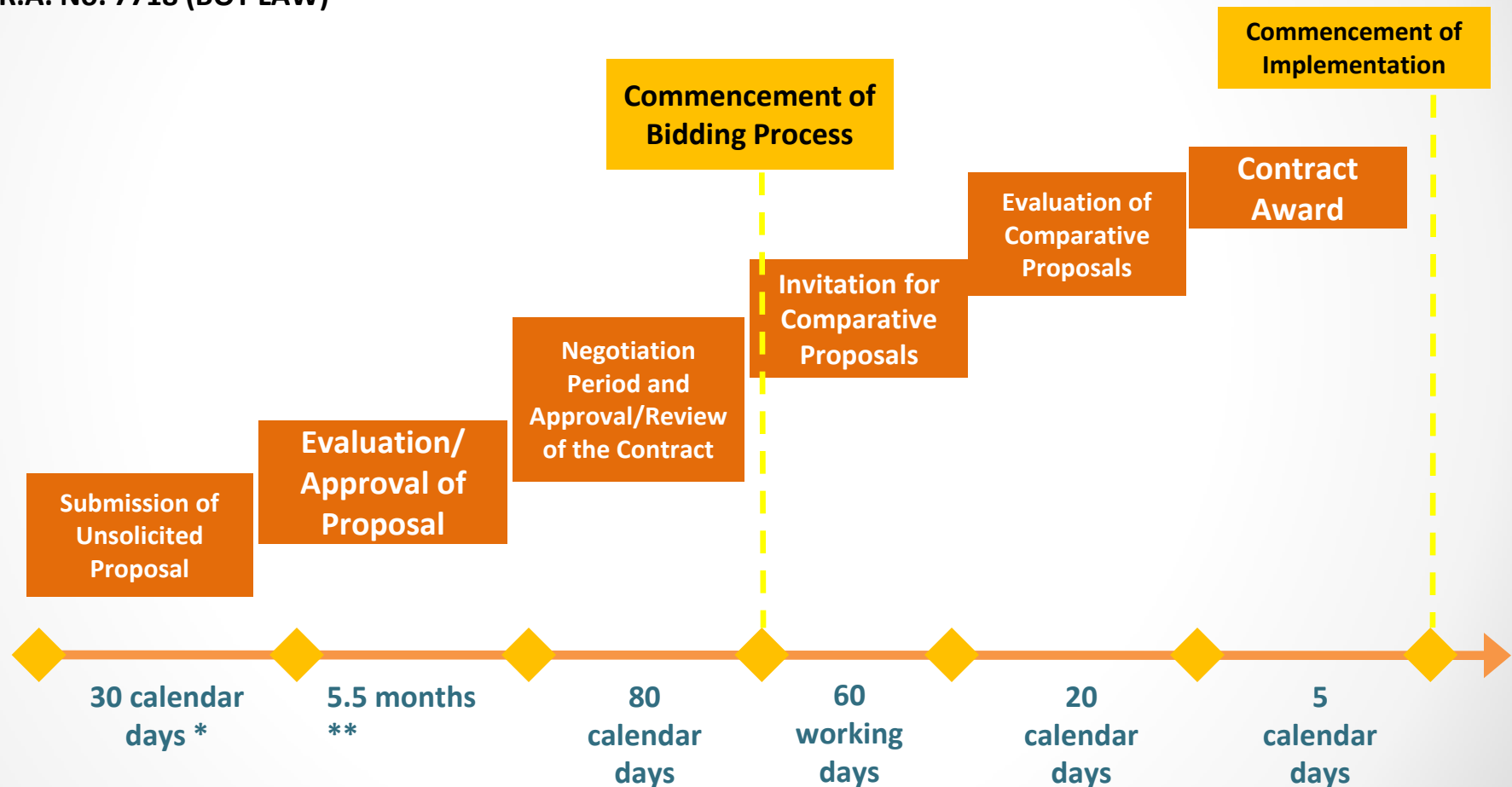


\*6 months standard project preparation time frame may vary depending on project complexity

\* \* Plus estimates

# Unsolicited Projects

TIMELINES FOR **UNSOLICITED PROJECTS** UNDER THE REVISED IRR OF R.A. No. 6957, As Amended by R.A. No. 7718 (BOT LAW)\*\*\*



\* After acknowledging receipt of proposal, agency/LGU shall advise the proponent for the proposal's completeness within 30 calendar days

\*\* Evaluation of proposal by the Agency/LGU and ICC

\*\*\* Plus estimates



# Procurement Requirements



## The Implementing Agency

- **PPP Unit**

- Responsible for planning, overseeing and monitoring projects of the Agency
- Composition:
  - Head: Senior Official of the Agency as PPP Project Development Officer (PDO)
  - Members: Technical and legal personnel who are knowledgeable on the IA's PPP project/s



## The Implementing Agency

- **PPP Pre-qualification, Bids, and Awards Committee (PBAC)**
  - As provided in the RA 7718 (BOT Law) IRR Rule 3, Agencies are required to create a PBAC for PPP projects.
  - The PPP PBAC shall be responsible for all aspects of pre-bidding and bidding process / conducting the Swiss Challenge.
    - Preparation of tender documents and bid evaluation criteria
    - Publication of the invitation to pre-qualify and bid
    - Qualification of prospective bidders
    - Pre-bid conferences and issuance of supplemental notices
    - Conduct of bidding
    - Evaluation of bids, resolution of disputes between bidders
    - Recommendation for the acceptance of the bid and/or for the award of the project



# Actors Involved in the Procurement Process

## The Implementing Agency

### • PPP Pre-qualification, Bids, and Awards Committee (PBAC)

Composition of PBAC provided in RA 7718 IRR Rule 3:

Designation	Focal Person/s
Chairman	At least a third ranking regular official of the Agency
Secretary	Legal Officer
MEMBERS	
• Voting	One (1) officer knowledgeable in finance
	One (1) officer knowledgeable in the management and operation of the project
• Provisional	One (1) technical officer knowledgeable with the technical aspects and requirements of the project, duly designated by the Head of Agency on a project-to-project basis
	One (1) technical officer knowledgeable with aspects of requirements of the project from a concerned regulatory body, who is to be invited by the Agency concerned on a project-to-project basis (non-voting)
• Observer and Non-Voting	Two (2) representatives from the private sector: one from a duly recognized Contractors association and the other from either the facility users or a duly recognized accounting association
	One (1) representative from the Commission on Audit
	One (1) representative from the PPP Center



## The Implementing Agency

- **PBAC Technical Working Group**

- Assists PBAC in terms of technical, financial, and legal aspects of procurement, specifically on the following PBAC activities:
  - Preparation of Bidding Documents
  - Conduct of PQ of Prospective Bidders
  - Evaluation of bids and preparation of accompanying reports
  - Conduct of post-qualification activities and prepare post-qualification summary report
  - Preparing the resolution recommending award
- Provide utmost priority to PBAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand are completed



## The Implementing Agency

- **PBAC Secretariat**

- Provides administrative support to the PBAC
- Organizes and makes all necessary arrangements for the PBAC meetings
- Prepare minutes of PBAC meetings
- Take custody of procurement documents and be responsible for the sale and distribution of Bid Documents
- Assist in managing the procurement processes
- Monitor procurement activities and milestones for proper reporting to relevant agencies
- Make arrangements for the pre-procurement and pre-bid conferences and bid openings



# Actors Involved in the Procurement Process

## Private Partners

### Lenders

- The party that provides debt service / financial sources for the PPP project.
- Financiers / Banks

### Investors

- The party that takes the entrepreneurial initiative of the PPP business
- Bidders / Equity sponsors
- Can be Private Individuals, Firms, or Consortia

### Construction Contractor

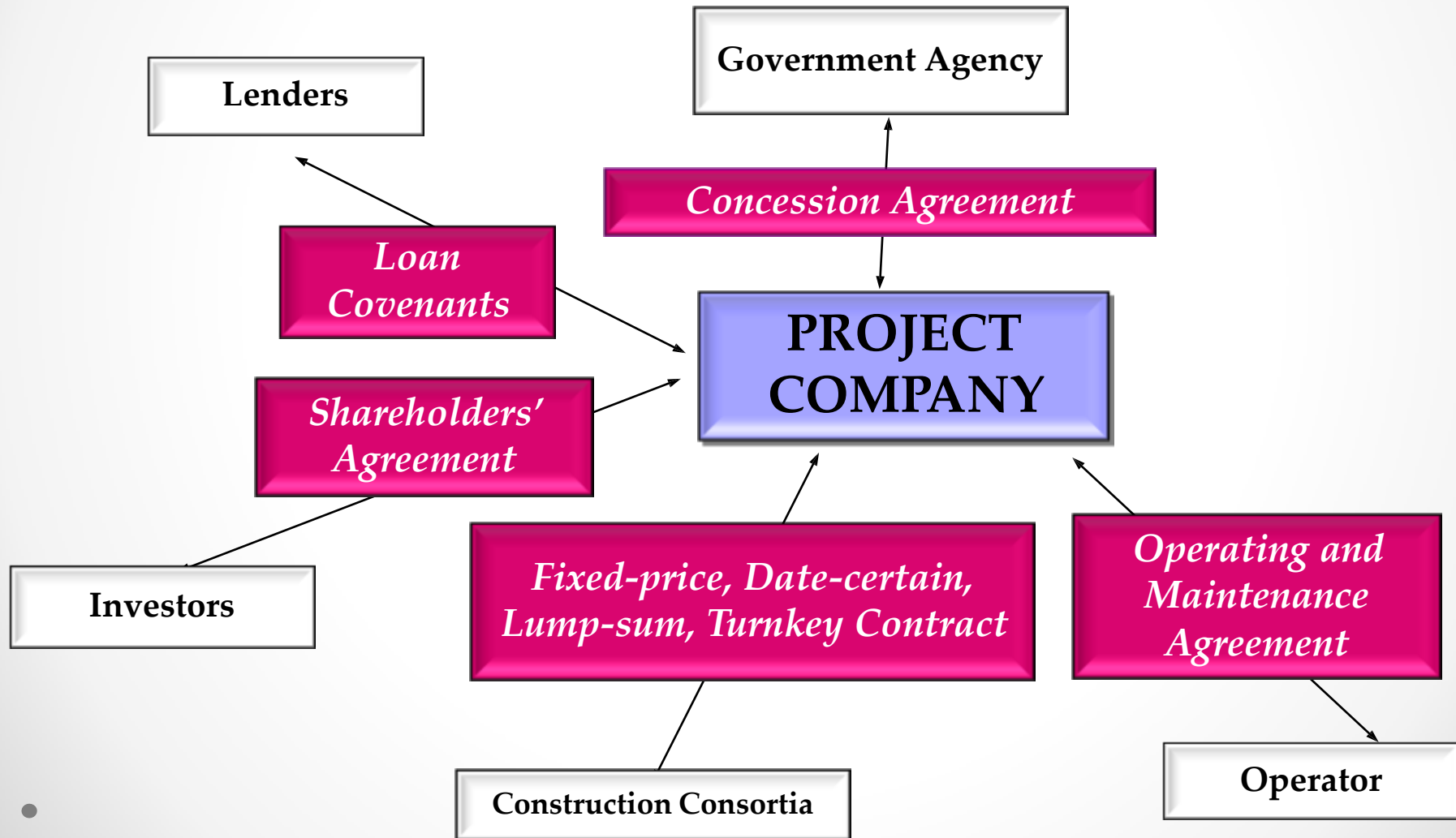
- The party that undertakes the actual construction and/or supply of equipment for the project
- May or may not be the project proponent

### Operator

- The party responsible for all aspects of O&M of the infrastructure or development facility.
- May or may not be the project proponent

# Actors Involved in the Procurement Process

Contracts Binding the Actors in a PPP



# Actors Involved in the Procurement Process

## The PPP Center

### PROJECT PREPARATION AND DEVELOPMENT

- ✓ Capacity Development
- ✓ Pre-investment financing (PDMF)
- ✓ Advisory services (legal, technical, financial matters)

### PROJECT REVIEW & APPROVAL/ PREPARATION OF BID DOCUMENTS

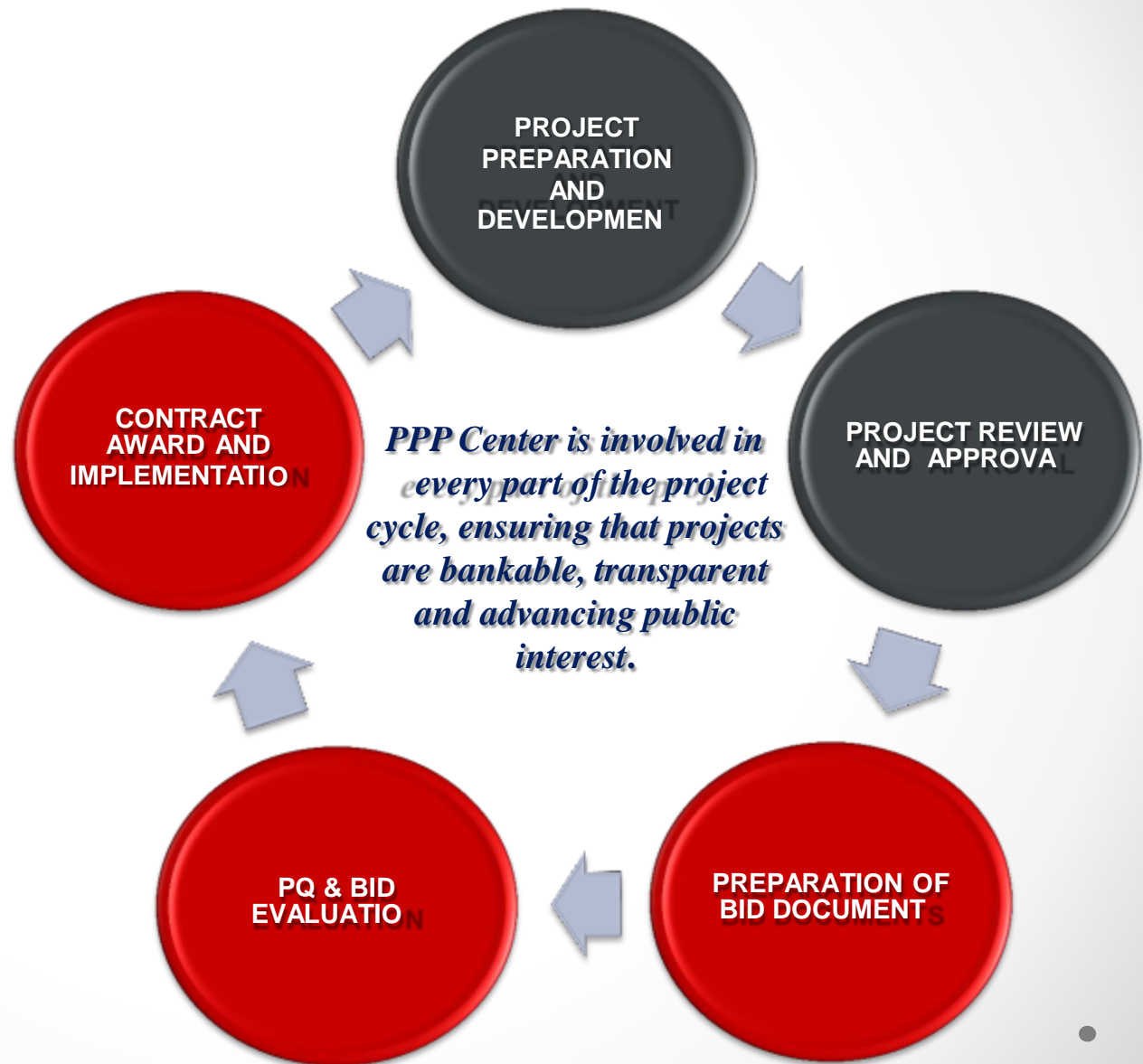
- ✓ Preparation of PPP transaction documents (bid documents, draft contract, etc)

### PQ & BID EVALUATION

- ✓ Participate as non-voting observer of BAC
- ✓ Provide advice during procurement process

### CONTRACT AWARD & IMPLEMENTATION

- ✓ Monitor project implementation and contract compliance



## Misrepresentation Causing Termination

- Conflict of interest
- Collusive bidding by prequalified bidders
- False statements and claims
- Change Order abuse
- Product substitution





## **Non-observance of bidding process amounting to violation of RA 3019 (Anti-Graft and Corrupt Practices Act)**

- Unjustified sole source awards
- Leaking of confidential bid information
- Tailored bid specifications
- Premature opening and altering of bids
- Unjustifiable extension of bid opening dates



## Institutional and Process Reforms

### Due Diligence

- **Project Preparation Stage**
  - Institutional Capacity
  - Policy Circular on Pipeline Development
  - Project Development and Monitoring Facility (PDMF)
  - Transaction Advisors
- **Approval Stage**
  - Inter-agency representation (ICC TWG, ICC-CC, NEDA Board)
  - Risk sharing (GPRAM/Risk Management Program)
- **Procurement Stage**
  - PBAC membership and capacity development
  - Transparency/predictability of processes/decisions
  - External support (transaction advisors, probity advisors, etc.)
- **Implementation Stage**
  - Contractual compliance monitoring/tracking
  - Monitoring Framework and Protocols

## Policy Reforms

- **PPP Act**
  - Subsume JVs into Amendment of BOT Law or PPP Act
  - Clarify processes for unsolicited projects
  - Clearer appeal mechanism in all stages of procurement process
- **Policy Circulars (PPP Governing Board)**
  - Guidelines on Appraisal of PPP Projects
  - Pipeline Development
  - PPP Best Practices
  - Viability Gap Funding
  - Appointment of Probity Advisors for PPP Procurement
  - Termination Payment for PPP Projects
  - PPP Monitoring Framework and Protocols
  - Assessing Value for Money in PPP Projects
  - Managing Government Employees Affected by PPP Projects
  - Public Consultation and Engagement for PPP Projects
- **Capacity Building**
  - Contracting Entities (IAs, LGUs, SUCs, GOCCs)
  - Oversight Agencies (NEDA, DOF, DENR, DBM, etc.)
  - COA (PPP Audit Guidelines)

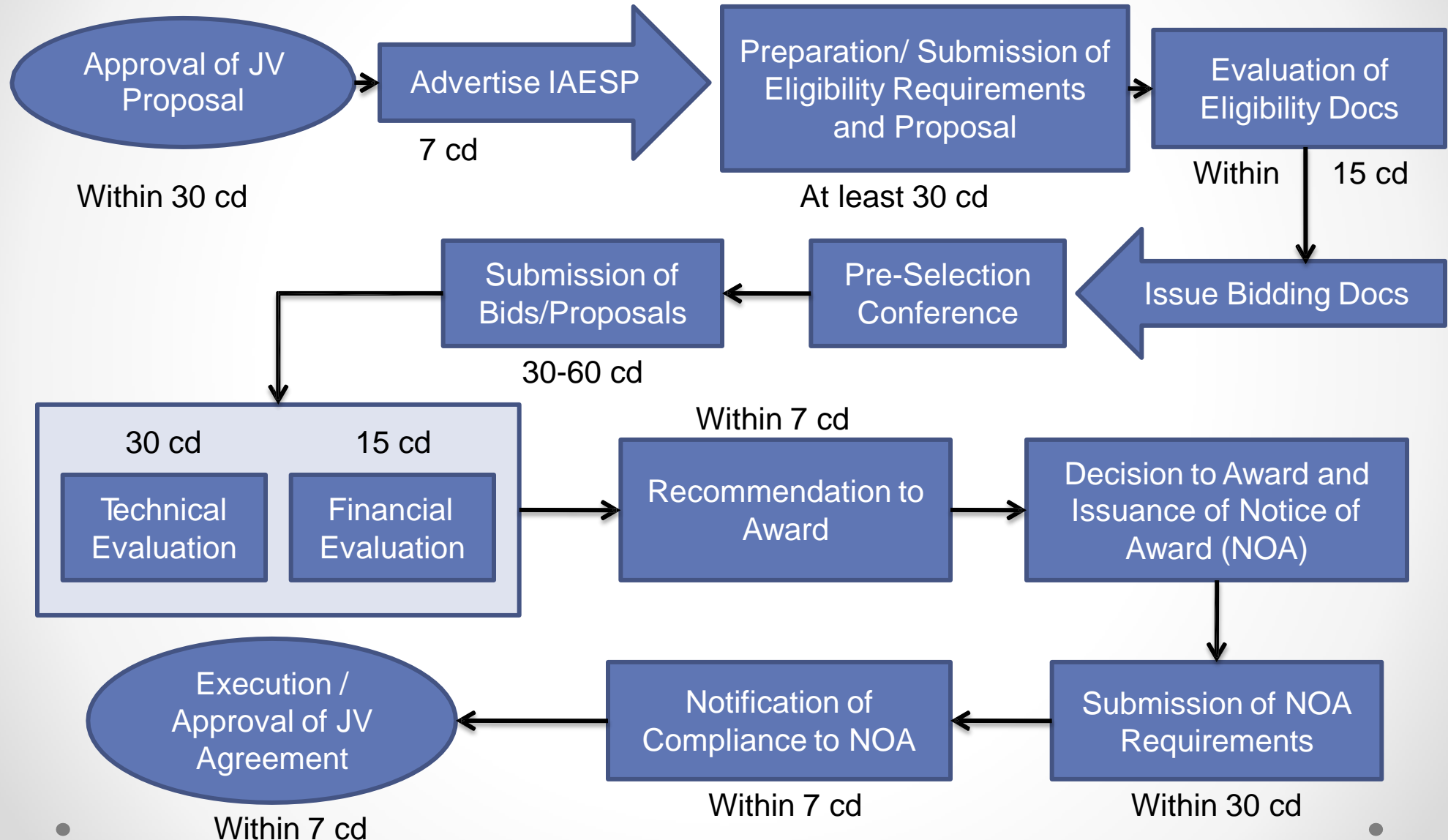


**THANK YOU!**  
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# JOINT VENTURE

## Procedures for Competitive Selection (Annex A, NEDA JV Guidelines)



# JOINT VENTURE

## Procedures for Negotiated JV and Competitive Challenge (Annex B, NEDA JV Guidelines)

