

## **PUBLIC-PRIVATE PARTNERSHIP GOVERNING BOARD**

March 25, 2015

**FOR :** All Heads of Departments, Bureaus, Offices, Commissions, Authorities or Agencies of the National Government, Government-Owned and/or Controlled Corporations, Government Financial Institutions, and State Universities and Colleges, and Local Government Units

**SUBJECT :** INSTITUTIONALIZATION OF BEST PRACTICES IN THE PUBLIC-PRIVATE PARTNERSHIP (PPP) PROCESSES

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### **I. Introduction**

The 1987 Philippine Constitution has expressly declared as a policy the recognition of private sector's indispensable role as the main engine for national growth. In this context, the Philippine Public-Private Partnership (PPP) Program was identified as one of the key strategies to achieve inclusive growth through an accelerated infrastructure development agenda.

Guided by the principles of transparency, accountability, and good governance, the PPP Program taps private investment and efficiency in delivering critical infrastructure facilities and development services.

After four (4) years of building and raising the credibility, confidence, and overall effectiveness of the PPP Program, there are best practices drawn from the experiences of the government agencies involved in the PPP process. These practices are not inconsistent with the mandated procurement process being undertaken. In fact, it reinforces the said processes and have actually been proven to be effective in maximizing the collaboration between the public and private sectors and in ensuring the success of the PPP procurement process and project implementation.

### **II. Objectives**

These Guidelines aim to institutionalize best practices in PPP procurement process and project implementation across the government and to guide the implementing agencies in effectively integrating these into the PPP procurement process and project implementation.

### **III. Selected Best Practices**

The following set of best practices shall be observed in procuring and implementing PPP projects:

#### **1. Market Sounding**

- 1.1. *Purpose.* The conduct of market sounding aims to assess the private sector's ability to assume risks through the PPP contract. It shall focus on the appropriateness and attractiveness of the PPP scheme and solicit inputs and requirements from the prospective bidders.

Market sounding shall be practiced to determine key areas that will need consideration in finalizing the PPP structure. The information received in the market sounding shall provide guidance to the Implementing Agency in deciding how to structure the project to make it most viable to the market. However, such information is merely suggestive and shall not mandatorily bind the Implementing Agency in deciding how to package the project.

Market sounding could either occur during the preparation of the project, before the issuance of the request for proposals or request for submission of qualification documents. In particular, it shall occur before the bidding proper or before sending out invitations to prospective bidders.

- 1.2. *Benefits.* The benefits of market sounding include understanding of risks, ensuring the capacity to meet future projects, early detection of issues and concerns that may affect the project, and development of competitive strategies in marketing the project. It also offers a chance to structure the PPP project at a very early stage in consultation with potential investors and bidders.

#### **2. One-on-one Meetings**

- 2.1. *Purpose.* One-on-one meetings with pre-qualified bidders shall be held to clarify any of the bidders' questions, comments, and concerns; and discuss key terms and conditions of the draft PPP agreement. It is designed to know the perspective of the bidders and serve as a venue to thresh-out all identified project issues and concerns before the formal bidding process.
- 2.2. *Transparency.* To ensure transparency, any question raised by the bidders during the conference and the answers given by the Implementing Agency shall be posted in a bid bulletin to inform all bidders of the results of every conducted session. However, the name/s of bidders, officials, or any person

who raised or answered the question shall not be included in the bid bulletin to protect confidential information.

The one-on-one meetings shall be conducted by the Implementing Agency with the presence of all concerned parties from the government side in order to eliminate the perception of favoring one bidder over the others.

### **3. Conflict Management Plan**

The submission of a Conflict Management Plan (CMP) shall be required from consulting firms who act as professional advisors of two or more bidders in the same project, in order to ensure that no conflict of interest exists between and among the teams within the said firm. The CMP shall contain, among others, an integrity pledge and a disclosure of all the firm's clients that are participating in a particular PPP project.

### **4. Control Test**

Unless otherwise provided by law, rules or regulations, or when the percentage of Filipino ownership in a corporation or partnership is in doubt, the Control Test shall be preferred in determining the bidder's compliance to the nationality requirement for PPP projects whose operation requires a public utility franchise.

The Control Test provides a practical and efficient approach in determining compliance to the nationality requirement for projects to be implemented under a contractual arrangement which requires public utility franchise for its operation.

### **5. Appointment of Independent Consultant or Engineer**

- 5.1. *Purpose.* The appointment of an Independent Consultant or Engineer for the construction phase and/or operation phase of the PPP project aims to ensure successful and timely delivery of projects through the provision of efficient, transparent, fair technical services to the contracting parties.
- 5.2. *Independence and Neutrality.* In order to maintain the independence and neutrality of the Independent Consultant or Engineer, the contracting parties shall not unduly pressure, deceive, intimidate, unduly influence the former, or commit similar acts that would adversely impact their integrity and independence.
- 5.3. *Remuneration.* The cost of the remuneration of the Independent Consultant or Engineer shall be shared equally by the contracting parties.
- 5.4. *Benefits.* The benefits of appointing an Independent Consultant or Engineer include provision of technical expertise on infrastructure projects; provision of

unbiased monitoring of the project; and provision of a first-level conflict resolution mechanism in case of disagreement/s or conflict/s between the contracting parties. It also contributes to the timely delivery of the project and provides an assurance that the infrastructure facility complies with the detailed engineering design and minimum performance standards and specifications identified in the PPP contract.

## **6. Virtual Data Room**

- 6.1. *Purpose.* The Virtual Data Room (VDR) aims to enable the Implementing Agencies to manage the information requirements of bidders during project tender in an efficient and timely manner.

The VDR is designed to be a secure online facility for storing, accessing, and distributing bid documents and related project data among pre-qualified bidders. It shall provide an online platform for bidders to undertake their due diligence review on a PPP project by making available the electronic versions of tender documents, feasibility studies, as well as other project-related information, including attachments such as photos, maps, etc. in a secure and controlled environment.

- 6.2. *Usage.* The use of VDR in PPP projects shall provide a limited or controlled access to bidders using a secured log-on supplied by the Implementing Agency, which maybe disabled anytime in case of violation in the guidelines set by the government. It shall not replace the physical data room managed by the technical advisors of the various Implementing Agencies. Moreover, the information supplied therein shall be treated confidential and subject to strict management.

- 6.3. *Benefits.* The use of VDR provides a highly secure online service with multilevel permission and access system which enables prequalified bidders to easily access up-to-date project data and information. It promotes transparency in sharing of critical project information to all bidders during the tender process through a centralized storage system that may be accessed 24 hours a day, seven (7) days a week, for the entire bidding period.

#### **IV. Effectivity**

These Guidelines shall take effect immediately upon approval by the PPP Governing Board.

*I hereby certify that these guidelines were approved by the PPP Governing Board at its meeting held on March 25, 2015, and subsequently renumbered<sup>1</sup> by virtue of PPP Governing Board Resolution No. 2018-03-07 which was approved on March 22, 2018.*



**FERDINAND A. PECSON**  
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Head, PPP Governing Board Secretariat

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<sup>1</sup> Deleted the phrase "Policy Circular No. 03-2015" in the title.