LGU PPPs:
Drafting the Local PPP Code

PPP Center of the Philippines
March 8, 2018

Presentation Outline

- The PPP Center, Its Role and Mandate
- The Philippine PPP Program
- Guiding Principles in the Development of LGU PPP Codes
- Salient Features of LGU PPP Codes
- Ways Forward for LGUs

The PPP Center, Its Role and Mandate

The PPP Program and the Center's roles through the years

1986-1992 • BOT Law (RA 6957)	**1992-1998** • Amended BOT Law (RA 7718) • BOT Center under Office of the President – Coordinating Council of the Philippine Assistance Program (CCPAP)	**1998-2001** • Renamed BOT program to PSP program • Coordinating Council for Private Sector Participation (CCPSP) under the Office of the President	**2001-2010** • Revert to BOT Program • BOT Center under DTI	**2010- 2016** • PPP Program • Renamed PPP Center and attached to NEDA	**2016-present** • PPP Program • PPP Center attached to NEDA

The PPP Center's Mandate

PUBLIC-PRIVATE PARTNERSHIP CENTER

Executive Order No. 8 dated 9 September 2010

SECTION 2. Powers and Functions of the PPP Center

The PPP Center shall cover all the PPP programs and projects including all the variants or Arrangements under the **BOT Law** and **Joint Venture Agreements** xxx

PPP Governing Board Policy Circular No. 07-2015 dated 25 August 2015

PPP Monitoring Framework and Protocols

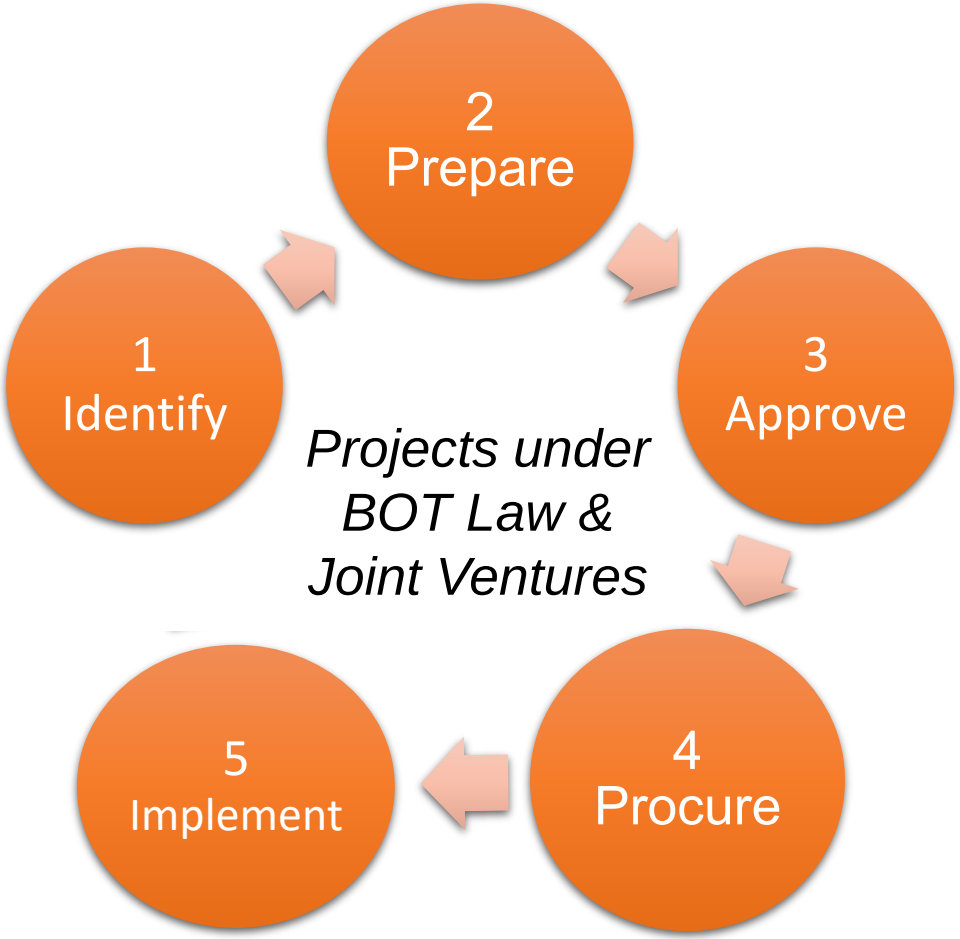
III. Scope. This policy is intended to cover all PPP projects, including all variants and arrangements under the **Build-Operate-and-Transfer (BOT) Law and its Revised Implementing Rules and Regulations (IRR) and Joint Venture Agreements**, among others, undertaken by government entities such as National Government Agencies (NGAs), Government-Owned or Controlled Corporations (GOCCs), Local Government Units (LGUs), and other government instrumentalities.

The PPP Center

Policy, Capacity and Projects

Policy reforms to enhance enabling environment

Capacity building of implementing and oversight agencies



- PPP Center to directly report to the **PPP Governing Board** chaired by NEDA, vice-chaired by DOF with the following members: DTI, DBM, OES, DOJ, and NCC

PPP Project Pipeline (as of March 7, 2018)

Awarded 16
PHP 323.06 Billion*

Under Procurement 1
PHP 0.298 Billion

Under Review by the IA 2
PHP 65.09 Billion

For Evaluation & Approval 4

Under Development 7

30
PROJECTS
PHP 388.45 Billion**

**Projects started from 2010 onwards*

***Amount does not include 12 other projects with no estimated costs yet*

The Philippine PPP Program

Private Sector Participation in Government Projects

Public sector owns and operates assets

- Utility
- Restructuring
- Corporatization
- Decentralization

Public-Private Partnership (PPP)

- **Build-Operate-and-Transfer (BOT)***
- **Joint Venture Agreements**

Private sector owns and operates assets

- Full Divestiture/Privatization

Low — Private Sector Engagement — High

**RA 6957 as amended by RA 7718 and its IRR covers the different BOT contractual arrangements and excludes Joint Venture Agreements*

PPPs in the Philippines

Contractual arrangement between government and the private partner for the provision of a public asset or service

It is a long term contract (e.g. 20 -30 years which shall not exceed 50 years)

Role of private partner: finance, design, construct, operate, and/or maintain government facilities

Risk is borne by the party who can best manage it

The facility is turned over to government at the end of concession period

Legal Framework for LGU PPPs

LGU P4 is a policy-level and project-level approach of promoting the general welfare, inclusive growth and better quality of life for the Filipinos.

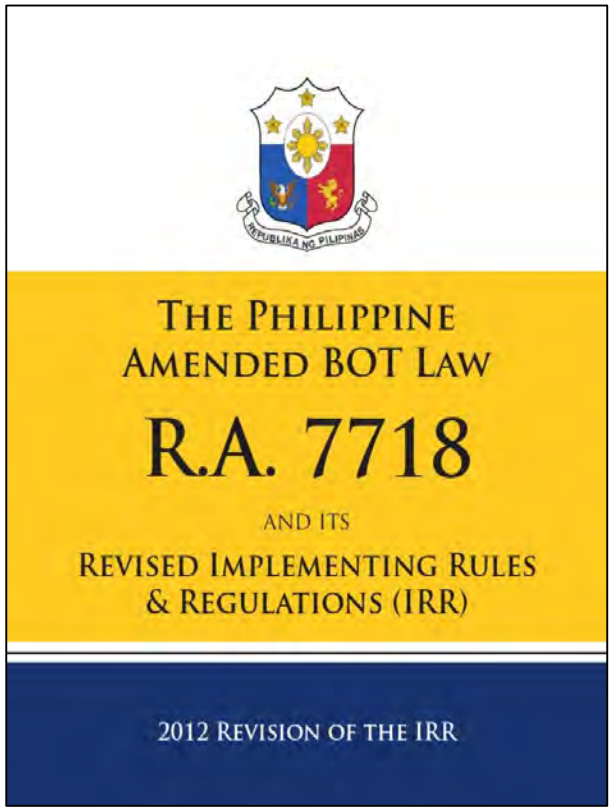
PPP Modality	Governing Framework
BOT Law Variants	BOT Law and IRR
Joint Ventures	LGC/2013 NEDA Guidelines/Local Ordinances
Concessions	Special Laws/Local Ordinances
Management and Service Contracts	GPRA
Lease and Affermage	Civil Code/Public Act/LGC/Local Ordinances
Divestment/Disposition	Commission on Audit Circular No. 89-296
Corporatization/Subsidiary	Corporation Code

Build-Operate-and-Transfer (BOT) Law and its revised IRR

An act authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector and for other purposes

Contractual Arrangements/Modalities:

1. Build-and-Transfer (BT)
2. Build-Lease-and-Transfer (BLT)
3. Build-Operate-and-Transfer (BOT)
4. Build-Own-and-Operate (BOO)
5. Build-Transfer-and-Operate (BTO)
6. Contract-Add-and-Operate (CAO)
7. Develop-Operate-and-Transfer (DOT)
8. Rehabilitate-Operate-and-Transfer (ROT)
9. Rehabilitate-Own-and-Operate (ROO)
10. Other variations of any of the above



Build-Operate-and-Transfer (BOT) Law and its revised IRR

A concession agreement under a specific contractual arrangement is signed between the government and the private partner for the provision of a public asset or service

A project company is formed by or among the private sector proponents

Lenders

Investors

Construction

Operator

Roles

Risks

Rewards

Duration

Turnover

Joint Venture Agreements (JVAs)

RA 7160 Local Government Code

Joint Venture Agreements

- Section 22 Corporate Powers “Every LGU, as a corporation, shall have the following powers xxx (5) to enter into contracts; xxx”
- Section 35. Local government units may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, xxx”

NEDA Joint Venture Guidelines (2008 or 2013)

Executive Order No. 423 s. 2005

- Section 8 “the NEDA, in consultation with the GPPB, shall issue guidelines regarding joint venture agreements with the private entities with the objective of promoting transparency, competitiveness and accountability in government transactions, and, where applicable, complying with the requirements of an open and competitive public bidding”
- LGUs not covered by the guidelines with respect to its local autonomy. However, LGUs are not precluded from adopting the process stipulated in the guidelines.

Own Local Government PPP Code/JV Ordinance

- Department of Interior and Local Government issued MC No. 2016-120 or the Guidelines for the Implementation of Public-Private Partnership for the People Initiative for Local Governments (LGU P4). The MC encourages LGUs to adopt an LGU P4 Code where one of the suggested modalities is JV.

Joint Venture Agreements (JVAs)

Joint Venture

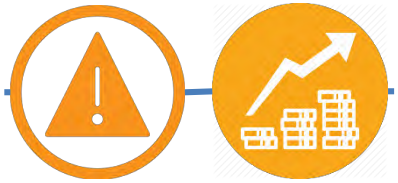
Jointly undertakes (directs and governs) an infrastructure or development projects *(with end view of eventually transfer to either private sector or to government)*

Government

Private Sector

Corporate JV:
max of 50% OCS

Pools money/capital, services, and/or assets



Shares risks & rewards

Guiding Principles in the Development of LGU Public-Private Partnership (PPP) Codes

LGU PPP Code Guiding Principles

Pro-People	Pro-Accountability	Pro-Change
Pro-Value	Pro-Learning	Pro-Innovation
Pro-Rule of Law	Pro-Justice	Pro-Participation
	Pro-decentralization	

**Based on DILG MC 2016-120*

Pro-People

- PPP Projects must be aligned with the development plans. 📖
- PPP projects must be socio-economically viable. 📖
- User-fees shall be affordable.
- The body regulating user fees and delivery of public service shall not have a conflict of interest. 📖
- Repayment schemes must be anchored on pay for performance and be limited by a reasonable rate of return. 📖
- PPP contracts shall have clearly defined indicators and expected levels of performance. Additionally these shall define how those indicators shall be measured. 📖

Pro-Accountability

- The LGU shall set up a Project Management Team that will be responsible for getting the project through the various phases – development, approval, procurement, implementation. This includes defining, assigning, tracking and reporting of all project tasks. 📖
- Projects must undergo appraisal and approval. 📖
  - Appraisal must be done by a body that is independent of the body that developed the project.
  - Approving body and authorities are clearly defined
- A unit responsible for ensuring that provisions of the contract are being implemented shall be established.
  - Contracts shall be made available to the public. 📖

Pro-Change

- PPP projects shall be designed and structured in a way that captures lessons learned from similar projects and from best practices. 📖
- Implementation bottlenecks and issues shall be analyzed so that future projects can benefit from lessons learned. 📖

Pro-Value

- The project should be an answer to a public need and should provide the optimum technical solution among alternatives.
- Risks shall be allocated optimally to achieve best value for money.
- Parameters for bidding shall be established by the LGU.
- The choice of private partner shall be done through a competitive process with sufficient timelines to be provided to allow bidders to provide competitive offers.

Pro-Learning

- The LGU shall invest in capacity building and learning activities in areas of project development, appraisal, procurement and monitoring. 📖

Pro-Innovation

- Innovation shall be encouraged through output-based project specifications that focus on outcomes expected from the private partner and not on the means to be employed to deliver those outcomes. 📖

Pro-Rule of Law

- Laws and relevant rules and regulations must always be followed through the various phases – development, approval, procurement, implementation.
- PPP projects must not fall under the pitfalls of government contracts- corruption, clientism, complacency, conflict of interest and concealment.

Pro-Justice

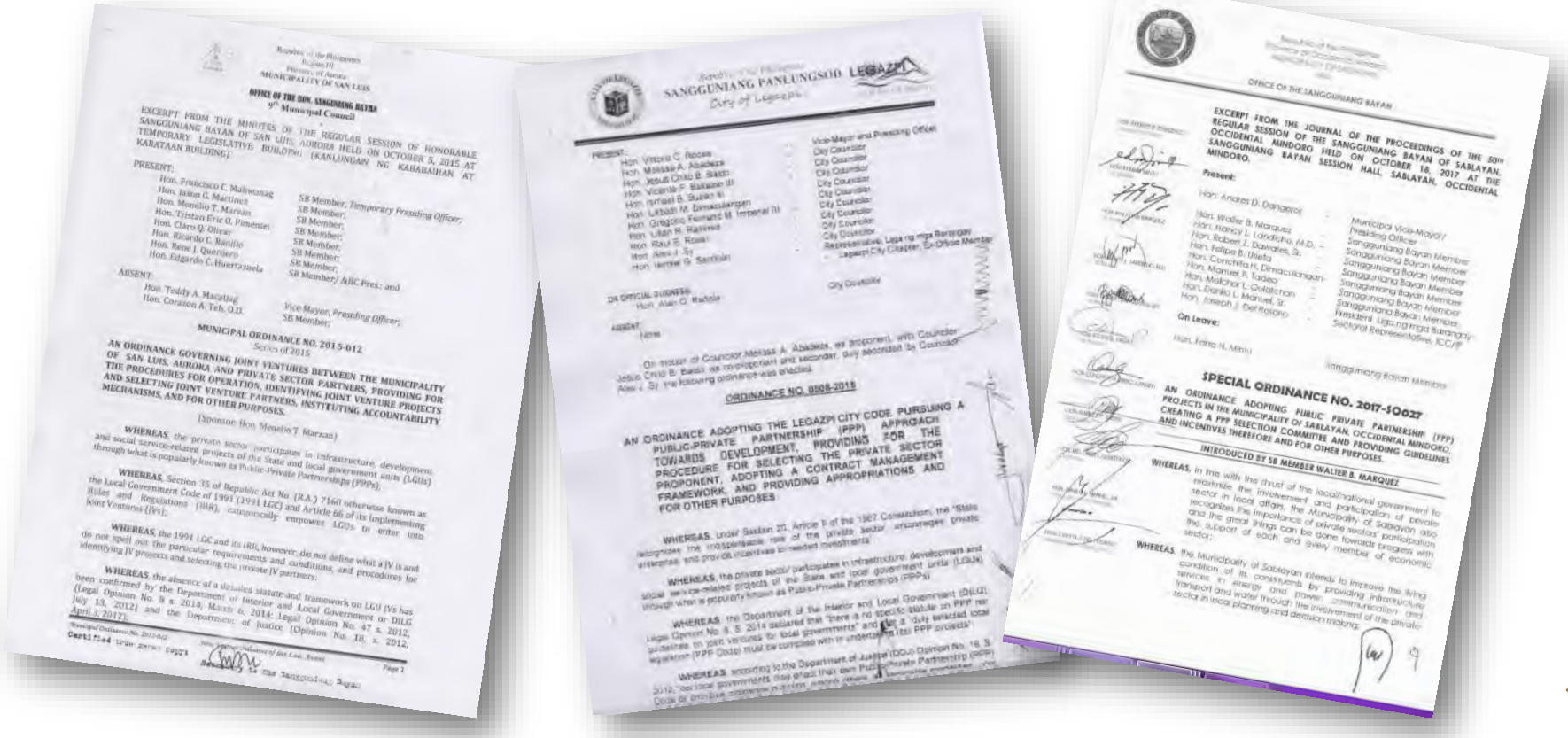
- LGUs shall also advance human rights, climate and gender justice and prioritize the needs of the marginalized in the implementation of its PPP projects. 📖

Pro-Participation

- Stakeholders shall be identified and a public consultation shall be conducted.

Pro-Decentralization

- Enacting a LGU PPP Code can be an embodiment of this principle.



LGU Public-Private Partnership (PPP) Code

- ✓ Identifies the legal framework and PPP modalities that the LGU can utilize for its PPP projects.
- ✓ Establishes the procedures, timelines, and requirements that the LGU and potential Private Sector Partners will need to follow in the implementation of local PPP projects.
- ✓ Promotes consistency, reliability and transparency among LGUs in dealing with the Private Sector.

Salient Features of LGU PPP Codes

LGU PPP Code General Sections*

Policy Declaration	Guiding Principles and Objectives	Modalities
Projects	Governance Structures	Project Approvals
Selection Procedures	Standard Contract Provisions	Contract Management and Monitoring
	Final Provisions	

**Based on draft PPP Center PPP Code for LGUs and DILG MC 2016-120 Annex 1*

Policy Declaration

- Enumerates the legal basis of the LGU in enacting a Local PPP ordinance as provided by relevant Philippine laws and issuances.

Go to Example

Guiding Principles and Objectives

- Defines the values that the LGU will uphold through the PPP Code which can be rooted from the LGU's local thrust, mission and vision in partnering with the Private Sector.
- Outlines the LGU's purpose and overall goal in enacting a PPP Code

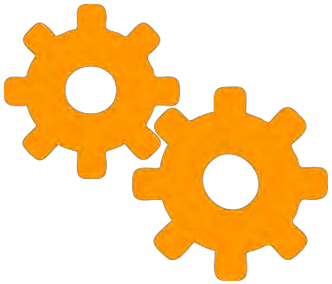
Go to Example

Definition of Terms

- Provides for uniform understanding of the terms used in the PPP Code.
- Aids in the interpretation of the PPP Code and gives clarity to unique terms as well as words which might have alternative definitions.

Go to Example

Modalities



Key considerations

- Include modalities and contractual arrangements that the LGU can utilize for its PPP projects

Go to Example

Projects

- Identifies the infrastructure and developmental projects that the LGU considers as eligible for PPP
- Eligible projects are suggested to be based on priority sectors within the region, province and the city/municipal level

Go to Example

Governance Structures

PPP Unit*

- Outline the composition and roles of a PPP core team that will handle PPP projects of the LGU
- Roles include the development of PPP project studies/FS, evaluation of unsolicited proposals coming from potential Private Sector partners etc.
- Contract management duties to ensure smooth implementation of PPP project
- Spearheads the safekeeping of all documentations to aid in the project's knowledge transfer
- Focal point of external and internal coordination on all things concerning the PPP projects of the LGU.

Go to Example

Project Approvals

- Determines the approval or confirmation process that the PPP projects, depending on the modality, will need to go through.

Go to Example

Selection Procedures

- Prescribes the procedures that the LGU will follow in the selection of Private Sector partners for its PPP projects
- LGUs are encouraged to subscribe to procedures set forth by existing laws and may formulate general guidelines and timelines for modalities with issuances that do not cover LGUs (i.e. NEDA Joint Venture Guidelines)

Go to Example

Standard Contract Provisions

- Stipulates the minimum required standard contract provisions that PPP contracts should have.
- Can act as a safeguard of the LGU in ensuring that the PPP contracts cover the basic legal relationship, roles, and responsibilities of both parties

Go to Example

Contract Management and Monitoring

- Establishes procedures and mechanisms in managing PPP Contracts and monitoring PPP projects of the LGU
- The PPP Governing Board issued **Policy Circular No. 07-2015 on PPP Monitoring Framework and Protocols** which aims to:
  - identify the roles and responsibilities of the key parties involved in monitoring the implementation of PPP project
  - define the protocols for generating, processing, and sharing information for monitoring the implementation of PPP projects
  - document information on lessons learned and best practices during project implementation that can be used in planning, evaluating, and implementing future PPP projects

Go to Example

Final Provisions

- Stipulates additional considerations of the LGU in the enactment of its PPP Code
- May include the following, as necessary:
  - Appropriations
  - Fiscal oversight
  - Adherence to existing PPP Governing Board Policy Circulars
  - Alternative Dispute Resolution
  - Implementing Rules
  - Confirmation of Executed PPP Contracts and Procedures Commenced
  - Application of other PPP Laws and Regulations
  - Repealing Clause
  - Separability Clause
  - Effectivity

Ways Forward for LGUs

Key Next Steps

- Revisit modalities that are applicable to the LGU's PPP agenda
- Review available templates and resource materials relevant to PPPs

- Draft LGU PPP Code and submit for review
- Draft supplementary executive orders (designation of members to the PPP Unit and Contract Management Team, and appropriate timelines for the selection procedures)

- Local Sanggunian to deliberate on the proposed LGU PPP Code supported by ample public consultation

PPP Codes into PPP Projects

LGU	PPP Code	PPP Project/s
Cebu City, Cebu	JV Ordinance	Waste to Energy
Baguio City, Benguet	DILG P4	Sanitation
Quezon City, Metro Manila	Various references	Waste to Energy
Valenzuela City, Metro Manila	JV Ordinance	Public Market, Town Center, Public Housing
General Santos City, South Cotabato	Various references	Public Market
Los Baños, Laguna	DILG P4	Public Market
Zamboanga City, Zamboanga del Sur	DILG P4	Multiple Projects

PPP Codes into PPP Projects

LGU	PPP Code	PPP Project/s
Tacloban City, Leyte	JV Ordinance	Reclamation
Sto. Tomas, Batangas	Draft PPP Code	Water Supply
Muntinlupa City, Metro Manila	Draft JV Ordinance	Multi-level Parking, Public Market
City of San Fernando, Pampanga	Various References	Slaughterhouse, Town Center
City of San Jose del Monte, Bulacan	DILG P4	Slaughterhouse/ Integrated Transport Terminal

THANK YOU!

For further information, please visit:

www.ppp.gov.ph

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Public-private-partnership-Center-of-the-philippines

PPPPinas

Reference Slides

Pro-People

Reference:
BOT Law IRR Section 2.3 List of Priority Projects

Concerned Agencies/LGUs are tasked to prepare their infrastructure or development programs and to identify specific priority projects that may be financed, constructed, operated and maintained by the private sector…

The List of Priority Projects shall be consistent with the Philippine Development Plan (PDP), and Provincial Development and Physical Framework Plan (PDPFP).

The Public Investment Program (PIP), and the Comprehensive Integrated Infrastructure Program (CIIP) shall be deemed as the list of National Priority Projects. The Provincial Development Investment Programs (PDIPs)/ Local Development Investments Programs (LDIP) shall be deemed as the List of Local Priority Projects.

Back to Pro-People

Pro-People

Example:

c) Measurement of economic desirability, sensitivity analysis and selection of projects based on economic feasibility indicators – The indicator to be used for estimating the economic desirability of projects shall be the economic internal rate of return (EIRR), which is defined as the discount rate which equates the net present social value (NPSV) of the benefits and costs of the project such that the NPSV is zero and the benefit cost ratio (BCR) is one. The NPSV is the discounted net economic benefit accruing to the project. The decision rule is to accept projects where the NPV is greater than zero.

Back to Pro-People

Pro-People

Example:

b) In terms of the procedures, the financial appraisal process to be undertaken for determining the financial viability of the PPP project, will include the following assessments:

i. Reviewing the project viability that covers the whole of project life, including the construction and operations phases, to assess the project viability from an appraisal of the following aspects:

i1. Tariff structure for 'user pays' concession model or annual 'availability payments' model with proposed periodic escalations, thereof;

i2. Reviewing financing plan and debt: equity structure;

i3. Assessing the debt costs and repayment structure and its impact on the cash flows: reviewing adequacy of cash flows to meet debt repayment commitments (principal + interest) during the tenor of the debt using ratio analysis benchmarks like debt service coverage ratio (DSCR), loan lifecoverage ratio (LLCR), and other key financial ratios;

i4. Determining the financial viability of the project from both, of the following viewpoints: the free cash flow to firm viewpoint and the free cash flow to equity viewpoint.The former looks at the discounted returns to all real investment flows for the project from all private finance, irrespective of whether these come from equity or from loans. The latter looks at the proponent's (investor's) equity contributions as the investment;

i5. Computing for the project to be financially viable in the free cash flow to project approach, the resulting financial internal rate of return (FIRR) should at least be equal tothe weighted average cost of capital (WACC) while the net present value (NPV) should at least be equalor greater than zero using the same WACC as the discount rate. For the free cash flow to equity approach, the resulting FIRR should exceed the cost of equity contribution of the proponent while the NPV should be greater than zero using cost of equity capital as discount rate; the resulting FIRRs using these two approaches should be provided as a range of values in the term sheet. If a project's FIRR falls below the WACC, but the EIRR is at least the threshold set by the ICC, viability gap funding (VGF) may be considered (see item ii below);

i6. Applying sensitivity analysis to the appraisal process by determining whether the project will remain feasible if changes in the assumptions or project structure used in the calculation/projections were to take place according to the degree in which they are likely to vary from the estimated or projected values; and

i7. Assessing the business case for delivery of the project using alternate PPP structures and delivery model, and selecting the preferred PPP model.

ii. Assessing the proposed level of financial support required from the government in the form of VGF and other forms of guarantees and revenue enhancements to make the project commercially attractive, and assessing the fiscal prudence of providing these forms of financial support;

Back to Pro-People

Pro-People

Example:

DILG MC 2016-120 Chapter 5 Sec. 33 Code of Conduct

(h) forthwith declare any personal or business interest that he or she, or any of his or her relatives within the fourth degree of affinity or consanguinity, may have in any business of a PSP, in which case, the official or representative shall no longer be a member of the LGU P4-SC and LGU P4-RA;

(i) forthwith declare any conflict of interest, insofar as the P4 Project concerned, that he or she may have or will have, in which case, the official or representative shall not longer be a member of the LGU P4-SC and LGU P4-RA;

Back to Pro-People

Pro-People

Suggested reference:
PPP Governing Board Policy Circular 03-2015: Institutionalization of Best Practices in the Public-Private Partnership (PPP) Process

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, and 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/sbetween the contracting parties. It also contributes to thetimely 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.

Back to Pro-People

Pro-Accountability

Example:

The **LGU PPP Implementing Office** shall be led by the Department Head of the Sectoral Office concerned. For purposes of PPP implementation, the Local Chief Executive (LCE) shall designate representatives from the following Offices to provide support:

- Office of the LCE;
- Legal;
- Planning and Development;
- Accounting and Finance;
- Engineering;
- Environment; and
- Social Welfare and Development

Go to Roles of PPP IO

Pro-Accountability

The LGU PPP Implementing Office shall perform the following functions:

Development Phase

a) Prepare and conduct pre-investment activities such as pre-feasibility studies, business case, feasibility studies, among others;

Approval Phase

a) Prepare the necessary documents that may be required by the approving body, including coordination with the local Sanggunian for the needed resolution, ordinance, endorsement of the project, and authority to the LCE for the project;

b) Submit to the LCE the project for endorsement to the appropriate approving body pursuant to the LGU's Public-Private Partnership Code

Procurement Phase

a) Assist the Prequalification, Bids and Awards Committee (PBAC) in preparing tender documents including pre-qualification and bidding documents and draft contract;

b) Assist the PBAC in the conduct of pre-qualification, bidding, evaluation of bids and recommendation for award;

b) Facilitate the compliance of all the requisite permits and approval prior to implementation; and

c) Facilitate the conduct of PPP project investor's forum and ensure the widest dissemination of information relative thereto.

Implementation Phase

a) Monitor and evaluate the implementation of PPP project; and

b) Prepare and submit reports to PPP Committee on the implementation of the PPP projects;

c) Submit the original signed copy of PPP contract and other project-related documents to the Approving Body and the PPP Center within five (5) calendar days after signing thereof; and

d) Prepare status and implementation reports of PPP Projects and submit the same to the PPP Center. The reports shall be in accordance with the format, contents and other guidelines prescribed by the PPP Center.

Back to Pro-Accountability

Pro-Accountability

Example:

SECTION 9. ***Approval of Projects.*** The list of all such local PPP projects that is part of the development program of the concerned LGU shall be submitted for confirmation, as follows:

a. To the municipal development council (MDC) for projects costing up to Php 20 million;
b. To the provincial development council (PDC), for projects of municipalities and component cities under it, costing above Php 20 million up to Php 50 million;
c. To the city development council (CDC) for projects of highly urbanized cities and independent component cities, costing up to Php 50 million,
d. To the regional development council (RDC) for projects costing above Php 50 million up to Php 200 million; and
e. To the ICC-Cabinet Committee for projects above Php 200 million.

Final approval of projects classified under a to d of this section is vested on the Local Sanggunians per provisions of the Local Government Code.

Regardless of amount, negotiated projects shall be submitted to the NEDA Board for approval upon recommendation by the ICC.

The LGU shall endorse to the ICC the proposed unsolicited project. The ICC shall determine the reasonable Rate of Return on investments and operating and maintenance cost based on the reasonable Rate of Return recommended by the LGU.

Back to Pro-Accountability

Pro-Accountability

Example:

DILG MC 2016-120 Annex 1 Chapter 5 Section 37

Sec. 37. *Transparency and Right to Information.* – The LGU P4 Contract, feasibility or project studies, bidding documents, terms of reference, results of the PSP selection process, Code of Conduct, Contract Management Manual, minutes of the post-award conference, LGU P4-RA, and LGU P4-RA-MC, and other relevant documents and instruments shall be posted in two conspicuous places of the [Province/ City/ Municipality/ Barangay/ ARMM] and uploaded in a dedicated website of the LGU P4-RA which can be freely accessed by the public. The [Province/ City/ Municipality/ Barangay/ ARMM] shall also implement a strategic communication plan addressed to all stakeholders.

Back to Pro-Accountability

Pro-Change

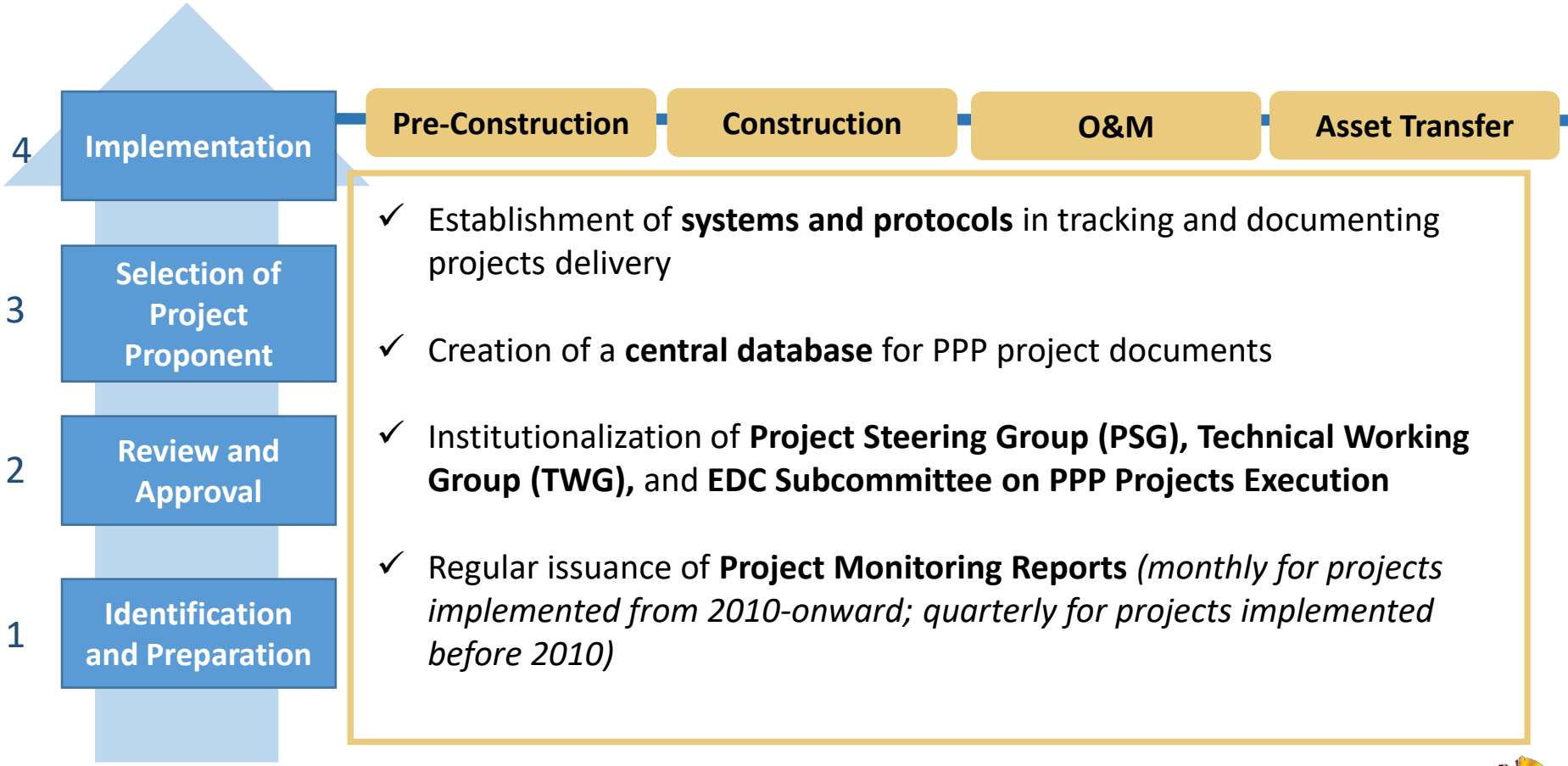
Example:
DILG MC 2016-120 Annex 1 Sec 5 n.

Feasibility or Project Study (FS) - A study, full or pre-feasibility study or business case prepared by the [Province/ City/ Municipality/ Barangay/ ARMM] in a competitive selection or a PSP when submitting an unsolicited proposal, containing or indicating a needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, LGU P4 mode selection, market testing if relevant, indicative transaction implementation plan, and draft LGU P4 contract. The study may be supported by the results of the appropriate "willingness-and-ability-to-pay" survey. The Project Study can be a feasibility study, pre-feasibility study or business case.

Back to Pro-Change

Pro-Change

Suggested reference:
PPP Governing Board Policy Circular 07-2015: PPP Monitoring Framework and Protocols



Back to Pro-Change

Pro-Value

Example:

Technical Validation (IA)

a) The objectives of technical validation shall be as follows:

i. To determine if the project is technically feasible, project design is technically sound and workable and that its operations and maintenance can be locally sustained;

ii. To ascertain if the proposed technology is cost effective; and

iii. To ensure that the project does not adversely affect the environment and / or that appropriate measures are taken to protect the environment.

Back to Pro-Value

Pro-Value

Risk Allocation Principle

"Allocating the risk to the party which can better manage it, can reduce the project's overall cost to government"

Suggested Reference:

Investment Coordination Committee-Cabinet Committee (ICC-CC) adopted Generic Preferred Risk Allocation Matrix (GPRAM)

Back to Pro-Value

Pro-Value

Reference:
BOT Law IRR Section 4.2 Instruction to Bidders

h. Parameters and criteria for evaluation of financial component of the bids;

Any one or more of the following criteria may be used in the evaluation of the financial component of the bid for determining the most advantageous bid for the Government:

i. Lowest proposed toll, fee, rental or charge at the start of project operation, if a pre-agreed parametric tariff adjustment formula is prescribed in the bid document;

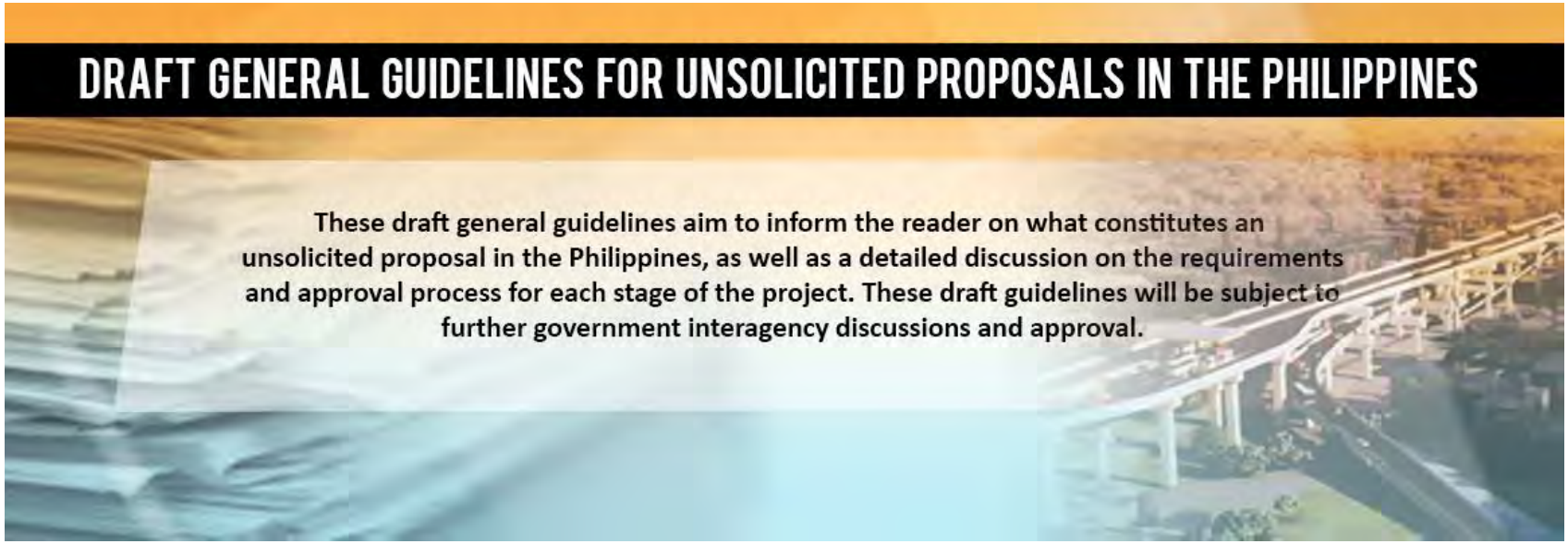
ii. Lowest present value of government subsidy to be provided for the period covered by the contract;

iii. Highest present value of proposed payments to Government, such as: concession fees, lease/rental payments, fixed/guaranteed payments, and/or variable payments/percentage shares of revenue for the period covered by the contract; or

iv. Any other appropriate financial bid parameter as may be approved by the Approving Body.

Back to Pro-Value

Pro-Value



Back to Pro-Value

Pro-Learning

Example:
DILG MC 2016-120 Annex 1 Sec. 38 Capability Building Program

Sec. 38. *Capability-Building Program.* – (a) The [Province/ City/ Municipality/ Barangay/ ARMM] shall design and implement a continuing education and capacity-building program on LGU P4 for its officials, and the members of the LGU P4-SC and LGU P4-RA.

The LGU may also utilize the PPP Center's resources for project development, capacity building, knowledge management and project monitoring

Back to Pro-Learning

Pro-Innovation

Reference:
BOT Law IRR

SECTION 4.3 - MINIMUM DESIGNS, PERFORMANCE STANDARDS/SPECIFICATIONS AND ECONOMIC PARAMETERS

Minimum design and performance standards/specifications, including appropriate environmental standards as prescribed by the DENR, shall be clearly defined and shall refer more to the desired quantity and quality of the outputs of the facility and should state that non-conformity with any of these minimum requirements shall render the bids as non-responsive. Likewise, for the purpose of evaluating bids, the following economic parameters, among others, shall be prescribed:

a. Discount rate, foreign exchange rate and inflation factor as prescribed by the Approving Body, if applicable;

b. Maximum period of project Construction;

c. Fixed term for project operation and collection of the proposed tolls/fees/rentals/charges, if applicable;

d. Formula and price indices to be used in the adjustments of tolls/fees/rentals/charges, if applicable;

e. Minimum period of repayment under the schemes contemplated in Section 12.16, if applicable;

f. Revenue Share of the Implementing Agency/LGU, if applicable; and

g. Minimum amount of equity as prescribed by the Approving Body.

Back to Pro-Innovation

Pro-Rule of Law

Example:

DILG MC 2016-120 Chapter 5 Sec. 33 Code of Conduct

Sec. 33. *Code of Conduct.* – Before commencing their functions, each member of the LGU P4-SC and LGU P4-RA and the contract manager shall sign a Code of Conduct, which shall guide each member in the performance of their duties as such.

Such Code of Conduct shall require each member to, among others:

(a) act at all times in accordance with relevant legislation and regulations;

(b) act at all times with fidelity, honesty, integrity and in the best interests of the [Province/ City/ Municipality/ Barangay/ ARMM] and its constituents;

(c) recognize the public's right to access to information in accordance with law;

(d) not misuse his or her position and privileges of a member of the LGU P4-SC and LGU P4-RA, whether or not such will prejudice the interest of the public, the PSP, or any third person;

(e) to take the utmost care in ensuring reasonable protection of the records of each LGU P4 project, and to not disclose any confidential and proprietary information to persons without a need to know such information, or in violation of any non-disclosure requirements under law or contract;

(f) carry out his or her duties with the skill and care expected from a person of knowledge and experience, and to exercise prudent judgment;

(g) forthwith report to the appropriate authorities any act of negligence, fraud, corruption, misuse of government funds, failure or refusal to perform duties, or any other act which may constitute an crime or offense, or which is prejudicial to the public interest, in the selection of the PSP and implementation of an LGU P4 contract;

(h) forthwith declare any personal or business interest that he or she, or any of his or her relatives within the fourth degree of affinity or consanguinity, may have in any business of a PSP, in which case, the official or representative shall no longer be a member of the LGU P4-SC and LGU P4-RA;

(i) forthwith declare any conflict of interest, insofar as the P4 Project concerned, that he or she may have or will have, in which case, the official or representative shall not longer be a member of the LGU P4-SC and LGU P4-RA;

(j) not vote or act in a particular way on any matter in consideration of any offer, promise, gift or present, from a member of the public, government, a political party, social group or CSO, PO, NGO, or any stakeholder or potential stakeholder;

(k) not receive any gift or anything else of value which is or may be viewed as aimed at influencing or directing his or her vote or actions; and

(l) to disclose immediately to the LGU P4-SC or LGU P4-RA as the case may be, any attempted inducement that may be construed as aimed at influencing or directing his or her acts as a member of the LGU P4-SC and LGU P4-RA.

Back to Pro-Rule of Law

Pro-Justice

Example:

4.1.2 Social Appraisal –The social appraisal of the PPP projects shall be undertaken to determine if the proposed project is responsive to national objectives of poverty alleviation, employment generation and income redistribution. NEDA shall, whenever possible, take into consideration project benefits beyond those that are simply financial and economic. If the project is of national or local interest, in the case of LGU projects, mainly because of its social benefit, this section takes on added importance. The following aspects may be considered in the qualitative assessment of the social benefits of the project:

a) Income Distribution - the extent to which the income of the poorest sector of the population is improved as a result of the project may be quantified. Reference must be made to the relative improvement in comparison with other groups in the country;

b) Employment- the extent to which the project reduces underemployment may be assessed. This may be quantified in terms of work years created by the project, with distinction made between permanent employment and employment during the investment or construction phase. The number of jobs created may be compared with the expected increase in the labor force of the project area;

c) Access to Land - if the project includes land settlement or land reform aspects, the distribution of land rights with and without the project should be demonstrated;

d) Internal Migration and Resettlement - it may be useful to note the possible effect of the project on rural-urban migration and to identify any resettlement issues that the Project faces;

e) Nutrition and Health - if the project is located in an area where serious nutrition or health problems exist, or if the project is directed toward groups with nutrition and health deficiencies, the expected effects of the project on these problems might be mentioned;

f) Other Indicators of the Quality of Life - some projects may have a significant effect on the quality of rural life through improvements in access to domestic water supplies, electricity, schools, and other facilities. These may be mentioned and the quantities of the new amenities noted; and

g) Gender and Other Appropriate Social Safeguards - all social impacts, including gender, rehabilitation and resettlement activities, proposed mitigation and their related costs would be assessed.

Back to Pro-Justice

Pro-Participation

Suggested reference:

PPP Governing Board Policy Circular 10-2016: Public Consultation and Engagement for PPP Projects

4.3. The IA shall conduct public consultation and engagement prior to project approval as required under the Investment Coordination Committee (ICC) Guidelines and Procedures, prior to implementation as required under the LGC, and during implementation as may be required under existing laws, rules, and regulations.

4.4. The IA shall publish promptly the results of the consultation and engagement process.

4.5. **Public-Private Partnership Center (PPP Center).** The PPP Center shall (i) assist in the information dissemination of the conduct of public consultation by the IAs, and (ii) ensure the conduct of stakeholder studies by the TAs under the PDMF.

5. Consultation Plan

5.1. The Consultation Plan shall be developed by the IA at the beginning of the project development stage containing its consultation and engagement process with timelines. The preparation of the Consultation Plan shall include the following steps:

(a) Define the objectives of the public consultation and engagement process;
(b) Identify the stakeholders that are likely to be affected by the PPP project (i.e. employees, unions, community groups);
(c) Define the timing and duration of the consultation and engagement, taking into consideration the stage or phase of the PPP project; and
(d) Select and prepare the appropriate communication platforms.

5.2. Appendix A of this Policy Circular provides a sample timetable for public consultation and engagement process for PPP projects.

6. Communication Platforms

The communication platforms to be employed by the IA shall include:

6.1. Publication (i.e. bulletin board, local newspaper) or Posting on the Website or Social Media Sites of the IA – IAs shall publish or post on its website or social media sites preliminary information on the proposed project or concept paper including any updates thereof, to stimulate public interest, ideas, and perspectives.

6.2. Conduct of Dialogue, Organization of Community Forum or Focus Group Discussion – IAs shall organize and conduct meetings, dialogue, forum or discussion within groups, organizations or community who will be affected by the proposed PPP project. Major issues and concerns that remain unsettled will be raised by IA during the project's presentation to the approving bodies for information and guidance. The conduct of dialogue, forum or group discussion may also be done during the cooperation stage such as in the case of a PPP project that involves tariff adjustments

6.3. Participation during Regional Development Council, Provincial Development Council or Local Development Council Meetings – IAs shall take part in the RDC, PDC and LDC meetings to provide information and clarification on the proposed PPP project.

6.4. Other platforms as may be deemed appropriate by the IA.

Back to Pro-Participation

Reference Slides For Salient Features of LGU PPP Codes

Policy Declaration

EXAMPLES:

Sec. 20, Art. II of the 1987 Constitution
"Section 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."

"It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate favorable incentives to mobilize private resources for the purpose."

R.A. No. 7160 or the Local Government Code (LGC)
Art. 400 of the LGC IRR
-Financing, Construction, Maintenance and Management of Infrastructure Projects by the Private Sector under BOT Law mechanism.

R.A. No. 6957 as amended by R.A. No. 7718 (Amended BOT Law) 2nd par., Section 1.2 of the BOT Law IRR:
"For LGU projects, concerned LGUs may formulate additional guidelines/procedures not in conflict with this Act and these Implementing Rules and Regulations and pertinent provisions of R.A. No. 7160 (Local Government Code of 1991) and its implementing rules and regulations."

Back to Policy Declaration

Guiding Principles and Objectives

EXAMPLES:

SECTION 3. ***Principles.*** The development and implementation of PPP projects shall be guided by the following principles:

a. The implementation of PPP projects must comply with existing laws, rules and regulations of the national and local governments.
b. PPP Projects must be procured through an open, transparent, and competitive bidding process.
c. PPP Projects must encourage the entry of private capital, advanced technology and managerial expertise for the effective and efficient delivery of infrastructure and services to the public.
d. Public interest shall be the overriding factor in considering all PPP projects. This includes the provision of more, quality and cost-effective services and opportunity for income and employment to the people.
e. In implementing PPP projects, adequate safeguards to protect the environment and ensure the participation of and benefit to the disadvantaged sectors of the community should be in place.
f. PPP projects must have strategic objectives that are in line with national and local development goals of alleviating poverty, improving competitiveness, and inclusive growth.
g. PPP Projects must be pursued consistent with the concept of proper risk allocation between the Local Government and the Private Sector Proponent;
h. PPP projects must be economically viable and ensure the best value for money for the government and commercially viable to the private sector.
i. PPP Projects must be supported by enabling policies and mechanisms, and appropriate incentives to attract private sector investments.

Go to next example

Guiding Principles and Objectives

EXAMPLES:

SECTION 4. ***Objectives.*** This Code has the following objectives:

a. To identify specific support and undertakings, financial or otherwise, that may be granted to the Project Proponents, as well as specific incentives as provided for under the Local Investments and Incentives Code;
b. Provide a climate of minimum Government regulations and procedures in undertaking PPP projects;
c. Allow reasonable returns on investments made by Project Proponents;
d. Provide rules and procedures that will ensure transparency and competitiveness in the bidding and awarding of projects;
e. Ensure that PPP Contractual Arrangements reflect appropriate allocation of risks between the Government and the Project Proponent;
f. Ensure close coordination between the national government and local government units (LGUs);
g. Ensure strict compliance by the Government and the Project Proponent of their respective obligations and undertakings under the PPP Contract and the monitoring thereof; and
h. To encourage pooling of resources and expertise between the local government and private sector entities through Public-Private Partnership as a viable, efficient, and practical alternative in pursuing development goals.

Back to Guiding Principles

Definition of Terms

EXAMPLE:

SECTION 7. ***Definitions.*** For purposes of this Code, the following terms shall mean:

a. ***Government Undertakings.*** Refers to any of the following forms of contribution and/or support which the LGU may extend to a Project, such as, but not limited to, the following:

(i) ***Cost sharing.*** This refers to the LGU bearing a portion of capital expenses associated with the establishment of an infrastructure development facility, such as the provision of access infrastructure, right-of-way, transfer of ownership, or usufruct, or possession of land, building or any other real or personal property for direct use in the project and/or any partial financing of the project or components thereof; *Provided*, that such shall not exceed fifty percent (50%) of the Project Cost, and the balance is to be provided by the Project Proponent. Such government share may be financed from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions.

(ii) ***Credit Enhancement.*** This shall refer to support to a development project by the Project Proponent and/or the LGU concerned. This can be considered to improve the risk and return profile of a project to attract financing. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements provided by the Project Proponent may take the form of escrow account of project revenues, the use of a loan, or a contingent credit line for the project company. While LGU support can improve the predictability of project cash flows and reduce the levels of risk through capital grants, off-take agreement, revenue guarantees or tax holiday.

Back to Definition of Terms

Modalities

Example:

Sec. 10. LGU P4 Modalities. – In undertaking a specific LGU P4 Project, the Province/ City/ Municipality may adopt and pursue any of the following LGU P4 Modalities and provide for other modalities not inconsistent with law:

1. Build-and-Transfer (BT);
2. Build-Lease-and-Transfer (BLT);
3. Build-Operate-and-Transfer (BOT);
4. Build Own and Operate (BOO);
5. Build-Transfer-and-Operate (BTO);
6. Contract-Add-and-Operate (CAO);
7. Develop-Operate-and-Transfer (DOT);
8. Rehabilitate-Operate-and-Transfer (ROT);
9. Rehabilitate-Own-and-Operate (ROO);
10. Rehabilitate-Lease-and-Transfer (RLT);
11. Rehabilitate-and-Transfer (RT);
12. Rehabilitate-Transfer-and-Operate (RTO);
13. Concession Arrangement;
14. Joint Venture (JV);
15. Lease or Affermage;
16. Management Contract using Provincial/ City/ Municipal Funds;
17. Management Contract without using Provincial/ City/ Municipal Funds;
18. Service Contract using Provincial/ City/ Municipal Funds;
19. Service Contract without using Provincial/ City/ Municipal Funds;
20. Divestment or Disposition;
21. Corporatization;
22. Incorporation of a Subsidiary with PSP equity;
23. Onerous Donations;
24. Gratuitous Donations; and
25. Any other modality akin to any of the above or features thereof which falls under the alternative definition of an LGU P4 under Section 5 (u) hereof.

Back to Modalities

Projects

EXAMPLE:

Sec. 8. LGU P4 Projects. – (a) The [Province/ City/ Municipality/ Barangay/ ARMM], through the appropriate and viable LGU P4 mode, may undertake Developmental Projects, including but not limited to, singly or with other related components, energy and power, renewable energy, waste-to-energy, roads, bridges, causeways, waterways, highways, ports, wharfs, terminals, airports, community airports, canals, dams, desilting, dredging, mining and exploration, hydropower projects, water supply and distribution, sewerage, irrigation, drainage, water conservation such as impoundment areas and rainwater harvesting, telecommunications, railroad and railways, short-haul transit services such as monorail, guided bus, bus services and trams, intermodal and multi-modal transit systems, transport systems, traffic control and management, parking facilities, reclamation projects, platform settlements, industrial estates or townships, central business and industrial park development, hotels and resorts, socialized housing, non-conventional low-cost housing, settlement/ resettlement and relocation facilities, residential subdivisions, parks and open space development/ redevelopment, pocket parks, public art, libraries, heritage conservation, government buildings, sustainable/ green public buildings, sports facilities, wellness establishments, tourism such eco-tourism, wellness tourism and agri/agro-tourism, public markets, commercial buildings, slaughterhouses, storage buildings, warehouses, cold storage, solid waste management, sanitary landfills, meeting and convention centers, information technology networks and database infrastructure, education-related, classrooms, health facilities, hospitals, social services-related, prisons, agriculture-related, post-harvest facilities, environmental management and protection, climate change adaption, disaster risk reduction, among other developmental projects.

(b) The determination of the appropriateness and viability of the P4 mode shall be specified, explained and justified in the feasibility or project study weighing all the relevant value drivers and reasons for pursuing an LGU P4 project.

(c) Parties to LGU P4 arrangement shall undertake an activity in order to accomplish either an integrated or multi-use arrangement or specific goal or purpose with the end view of serving the public good or generating revenues.

(d) No LGU P4 Project shall bear the name of any past or incumbent local official.

Sec. 9. *List of LGU P4 Priority Projects.* – The [Province/ City/ Municipality/ Barangay/ ARMM] shall identify specific priority developmental projects that may be undertaken under any of the LGU P4 Modalities defined under Sec. 10 hereof.

Back to Projects

Governance Structures

EXAMPLES:

SECTION 8. *The LGU PPP Implementing Office.* Each PPP project shall be categorized per sector. The LGU Office in charge of that particular sector shall be considered as the LGU PPP Implementing Office.

8.1 **Composition of the LGU PPP Implementing Office.** The LGU PPP Implementing Office shall be led by the Department Head of the Sectoral Office concerned. For purposes of PPP implementation, the LCE shall designate representatives from the following Offices to provide technical support:

a) Office of the LCE;
b) Legal;
c) Planning and Development;
d) Accounting and Finance;
e) Engineering;
f) Environment; and
g) Social Welfare and Development

Sec. 14. *P4 Selection Committee.* – (a) There is hereby created an LGU P4 Selection Committee (LGU P4-SC) for purposes of selecting a PSP for a specific LGU P4 Project. The LGU P4-SC, to be constituted and convened by the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Economic and Development Planning Board], shall be composed of the following:

(i) Chairperson – At least a third ranking officer of the [Province/ City/ Municipality/ Barangay/ ARMM];

(ii) Secretary – [Provincial/ City/ Municipal/ ARMM Legal Officer];

(iii) The [Provincial/ City/ Municipal/ ARMM Treasurer];

(iv) The [Provincial/ City/ Municipal/ ARMM Planning and Development Officer];

(v) One (1) representative from and selected by the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/ Barangay/ Regional Assembly] designated in an appropriate resolution; and

(vi) Two (2) representatives from and chosen by the accredited CSOs, POs and NGOs who are members of the [Provincial/ City/ Municipal Development Council/ Regional Economic and Development Planning Board].

Go to next example

Governance Structures

EXAMPLES:

8.2 **Mandate and Functions of the LGU PPP Implementing Office.** The LGU PPP Implementing Office (PPP-IO) shall perform the following functions in every phase:

8.2.1 **Development Phase**

a) Prepare and conduct pre-investment activities such others as pre-feasibility studies, business case, feasibility studies, among others.

8.2.2 **Approval Phase**

a. Prepare the necessary documents that may be required by the approving body, including coordination with the Local Sanggunian for the needed resolution, ordinance, endorsement of the project, and authority to the LCE for the project;
b. Submit to the LCE the project for endorsement to the appropriate approving body pursuant to Section 19 of this code.

8.2.3 **Competition Phase**

a. Assist the PBAC in preparing tender documents including pre-qualification and bidding documents and draft contract;
b. Assist the Prequalification, Bids and Awards Committee (PBAC) in the conduct of pre-qualification, bidding, evaluation of bids and recommendation for award;
c. Facilitate the compliance of all the requisite permits and approval prior to implementation; and
d. Facilitate the conduct of investor's forum for each PPP project.

8.2.4 **Cooperation Phase**

a. Serve as the implementation Unit designated for the implementation and monitoring of PPP projects
b. Appoint a Project Manager who will manage the execution of the LGU's PPP contracts, implementation of PPP projects, and share information to the PPP Center and other relevant government agencies
c. Together with the Project Proponent, establish the Project Steering Group (PSG), which will serve as forum for regular communication between the high representatives of parties in the facilitation of the PPP contract, and Technical Working Group (TWG) which shall assist the PSG in this regard.
d. Submit the original signed copy of PPP contract and other project-related documents to the Approving Body and the PPP Center within five (5) calendar days after signing thereof;
e. Prepare and implement a contract management plan for each PPP project; and
f. Prepare status and implementation reports of PPP Projects and submit the same to the PPP Center. The reports shall be in accordance with the format, contents and other guidelines prescribed by the PPP Center.

A quorum of the LGU P4-SC shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.

The LGU P4-SC with the approval of the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor] may invite provisional non-voting members from the national government agencies, regulatory agencies, NEDA, DILG, and the private sector to observe in the proceedings of the LGU P4-SC; and form a support staff composed of employees and staff of the [Province/ City/ Municipality/ Barangay/ ARMM].

(b) The LGU P4-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the Feasibility or Project Study and selection/ tender documents; determination of the minimum designs, performance standards/ specifications, economic parameters and reasonable rate of return or tariff-setting mechanism appropriate to the LGU P4 Modality; drafting or evaluation of the LGU P4 contract; publication of the invitation to apply for eligibility and submission of proposals or comparative proposals; defining the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challengers; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; conduct of the selection or challenge process; evaluation of the legal, financial and technical aspects of the proposals; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/ or for the award of the contract.

Back to Governance Structure

Project Approvals

EXAMPLES:

SECTION 9. ***Approval of Projects.*** The list of all such local PPP projects that is part of the development program of the concerned LGU shall be submitted for confirmation, as follows:

a. To the municipal development council (MDC) for projects costing up to Php 20 million;
b. To the provincial development council (PDC), for projects of municipalities and component cities under it, costing above Php 20 million up to Php 50 million;
c. To the city development council (CDC) for projects of highly urbanized cities and independent component cities, costing up to Php 50 million,
d. To the regional development council (RDC) for projects costing above Php 50 million up to Php 200 million; and
e. To the ICC-Cabinet Committee for projects above Php 200 million.

Final approval of projects classified under a to d of this section is vested on the Local Sanggunians per provisions of the Local Government Code.

Regardless of amount, negotiated projects shall be submitted to the NEDA Board for approval upon recommendation by the ICC.

The LGU shall endorse to the ICC the proposed unsolicited project. The ICC shall determine the reasonable Rate of Return on investments and operating and maintenance cost based on the reasonable Rate of Return recommended by the LGU.

Back to Approvals

Selection Procedures

EXAMPLES:

Sec. 13. LGU P4 *Procedures*. – The following procedures shall apply: (a) For BOT Law variants, the [Province/ City/ Municipality/ Barangay/ ARMM] must comply with the procedure set forth in the BOT Law and its Implementing Rules and Regulations.

(b) For Management and Service Contracts where [Provincial/ City/ Municipal/ Barangay/ ARMM] funds will be used, the [Province/ City/ Municipality/ Barangay/ ARMM] shall comply with Republic Act No. 9184 or the Government Procurement Reform Act and its Implementing Rules and Regulations.

(c) For Concessions, Leases or Affermage, and Management and Service Contracts where public funds are not used to procure the services of the PSP, competitive selection, limited negotiations, competitive negotiations or competitive challenge as defined herein may be utilized to select the PSP.

(d) For onerous donations, competitive negotiations or competitive challenge as defined herein may be utilized to select the PSP. For gratuitous donations, the competitive processes mentioned herein need not be followed. However, the deed of donation must be made known to the public.

(e) For Joint Ventures, Rehabilitate-Transfer, Rehabilitate-Lease-and-Transfer and Rehabilitate-Transfer-and-Operate, competitive selection, limited negotiations or competitive challenge as defined herein may be utilized to select the PSP/ JV partner.

(f) For Divestment or Disposition of a property, COA Circular No. 89-296 (January 27, 1989) shall be applicable.

(g) For the incorporation of a subsidiary with equity from the PSP, the Corporation Code shall be followed.

(h) For the Divestiture of a subsidiary or corporation incorporated by the [Province/ City/ Municipality/ Barangay/ ARMM] under Corporatization, the sale may be pursued via a public offering or through a public auction or other relevant schemes under COA Circular No. 89-296 (January 27, 1989).

Back to Selection Procedure

Standard Contract Provisions

EXAMPLE:

SECTION 4.4 - DRAFT CONTRACT

The Head of the Agency/LGU shall be responsible in ensuring the consistency of the draft contract with the parameters, terms and conditions as approved by the Approving Body.

The draft contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities including the specific Government Undertakings to be provided by the Agency/LGU relative to the project. The draft contract shall have the following mandatory terms or conditions:

a. specific contractual arrangement, term, and scope of work;

b. project technical specifications and system features;

c. implementation milestones including those for securing other approvals, project completion date;

d. cost recovery scheme via proposed tolls, fees, rentals and charges, as the case may be;

e. liquidated damages as contemplated under Section 12.14;

f. performance and warranty bonds contemplated under Sections 12.8 and 12.9;

g. minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workmen's compensation, third party liability, or comprehensive general liability insurance;

h. acceptance tests and procedures;

i. warranty period and procedures (after transfer);

j. grounds for and effects of contract termination including modes for settling disputes;

k. the manner and procedures for the resolution of warranty against corruption, and

l. compliance with all other applicable laws, rules, and regulations.

Back to Standard Contract Provisions

Contract Management and Monitoring

EXAMPLE:

Sec. 23. *Contract Management Manual.* – (a) The [Provincial/ City/ Municipal/ ARMM] Legal Officer, [Provincial/ City/ Municipal/ ARMM] Treasurer and [Provincial/ City/ Municipal/ ARMM] Planning and Development Officer and one of the CSO representatives of the P4-RA, acting as the LGU P4-RA Manual Committee (LGU P4-RA-MC), shall jointly prepare a contract management manual for each executed LGU P4 contract, which shall serve as a guide to the [Province/ City/ Municipality/ Barangay/ ARMM] and its personnel in ensuring a consistent, high quality contract monitoring process that is specific for such LGU P4 contract.

(b) The contract management manual in (a) shall be submitted to the LGU P4-RA for approval within twenty-one (21) days from the execution of LGU P4 contract, provided that, for outstanding P4contracts concluded prior to the effectivity of this Code, the contract management manual shall be submitted to the LGU P4-RA within one hundred and twenty days (120) days from the effectivity of this Code and the provisions of this Code shall apply *mutatis mutandis*.

(c) The LGU P4-RA may accept, reject, or order the revision of the contract management manual at any time during the life of the LGU P4 project, provided that any revision subsequent to the first acceptance of the contract management manual at the inception of the LGU P4 project shall require written notice to the PSP and opportunity to be heard.

(d) If the contract management manual has not been approved by the LGU P4-RA within seven (7) days from its submission as provided in paragraph (b), the same shall be deemed issued and approved by the LGU P4-RA for all purposes.

(e) The LGU P4-RA shall evaluate each contract management manual quarterly, which shall be amended as may be necessary. Any amendment to the contract management manual shall be effective upon the approval of the LGU P4-RA.

(f) The LGU P4-RA, all throughout the life of the LGU P4 Contract, shall present, make available and explain, before and after any material action is taken, all relevant information regarding the implementation of the LGU P4 Contract, the submissions of the PSP and actions taken by the LGU P4-RA, to the [Provincial/ City/ Municipal Development Council/ Regional Economic and Development Planning Board].

Sec. 24. *Contents of the Contract Management Manual.* – Each contract management manual shall include the following information:

(a) a description of the LGU P4 project and its history;

(b) a summary of the key terms of the LGU P4 contract;

(c) roles and responsibilities of each member of the LGU P4-RA and other [Provincial/ City/ Municipal/ Barangay/ ARMM] personnel and contractors, as applicable, who are involved in the LGU P4 project;

(d) roles and responsibilities of key personnel of the PSP;

(e) details of the post-award conference;

(f) partnership management procedures;

(g) performance or service delivery management;

(h) contract administration; and

(i) project closeout procedures.

Back to Contract Management