

# Legal Framework and Processes under Joint Venture Arrangements

Training-Workshop on PPP Concepts and Processes  
for NRO PPP Focal Persons  
June 27, 2018

# Joint Venture Agreements (JVAs)



Joint Venture

Jointly undertakes (directs and governs) an investment activity *(which is eventually transferred to Private Sector under competitive market conditions)*



Government



Private Sector

Minority Share



Majority Share



Pools money/capital, services, and/or assets

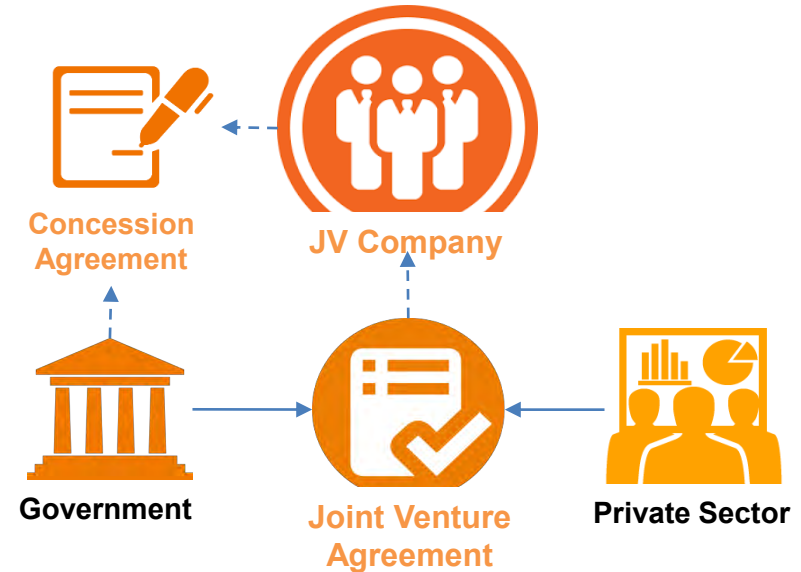


Shares risks & rewards

# Forms of Joint Ventures

## 1 Corporate JV

- Also referred to as “incorporated JV”
- Formation of a JV Company thru the Corporation Code of the Philippines to perform the primary functions and obligations of the JV as stipulated under the JV Agreement. 50% or less Government ownership of outstanding capital stock.

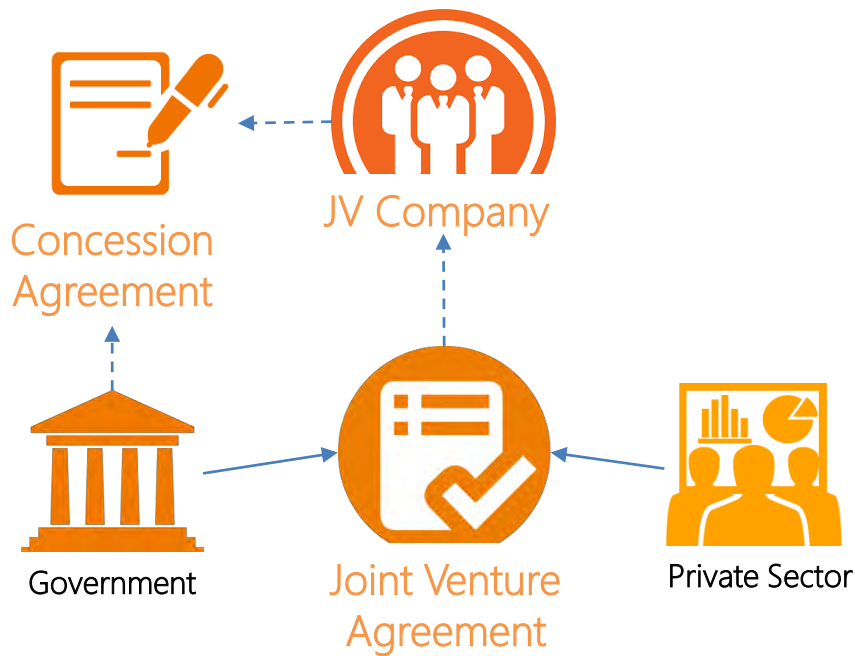


## 2 Contractual JV

- Also referred to as “unincorporated JV”
- JV Partners shall perform the primary functions and obligations under the JV Agreement without forming a JV Company.



# Corporate JV



## The JV Agreement:



Serves as the “shareholder’s agreement” that causes the formation of a JV Company  
Defines the relationship between Private Partner and the Government in running the JV Company.

## The Concession Agreement



Defines the Project Scope, responsibilities between Government and Private Partner, termination, etc.  
Same as the usual Concession Agreements

# Contractual JV



## The JV Agreement:

Defines the Project Scope, responsibilities between Government and Private Partner, termination, etc.

A legal and binding agreement under which JV Partners shall perform the primary functions and obligations under the JV Agreement without forming a JV Company.

# JV Agreement (Corporate or Contractual JV)

## General Information

- ✓ Effectivity date
- ✓ Description of each JV member
- ✓ Term of the JV
- ✓ JV Vehicle
- ✓ Cost of the JV activity
- ✓ Percentage of profit, revenue, and risk- sharing
- ✓ Governing board and officers of the JV
- ✓ Milestones and reporting
- ✓ Definitions of costs of the JV for purposes of determining Profit/Loss

## Scope, Contributions, Sharing of Risks and Rewards and Governance

- ✓ JV specifications and features
- ✓ Relationship between parties & management roles
- ✓ Amount, kind, description, timing & valuation of contributions of each party
- ✓ Procedure for additional capital infusion
- ✓ Indemnification and liquidated damages
- ✓ Dispute resolution and arbitration
- ✓ Compliance with laws, rules, & regulations
- ✓ Grounds for and effects of default and termination
- ✓ Procedures for divestment

# Typical Components of a Concession Agreement



- Grant of Concession Rights
- Service Obligations of Private Partner
- Other obligations aside from KPIs
- Obligations of Government
- Tariff Setting, Business Plan Review and Contract Management
- Transitional Arrangements
- Conditions Precedent
- Events of Default, MAGA, Force Majeure, Termination Provisions

# PPP Legal Framework by Implementing Agency

Implementing Agency	BOT Law	NEDA JV Guidelines	PPP/ JV/ P4 Code
NG	✓	✗	✗
LGU	✓	At the option of the LGU	✓
GOCC, GCE, GICP, GFI, SUC (including WDs)	✓	✓	✗





# **Salient Features of the 2013 Revised NEDA Joint Ventures Guidelines**



# 2013 Revised NEDA Joint Venture Guidelines



## NEDA Joint Venture (JV) Guidelines (2013):

Revised Guidelines and Procedures for Entering into Joint Venture (JV) Agreements Between Government and Private Entities

- Issued pursuant to Section 8 (Joint Venture Agreements) of Executive Order (EO) No. 423 dated 30 April 2005
- For Government-owned and/or controlled corporations (**GOCCs**); Government corporate entities (**GCEs**); Government instrumentalities with corporate powers (**GICPs**); Government financial institutions (**GFI**s); State universities and colleges (**SUCs**)

As stipulated in Section 4.2 b of the revised NEDA JV Guidelines, “the guidelines shall not apply to JV activities of government corporate entities in the **exercise** of their **primary mandate to dispose government assets or properties.**”

- GOCCs exempt from the revised NEDA JV Guidelines may craft its own rules and procedures to govern JV agreements with private entities
- Review the charter or laws on the specific GOCC to determine whether they are required to submit any issued rules/regulations to the Office of the Government Corporate Counsel for its review

# Coverage

## **Covered entities:**

- a) Government-owned and/or controlled corporations (GOCCs)
- b) Government corporate entities (GCEs)
- c) Government instrumentalities with corporate powers (GICPs)
- d) Government financial institutions (GFIs) and
- e) State universities and colleges (SUCs)

## **Excluded Transactions:**

- a) Transactions of GFIs in the ordinary course of business as part of their normal and ordinary banking, financial or portfolio management operations
- b) JV activities of government corporate entities in the exercise of their primary mandate to dispose government assets or properties and
- c) JV activities or undertakings of the Local Government Units (LGUs).

# Infrastructure and Development Projects for Joint Venture



power plants, hydropower projects



highways, railroad and railways, ports, airports transport systems



canals, dams, water supply irrigation, sewerage, drainage, dredging



telecommunications, information technology networks and database infrastructure,



land reclamation projects, industrial estates or townships, commercial/real estates, housing, government buildings, tourism projects, public markets, slaughter houses, warehouses, solid waste management,



education and health facilities



other infrastructure and development projects as may be authorized by the government entity.

# Modes of Selecting a JV Partner

## 1 Competitive Selection (“Solicited”)

- process of selection by Government Entity of a JV Partner based on transparent criteria which should not constrain or limit competition and is open to participation by any interested and qualified private entity

## 2 Negotiated JV

- Government Entity directly negotiates a JV activity with a Private Sector Entity
- Negotiated terms will be subject to Competitive Challenge
  - Third parties are invited to submit comparative proposals to a negotiated JV
  - PSE that submitted the negotiated proposal has the right to outbid, through a superior financial bid, the comparative financial offers

# General Process (Competitive Selection)



## DEVELOPMENT PHASE

1. Project identification
2. Preparation of requirements/conditions for the JV proposal
3. Finalization of the JV proposal



## REVIEW AND APPROVAL PHASE

4. Proposal submission to relevant approving bodies
5. Clearance/Approval of relevant Approving Authorities



## COMPETITION PHASE

6. Formation of JV-Selection Committee
7. Preparation of selection/tender documents
8. Publication of Invitation to Apply for Eligibility and to Submit a Proposal (IAESP)
9. Qualification of Private Sector Participants (PSPs)
10. Pre-Selection conference
11. Submission & evaluation of proposals
12. Notice of award and compliance with CPs



## COOPERATION PHASE

13. Execution of the JV Agreement

# Detailed JV Process – Competitive Selection (1 of 4)

## DEVELOPMENT PHASE



1. Project Identification
2. Preparation of Requirements/Conditions for JV Proposals
3. Finalization of JV Proposal

## REVIEW AND APPROVAL PHASE



- |   |  |
|---|--|
| 4. Proposal submission to relevant approving bodies     |  |
| 5. Proposal assessment and appraisal                    | Within 30 cd upon submission of complete documents |
| 6. Clearance/Approval of relevant Approving Authorities |  |

## COMPETITION PHASE



7. Formation of JV-Selection Committee
8. Preparation of Selection/Tender Documents

## Requirements/Conditions for JV Proposals

- a) JV activity is within **mandate and charter** of Government Entity
- b) JV activity is responsive in meeting **national or development goals**
- c) JV proposal clearly describes **proposed investment** (e.g. total cost, activities, objectives, sources of funding, extent and nature of Government Entity's participation, etc.)
- d) JV proposal establishes all components in determining the **over-all feasibility** (e.g. technical, financial, economic and legal aspects)



# REVIEW AND APPROVAL PHASE

## Relevant Approving Authorities

### 1 NEDA Investment Coordination Committee

- Projects with government contribution amounting to **PhP150M and above**:
  - 1) Infrastructure projects
  - 2) Public Utility projects
  - 3) Negotiated JVs that are initiated by a private sector proponent
  - 4) Projects that are not related to primary corporate mandate

### 2 Head of Government Entity

- Projects that are related to primary corporate mandate and not involving Infrastructure Projects
- Projects not falling under NEDA Board ICC approval

# REVIEW AND APPROVAL PHASE

## NEDA ICC Submissions for Approval of JV Proposal

- 1) Endorsement of the JV proposal by the Head of the Government Entity
  - 2) Project details
  - 3) Draft JV Agreement
  - 4) Other documents and requirements as may be determined by the NEDA ICC
- DOF shall be furnished all the documents submitted to the NEDA ICC

**Upon approval of the JV proposal by the Approving Authority, the Head of the Government Entity will approve the draft JV agreement**

# REVIEW AND APPROVAL PHASE

## Other Prior Approvals

*Prior to submission of a JV proposal to the Approving Authority, approval from the following entities shall be secured:*

### Privatization Council (PC)

- Projects which involve divestment or transfer of government assets or properties to the private sector partner or a private sector/entity (EO 12 as amended by EO 323)

### Governance Commission for GOCCs (GCG)

- Projects which involve the formation of a JV company
- Projects which involve divestment of government equity that is not in the form of asset or property (RA 10149 or GOCC Governance Act of 2011)

### Department of Finance / Department of Budget and Management

- JV Activity that requires national government undertakings, subsidies or guarantees

# COMPETITION PHASE

## JV Selection Committee

### Regular Members (voting)

- 1) Chairman (at least 3<sup>rd</sup> ranking officer) – votes only in case of tie
- 2) Secretary (any legal officer)
- 3) Members
  - One (1) officer knowledgeable in finance
  - One (1) officer knowledgeable in management/operation of the JV
  - One (1) officer knowledgeable in technical aspects or requirements of the project

***Quorum = majority of voting members***

### Provisional Members (non-voting)

- 1) One (1) technical officer from a concerned regulatory body knowledgeable with the project
- 2) Observers
  - One (1) representative from Government Entity's statutory counsel (OGCC or OSG)
  - One (1) representative from COA
  - Two (2) representatives from the private sector

# COMPETITION PHASE

## Selection/Tender Documents

- 1) Feasibility Study or Business Case/Pre-Feasibility Study of the Project
- 2) Instruction to Private Sector Participants\*
- 3) Minimum Design, Performance Standards/Specifications and other Financial and Economic Parameters\*
- 4) Draft Contract reflecting the terms and conditions in undertaking the JV activity\*
- 5) Selection Form reflecting the required information to evaluate technical and financial proposals
- 6) Forms of technical and financial proposals and performance securities
- 7) Other documents as may be required by Government Entity

*\*Items 2, 3, 4 must be submitted to NEDA, DOF and GCG for information before publication of the Invitation to Apply for Eligibility and Submit Proposal (IAESP)*

# Detailed JV Process - Competitive Selection (2 of 4)



## COMPETITION PHASE

9. Publication of the Invitation to Apply for Eligibility & to Submit Proposal (IAESP)	1x newspaper of gen circulation and posted continuously in websites for 7 cd starting on date of advertisement
10. Application for Eligibility	At least 30 cd from the last date of publication of IAESP
11. Evaluation of Eligibility of Private Sector Participants (PSPs)	Within 15 cd after the deadline of submission
12. Notification of Eligible PSPs*	Within 7 cd after approval thereof
13. Issuance of Tender Documents to Eligible PSPs	[ ]
14. Pre-Selection Conference	<ul style="list-style-type: none"><li>• <b>Project Cost &lt; 500M:</b> at least 15 cd</li><li>• <b>Project Cost ≥ 500M:</b> at least 30 cd before the deadline for submission of proposals</li></ul>

*\*Those ineligible may appeal to Head of Government Entity within 7 cd from receipt of notice of ineligibility. Competitive Selection process will suspended for maximum of 30 cd while appeal is evaluated.*

# COMPETITION PHASE

## Eligibility Requirements

### 1) Legal

- registered with the SEC and be at least 60% Filipino-owned if JV activity requires a public utility franchise
- comply with nationality and ownership requirements under the law (e.g. 10<sup>th</sup> Regular Foreign Investment Negative List)

### 2) Technical

- completed a project similar or related to JV activity whose value is at least 50% of the cost of the JV activity (i.e. total amount of contributions of the parties) within the relevant period
- submit statement of all ongoing and completed government and private contracts similar or related to the JV contracts

### 3) Financial

- submit AFS for last 3 years and latest tax returns
- financial capability measured by a) proof of ability to provided minimum amount of equity to JV activity (i.e., net worth of company or deposit set aside or ear-marked for JV activity) and b) bank certificate attesting that PSPS is a current client and is in good financial standing

### 4) Acceptance of Criteria and Waiver of Rights to Enjoin JV Activity

# Detailed JV Process - Competitive Selection (3 of 4)



## COMPETITION PHASE

15. Submission of Technical & Financial Proposals by Eligible PSPs	On or before deadline set in ITP
16. Opening of Technical Proposals <i>*Withdrawal/modification of proposals allowed prior to time and date set for opening technical proposal</i>	<ul style="list-style-type: none"><li>• <b>Project Cost ≥500M:</b> within 60 cd</li><li>• <b>Project Cost &lt;500M:</b> within 30 cd from last day of issuance of tender documents</li></ul>
17. Evaluation of Technical Proposals	Within 30 cd from date technical proposals are opened
18. Opening of Financial Proposals of Eligible PSPs who passed the technical evaluation	<ul style="list-style-type: none"><li>• <b>Project Cost ≥500M:</b> within 60 cd</li><li>• <b>Project Cost &lt;500M:</b> within 30 cd from last day of issuance of tender documents</li></ul>
19. Evaluation of Financial Proposals	Within 15 cd from date financial proposals are opened
Simultaneous Opening and Evaluation of Technical and Financial Proposals	Within 30 cd from date the proposals are opened

***Government entity reserves the right to reject any or all proposals, waive any minor defects therein and accept the offer it deems most advantageous to the government***



# Detailed JV Process - Competitive Selection (3 of 4)

## COMPETITION PHASE

### Requirements for Submission of Proposals

- 1 Technical Proposal (First Envelope)**
  - Compliance statements with technical parameters
  - Operational feasibility
  - Technical soundness
  - Preliminary environmental assessment
  - Cost and financial plan
  - Proposal security (equivalent to 1-2% of PSP's total contribution as estimated by Government Entity)
  
- 2 Financial Proposal (Second Envelope)**
  - Compliance statements with financial parameters
  - Proposed cost of JV activity, O&M cost, amount of equity and debt, sources of financing, other related costs
  - Financial proposal corresponding to parameters set

*Non-compliance with the required information shall be grounds for rejection of the proposals*

# Detailed JV Process - Competitive Selection (4 of 4)



## COMPETITION PHASE

20. Recommendation to Award	Within 7 cd from date the evaluation is completed
21. Decision to Award	Within 7 cd from date of recommendation
22. Issuance of Notice of Award (NOA)	Within 7 cd from decision
23. Compliance of the Winning PSP with Conditions Precedent (CPs) for Execution of JV Agreement	Within 30 cd from receipt of NOA
24. Evaluation of Compliance with CPs and Notification of Results to the Winning PSP	Within 7 cd from receipt of compliance statements



## COOPERATION PHASE

25. Execution of the JV Agreement by the Winning PSP	Within 7 cd from notification of compliance with CPs to Winning PSP (during period of validity of Proposal Security not beyond 180 cd from opening of proposals)
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## COMPETITION PHASE

### Single Responsive Bid

*A single responsive bid (i.e., technical and financial proposal) shall be considered for award under the following circumstances:*

- Only one PSP submits eligibility documents and meets the eligibility requirements; after which it submits a proposal which meets the technical and financial requirements
- More than one PSP submits eligibility documents but only one PSP meets the eligibility requirements; after which it submits a proposal which meets the technical and financial requirements
- More than one PSP meets the eligibility requirements but only one PSP submits a proposal that meets the technical and financial requirements
- After evaluation of proposals, only one PSP meets the technical requirements but is not able to comply with financial requirements; after which a negotiation on the financial terms/proposal is conducted and is successful

# Detailed JV Process - Competitive Selection (3 of 4)

## COMPETITION PHASE

### Negotiation on Financial Terms/Proposal under Competitive Selection

- Applies when one or several eligible and technically qualified PSPs do not meet the financial requirements
- Government Entity will request such technically qualified PSPs to submit their new financial proposals
- The technical proposal will remain valid and binding
- Government Entity will notify and negotiate on the financial terms/proposal with the PSP who submitted *the most advantageous financial proposal*
- If Government Entity fails to successfully negotiate within 30 cd from notification, it will negotiate with the *next ranked most advantageous financial proposal*, and so on until a successful negotiation is concluded
- If there is no successful negotiation, Government Entity will conduct another Competitive Selection

## COMPETITION PHASE

### Failure of Competitive Selection

- No PSPs are eligible
- No proposals are received
- No eligible PSPs meet the technical requirements
- No successful negotiation on financial terms/proposals

Government Entity will review the TOR/tender documents **and** conduct another competitive selection

In case of second failed competitive selection, Government Entity **may** resort to Negotiated JV

# Modes of Selecting a JV Partner

## 1 Competitive Selection (“Solicited”)

- process of selection by Government Entity of a JV Partner based on transparent criteria which should not constrain or limit competition and is open to participation by any interested and qualified private entity

## 2 Negotiated JV

- Government Entity directly negotiates a JV activity with a Private Sector Entity
- Negotiated terms will be subject to Competitive Challenge
  - Third parties are invited to submit comparative proposals to a negotiated JV
  - PSE that submitted the negotiated proposal has the right to outbid, through a superior financial bid, the comparative financial offers

# Conditions for Negotiated JVs

*Government Entity may directly negotiate a JV activity with a private sector entity under the ff. circumstances:*

- Government Entity receives an “Unsolicited” proposal from the private sector for a project
- In case of second failure of competitive selection, Government Entity may seek out a JV Partner and request the latter to submit a proposal, provided that the negotiations:
  - must be concluded 1 year from date of submission of proposals for which there was a second failure of competitive selection; and
  - shall only be on the financial terms

# General JV Process (Negotiated)



## EVALUATION AND APPROVAL PHASE

1. Submission of a Proposal by PSP
2. Evaluation of Eligibility of Proponent & Proposal
3. Issuance of Letter of Acceptance/Non-Acceptance



## NEGOTIATION AND REVIEW PHASE

4. Negotiations on terms and conditions of the JV Project
5. Issuance of Certification of Agreement & Conferment of the Original Proponent Status
6. Approval of the JV Proposal by the Approving Authority



## COMPETITIVE CHALLENGE PHASE

7. Preparation & Approval of Tender Documents
8. Publication of the Invitation to Apply for Eligibility
9. Original Proponent to Post the Proposal Security
10. Submission of Comparative Proposals
11. Determination of Eligibility of Comparative PSPs
12. Evaluation of Proposals
13. Notice of award and compliance with CPs



## COOPERATION PHASE

14. Execution of JV Agreement



# Detailed JV Process - Negotiated (1 of 4)



## STAGE 1 - EVALUATION AND APPROVAL PHASE

1. Submission of a Proposal by the PSP*	
2. Evaluation of Eligibility of Proponent and Proposal	Within 60 cd upon submission of complete documents
3. Issuance of Letter of Acceptance/ Non-Acceptance <i>Acceptance will not bind the Government Entity to enter into JV activity but means authorization is given to proceed with negotiations</i>	



## STAGE 2- NEGOTIATION AND REVIEW PHASE

4. Negotiations on the Terms and Conditions, Scope, Legal, Technical and Financial Aspects of the JV Activity	Within 30 cd upon acceptance of proposal in Stage One
5. Issuance of Certification of Agreement & Conferment of the Original Proponent ("OP") Status	Within 7 cd after successful negotiation
6. Approval of the JV Proposal by the appropriate Approving Authority <i>*see next slide for discussion on First In Time Approach</i>	Within 30 cd upon submission of complete documents

# First In Time Approach

*In case similar proposals are received prior to conferment of Original Proponent Status, Government Entity has the ff. options:*

- Reject all such proposals
- Subject all such proposals to Competitive Selection
- Evaluate the proposals based on the first-in-time approach
  - *First complete proposal* is evaluated
  - Second complete proposal will only be opened and evaluated after first one is rejected
  - Government Entity will acknowledge the submissions of other PSPs and advise each of its rank/position based on date of submission
  - If contract is awarded, the unopened envelopes will be returned

# Detailed JV Process - Negotiated (2 of 4)

## STAGE 3 - COMPETITIVE CHALLENGE PHASE



7. Formation of JV Selection Committee	
8. Preparation & Approval of Tender Documents	
9. Publication of the Invitation to Apply for Eligibility & Submit Comparative Proposals (IAESP)	Within 7 cd from approval of proposal by Approving Authority
10. Posting of Proposal Security by OP	At the date of the first day of publication of IAESP
11. Application for Eligibility of Comparative PSPs	At least 30 cd from the last date of publication of IAESP
12. Evaluation of Eligibility of Comparative PSPs	Within 15 cd after the deadline of submission
13. Notification of Eligible PSPs	Within 7 cd after approval thereof
14. Issuance of Tender Documents to Eligible PSPs	[ ]
15. Pre-Selection Conference	<ul style="list-style-type: none"> <li>• <b>Project Cost &lt;500M</b>: at least 15 cd</li> <li>• <b>Project Cost ≥500M</b>: at least 30 cd before the deadline for submission of proposals</li> </ul>

# Detailed JV Process – Negotiated (3 of 4)



## COMPETITION PHASE

<p>16. Submission of Comparative Proposals by Eligible PSPs  <i>*If no comparative proposal is submitted, JV activity will be awarded to OP</i></p>	<p>At least 120 cd from the issuance of tender documents</p>
<p>17. Opening of Technical Proposals  <i>*Withdrawal/modification of proposals allowed prior to time and date set for opening technical proposal</i></p>	<ul style="list-style-type: none"> <li>• <b>Project Cost ≥500M:</b> within 60 cd</li> <li>• <b>Project Cost &lt;500M:</b> within 30 cd from last day of issuance of tender documents</li> </ul>
<p>18. Evaluation of Technical Proposals</p>	<p>Within 30 cd from date technical proposals are opened</p>
<p>19. OP may opt to submit Second Financial Proposal (<i>Modified Competitive Challenge</i>)</p>	<p>On or before the date of opening of financial proposals</p>
<p>20. Opening of Financial Proposals of Eligible PSPs who passed the technical evaluation and Second Financial Proposal of OP</p>	<ul style="list-style-type: none"> <li>• <b>Project Cost ≥500M:</b> within 60 cd</li> <li>• <b>Project Cost &lt;500M:</b> within 30 cd from last day of issuance of tender documents</li> </ul>
<p>21. Evaluation of Financial Proposals  <i>*in case comparative PSPs fail to outbid the financial proposal of OP or if there are no comparative PSPs or there is a tie between OP and comparative PSPs, JV activity will be awarded to OP</i></p>	<p>Within 15 cd from date financial proposals are opened</p>

# Detailed JV Process - Competitive Selection (4 of 4)



## COMPETITION PHASE

22. Recommendation to Award	Within 7 cd from date of completion of competitive challenge
21. Decision to Award	Within 7 cd from date of recommendation
22. Issuance of Notice of Award (NOA)	Within 7 cd from decision
23. Compliance of the Winning PSP with Conditions Precedent (CPs) for Execution of JV Agreement	Within 30 cd from receipt of NOA
24. Evaluation of Compliance with CPs and Notification of Results to the Winning PSP	Within 7 cd from receipt of compliance statements



## COOPERATION PHASE

25. Execution of the JV Agreement by the Winning PSP	Within 7 cd from notification of compliance with CPs to Winning PSP  (during period of validity of Proposal Security not beyond 180 cd from opening of proposals)
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# PPP Legal Framework by Implementing Agency

Implementing Agency	BOT Law	NEDA JV Guidelines	PPP/ JV/ P4 Code
NG	✓	✗	✗
LGU	✓	At the option of the LGU	✓
GOCC, GCE, GICP, GFI, SUC (including WDs)	✓	✓	✗



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



# DILG Memorandum Circulars

## **DILG Memorandum Circular (MC) No. 2011-16: Establishment of PPP Subcommittee in the Local Development Councils of LGUs**

- Enjoins Local Chief Executives to create a PPP Subcommittee to assist the LDC formulate action plans and strategies in implementing PPPs



## **DILG MC No. 2016-120: Guidelines for the Implementation of PPP for the People Initiative for Local Governments (LGU P4)**

- Provides more modalities available under P4 for LGUs
- Provides an LGU P4 Code template that may be adopted by LGUs
- Provides for joint undertakings among and between LGUs and IAs to implement applicable LGU P4 projects
- Sets documentary requirements for undertaking LGU P4 projects
- Encourages the use of the DILG LGU P4 Portal to facilitate the sharing of lessons learned and best practices





# 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



- ❑ 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.





- ❑ 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.



- ❑ 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.





- ❑ 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.



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





- ❑ 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.



- ❑ 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.





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

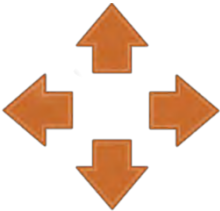
# Pro-Participation



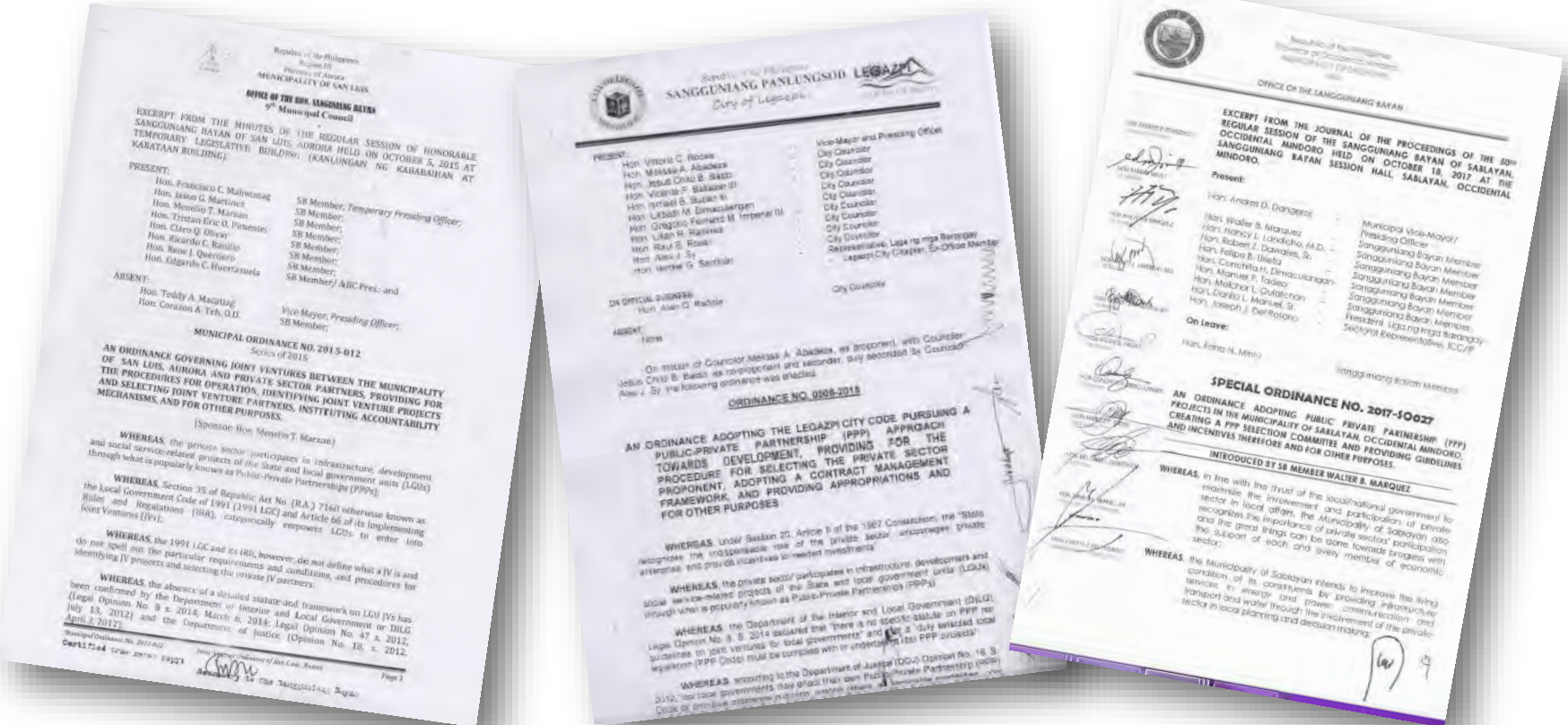
- ❑ Stakeholders shall be identified and a public consultation shall be conducted.



# Pro-Decentralization



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



# LGU Public-Private Partnership (PPP) Code



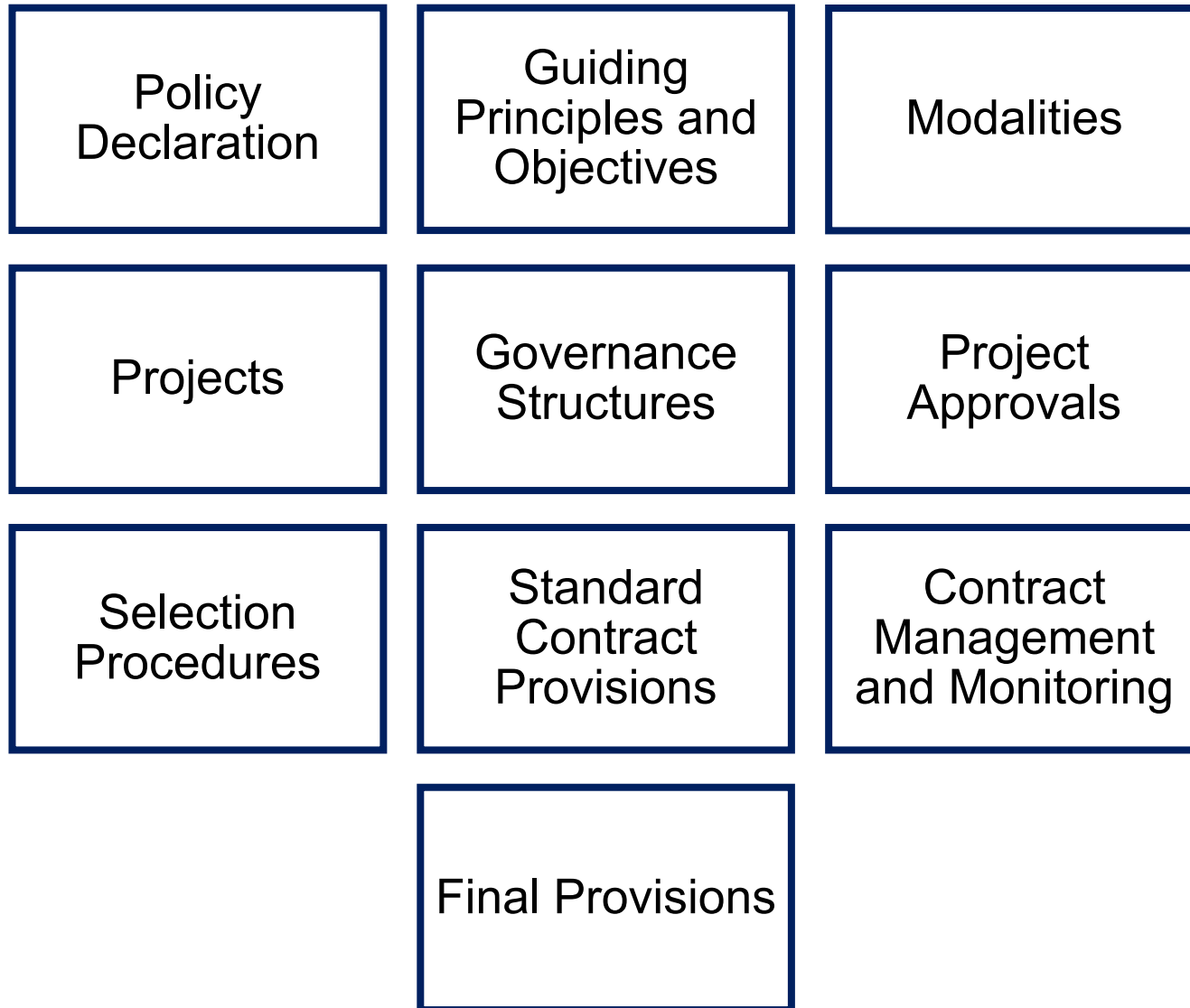
- ✓ Identifies the legal framework and PPP modalities that the LGU can utilize for its PPP projects.
- ✓ Establishes the procedures, timelines, and requirements that the LGU and potential Private Sector Partners will need to follow in the implementation of local PPP projects.
- ✓ Promotes consistency,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



# Salient Features of LGU PPP Codes



# LGU PPP Code General Sections\*



# Policy Declaration



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

# 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

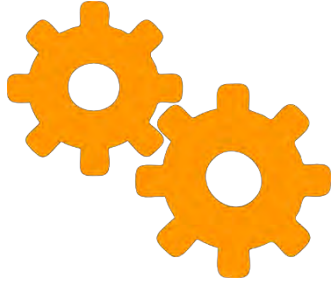


# Definition of Terms



- 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.





## **Key considerations**

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

# 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



## 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.



# Project Approvals



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

# 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)



# 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



# 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



# 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

# Essential Elements for Local PPP Codes & JV Ordinances

1. Local PPP Codes must be consistent with **the Amended Build-Operate-and-Transfer (BOT) Law and its IRR** (RA 6957, as amended by RA 7718 and its IRR) and all national laws.
2. A local JV Ordinance must indicate the following processes:
  - a. Contribution, allowable by law, of LGU (e.g. money, capital, land, intellectual property (IP), etc.)
  - b. Competitive selection of JV Partner/ procedure for competitive selection
  - c. Approval by LGU (authorized by Sanggunian)
  - d. Joint Venture Vehicle/ Forms (Contractual or Incorporated JV)
  - e. Monitoring of Implementation

## General Requirements for LGUs entering into LGU P4 Code (1 of 2)

LGU contribution can be in the form of: money, capital, services, personnel, assets, equipment, and IP, combination. The contribution shall be subject to third party independent valuation

- LGU contribution or share in the JV activity may come from allocation of funds such as a portion of its Internal Revenue Allotment, real property tax, development fund, regular funds, as its contribution or share in the JV Activity.
- LGU shall be a minority equity or shareholder, except in cases where it owns or makes 50% of the outstanding capital stock or contribution.
- LGU may contract a loan, avail of ODA (not more than 50%), secure grants, issue bonds, debentures, securities, collaterals, credit enhancements, and notes the proceeds of which can be earmarked for the JV Activity.

## General Requirements for LGUs entering into LGU P4 Code (2 of 2)

- The LGU may extend goodwill, free carry, grant a franchise, concession, usufruct, right-of-way, equity, subsidy or guarantee, provide cost-sharing and credit enhancement mechanism, give tax incentives or tax holidays, etc.
- The share of each JV partner shall be set as fixed or determinable percentages or values either based on an overall or across-the-board assignment of contributions, revenues, profits, losses, risks and functions; or on specific assignment of contributions and functions to each JV party
- The JV activity may, subject to competitive selection process, include divestment, disposition or transfer of ownership of the JV activity, equity, asset or project to the private partner. The divestment or disposition may take place at the end of the JV period or before the term ends;

# Government-to-Government Joint LGU P4 Undertakings

- For projects located within an LGU's territory or those projects that will benefit the LGU and its community even if the project site is outside the territory of the province.
- Collaborating or partner government entity jointly undertakes with the LGU the selection of the private sector partner using the appropriate LGU modality.

# Modes of Selecting a JV Partner

## 1. Competitive Selection

## 2. Limited Negotiations

- Where there is failure to identify an eligible PSP when there is only one qualified bidder after subjecting the same to a competitive selection (first scenario); or
- Where a Project or Activity under consideration has an indispensable or integral component which has already been subjected to competitive selection giving the PSP a vested and exclusive right over the component without which the Project cannot be implemented as envisioned (second scenario)

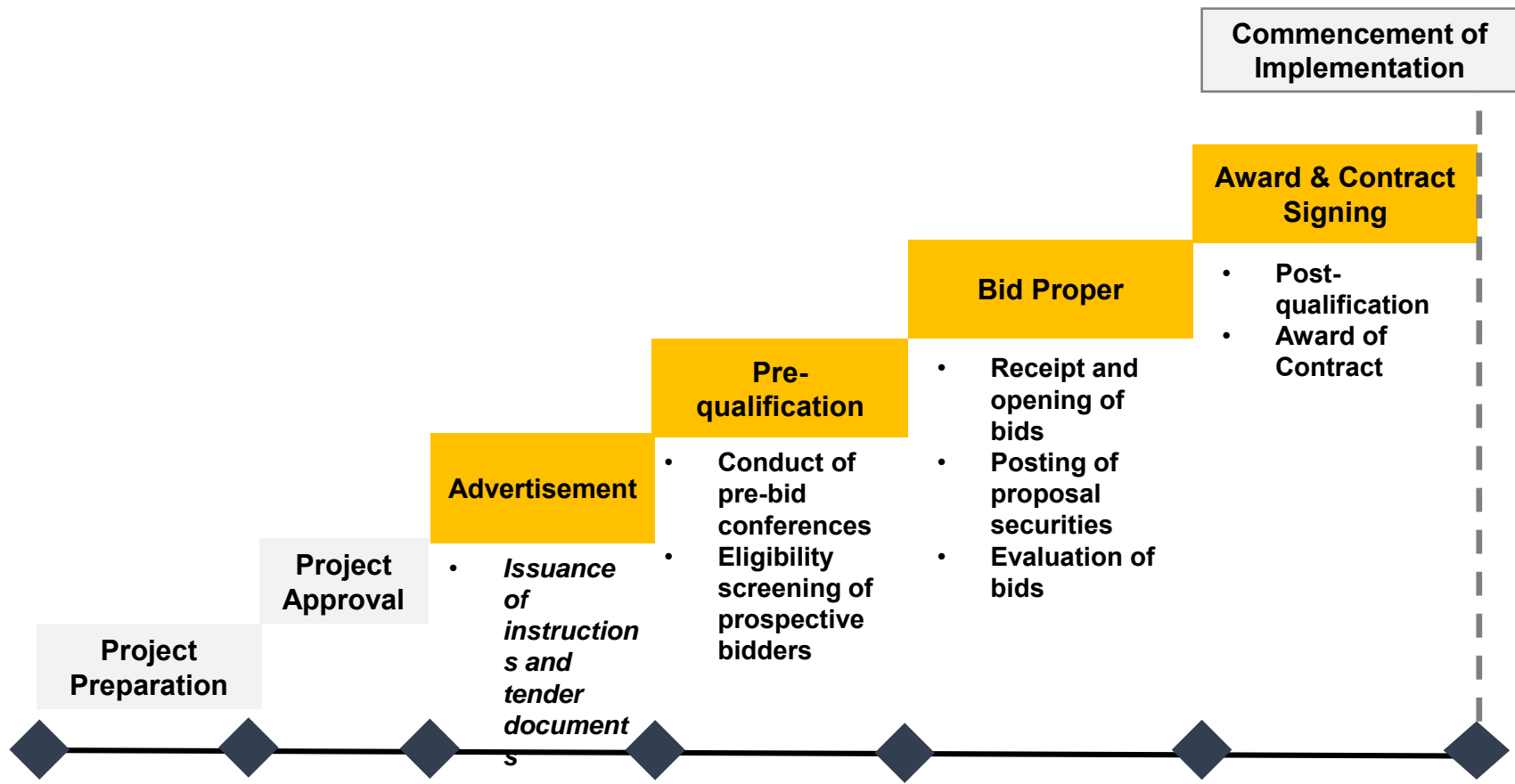
## 3. Competitive Negotiation

**Stage One** – Unsolicited Proposal

**Stage Two** – Detailed Negotiation

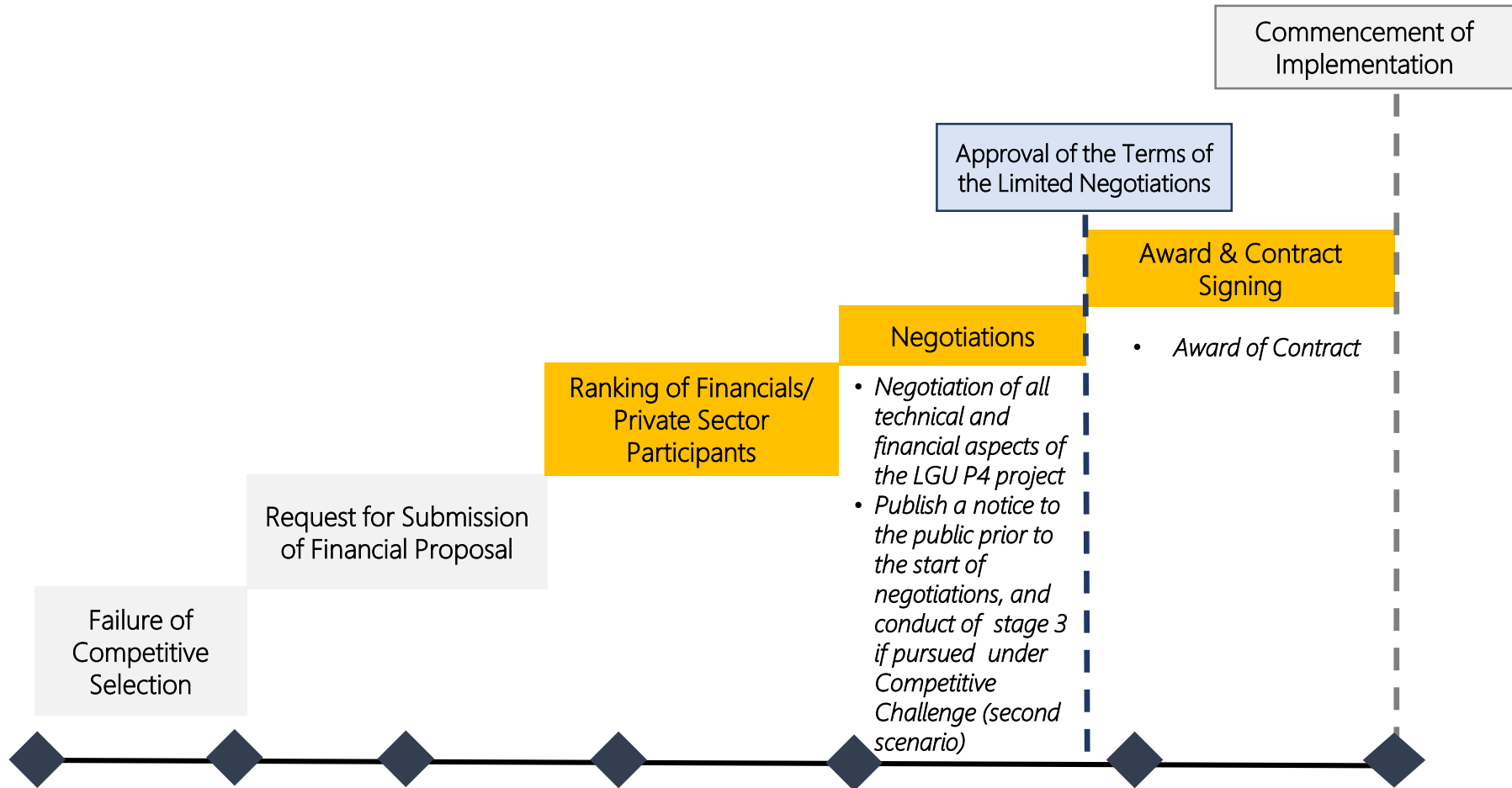
**Stage Three** – Competitive/ Swiss Challenge

# Competitive Selection Under the DILG LGU P4 Code



**Schedules and Timelines:** The Local Chief Executive, through an Executive Order, upon recommendation of the LGU P4-LC, shall have the authority to adopt and prescribe the appropriate and reasonable schedules and timeless for each PSP selection process.

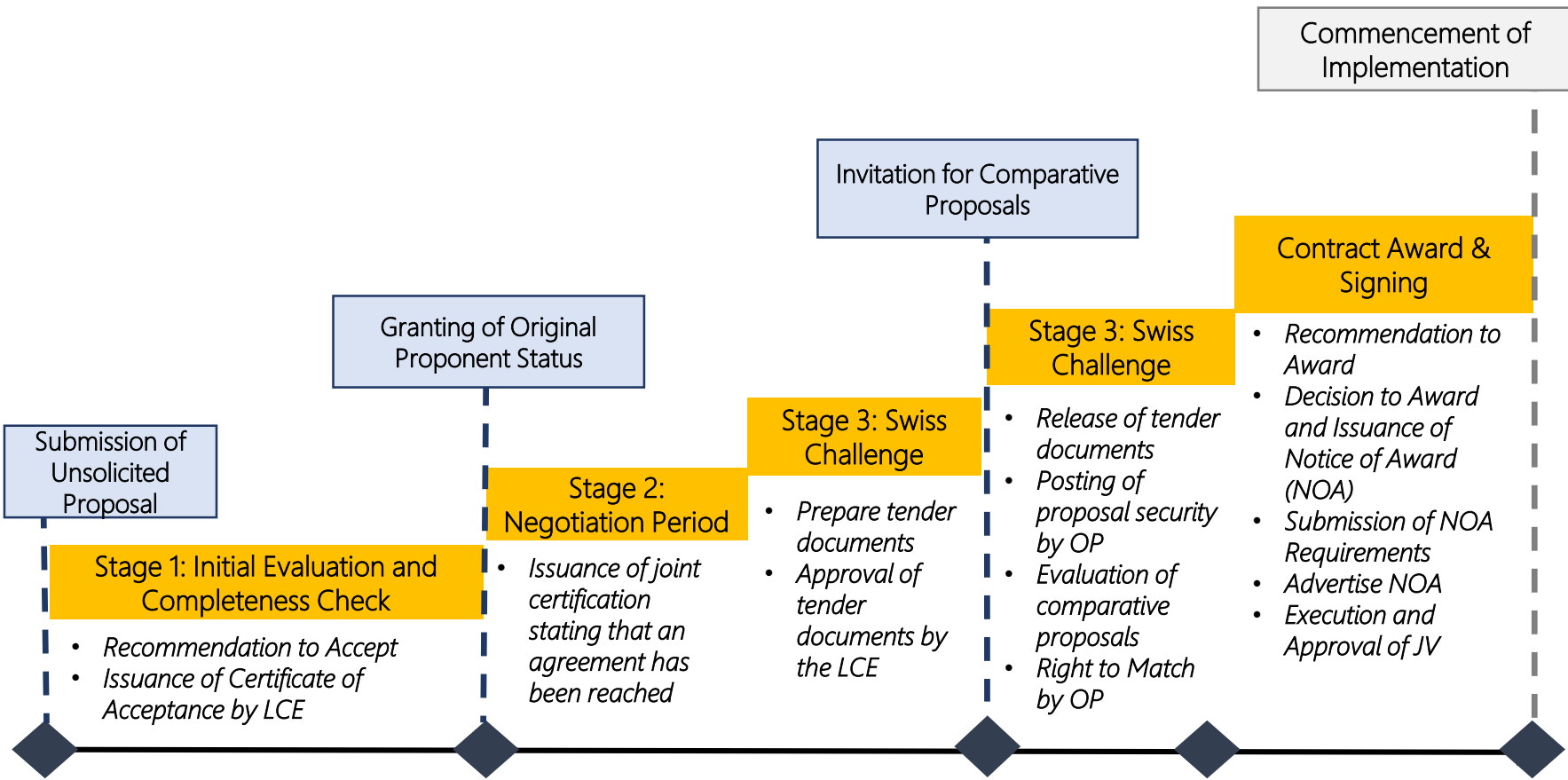
# Limited Negotiations Under the DILG LGU P4 Code



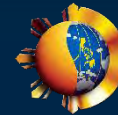
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# Competitive Negotiation Under the DILG LGU P4 Code



**Schedules and Timelines:** The Local Chief Executive, through an Executive Order, upon recommendation of the LGU P4-LC, shall have the authority to adopt and prescribe the appropriate and reasonable schedules and timeframes for each PSP selection process.



# THANK YOU!

For further information, please visit:

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