

The PPP Program

Training-Workshop on PPP Concepts and
Processes for NRO PPP Focal Persons

June 27, 2018

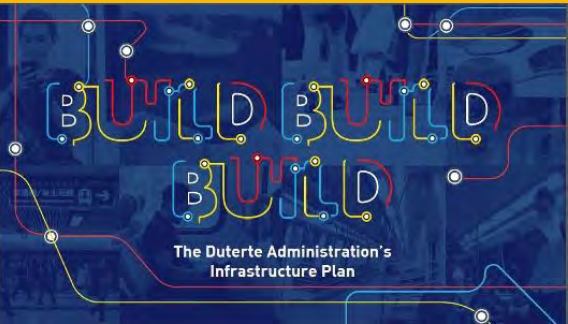
Feroisa T. Concordia
CBKMS

PPP Program for Infrastructure Development

10-POINT SOCIOECONOMIC AGENDA



4 Accelerated Infrastructure Development



Financing and Implementation



Delivery Mechanisms

Government Financing
General appropriations, corporate funds

Government Borrowings
Domestic & foreign debt, official development assistance (ODA)







Private Sector Financing
Public-Private Partnership (PPP)





The PPP Center, Its Role and Mandate

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

					
<p>1986-1992</p> <ul style="list-style-type: none"> • BOT Law (RA 6957) 	<p>1992-1998</p> <ul style="list-style-type: none"> • Amended BOT Law (RA 7718) • BOT Center under Office of the President – Coordinating Council of the Philippine Assistance Program (CCPAP) 	<p>1998-2001</p> <ul style="list-style-type: none"> • Renamed BOT program to PSP program • Coordinating Council for Private Sector Participation (CCPSP) under the Office of the President 	<p>2001-2010</p> <ul style="list-style-type: none"> • Revert to BOT Program • BOT Center under DTI 	<p>2010- 2016</p> <ul style="list-style-type: none"> • PPP Program • Renamed PPP Center and attached to NEDA 	<p>2016-present</p> <ul style="list-style-type: none"> • PPP Program • PPP Center attached to NEDA



The PPP Center's Mandate



**PUBLIC-PRIVATE PARTNERSHIP
CENTER**

EO No. 8 series 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



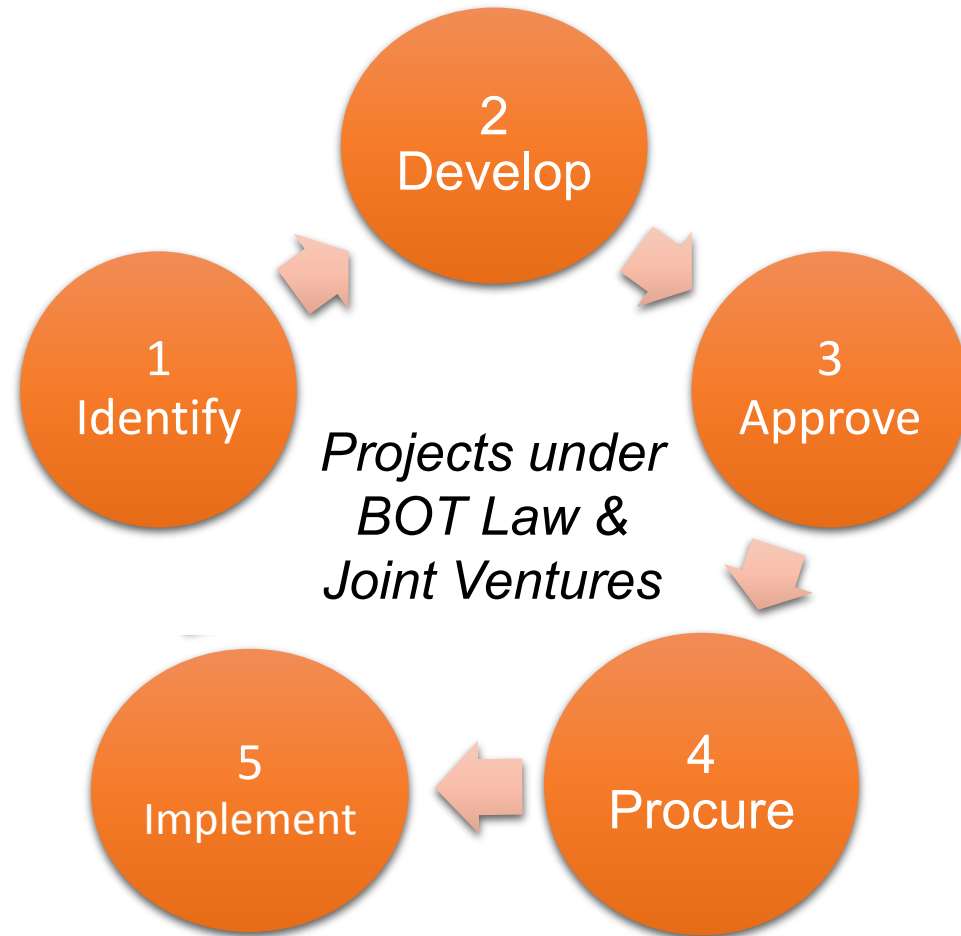
Policy, Process, and Projects



Policy reforms to enhance enabling environment



Capacity building of implementing and oversight agencies



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



Project Development and Monitoring Facility (PDMF) Fund

USD 102 million revolving facility managed by PPP Center and used by implementing agencies for procurement of consultants

Project Preparation and Transaction Support

- Feasibility study and project structuring
- Management of bid process
- Support until financial close

Probity Advisory

- Independent oversight during bidding process to ensure integrity and fairness
- Assessment of and advisory on probity issues

Implementation and Monitoring

- Independent review and monitoring of activities related to design, construction, operations and/or maintenance



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)



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



PPP Benefits

Integrated approach

- Proper alignment of incentives (among contractor, operator and maintenance provider) in a whole-of-life approach
- Single procurement process

Optimized risk allocation

- Allocation of risks to party who can best manage that risk (e.g. risk of cost and time overruns allocated to private partner)

Output specifications

- Specifications are defined via desired project outputs
- Government can tap private partner's innovation and expertise in coming up with most efficient design that adheres to specifications

Revenue potential

- Revenue sharing with private partner
- Revenues from commercial activities

Private sector capacity

- Can address implementing agencies' limited absorptive capacity and government's limited fiscal space



**Integrated
approach**

**Optimized
risk allocation**

**Output
specifications**

**Revenue
potential**

**Private sector
capacity**

*“PPP creates and delivers services,
not assets”*



- ✓ Efficient service delivery
- ✓ Minimize project's lifecycle cost



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

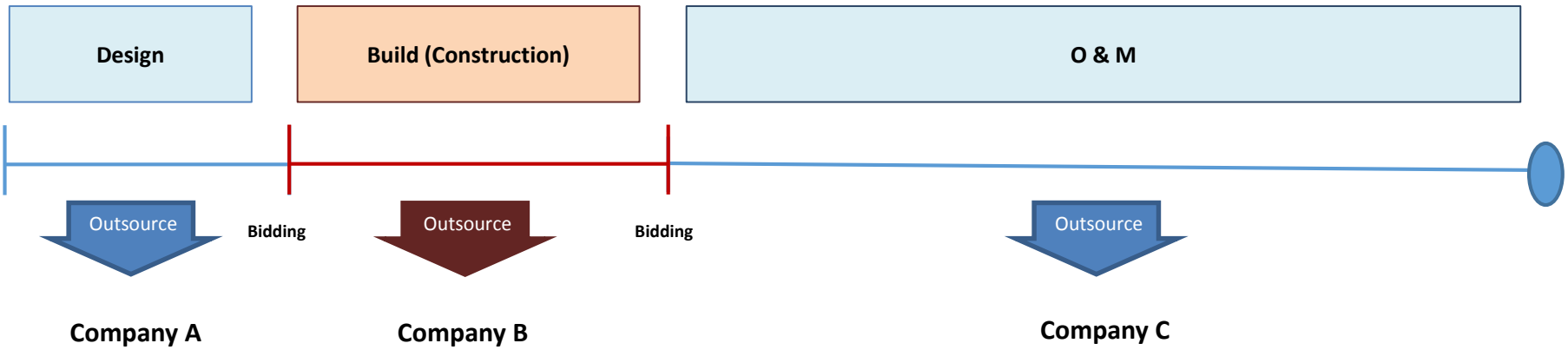
High

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

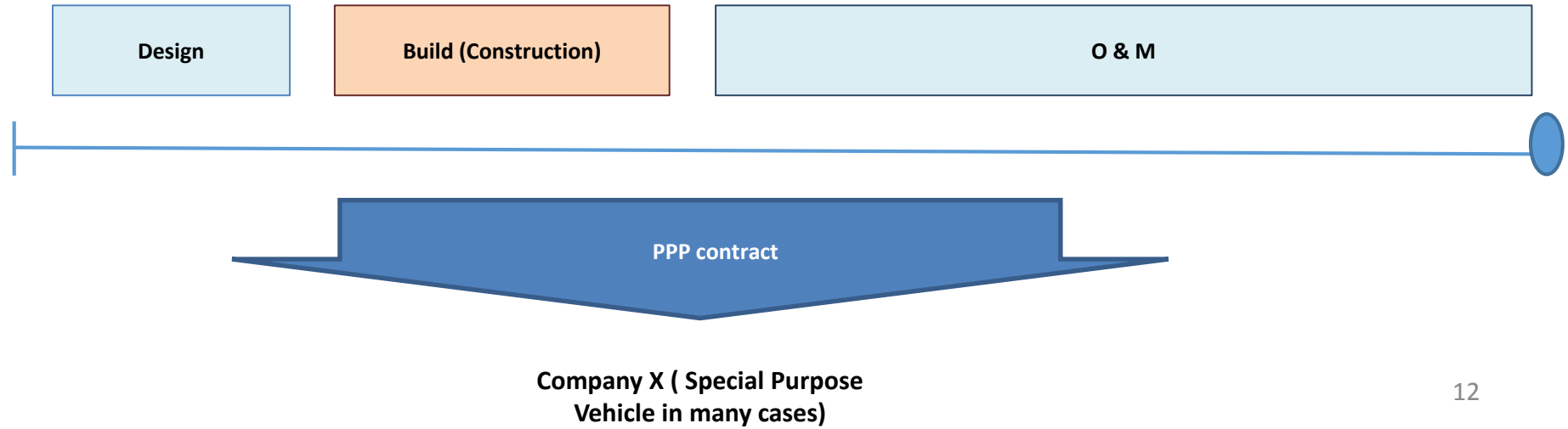


Comparing Traditional Public Works and PPPs

Traditional Public Works



Public-Private Partnership



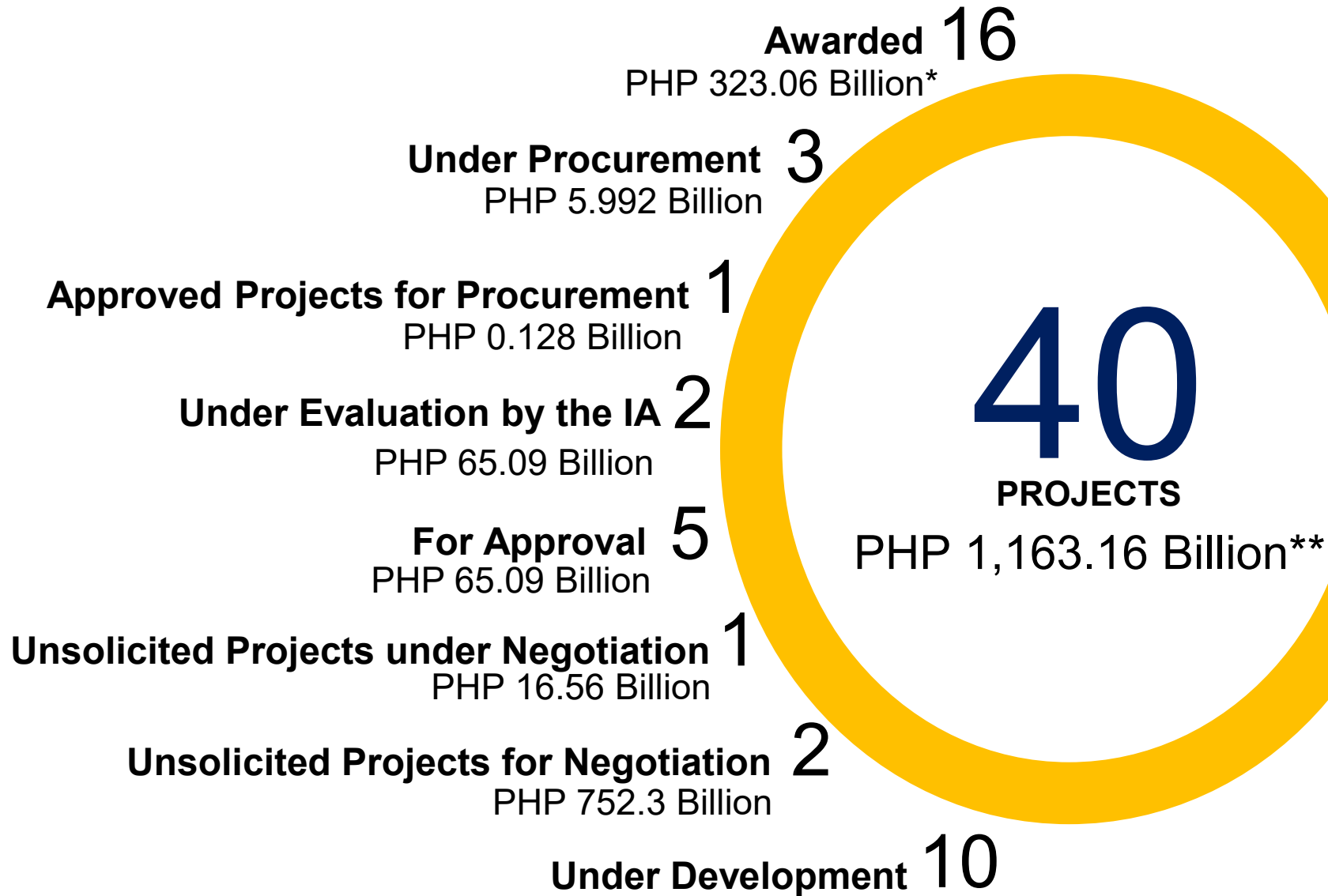
Payment Mechanisms in PPP



1. **Concession-based PPPs** – private partner is allowed to collect charges from users (e.g. collection fees, tipping fees, etc.)
2. **Availability-based PPPs** – implementing agency (IA) will allocate budget or funds as payment to private partner
3. **Non-monetary payments** – private partner may be repaid through non-monetary payments (e.g. grant of commercial development rights, etc.)
4. **Combination of the different schemes** or any other schemes as may be approved by relevant approving bodies



PPP Project Pipeline (as of June 18, 2018)



**Projects started from 2010 onwards*

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



PPP Legal Frameworks

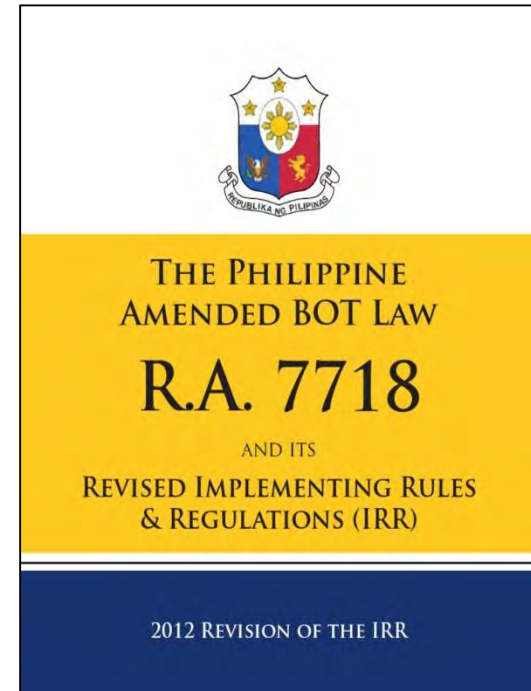
Implementing Agency	BOT Law	NEDA JV Guidelines	PPP/ JV/ P4 Code
NG	✓	✗	✗
LGU	✓	At the option of the LGU	✓
GOCC, GCE, GICP, GFI, SUC (including WDs)	✓	✓	✗

Legal Framework for PPP Projects (1/2)

RA 6957 as amended by RA 7718 - 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 thereof, as may be approved by the President



Implementing Agencies: any **department, bureau, office, commission, authority or agency of the national government**, including Government-Owned and/or -Controlled Corporations (**GOCCs**), Government Financial Institutions (GFIs), State Universities and Colleges (**SUCs**), and Local Government Units (**LGUs**) authorized by law or their respective charters to contract for or undertake Infrastructure or Development Projects



Legal Framework for PPP Projects (2/2)

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



Coverage:

- Government-owned and/or controlled corporations (**GOCCs**);
- Government corporate entities (**GCEs**);
- Government instrumentalities with corporate powers (**GICPs**);
- Government financial institutions (**GFIs**);
- State universities and colleges (**SUCs**)

Section 4.2 b

*“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.**”*

- Agencies exempt from the revised NEDA JV Guidelines may craft its own rules and procedures to govern its JV agreements
- 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



DILG P4 Program

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/Local Ordinances
Divestment/Disposition	Commission on Audit Circular No. 89-296
Corporatization/Subsidiary	Corporation Code





The Process under the BOT Law

Eligible Types of PPP Projects under the BOT Law



- Highways/Roads
- Railroads & Railways
- Ports
- Airports
- Transport Systems
- Power Generation
- Telecommunications
- ICT Systems/Facilities
- Agriculture
- Canals, Dams, Irrigation
- Water Supply
- Land Reclamation
- Solid Waste Management
- Tourism Facilities
- Education
- Health Facilities
- Industrial & Tourism Estates
- Markets, Warehouses, Slaughterhouses
- Housing, Government Buildings
- Climate change mitigation/adaptation infrastructure projects
- Other Infrastructure/ Development Projects



Institutional Arrangements under the BOT Law

■ **Implementing Agencies**

- Line Agencies (national government agencies)
- Government Corporations (GOCCs)
- State Universities and Colleges (SUCs)
- Local Government Units (LGUs)



■ **Review and Approving Bodies**

- Local Development Councils
- Investment Coordination Committee (ICC)
- National Economic and Development Authority (NEDA) Board for national projects



■ **Coordinating and Monitoring Agency**

- PPP Center



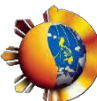


Solicited Track under the BOT Law

BOT Law: Features of Solicited PPP

SOLICITED

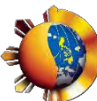
- ✓ IA identifies projects from its list of priority projects
- ✓ IA develops Feasibility Study/Business Case for the identified PPP project



BOT Law: Features of Solicited PPP

SOLICITED

- The Government can define the scope and the structure of the project based on its needs/long term plan
- The Government can also set its own minimum performance standards and specifications based on the service levels required



BOT Law: Solicited PPP Project Life Cycle



DEVELOPMENT STAGE

- Project Preparation (Feasibility Study, Market Sounding)
- Project Structure is finalized



APPROVAL STAGE

- IA level project assessment and appraisal
- Project submission to relevant approving bodies



PROCUREMENT STAGE

- Prequalification (e.g. Advertisement of ITPB)
- Prequalification Conference, submission of prequalification documents
- Bid proper (e.g. Pre-bid conference, bid submission, bid opening and evaluation)
- Issuance of Notice of Award to winning bidder
- Contract Signing



IMPLEMENTATION STAGE

- Financial Close
- Implementation (Preparation of Detailed Engineering Design, Commissioning)
- Turn over of facility back to government



BOT Law: Project Development Stage

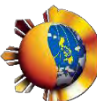
Implementing Agency

Activities/Output

Implementing Agency (IA)



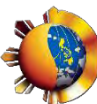
- Project Identification
- Project Preparation (Feasibility Study/Business Case Development)



BOT Law: Project Development Stage

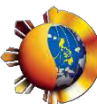
Components of a PPP Feasibility Study

Technical Analysis	Economic Analysis	Market Study
Institutional Analysis	Financial Analysis	Social and Environmental Impact Assessment
Value For Money Analysis	Risk Allocation Matrix	PPP Project Structure



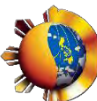
PPP Risks (1/2)

RISK	EXAMPLES	PREFERRED ALLOCATION
Pre-Contract Risks	Failure to bidding	Government
Site Risk	Existing structures, site conditions, permits and approvals, environmental liabilities, cultural heritage, availability of site	Mostly by Private; Government – availability of ROW & clearing of utilities and informal settlers
Construction	Design, construction and commissioning	Private
Financial	Interest rates, forex, inflation, fund availability, tax changes	Private
Operating	Inputs, maintenance and refurbishment, operator failure, technical obsolescence or innovation	Private
Demand	Operating revenues fall below forecasted and non-technical losses	Private



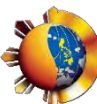
PPP Risks (2/2)

RISK	EXAMPLES	PREFERRED ALLOCATION
Network and Interface	Withdrawal of support of network	Government
	Change in competitive network and interface	Private
Industrial relations	Strikes/industrial action	Private
Legislative and Government Policy	Approvals, changes in law/policy, regulation	Government
Force majeure	Insurable events (e.g. earthquake, floods, fire and drought)	Shared



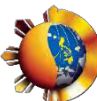
BOT Law: Roles under Project Development Stage

IA's Role	PPPC's Role
Set up of Project Team/Governance Structure	Conduct Capacity building, issue guidelines and provide advice
Project identification	
Decision to procure via PPP	
Engage consultants / transaction advisors (TA), as necessary	Advice and assistance
Stakeholder analysis / Market sounding activities / Feasibility study development	
Assign a dedicated Communications Officer for the project	



BOT Law: Approval Stage

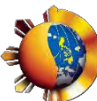
APPROVING BODY	THRESHOLD AMOUNT
I. National Projects	
Investment Coordination Committee (ICC)	PhP300 Million
NEDA Board	>PhP300 Million (upon ICC recommendation)
	<u>Negotiated projects and unsolicited projects</u> regardless of amount (upon ICC recommendation)
II. Local Projects (final approval is vested on Local Sanggunians)	
Municipal Development Council	PhP20 Million
Provincial Development Council	>PhP20 Million - PhP50 Million
City Development Council	PhP50 Million
Regional Development Council	>PhP50 Million - PhP200 Million
ICC	>PhP200 Million



BOT Law: Roles under Approval Stage

IA's Role	PPPC's Role
Project Assessment and Evaluation by the IA's PPP Team	Advice and assistance
Submission to relevant local approving/confirming bodies	
Submission to ICC for project evaluation*	
Compliance with ICC requirements*	Evaluation of project (value for money & bankability)
Presentation during ICC*	Advice and assistance

**as necessary depending on project cost*

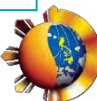


BOT Law: Procurement Stage

PPP Pre Qualification Bids and Awards Committee (PPP PBAC)

- As provided in the RA 6957 as amended by RA 7718 (BOT Law) IRR Rule 3, Agencies are required to create a PBAC for PPP projects.
- The PPP PBAC shall be responsible for all aspects of pre-bidding and bidding process / conducting the Swiss Challenge.
 - Preparation of tender documents and bid evaluation criteria
 - Publication of the invitation to pre-qualify and bid
 - Qualification of prospective bidders
 - Pre-bid conferences and issuance of supplemental notices
 - Conduct of bidding
 - Evaluation of bids, resolution of disputes between bidders
 - Recommendation for the acceptance of the bid and/or for the award of the project

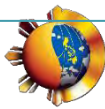
The Procurement process will be based on the BOT Law and its Revised IRR, and not RA 9184



BOT Law: Procurement Stage

PPP Pre Qualification Bids and Awards Committee (PPP PBAC) for LGUs

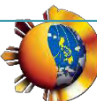
Designation	Focal Person/s
Chairperson	At least a third ranking regular official of the Agency (e.g. City/Municipal Admin etc.)
Secretary	Legal Officer (if no Legal Officer in the LGU, can be Provincial Legal)
MEMBERS	
• Voting	One (1) officer knowledgeable in finance
	One (1) officer knowledgeable in the management and operation of the project
• Provisional	One (1) technical officer knowledgeable with the technical aspects and requirements of the project, duly designated by the LGU on a project-to-project basis
	One (1) technical officer knowledgeable with aspects of requirements of the project from a concerned regulatory body, who is to be invited by the LGU on a project-to-project basis (non-voting)
• Observer and Non-Voting	Two (2) representatives from the private sector: one from a duly recognized Contractors association and the other from either the facility users or a duly recognized accounting association
	One (1) representative from the Commission on Audit
	One (1) representative from the local DILG office, for LGU projects



BOT Law: Procurement Stage

PPP Pre Qualification Bids and Awards Committee (PPP PBAC) for NGAs

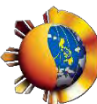
Designation	Focal Person/s
Chairperson	At least a third ranking regular official of the Agency
Secretary	Legal Officer
MEMBERS	
• Voting	One (1) officer knowledgeable in finance
	One (1) officer knowledgeable in the management and operation of the project
• Provisional	One (1) technical officer knowledgeable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



BOT Law: Procurement Stage

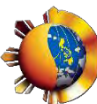
Bidding Procedures for Solicited PPPs

Two-Stage Process	Single Stage Process
<ol style="list-style-type: none">1. Bidders submit pre-qualification documents,2. Pre-qualified bidders then submit technical and financial proposals	<ol style="list-style-type: none">1. Bidders submit pre-qualification documents, technical and financial proposals
<p>Suitable if:</p> <ul style="list-style-type: none">✓ there is a large number of bidders that are interested✓ project scope needs to be refined and discussed with bidders.	<p>Suitable if:</p> <ul style="list-style-type: none">✓ there is a limited number of bidders✓ the project scope and service delivery options are clear and well-defined



BOT Law: Roles under Procurement Stage

IA's Role	PPPC's Role
Constitution of PBAC & TWG Kick-off & promotional activities Publication of Invitation to Prequalify and Bid	<ul style="list-style-type: none">• Advice and assistance• Access to Virtual Data Room
Pre-qualification conference Determination of pre-qualified bidders (legal, experience & financial capability)	
Release of bid documents Bid conference Determination of winning bidder (technical & financial proposal)	
Project award and Contract signing	



BOT Law: Implementation Stage

PPP Contract Management Principles

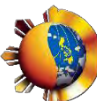
Communion of two parties, specifically between the **Concessionaire** and **Contracting Authority** and in **close coordination** with the **PPP Center**

To ensure that both parties are

- ❑ **compliant** with contractual responsibilities found in the **concession** agreement
- ❑ so as to be able to provide **continuous** public service delivery to avoid any **consequences**.

The **Center (PPP)** ensures that all **contracting parties** are also **consistent** with their reporting duties.

Monitoring of PPP projects is guided by the PPP Governing Board approved Policy Circular establishing a **Monitoring Framework and Protocols for PPP projects**



BOT Law: Implementation Stage

Implementation Stage Sub-Phases

Pre-Construction Phase

Independent Consultant | Financial Close
Detailed Engineering Design | ROW or Project Site
Delivery | Permits and Approvals

Construction Phase

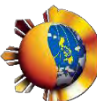
Monitoring and Inspection | Inter-agency Coordination
Variation/ Realignment | Testing and Commissioning

**Operation and
Maintenance Phase**

Monitoring and Inspection of Key Performance Indicators
| Tariff Adjustments

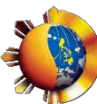
Transfer or Turn-over Phase

Asset Turnover Inspection | Asset Turnover Report |
Asset Transfer



BOT Law: Roles under Implementation Stage

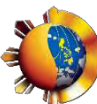
IA's Role	PPPC's Role
Set up PPP Implementation Team	<ul style="list-style-type: none">• Monitor implementation of PPP project• Provide assistance in addressing potential bottlenecks and issues
Procure Independent Consultant	
Monitor/track Contract Milestones Implementation Activities	
Provide PPP Center copy of progress reports and other relevant documents	
Implement the project's communication plan	Support the implementation of the project's communication plan



BOT Law: Project Timeline – Solicited PPP

Activity	Indicative (in months)
Project Development	8*
Approval	3
Pre-qualification	3
Bid proper	6
Issuance of Notice to Award and Contract Signing	2
TOTAL	22

**Depending on the complexity of the project*





Unsolicited Track under the BOT Law

BOT Law: PPP Tracks

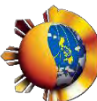
UNSOLICITED

Private sector proponent submits proposal to IA on a project that:

- ✓ Involves new concept or technology; or not the in the list of priority projects;
- ✓ Not a component of an approved project; and
- ✓ No direct government guarantee, equity or subsidy

Private sector submits in a sealed envelope a complete unsolicited proposal which consists of:

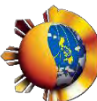
- ✓ Cover letter
- ✓ Feasibility study
- ✓ Draft contract
- ✓ Other documents as needed even if proprietary in nature



BOT Law: Features of Unsolicited PPP

UNSOLICITED

- It provides a venue for the private sector to propose innovative projects that were not considered by the government in the first place
- No direct government guarantee, subsidy or equity is required
- Development of FS and draft contract undertaken by private sector
- Role of Implementing Agency is to assess and evaluate the unsolicited proposal



BOT Law: Guiding Principles for Unsolicited PPPs



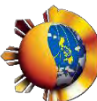
Promote development of innovative ideas by private sector to support economic development and infrastructure needs



Ensure open, transparent and fair process that involves high standard of public accountability



Ensure that value for money for Government is achieved



BOT Law: Unsolicited PPP Project Life Cycle



PROPOSAL COMPLETENESS CHECK STAGE

- Private Sector (PS) submits Unsolicited Proposal (USP)
- IA checks for completeness of USP



DETAILED EVALUATION AND APPROVAL STAGE

- IA performs detailed evaluation of USP and pre-qualify PS
- IA to accept proposal and confirm Original Proponent (OP) status or reject project
- Project submission to relevant approving bodies
- Project is submitted to Investment Coordination Committee (ICC)/Approving Body for determination/approval of reasonable Rate of Return and parameters for negotiation
- IA submits report to ICC/Approving Body the result of negotiation with OP for confirmation/validation



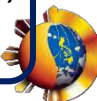
PROCUREMENT STAGE

- Swiss Challenge (advertisement, submission and evaluation of comparative proposals)
- Right to match by the original proponent
- Issuance of Notice of Award and Contract Signing



IMPLEMENTATION STAGE

- Financial Close
- Implementation (Preparation of Detailed Engineering Design, Commissioning)
- Turn over of facility back to government



BOT Law: Proposal Completeness Check Stage - Unsolicited PPP

Implementing Agency

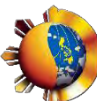
Activities/Output

Implementing Agency (IA)



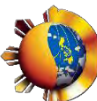
- Acknowledge receipt of USP
- IA checks eligibility of proposal based on requisites for USP*
- Presence/absence check of documentary requirements*
- Presence/absence check of FS components and draft contract provisions*
- Inform Private Sector the results of Proposal Completeness Check

**IA may refer to PPPC's Completeness Checklist, FS Checklist, Draft Contract Checklist and Preliminary Eligibility Checklist*



BOT Law: Detailed Evaluation and Approval Stage - Unsolicited PPP

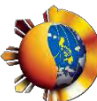
First Tier	Second Tier	Third Tier
<ol style="list-style-type: none"> 1. IA conducts detailed evaluation to check: <ul style="list-style-type: none"> • Project Merits (as provided in the FS and other documents) including Reasonable Rate of Return 2. IA pre-qualifies Private Sector Proponent based on: <ul style="list-style-type: none"> • Financial and technical capability and capacity; and, • Legal and institutional framework 	<ol style="list-style-type: none"> 1. Confirmation/approval of local approving bodies 2. ICC determines RROR and parameters for negotiation 3. Government to enter into exclusive negotiations with OP to further develop PPP draft contract 	<ol style="list-style-type: none"> 1. IA submits report on the result of negotiation with OP to ICC/Approving Body for approval/validation 2. OP shall notify IA that it accepts all terms and conditions 3. Upon approval by ICC/Approving Body, “Certificate of Successful Negotiation” is issued jointly by LCE and authorized signatory of OP



BOT Law: Procurement Stage - Unsolicited PPP

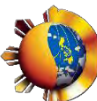
- ✓ IA prepares the transaction documents such as the Instruction to Comparative Proponents “ICP”, Project Information Memorandum “PIM”, draft PPP Contract*, MPSS, etc.
- ✓ **Swiss Challenge** starts with the publication of invitation for comparative proposals for competitive bidding
 - Release of bid documents
 - Posting of bid bond by OP
 - Pre-bid conference
- ✓ Submission and evaluation of comparative proposals
- ✓ Right to match by OP
- ✓ Notice of award and contract signing

**The draft PPP contract as agreed upon by the Head of Agency/LGU shall be considered final and non-negotiable by the comparative proponents*



BOT Law: Project Timeline- Unsolicited PPP

Activity	Indicative (in months)
Proposal acknowledgment, Project Evaluation, and Grant of Original Proponent Status	5
Approval of ROR and negotiation parameters by ICC/Approving Body	2.5
Direct negotiation with original proponent	3
Approval of results of negotiation by ICC/Approving Body	1
Advertisement (Swiss Challenge), contract review and submission of comparative bids	3.5
Evaluation; Right to match and decision to award	3
Award, post-award requirements and contract signing	1
TOTAL	19



Thank You!

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