NGA PPP GUIDEBOOK

PUBLIC-PRIVATE PARTNERSHIP CENTER OF THE PHILIPPINES

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MESSAGE FROM THE SECRETARY

As the nation strives to achieve the *Golden Age of the Economy* through its *Build Build Build Program*, Public-Private Partnerships (PPPs) stand among the government's key strategies to deal with the country's massive infrastructure gap. It is worth noting that the Philippine PPP program has been touted as one of the successful PPP initiatives in the Asia and the Pacific region. Moreover, based on the Economist Intelligence Unit's 2014 report, the country has been recognized as the most improved in the region on PPP readiness, owing to improvements in PPP regulatory and institutional frameworks.

To fulfill the Administration's commitment to providing better public services and facilities to the people, the government strongly encourages private partners to participate in the implementation of infrastructure projects. Complementarily, capacity building of implementing agencies in both national and local governments, government-owned and controlled corporations, among others, in rolling out PPP projects is regularly conducted. To date, half of the thirty-two (32) projects in the pipeline have been awarded to private sector partners.
This National Government Agencies (NGA) PPP Guidebook has been developed by the PPP Center to serve as a tool to guide our national government agencies in preparing and implementing viable PPP projects. It is composed of chapters providing detailed information and guidelines covering the different stages of the PPP process.

We highly encourage concerned implementing agencies to take full advantage of these opportunities as we work together towards attaining the nation's Golden Age of the Economy.

ERNESTO M. PERNIA
Secretary of Socioeconomic Planning
National Economic and Development Authority

MESSAGE FROM THE PPP CENTER EXECUTIVE DIRECTOR

Public-Private Partnerships (PPPs) play a pivotal role in the government's infrastructure development agenda. As the country ramps up its investments in infrastructure to further spur economic growth, PPPs help address the infrastructure gap by tapping the private sector's capital and efficiency, thus giving them another avenue to directly contribute to the country's economic development.

As we continue to rely on PPPs as one of the main pillars towards achieving inclusive growth for our citizens, this NGA PPP Guidebook produced by the PPP Center provides a step-by-step guide for national government agencies, government-owned and controlled corporations, and government financial institutions on how to develop and implement PPPs in accordance with their respective mandates.

The NGA PPP Guidebook will supplement the ongoing capacity building activities and technical assistance being provided by the PPP Center to implementing agencies to help ensure that projects are delivered more efficiently while also assuring both the investors and the public that these partnerships conform to the principles of transparency, accountability, and good governance.

Let us continue our strong collaboration to further achieve our goal in providing quality public infrastructure and services through properly structured PPP projects.

FERDINAND A. PECSON
Executive Director
Public-Private Partnership Center of the Philippines

PREFACE

This Guidebook provides a detailed guide to national government agencies (NGAs) in undertaking and managing Public-Private Partnerships (PPPs) using Republic Act 6957 as amended by Republic Act 7718. It also provides case studies that demonstrate the PPP concepts, illustrate best practices or share lessons learned from past PPP projects. The Guidebook includes a chapter on how NGAs can get the assistance of international advisors and consultants through the Project Development and Monitoring Facility that is managed by the PPP Center.

The Guidebook does not cover PPPs undertaken using the NEDA Joint Venture Guidelines.

INTRODUCTION

A Public-Private Partnership (PPP) following the Amended BOT Law is one means for a national government agency (NGA) to procure projects. Across various countries, PPPs comprise between less than 1 % to as high as 15% of procured projects.[1] The bulk of procurement is still being done through the traditional procurement modality or in the case of the Philippines, using Republic Act 9184.

PPPs are compelling when the private sector can implement the objectives of a project more effectively or more efficiently than the NGA can. This is particularly true when any of these apply:

a) Innovative designs available only from the private sector are required.
b) The operation and maintenance of the assets to be used by the project requires skills, systems and processes that are either lacking or are not inherent in the NGA.
c) There is a need to maximize the value that can be captured by the project and that the skills needed for value capture lie within the private sector.
d) When minimizing life-cycle costs is a dominant consideration.

The choice of whether to use PPP or traditional procurement in a particular project or in a sub-component of a project lies with the NGA. To assist NGAs with the former type of decision, the PPPGB issued the Guidelines on the Identification, Selection and Prioritization of Public-Private Partnership (PPP) Projects which prescribes the use of the Multi-Criteria Analysis (MCA) approach to determine potential PPP projects. The PPP Center can assist NGAs with the use of this approach. The section in this Guidebook on "Setting the Scope of the Private Party's Participation," provides guidance in the case when only a sub-section of the project shall be done through PPP.

The decision to use PPP has to be matched with a strong commitment at the highest levels of the NGA to devote the resources and time needed to set the terms and conditions of the partnership. As PPPs come with government obligations, the NGA has to have a PPP monitoring unit that will ensure obligations are met during implementation. And when the national government takes on certain project risks which have corresponding contingent liabilities, then such monitoring has to include the active management of such contingent liabilities.

A PPP can be initiated by either an NGA (solicited PPP) or by a private party (unsolicited PPP). There are four processes to be managed:

- Project Development
- Procurement
- Approval
- Implementation and Monitoring

The guidebook assigns a chapter to each process and provides for each process, the objective(s), explanations of key concepts and advice on best practices or lessons from past projects.

[1] P. Burger & I. Hawkesworth. 'Capital Budgeting and Procurement Practices'. OECD (2013)

PROJECT DEVELOPMENT

Objective of Project Development

The objective of project development is to arrive at a set of project terms that the government and the private sector can agree to commit to by way of a PPP contract.

A PPP will only materialize if the approving body can be convinced of the following:

- That the project is technically feasible and economically viable
- That the necessary social safeguards are part of what will be delivered by the project
- That proposed arrangements and contract terms, including any user fees, institutional arrangements and government obligations are acceptable and can be sustainably met

Apart from the above, lenders to the project have to be convinced that debt and interest can be paid wile a private party has to be convinced that the project can be financed and implemented at a cost that allows its expected return on investment to be achieved.

The Project Concept Note

The input to the project development process is the concept note. At the minimum, it should consist of the following sections:

- General Information on the Project (including project background and scope);
- Rationale of the Project; and
- Indicative Timeline (should cover project development, approval, cooperation and implementation);

General information section should present the project scope such as the major component/s of the project and the expected output/s to be delivered. The project scope under this section should identify the kinds of public service that the project would provide (transportation, electricity, water, health, education, etc.), the geographic coverage, the segment(s) of the population targeted by the project, and the stakeholders of the project. Other than the project scope, a discussion on the project background should also be included. This should include milestones and status in the development and processing of the project including a discussion on previous studies that may have already been undertaken, highlighting its recommendations and findings. The general information section should also describe the involvement on the perceived role of the private sector in the project (i.e. project implementation, operation and/or maintenance and other perceived arrangement/s).

The section on the rationale of the project may include a discussion on the project objectives. Project objectives typically address economic goals (increased economic activity, reduced congestion, reduced health care costs, improved environment, poverty alleviation, etc.). Projects also normally should align with larger development plans (Philippine Development Plan, etc.).

The section on the indicative timeline should provide an overview of the target dates for various project milestones under the different stages of the PPP cycle (development, approval, procurement, and implementation).

Project Name: San Ramon Newport Project

Implementing Agency: Zamboanga City Special Economic Zone Authority (ZCSEZA)

1. General Information:

a. *Project Scope*

The Project will entail the construction of a seaport within the economic zone. The seaport will support Zamboanga City's potential to be the center of maritime activities in the Philippines and in the region. The new seaport is also expected to function as transhipment hub for the Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA).

b. *Project Location*

The Project shall be located within the Zamboanga City Special Economic Zone and Freeport (ZamboEcozone) which was created as an economic hub that would bring about development for Zamboanga City as well as the Mindanao region, and is considered as the only freeport in Visayas and Mindanao. The ZamboEcozone provides a favorable location and environment; ready access to markets, manpower, and other resources; and value-adding services to attract investments to Mindanao.

c. *Project Background*

In 1998, a Master Development Plan (MDP) for the ZamboEcozone recommended the development of a seaport. Three (3) possible sites were evaluated wherein the San Ramon site in Brgy. Talisayan was identified as the best option in terms of operational convenience, safety, economy, flexibility (adaptability to changes), and environmental impact. Based on normal traffic for current international cargo container volume, generated cargo traffic from input and output requirements of the industries within ZamboEcozone, and diverted cargo traffic from the existing Zamboanga port, the 1998 MDP estimated project cost of about PhP 3B. In this context, ZamboEcozone Authority is proposing the construction of a seaport within the economic zone. Subsequently, the Regional Development Council IX endorsed, for appropriate action, the proposed construction of the ZamboEcozone International Cargo

Terminal to the Department of Budget and Management in 2014.

d. *Private Sector Involvement*

The Project is proposed to be structured as a PPP in accordance with the Amended BOT Law and its Revised Implementing Rules and Regulations. It is envisioned that the private sector will undertake the financing, development, and O&M of the project. The private sector is expected to recover its cost through fees it may charge for the use of the port facilities (e.g., wharves, piers, slips, docks, bulkheads, basins, warehouses, cold storage, loading and unloading equipment, and passenger terminal) or for port services.

2. Rationale for the Project

a. *Project Objectives*

The Project aims to improve the competitiveness of the ZamboEcozone and fulfil its vision of becoming a world-class economic zone that will link resources, markets, and other logistical activities that can contribute to the economic development of Zamboanga City and Mindanao.

b. Project's National and Sectoral Context

The proposed project is aligned with the key strategy as identified in the Mindanao Strategic Development Framework 2010-2020 of improving the network of intermodal transport system in order to enhance Mindanao's links to the rest of the country and to the world. Likewise, the Project is intended to support the government's 10-point Socioeconomic Agenda to increase competitiveness and ease of doing business and to improve connectivity by addressing gaps in physical infrastructure.

3. Indicative Timeline

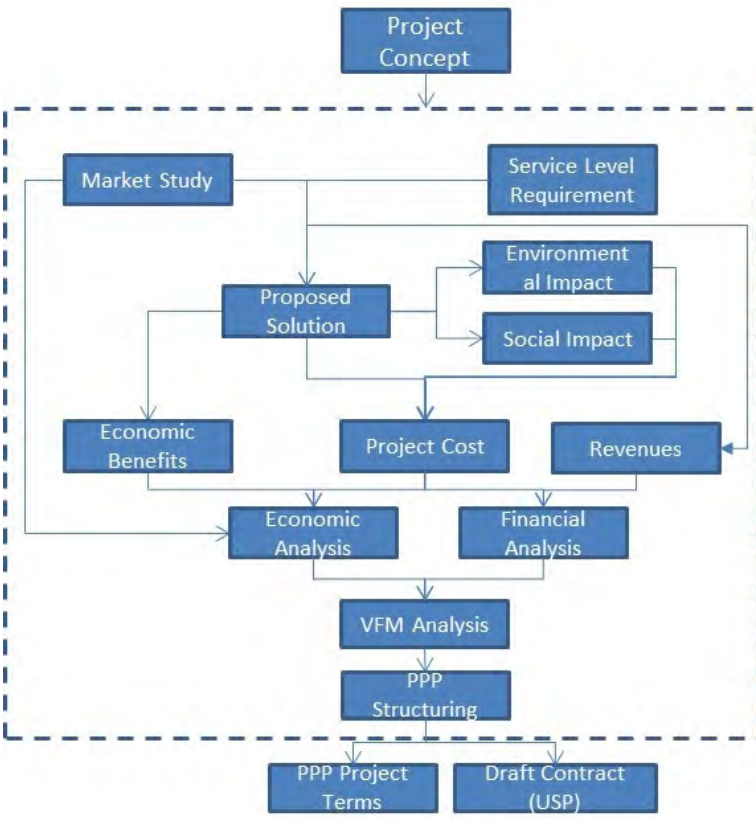
Milestone	**Target Date**
Completion of Feasibility Study	1st Quarter 2019
Approval of Approving Entities	2nd Quarter 2019
Bidding Stage	3rd Quarter 2019 – 1st Quarter 2020
Award and Contract Signing	1st Quarter 2020

Key Activities of the Project Development Process

The key activities of project development can be grouped into three phases:

- Arrive at a technically feasible and economically viable project
- Assess if the PPP procurement makes sense – VFM Analysis
- Determine the optimum PPP structure

The output of project development is the set of project terms that will be submitted to the approving body.



Quantifying the Demand for the Public Service – the Market Study

The expected demand for the public service over the life of the project determines the capacity of the infrastructure to be built or the size of the expansion if the infrastructure is already existing, and the need for future expansion of capacity.

As an example, the demand study used in the Integrated Transport System (ITS) Project shall be included in this section once permission has been secured from the implementing agency.

Establishing the Service Levels

The service levels provide targets for the quality of the public services that will be provided by the project. These are determined by the NGA based on its objectives, local laws and regulations, and existing global standards and best practices such as the IATA Service Level for Airports.

Determining Alternative Solutions

The key considerations when assessing a proposed solution are:

- The proposed solution's capability to meet the demand, the required quality of public service, and the timing of implementation;
- The technical risks that come with the proposed solution, such as those affecting public health and safety, safety of property, those that could damage the environment, or those that could impact other projects; and
- Social impacts that arise from the technical solution or from the choice of location or alignment such as the relocation of informal settlers or expropriation of private properties

If there is more than one technically feasible solution, the optimum solution is the one that is most economically viable. If there is only one technically feasible solution, then the goal is simply to validate if the solution can be implemented at a total cost that makes the project economically viable.

Assessing the Technical Risks

Geotechnical Risks

Geotechnical risks are the risks related to construction or development of an asset which is created by the site ground conditions. It is the risk that is brought about by unanticipated adverse geological conditions (geotechnical risk) and causes construction or maintenance costs to increase and/or cause construction delays. In a PPP project, the private partner usually absorbs risks which are pre-identified as well as a portion of the unidentified risks equivalent to a certain materiality threshold. Beyond what the private sector may reasonably absorb, the government takes on the material unidentified risks.[2]

[2] Refer to General Preferred Risk Allocation Matrix (http://ppp.gov.ph/wp-content/uploads/2017/02/GPRAM_2Aug2016.pdf)

Impact on or impact by other infrastructure projects

For PPP projects, impact on existing infrastructure may pose interconnectivity or interface issues with the proposed asset. Existing structures and assets risks are risks that existing structures and other assets are inadequate to support new improvements or structures subject of or involved in the PPP contract which results in additional construction, time and cost that may be necessary to replace, strengthen or improve the existing structures or assets to enable it to successfully support the project. In a PPP project, the private partner usually absorbs risks which are pre-identified as well as a portion of the unidentified risks equivalent to a certain materiality threshold. Beyond what the private sector may reasonably absorb, the government takes on the material unidentified risks.[3]

Environmental Impact Assessment

Environmental Impact Assessment (EIA) is a systematic process that examines the prospective environmental consequences of development action, for purposes of determining measures necessary for preventing adverse impacts to the environment. It is both a technical tool for analysis, and a legal and institutional procedure linked to the decision-making process, usually having public participation/disclosure mechanisms. It is a common part of project appraisal systems in many countries, as well as a requirement of development/funding institutions.

In the Philippines, undertakings which are considered to have significant impact to the environment are required an EIA to secure an Environmental Compliance Certificate (ECC) prior to project implementation. Presidential Decree 1586 on the Establishment of the Environmental Impact Statement (EIS) System provides that an ECC has to be secured for environmentally critical projects (ECPs) and those to be located in environmentally critical areas (ECAs).

The Department of Environment and Natural Resources Environmental Management Bureau (DENR-EMB) is the lead agency for the implementation of the EIS System. It has formulated detailed guidelines on the EIA requirement which is dependent on certain screening parameters, such as the classification as ECP or non-ECP in ECAs, the size, the type and the status (new or expansion) of projects. The required comprehensiveness of the EIA, the type of the report and applicable procedures are dependent on these screening parameters. Certain projects which are deemed to have insignificant impact to the environment are not required to secure an ECC, and may opt to secure a Certificate of Non-Coverage (CNC) from the EMB through their online systems.

For more guidance, please refer to the DENR Administrative Order 2003-30 and related issuances, or any amendments thereof.

[3] Refer to General Preferred Risk Allocation Matrix (http://ppp.gov.ph/wp-content/uploads/2017/02/GPRAM_2Aug2016.pdf)

Social Impact Study

Social and gender impacts are included in the discussion of technical risks as these emanate primarily from the choice of technology, or the choice of alignment or location of a PPP project.

Social and gender impacts may include but are not limited to:

- Impact of a project on informal settlers, women and children, persons with disabilities, indigenous peoples, and ancestral domain or cultural heritage sites that would be affected by the choice of project location or alignment;
- Impact of the project on the livelihood of surrounding communities, such as a port or a project that has a reclamation component that could affect the livelihood of fishermen; and
- Impacts on the overall economic environment (e.g., quality of life of affected stakeholders, effect on people's mobility).

The goal of a social impact study is to determine appropriate safeguards or mitigating measures for each social impact. Gender is carved out and specified since gender equality and women's empowerment should be promoted as part of the abovementioned impacts.

PPP Governing Board Resolution No. 2018-12-02, Safeguards in PPP (link not yet available at this time), provides guidance on integrating social and gender concerns in PPP projects. Annex C of the said resolution outlines the prescribed contents of the project FS with regard to environmental, displacement, social and gender concerns.

Safeguards Considerations

In developing an economically viable and technically feasible project, environmental, displacement, social and gender safeguards shall be integrated in the study of project risks, costs, and economic benefits.

As input to project location selection, the NGA must consider:

- Extent of physical and economic displacement, and whenever possible, avoid forced displacement;
- Compatibility with existing/proposed local development plans (e.g. LGU land use plan);
- Compatibility with national development plans (e.g. sectoral plans and multi-sectoral plans such as disaster risk reduction and management plans);

- Environmental sensitivity to the projected impacts of the project, which may have cost implication in terms of management measures; and

- Environmental hazards in the project location alternatives, which may have cost implication in terms of climate resiliency requirements.

Moreover, during project development, the NGA shall:

- Identify applicable requirements in laws, decrees, orders, issuances, rules and regulations; and

- Ensure that identified safeguard concerns are considered in the project FS and integrated in the project design.

General safeguards (e.g. Environmental Impact Assessment) and project-specific safeguard requirements (e.g. geo-technical studies, hydrological studies) identified during project development serve as inputs to project siting, design, and cost, and will be subject to validation during the implementation stage when the detailed engineering design has been finalized.

As part of the FS, a corresponding compliance plan to relevant safeguards should be prepared.

Samples of Safeguards During the Project Development Stage	
a. Requirement in laws, decrees, orders, issuances, rules and regulations	• Conducting an Environmental Impact Assessment as preparation for the requirements under the Environmental Compliance Certificates (ECC) in line with the Philippine EIS System • Preparation of the ROW/Resettlement Action Plan in line with R.A. No. 10752 (the Right of Way Act) • Identification of social and gender issues that the proposed project must address and anticipate, such as those that might arise from the implementation of the project.

Samples of Safeguards During the Project Development Stage	
b. Integration in the project FS which shall be used as input for the project design	• Identification of environmental impact mitigation measures, and resiliency measures for man-made and natural hazards; • Summary of the ROW/Resettlement Action Plan; and • Considerations on addressing gender issues and barriers from access or from gaining development benefits especially for marginalized sectors including women, persons with disability

The benefits of integrating safeguards during the project development stage include preventing delays during implementation by threshing out risks early on and preparing risk management measures. They also help the NGA develop PPP projects that are sustainable and responsive to the needs of various stakeholders by providing baseline information for the formulation of safeguard-related Minimum Performance Standards and Specifications (MPSS) and Key Performance Indicators (KPIs).

For more guidance on mainstreaming safeguards throughout the PPP process, please refer to PPP Governing Board Resolution No. 2018-12-02, or Safeguards in PPP: Mainstreaming Environmental, Displacement, Social and Gender Considerations (link not yet available at this time), or any amendments thereof.

Estimating the Cost of Each Proposed Solution

- Capex Cost or the cost needed to build the infrastructure
- Operating and Maintenance Cost

The Capex Cost refers to the cost to upgrade, acquire, and develop a physical asset related to the project. It includes cost of equipment and pre-development costs. Operating and Maintenance Cost, on the other hand, refers to expenses which are incurred in regular business operations.

The total cost of bringing the technical risks to an acceptable level and of implementing social safeguards should be included in the above costs.

Determining and Quantifying the Benefits Provided by Each Proposed Solution

Economic benefits are measured in terms of increases in economic output or savings in resource use in the economy. For instance, the implementation of a developmental transport project project may stimulate additional production to the economy, thus increasing total output. On the other hand, savings in resources may be demonstrated by reduced vehicle operating cost or waiting time, in transport projects. These savings allow the resources to be freed up for more productive use, thus increasing total output. The approach in determining the value of the economic benefits associated to a project varies depending on the industry/ sector.

In general, the first step in economic analysis is the identification of economic benefits as discussed. The next step is the valuation of benefits in terms of economic prices. Economic benefits may be quantified by adjusting financial prices of good and services to reflect their economic values. This economic value is referred to as "shadow pricing". Economic prices differ between internationally traded and nontraded goods and services, between project outputs and inputs, and between incremental and non-incremental outputs and inputs.

Using Economic Analysis to Arrive at the Optimum Solution

There are numerous articles that explain how to conduct an economic analysis. A very detailed explanation is provided by the Guidelines for Economic Analysis of Projects of the Asian Development Bank.

Establishing the Financial Viability of the Project

A financially viable project is one that can generate sufficient cash to meet the return expectations of lenders and equity holders.

Lenders would like to be paid the money they had loaned plus interest while the equity holders would like their invested capital returned plus a return on the invested capital. Both the interest and the return on equity consider the risks that the project would not generate sufficient cash. Money for such payments would come from the project's revenues after deducting operating, maintenance, and other expenses.

To assess the project's financial viability, a financial model showing all cash flows throughout the life of the project is created. A project is financially viable if the net present value of cash flows discounted at the weighted average cost of capital (WACC) is at least zero.

Note that cash flows, and their distribution between the public and the private parties, will vary with the PPP structure (i.e., BOT variant, scope of the private sector, financing, risk allocation, government support, etc.).

It is obvious that no private party will invest in a project that is not financially viable. What about the government's willingness to make the project financially viable by providing financial support?

Section 13.3 of the Implementing Rules and Regulations of the Amended BOT Law allows the provision of a number of types of financial support to close the viability gap. Note that the IRR restricts the provision of such financial support to solicited projects only. The PPPGB issued Guidelines on Viability Gap Funding (VGF) which restricts viability gap funding to economically viable projects.

Thus project development, for the case of non-financially viable projects, includes qualifying and quantifying the required VGF support.

While the provision of financial support to render a project financially viable is allowed, the granting of such support is not automatic. Once the project is approved and/or awarded, the NGA must include the VGF in their proposed budget and follow the usual appropriations process.

Assessing if PPP Procurement Makes Sense – the Value for Money (VfM) Analysis

Value for Money (VfM) analysis determines the appropriateness of undertaking the project as PPP and for assessing whether they provide better VfM in comparison to the traditional public procurement option.

VfM analysis determines the procurement approach that provides the maximum benefit for the government, which could include benefits from private sector innovation, financing, efficiencies in construction and operations, and project risk transfer.

The general principles in VfM analysis are provided in the PPPGB-issued Guidelines on Assessing Value for Money in PPP Projects. A more detailed discussion on how to conduct VfM analysis can be found in the APMG International's module on Assessing Value for Money.

PPP Structuring

Structuring a PPP entails the following interrelated activities:

- Establishing the contractual arrangement
- Setting the scope of the private party's participation (which is not necessarily the same as the project scope)
- Setting the institutional arrangement for the public party
- Setting up the Minimum Performance Standards and Specifications (MPSS)
- Setting up the tariff structure (if applicable)
- Establishing the financing structure
- Doing a PPP risk assessment
- Allocating the risks between the public and the private partners
- Determining the form or kinds of government support
- Choosing the financial bid parameter

The goal of PPP structuring is to arrive at, for a given project scope, quantity and quality of public service, a combination of contractual arrangement, scope of participation of the private partner, risk allocation, and kinds of government support that makes the project bankable, but at the same time, acceptable to the approving body. It is possible that more than one combination can be found.

Setting the Contractual Arrangement – Choosing Among the BOT variants

Selecting the most appropriate BOT variant may be based on the following considerations: (1) technical constraints and goals of the sector, (2) legal and regulatory constraints, (3) institutional issues, (4) commercial, taxation, financial, and financing requirements and constraints, (5) interest of the market, and (6) special requirements of the sector based on characteristics of the system or population.

The appropriate BOT variant may differ from project to project depending on its objectives and coverage. In the Philippines, the identified types of BOT variants for PPP projects, and its applicable repayment schemes, may be found in the Amended BOT Law.

Setting the Scope of the Private Party's Participation

- Deconstruct the whole project scope into its elements
- Form entities out of the elements
- Determine the KPIs and service levels for each entity
- Determine which entities will be given to private parties

For a detailed discussion on how to set the scope of private sector participation, please see "Framework for Structuring PPPs in Railways".

Public Institutional Arrangement

In PPPs, the implementing agency for a project is the government entity who has the mandate to implement such project and provide such services. In some cases, however, a co-grantorship arrangement between government entities may be needed to successfully implement a project.

In brownfield projects for instance, the government entity mandated to implement a project may be different from the government entity who owns the existing asset. In the case of the Regional Airports Project[4], the Department of Transportation (DOTr) served as co-grantor with the Civil Aviation Authority of the Philippines (CAAP), who has ownership of the existing airports covered by the project.

Co-grantorship can also be arranged if the NGA does not have the required capacity to fully undertake the project, as in the case of the New Centennial Water Source – Kaliwa Dam Project[5]. Because the Metropolitan Waterworks and Sewerage System (MWSS) did not have the financial capacity to cover the amortization payments of the project, the Department of Public Works and Highways (DPWH) was brought in as a co-grantor to provide a guarantee on the payment obligations of MWSS under the project.

A co-grantorship arrangement is typically done via a Memorandum of Agreement (MOA) outlining the roles of each concerned government entity.

Setting up the Minimum Performance Standards and Specifications (MPSS) and Key Performance Indicators (KPIs)

The MPSS details the minimum technical specifications and minimum required performance levels of a project based on the demand study, as well as existing local and international industry standards and best practices. These could also be based on local laws and building regulations as well as service level targets determined by the NGA.

[4] The solicited project has been discontinued by the DOTr and CAAP.
[5] The project is now proposed to be funded via ODA.

The MPSS serves as the primary guide when preparing the Detailed Engineering Design (DED) and when monitoring the KPIs during the construction and O&M stages of the project.

KPIs define and measure the progress towards achieving a project's objectives. Ideally, KPIs should be specific, measurable, attainable, relevant and time-bound (SMART). Performance indicators are used virtually in all industries such as construction, software development, hospital, mining, logistics, manufacturing and fleet maintenance. The determination of KPIs vary depending on the sector of the project to be undertaken. It includes benchmarks, targets, milestone, dates, numbers, percentages, variances, distribution, rates, time, cost, indexes, ratios, survey data and reports.

Setting up the Tariff Structure

In user fee-based or concession-based PPPs, the government sets the maximum allowable tariff to provide protection to the end-users. The tariff structure is determined through a (1) willingness-to-pay survey which measures how much target users would be willing to pay for a different or improved service, and an (2) ability-to-pay analysis, which determines the maximum price or fee users will be able to pay given their level of income.

Demand for a particular good or service is highly dependent on the affordability of tariffs for the project. If user charges or tariffs are too expensive for potential users of the service, obviously this will impact demand and the expected revenues for the project. Another important part of the demand analysis, especially for concession-based PPPs, is to look at the demand elasticity for the project. Elasticity of demand refers to how much demand or patronage for a project would change in response to changes in fees. This analysis considers affordability of the proposed tariffs by looking at the ability of potential users to pay for the service. If there is a big change in demand for every step increase or decrease, then demand is elastic. This means that target users can easily switch to other options they deem more affordable for the same expected benefits. If the changes in demand are marginal compared to the changes in price, demand is considered inelastic. However, even if demand is inelastic, tariffs should not be set too high as this might take up a considerable portion of the target users' daily income.

Demand elasticity analysis is usually done by an economist and is also included in the economic analysis portion of the feasibility study. It is highly useful for providing a basis for setting tariffs and scheduling tariff increases, providing regulators with useful information for the formulation of tariff regulations, as well as determining the PPP project's social acceptability.

For more information on setting the tariff structure for PPP projects, please refer to the discussion on Tariff Design (Section 6.4.2) found in the Public-Private Partnership Handbook by the Asian Development Bank.

Financing Structure

The government's partner in a PPP contract is typically a project company formed specifically for the purpose of undertaking the awarded PPP project. Often called a Special Purpose Vehicle (SPV) or Special Purpose Company (SPC), this project company raises finance through a combination of equity—provided by the project company's shareholders—and debt provided predominantly by banks or financial institutions. The project company's financing structure is the combination of equity and debt, and contractual relationships between the equity owners and lenders.

While ultimately the adoption of the final financing structure rests with the project company stakeholders, during development stage of a PPP project, government simulates potential financing structures in its shadow bid model. The objective is to achieve an optimal financing structure for a PPP project that would maximize the benefits of private funds together with minimizing the cost of finance for the project, while guaranteeing that public interests are upheld.

The key considerations in setting a proper financing structure for a PPP project, begins with the PPP project's cash flows and the project's inherent contractual risks to be borne by the private party. Typically, a PPP project will be project financed, meaning that the project company holds the assets of the project exclusively. Fundamentally, in case of default, a lender who provides debt to the project company's recourse is limited to the cash flows generated by these assets. The shadow bid model for the PPP project will illustrate debt service and expected dividends according to the expected flow of funds, including revenue from user fees and government payments, and construction and on-going expenditures, namely for maintenance and operations.

Factors such as sufficient operating cash flows to cover debt service, security over the assets, step-in rights or degree of control, prevailing market conditions, internal rates of return, investment return period, government support/guarantee/subsidy and non-economic indicators such as reputation, familiarity, experience are top critical factors in defining the extent by which lenders would provide debt to a project company. Depending on how these factors are satisfied, a project company's debt financing may be raised up to 70-85% of total financing.

From the government standpoint, it is important to ensure that the project company is not too thinly capitalized, that is, the debt/equity ratio should not be too high. While government needs to ensure that the project is bankable (i.e., able to raise debt), too much debt is vulnerable to default, bankruptcy or liquidation. Therefore, equity owners should likewise have "skin in the game" in order to align them with government objective of ensuring that the project is implemented successfully. In situations like this, government can consider introducing a minimum equity ratio. This particular requirement can best be enforced via termination provisions in the PPP contract which would be a clear incentive in the adoption of government's preferred financing structure.

PPP Risk Assessment

PPP Risk Assessment looks at the factors that would adversely affect the bankability of a project. While these would include the kinds of technical risks discussed in the section of the Guidebook, "Assessing the Technical Risks," other risks that need assessment are:

- Risks to achieving the expected demand for the public service
- Risks to achieving the expected revenues
- Risks that could affect the project costs
- Risks to achieving the KPI's

PPP Risk Allocation

For each risk, risk allocation identifies which party in a PPP contract shall bear the risk. The process is guided by the principle that the party that can best manage the risk, bears the risk.

Examples of risk allocation in the transport, energy, and water and sanitation sectors are provided in the Global Infrastructure Hub's guide on Allocating Risks in Public-Private Partnership Contracts.

On December 7, 2010, the ICC-CC adopted the Generic Preferred Risk Allocation Matrix (GPRAM) that was formulated under the Philippines-Australia Partnership for Economic Governance Reforms (PEGR) Facility.

The GPRAM serves as guide for government entities and the private sector in structuring PPP projects with regard to the risks to be borne by the government or the private sector, and the risks that may be shared between both parties. This risk allocation matrix lists the risk allocation preferences, including risk mitigation measures, for consideration by the proponent agencies in the development and implementation of their projects. The ICC-CC had approved two revisions to the GPRAM; the first in 2014 and the second in 2016.

In practice, NGAs are expected to comply with the GPRAM and to justify during the approval stage if any particular risk allocation is not compliant with the GPRAM.

One of the possible outcomes of allocating risk to the NGA is the assumption of contingent liabilities by the NGA. A contingent liability (CL) is an obligation that may or may not arise from events specified in a PPP contract, the occurrence, timing, and/or amount of which are uncertain. These events are:

- Regulatory risks;
- Force majeure;
- Breach of government warranties; and
- Material Adverse Government Action.

Because of the impact of contingent liabilities on the Philippine government's sovereign credit rating and the potential fiscal impact, the risk allocation is among the project terms that are subject to approval by the ICC-CC.

Enabling the Bankability of the Project

APMG[6] defines bankability as the level of willingness of prospective lenders to finance the project, that is, what amount and under what conditions. The World Bank's article – "How to Engage with the Private Sector in Public-Private Partnerships in Emerging Markets" written by Edward Farquharson, Clemencia Torres de Mästle, E.R. Yescombe and Javier Encinas – lists a number of "bankability" concerns that project development has to address:

- Certainty of the project cash flows for meeting debt service requirements
- Bankability of public sector obligations
- Soundness and stability of the legal framework for PPP
- Effectiveness and enforceability of the PPP contract and related agreements
- Confidence in the regulatory regime when applicable
- Right to step in if a project fails and availability of alternative contractors
- Ability of contractors to perform and the quality of their management
- Bankability of contractors and quality of contractor guarantees
- Risks that are understood, controllable, finite, and appropriately allocated
- Reputation impact of the project (environmental, social)
- Availability and effectiveness of insurance cover, where needed.

It is the task of PPP structuring to assess the project's bankability and to identify what support the project would need in order to be bankable. In so far as government support is concerned, Section 13.3 of the IRR of the Amended BOT Law allows any form of Government support or contribution to solicited projects, such as, but not limited to, Cost Sharing, Credit Enhancements, Direct Government Subsidy, Direct Government Equity, Legal Assistance, and Security Assistance. This section also allows the provision of performance undertaking such as the payment of a monetary obligation in case the NGA defaults on an obligation.

[6] https://ppp-certification.com/ppp-certification-guide/71-private-finance-and-project-finance73

Other types of support that could be provided but not mentioned in Section 13.3 are:

- Take or pay arrangements
- Extension of the concession period in case contractually agreed toll fees cannot be enforced
- Compensation in case of material adverse government action
- Take-out financing (where the project can only obtain short tenor debt, the government promises to make debt available at a given interest rate at a certain date in the future)
- Revenue support (where the government promises to lend money to the project company to make up for revenue short-falls, enough to satisfy debt-service obligations)
- Termination payment

Any government undertaking to enhance bankability is subject to restrictions specified in Section 13.3.

Best practices – Government Support in Financing PPPs

Case Study : Government Support that was given to LRT Line 1 Cavite Extension and O&M Project

Project: LRT Line 1 Cavite Extension and Operation and Maintenance Project
Implementing Agency: Department of Transportation and Communications (DOTC) and Light Rail Transit Authority (LRTA)

Project Description:
The Project involves (1) the extension of the current LRT Line 1 from Baclaran to Bacoor, Cavite, with the construction of an estimated 11.7 kilometers of railway with eight (8) new stations; and (2) operations and maintenance (O&M) of the integrated LRT 1 system by the Private Proponent.

The execution of the Project has two different funding mechanisms: (1) The loan extended by the Japan International Cooperation Agency (JICA) will fund the procurement of the additional 120 Light Rail Vehicle (LRV) rolling stock, expansion of the existing Baclaran Depot, and construction of a new satellite depot at Zapote (Zapote Satellite Depot); and (2) The PPP Private Proponent will fund the civil and architectural works, and E&M Rail systems for the entire Cavite Extension, including the existing stations and depots.

Government Intervention to ensure Bankability:

After securing the necessary project approvals for the project, the LRT Line 1 bidding commenced. However, due to issues on market acceptability on project structure, there was a failure of bid declared on August 27, 2013. To improve the bankability of the project, the following changes to the project structure were done:

o Real Property Taxes - Payment for RPT shall be the full responsibility of the government. This applies for RPT obligations along the rail system but excluding the commercial areas.

o Fare Increase - The DOTC/LRTA shall allow for an increase in fare upon completion of the Cavite extension;

o Warranties and Obligations - The DOTC/LRTA shall provide limited warranties on the physical condition of the Existing System and shall compensate the Concessionaire for some repair costs and lost profits; and

o Common Station - The DOTC/LRTA shall be responsible for the implementation of the Common Station.

Due to the changes in the project structure, a successful bid was closed in May 2014. After thorough evaluation by the DOTC-SBAC, the Light Rail Manila Consortium was determined to have passed the qualification, technical and financial requirements. Light Rail Manila Consortium submitted a bid in the form of concession (premium) payment amounting to Php 9,350,103,900.00.

Termination Payment and Bankability

Lenders are particularly concerned over what happens to the remaining debt when a PPP contract is terminated. To reduce this uncertainty and therefore enhance bankability, an agreement on a payment to be made by the government when such termination happens is included in a PPP contract. The PPPGB issued a circular on Termination Payment for PPP Projects that prescribes the applicability and the method of calculation of termination payment.

Choosing the Financial Bid Parameter

The financial bid parameter is used in determining the winning bidder in either the solicited or the unsolicited procurement process. Section 4.2 (h) of the IRR of the Amended BOT Law lists some of the financial bid parameters that a project may use. In order to guide NGAs in choosing the most suitable financial bid parameter, the PPP Governing Board issued the circular, Guidelines on Setting Financial Bid Parameters for the Selection of Project Proponent in PPP Projects.

The following table shows the financial bid parameter used in a number of PPP projects:

Project	Financial Bid Parameter	Winning Bid
PPP for School Infrastructure Project – Phase I	Lowest present value of lease payments	Package A: P3.45 billion Package B: P5.23 billion Package C: P7.6 billion
Cavite-Laguna Expressway	Highest premium to the government	P27.3 billion
Bulacan Bulk Water Supply Project	Lowest bulk water charge	P8.50 per cubic meter
Clark International Airport – Engineering, Procurement and Construction	Lowest EPC payment by the government	P9.36 billion

Project Terms

The output of project development is the set of project terms on which the project's viability and bankability are dependent on and for which approval from the approving body is sought. These are scope, contractual arrangement, concession period, Implementing Agency/ies, bid parameter, estimated project cost, government undertakings, repayment scheme, risk allocation, and indicative schedule.

The proposed project terms are documented using the ICC Project Evaluation (PE) Forms for PPP Projects.

Development of Unsolicited Projects

Unsolicited proposals tend to be those with sustainably strong and certain demand for a public service and where opportunities to capture value are present. These are typically structured as concession agreements where fees are charged for the public service (i.e., toll fees) and where the private proponent is allowed to earn from other sources of revenues (i.e., revenues from commercial businesses, advertising revenues). Private proponents are also attracted to propose projects that have synergies with other projects they may have (i.e., a rail project close to a real-estate development that they already own).

The objectives of project development that were stated earlier in this chapter apply to both solicited and unsolicited projects. Project terms, which are the output of the development of a solicited project are also part of the output of the development of an unsolicited project.

Apart from the obvious fact that development is initiated by the private proponent, the other differences in project development between unsolicited and solicited projects are in the following:

- The universe of projects that can be developed is more restricted in the case of unsolicited projects.

    a. Projects that are not in the priority list (i.e., Public Investment Program) of the NGA
    b. If a part of the Public Investment Program of the NGA then it has to be a project that involves a new technology or a new concept
    c. Projects that are not components of an approved project

- For eligible projects, the project structure has to fit prohibitions imposed by the IRR of the Amended BOT Law on direct government subsidies, direct government guarantees and government equity. These are in addition to restrictions on government undertakings that apply to both solicited and unsolicited projects.

- The private proponent develops an unsolicited proposal without prior knowledge of the government's preferred structure. The government provides its preferences during the negotiation that follows approval of the project.

- The project has to be structured in a way that the approving body will find the project's rate of return to be reasonable. Such structuring may involve the sharing of revenues with the NGA or the national government in order to keep the returns to a reasonable level.

- At the end of project development, the private proponent submits a set of documents to the NGA that includes a draft contract.

Best Practices in Project Development

Stakeholder Consultation

Stakeholder consultation promotes transparency in the development and implementation of PPP projects, helping the NGA identify important issues and concerns on the ground and formulate appropriate strategies to effectively address these.

The Local Government Code of 1991 requires NGAs to consult appropriate LGUs and concerned community sectors before any program or project is implemented within the respective LGU's jurisdictions, especially those that are expected to have adverse environmental or social effects.

More information on how to conduct stakeholder consultation in PPP projects can be found in the Guidelines on Public Consultation and Engagement for PPP Projects issued by the PPP Governing Board.

Market Sounding

The conduct of market sounding aims to assess the private sector's ability to assume risks through the PPP contract. It focuses on the appropriateness and attractiveness of the indicative PPP structure and solicit inputs and requirements from the prospective bidders.

Market sounding, which was institutionalized through a PPP Governing Board issuance on the Institutionalization of Best Practices in the PPP Processes, determines key areas that will need consideration in finalizing the PPP structure. The information received in the market sounding shall provide guidance to the NGA in deciding how to structure the project to make it most viable to the market. However, such information is merely suggestive and shall not mandatorily bind the NGA in deciding how to package the project.

Market sounding could either occur during the preparation of the project, or before the issuance of the request for proposals or request for submission of qualification documents. In particular, it shall occur before the bidding proper or before sending out invitations to prospective bidders. In some instances, it may be requested even while the project is at the approval stage.

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

For a detailed discussion on how to conduct market sounding, please refer to the APMG International's module on How to Conduct the Market Sounding.

Market sounding involving creditors

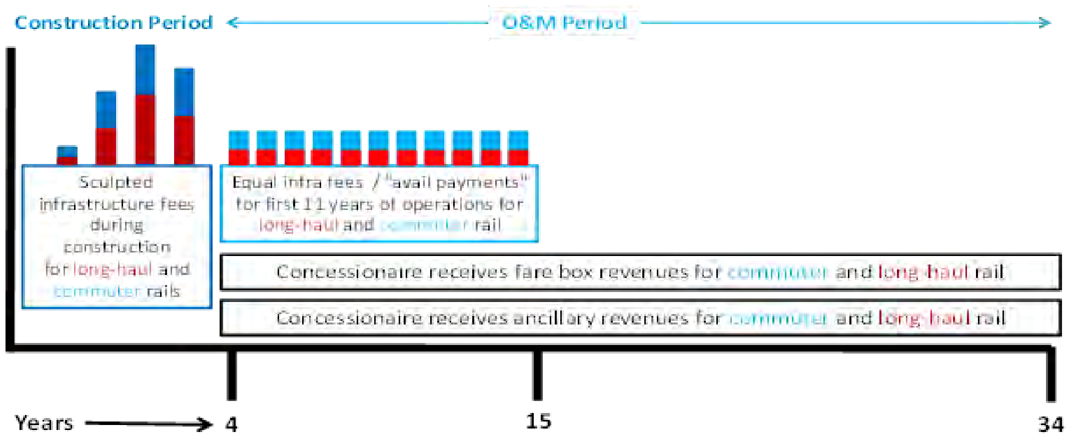
One of the recommendations of Allen & Overy in their report to the Japan Bank for International Cooperation on the Philippine PPP Program is the inclusion of potential creditors in the market sounding activity. Below is an excerpt from that report:

"*Ensuring that the concession agreement and risk allocation for a Project are bankable and otherwise encouraging overseas debt financiers to participate in the debt financing of PPP projects are important goals for any PPP programme. Our recommendations below are principally directed at ensuring that all bidders are required to involve their financiers in the whole tender process, to ensure that the requirements of debt financiers are taken into account in formulating the final shape of the project, to encourage a competitive process amongst bidders with respect to their financing arrangements and to provide certainty to the procuring authority that the preferred bidder will be able to quickly proceed to financial close after selected.*"

Case Study: North-South Railway Project Market Sounding with Lenders

On 7 August 2015, a consultation meeting with potential foreign and domestic banks, lenders and financing institutions was held at the PPP Center of the Philippines for the North South Railway Project (NSRP) South Line[7]. The NSRP South Line, sponsored by the Department of Transportation and Communications (DOTC) and Philippine National Railways (PNR), was a keystone transport project of the Government of Philippines (GOP) and was approved by the ICC Cabinet Committee on 14 January 2015 and the NEDA Board on 16 February 2015. The Project involves the construction, rehabilitation, extension, operation, and maintenance of the PNR South Line to provide Commuter Operations and Long-haul Services spanning a total of 653 kilometers. The Project's estimated cost initially was Php171billion but was updated to Php285 billion.

The Project's technical overview, concession structure, regulatory matters, consortium and qualification requirements and pre-qualification process were presented in order to solicit feedback on a proposed financing structure, where assuming a construction for Long Haul Line of 4 years, payment streams to the concessionaire would be like so:



While there was comfort in the overall payment structure, the domestic banks suggested that for a project of this scale, GOP should consider a stapled financing arrangement. Stapled financing is a pre-arranged financing package for the project, developed by government and provided to bidders during the tender process[8]. Stapled financing by domestic banks is not without merits however, it was argued that this is not necessarily a competitive solution as domestic banks will in any case lend to the project whichever bidder/consortium wins and will always be less risk averse than foreign institutions. Foreign banks were quick to add that given the significant debt amount required, GOP may well be better advised to make sure that more stringent foreign lending institutions are able to support the financing by focusing on the above-mentioned due diligence requirements of Export-Credit Agencies (ECAs) and the environmental & social (E&S) due diligence required by ECAs, multilateral institutions such as Asian Development Bank (ADB) or World Bank (WB) and the Equator Principles lenders. The claim was there will be more value and credibility for potential foreign lenders by having foreign lenders provide all the bidders with a stapled financing than by the domestic banks who have less stringent requirements and therefore whose terms and conditions will not necessary be accepted by the foreign lenders. Foreign banks suggested that government should require, instead of having a stapled financing from the domestic banks, that no domestic banks can commit exclusively to any one bidder and that the domestic banks set up adequate "information barriers" to support different bidders thereby ensuring that there is sufficient liquidity and competitiveness from the domestic market. It was clear that to adopt a stapled financing arrangement for this project, a certain amount and level of information would have to be available pre-bid, including advanced drafts of the Project Documents, agreed detailed Term Sheet and sufficient technical, E&S due diligence results.

Foreign banks underscored the importance of a robust E&S due diligence at a level that sufficiently satisfies ECAs, Equator Principles lenders and multilateral institutions' requirements. GOP was well advised to invest in mandating a globally recognized E&S expert tasked to set the critical baseline study of the number of people/families involved (before new people move in to take advantage of any compensation) and establishing their assets, level and sources of income (which will all need to be compensated for and restored) – such work would then only have to be reviewed by the Lenders' Independent E&S consultant and the government could be reassured that this important risk factor has been satisfactorily addressed and would not prevent the ECAs, ADB/WB, foreign lenders from lending to the Project.

In the end, it came down to which parts of the scope of work can realistically be delivered by GOP at an early stage or during pre-bid/tender stage. While the suggestion of stapled financing and undertaking a robust E&S due diligence were taken into strong consideration, GOP timeline dictated that it was not in a position to deliver such given that this would set GOP bidding for another 6-12months. In any case, the feedback by both domestic and foreign banks was critical in infusing new designs and key considerations for future PPP financing.

[7] The project is now funded via ODA. The O&M component is being discussed to be undertaken via PPP.
[8] Public Private Partnerships Reference Guide Version 1, World Bank Institute PPIAF, page 51.

PROJECT APPROVAL

Objective of the Approval Process

The objective of the approval process is to ensure that projects meet the criteria for approval set forth by the approving body.

Guidelines for Approval

Section 2.6 of the IRR of the Amended BOT Law defines who shall approve a national project, based on the project cost. The project cost is defined in Section 1.3 w. It is to be noted that under the IRR, the project cost used to determine the approving body does not include the operating and maintenance expenses.

Section 2.7 of the IRR grants authority to the Approving Body to prescribe or revise detailed guidelines on the process and procedures for the approval of projects, including the requirements to be submitted for approval.

Section 2.9 of the IRR mandates that projects undertaken through the Build-Own-and-Operate scheme or other contractual arrangements not defined in the Amended BOT Law shall require the approval of the President.

Section 2.10 of the IRR sets a deadline for the approval of solicited projects:

"The Approving Body shall act on the project within thirty (30) working days upon satisfactory compliance by the concerned Agency/LGU with the ***requirements of the Approving Body.***"

In the above, the requirements of the Approving Body pertain to the ICC Requisite Documents and other information as may be required by the ICC.

The ICC Evaluation Procedures and Guidelines describe the key criteria for evaluating *any* project that requires ICC approval. In the case of PPP projects, there are other considerations apart from the technical, social, financial and economic criteria discussed in the ICC guidelines:

1. Why procure the project through PPP
2. Whether the scope of the private sector's participation is acceptable
3. Whether risks allocated to the government and the corresponding government undertakings are acceptable.
    a. What are the fiscal impacts? Can we afford such impacts?
    b. How shall the CLs be managed?
4. Whether the proponent has the financial capability, if the project is unsolicited
5. If the project structure is compliant with the Amended BOT Law and its IRR and other PPP policies (as in the current administration's preference for hybrid approach and for the use of bid parameters other than highest premium)
6. Whether the project terms to be used for preparing the contract for a solicited project, or for the negotiation of an unsolicited proposal, are acceptable

The NGA may also seek approval for flexible project terms or restrictions that it deems necessary. In the case of PSIP II, DepEd sought for approval to have a flexible contractual arrangement (BLT or BT).

When approved, the NEDA issues an official memo to the NGA informing them of the approval.

Flowchart of the ICC Approval Process

The website of the Investment Coordination Committee (http://www.neda.gov.ph/investment-coordination-committee/) provides the flowchart for the ICC Approval Process. This process is applied to both solicited and unsolicited PPP projects. However, for unsolicited PPP projects, two different kinds of approvals are required: (1) approval of the unsolicited project prior to negotiation with the original proponent, and (2) approval of the results of the negotiation between the NGA and the original proponent (see Section 10.8 of the IRR of the Amended BOT Law).

Lessons from Past PPP Projects

Submit complete documentary requirements. In accordance with the Amended BOT Law and its IRR, and the ICC Guidelines, the NGA must ensure that all required documents are complete prior to submission to the ICC for approval. The submission of complete documents shall facilitate the evaluation and approval of the proposed project, and may also help in avoiding delays in the approval process.

Provide realistic assumptions for the project's feasibility study and models. As part of the review, evaluators challenge assumptions provided and used by the NGA in the feasibility study and financial and economic models of the proposed project to test the project's robustness. In order to avoid issues that may be raised, assumptions used for the project must be realistic, current and supported by facts.

Follow the mandatory provisions for the draft concession agreement, as specified by the Amended BOT Law IRR. For unsolicited proposals, as provided by Section 4.4 of the Amended BOT Law IRR, draft PPP contracts submitted to the ICC for approval should contain all the mandatory provisions enumerated by the Law.

Engage other stakeholders for the evaluation of complex projects. The NGA may benefit from engaging consultations with concerned stakeholders and Local Government Units to have a more holistic knowledge about a complex project. This shall prepare the NGA in presenting and defending the proposed project during ICC deliberations.

Avoid changes in the project terms. To avoid delays, the NGA is advised to avoid constantly changing the terms of approval of their project. More comprehensive market sounding activities should be done during the project development stage to ensure the viability of the project and reduce the risks of changes in the structure of the project.

PROCUREMENT

Objectives and Scope of the Procurement Process

The goal of the procurement process is to choose the private partner in an open, competitive, fair, and efficient manner, and within the expected timeline.

The process starts with the formation of the Prequalification Bids and Awards Committee and ends when a contract is signed between the NGA and the private partner. The signed PPP contract should meet the requirements of the NGA, the approving body, oversight bodies, the private partner and its financiers.

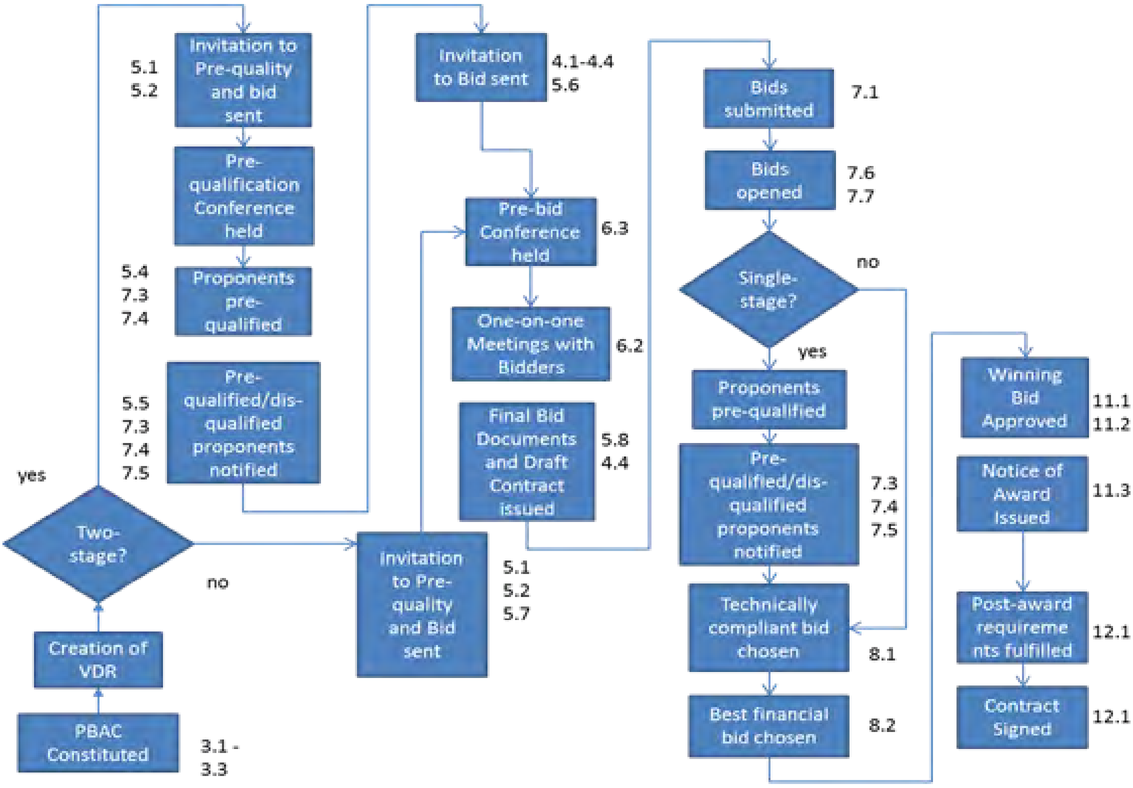
Guidelines for the Procurement Process

There are three variants of the procurement process:

- Two-stage bidding of a solicited project
- Single-stage bidding of a solicited project
- Swiss Challenge of an unsolicited proposal

Bidding of Solicited Projects

In a two-stage bidding, the second stage, which involves the submission of bids, is restricted only to those who pass the first stage or the pre-qualification stage. In a single-stage bidding, the submission of pre-qualifications and the bid occur at the same time. Both stages are shown in the flowchart below. The numbers next to each process step show the sections in the IRR of the Amended BOT Law that are relevant to a particular step.



Swiss Challenge for Unsolicited Proposals

The Swiss Challenge differs from the procurement of solicited projects with respect to the following:

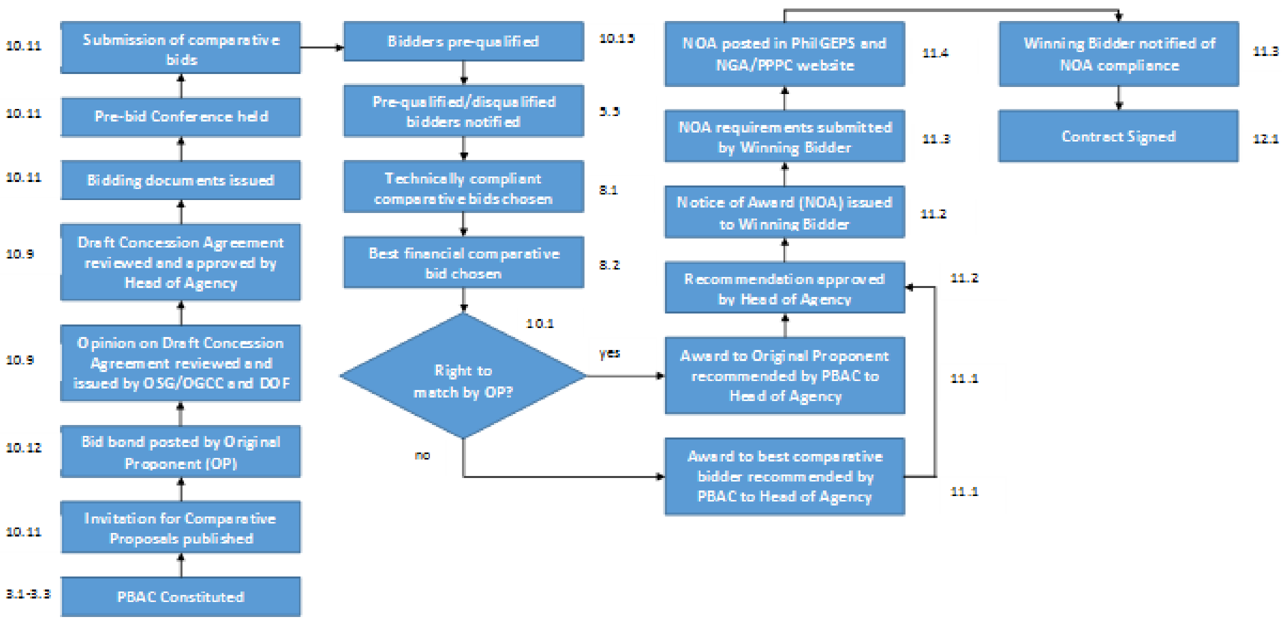
- There is minimal competition on innovation or efficiency as challengers are asked to present proposals that are comparable to that of the Original Proponent's. In the procurement process for solicited projects, the terms and conditions of a project may still change after the NGA has obtained feedback during the pre-bid conference and one-on-one meetings. However, these changes are subject to the conditions set forth in Sections 5.8 and 6.3 of the IRR of the Amended BOT Law.

- The Swiss Challenge period has a time limit of 60 working days. There is no time limit in the case of the procurement process for solicited projects in the IRR of the Amended BOT Law.

- The Original Proponent has the right to match the price proposal of a comparative proponent that is better than that of the Original Proponent. The right to match process can take more than one round in case that the Original Proponent does not exercise its right, and, the comparative proponent with the better proposal fails to enter into a contract with the NGA. See Section 10.1 and 10.17 of the IRR of the Amended BOT Law for more details.

- In case there are no comparative proponents, the project is automatically awarded to the Original Proponent. In the procurement process for solicited projects, a negotiation process follows the bidding stage in case there is only one qualified bidder with an acceptable proposal.

For a detailed description of the Swiss Challenge process, please refer to Annex A, pages 2 to 3 of the Guidelines on Managing Unsolicited Proposals under RA 6957 as Amended by RA 7718. The flowchart below is constructed from the table in the said Guidelines containing the following: Procurement, Evaluation: Right to Match and Decision to Award, and Issuance of Notice of Award and Signing of Contract.



Notes on Selected Procurement Concepts and Process Steps

Providing a Project Information Memorandum as part of the Notices related to the Invitation to Prequalify and Bid

The provision of a Project Information Memorandum (PIM) is a standard international practice and is a document providing preliminary information to the market. It is a key aspect of the transaction transparency arrangements the Government of the Philippines puts into place. The PIM is normally published online. The PPP Center publishes the PIM in its website as soon as this becomes available.

The PIM describes the PPP project in terms of the following:

- Project objectives
- Project background and description
- Project scope and deliverables
- Implementing agency
- PPP structure
- Procurement process
- Indicative timelines

Setting up the MPSS

The MPSS is one of the outputs of project development and is among the terms and conditions approved by the Approving body. For more details, see the section, Setting up the MPSS of this Guidebook.

Choosing the financial bid parameter

The financial bid parameter is one of the outputs of project development and is among the terms and conditions approved by the Approving body. For more details, see the section, Choosing the Financial Bid Parameter of this Guidebook.

Drafting of the Contract

A Draft Contract is a key bid document which allows prospective bidders to review the proposed terms and conditions of the PPP Project. The purpose of a Draft Contract is to help bidders structure their bids accordingly.

The Draft Contract must be written clearly and structured logically. Modern and plain language is preferred.

The Draft Contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities, including the specific undertakings based on the final risk allocation for the project.

Required contract provisions

The Draft Contract shall have the following mandatory terms or conditions:

- specific contractual arrangement, term, and scope of work;
- project technical specifications and system features based on the MPSS;
- implementation milestones including those for securing other approvals, project completion date;
- cost recovery scheme via proposed tolls, fees, rentals and charges as the case may be;
- liquidated damages as contemplated in the IRR of the Amended BOT Law;
- performance and warranty bonds contemplated in the IRR of the Amended BOT Law;
- 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;
- acceptance tests and procedures; warranty period and procedures (after transfer);
- grounds for and effects of contract termination including modes for settling disputes;
- the manner and procedures for the resolution of warranty against corruption, and
- compliance with all other applicable laws, rules, and regulations.

Furthermore, Executive Order No. 78 mandates that provisions on the use of alternative dispute resolution mechanisms be included in all contracts involving PPP projects and Build-Operate and Transfer projects of NGAs. Further details may be found in the IRR of this EO.

Template of Selected Contract Provisions from the UP Law Center's PPP Book

The University of the Philippines (UP) Law Center Institute of Government and Law Reform, in collaboration with the Public-Private Partnership (PPP) Center, launched the PPP Book at the UP College of Law, Malcolm Hall, Diliman, Quezon City on October 11, 2017.

The PPP Book, which features a complete pre-configured contract template, is envisioned to serve as an easily comprehensible guide to negotiating and structuring PPP contracts.

Copies of the book may be purchased from the UP Law Center Institute of Government and Law Reform at Rm. 106, UP Law Center, Bocobo Hall, UP Diliman, Quezon City.

Inclusion of project monitoring among the contract provisions

To achieve the intended outcomes of the PPP project, government needs to make sure that the planned allocation of responsibilities and risks are put into practice, monitored, recorded and continuously verified throughout the lifetime of the contract. A critical element in ensuring good performance and sustained output is the inclusion of project monitoring in the provisions of the contract.

The NGA, by ensuring project monitoring in the contract provisions, can implement enforcement mechanisms as appropriate based on the monitoring information received, as well as being able to comply with its continuing obligation to meet its deliverables.

The NGA may include in the contract a determination of the size of the contract management team, depending on the size and complexity of the project, how performance is to be monitored, and how the relationship will be managed. To a large extent, the roles and responsibilities must be clearly defined and understood by all individuals within the team, and define governance structures and establishing procedures for monitoring and reporting. To guide NGAs further in identifying key responsibilities to be included in the contract provisions, the PPP Governing Board issued the PPP Projects Monitoring Framework and Protocols.

Inclusion of Independent Consultant

The PPP Center recommends that the contract includes a provision on the use of an Independent Consultant during project implementation. 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.

The cost of the Independent Consultant is customarily shared 50-50 between the NGA and the private proponent. The funding of the NGA share can be advanced by the Project Development and Monitoring Facility (PDMF). So far there are two PPP projects that have availed of the services of an Independent Consultant through PDMF—the Clark International Airport EPC and the Civil Registry System IT Project – Phase II.

The functions of the independent consultant are elaborated further in the PPPGB issuance on the Institutionalization of Best Practices in the PPP Processes.

Clarifying Questions and Concerns of Qualified Bidders through Pre-bid Conference and One-on-one meetings (Two-Stage Process)

A pre-bid conference, where all pre-qualified bidders are invited, is conducted by the NGA to clarify any provisions, requirements or terms and conditions in the Draft Contract and other bidding documents, or any other matter that prospective bidders may raise.

One-on-one meetings with pre-qualified bidders shall be held to further clarify any of their questions, comments, and concerns; and discuss key terms and conditions of the Draft Contract. It is designed to know the perspective of the pre-qualified bidders and serve as a venue to thresh-out all identified project issues and concerns before the formal bidding process.

To ensure transparency, any questions raised by the pre-qualified bidders during the conference and the answers given by the PBAC shall be posted in a bid bulletin to inform all pre-qualified bidders of the results of every conducted session. However, the name/s of pre-qualified bidders, officials, or any person who raised or answered the question shall not be included in the bid bulletin to protect confidentiality.

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

Best Practices and Lessons from Past PPP Projects

Use of Probity Advisors during Procurement

It is highly recommended that the NGA hire a Probity Advisor prior to the commencement of a PPP procurement process, especially for large and complex PPP projects. Probity Advisors provide independent oversight during the bidding process to determine whether relevant government policies are being complied with, ensure that the process is impartial and fair to all bidders, and highlight any potential conflict-of-interest situations as they arise. For further guidance, see PPP Governing Board Resolution No. 2018-03-03: Guidelines on Appointment of Probity Advisors for PPP Procurement.

The Project Development and Monitoring Facility (PDMF) that is managed by the PPP Center can be tapped to finance the hiring of probity advisors. For more information about the PDMF, please see the section Project Development and Monitoring Facility of this Guidebook.

Use of PPP Center's Virtual Data Room

The Virtual Data Room (VDR) is a secure online facility that NGAs may utilize to manage the information requirements of bidders during project tender in an efficient and timely manner. It is an online platform for storing, accessing, and distributing bid documents and related project data among pre-qualified bidders, facilitating easier due diligence review on a PPP project.

The VDR was established through ADB TA 7796-PHI and is being managed by the PPP Center. It makes available the electronic versions of the following:

- Tender documents;
- Feasibility studies;
- Other project-related information, including attachments such as project alignment illustrations, project site maps, etc.

The use of the VDR in PPP Projects shall provide a secure, limited and controlled access to pre-qualified bidders using a secured log-on supplied by the NGA.

An NGA may disable any time the access of a bidder to the VDR in case of violation in the guidelines set by the government. The information supplied in the VDR shall be treated confidential and subject to strict management. The VDR is institutionalized via a PPPGB issuance on the Institutionalization of Best Practices in the PPP Processes.

Conduct of Site Inspection and other Preparatory Works

The NGA should conduct inspection activities in the project site for the inventory of all right-of-way required for the project, including any potential site issues. This includes the inventory for the all the utilities (e.g., electric posts, water pipes, cable lines), and informal settler families (ISFs) that must be relocated. To avoid potential right-of-way issues during the implementation of the project, the NGA may coordinate with the offices concerned for the affected utilities and ISFs as early as the development and/or procurement stage.

Conduct of more Marketing Activities

The NGA may conduct marketing activities to avoid delays in the procurement process particularly for the need to re-submit the project to ICC-CC for re-approval of changes in the project terms as proposed by the prospective bidders. These activities may include investor's forum, international and local road shows, and market sounding activities where the NGA can gather inputs and feedback from prospective bidders regarding the project.

Ascertaining the Payment Mechanism of the Project

The Department of Budget and Management (DBM) issued the National Budget Circular No. 564 or Guidelines for Issuance of Letter of Commitment Covering National Government Support for Multi-year Solicited PPP Projects on June 8, 2016 which prescribed the procedure, requirements, among others, for PPP projects that may require budgetary support from the National Government. Given this, to boost the interest of prospective bidders, the NGA may assure the bidders that the required budgetary support for the PPP project shall be included in the long term program of the National Government.

Case Study: Procurement of Clark International Airport O&M Project

The Clark International Airport O&M Project was awarded to the private sector partner in December 2018, 8 months after its NEDA Board approval in April 2018. The relatively faster procurement period was due in large part to the commitment of the Bases Conversion and Development Authority (BCDA) in pursuing and implementing the project.

Due to the urgent need to decongest NAIA, the BCDA has considered both the Engineering, Procurement and Construction (EPC) and O&M component of the Clark International Airport project as part of their main priorities. The target was to award the project at the soonest possible to allow the winning bidder to be involved with the design and construction of the new passenger terminal.

Regular PBAC meetings were held to finalize project details and address any issues that may arise during the procurement stage. Several one-on-one meetings were held with potential bidders to confirm the acceptability of the project terms. The PPP Center, DOF, IFC, and other stakeholders were involved at every step to provide guidance and assistance in addressing bottlenecks in the project.

PROJECT IMPLEMENTATION

Implementation refers to the fulfillment of the obligations and the delivery of the outputs in accordance with the terms and conditions of the contract that were agreed between the NGA and the private partner.

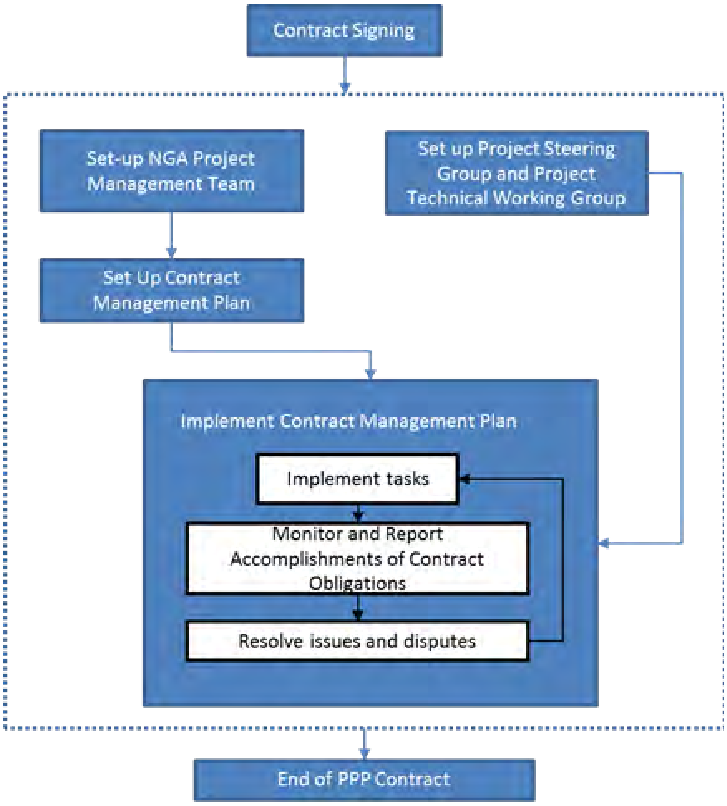
Objectives of Project Implementation from the NGA's Perspective

- Timely execution of all parties' obligations and of the delivery of outputs
- Achievement of the targets for the project's key performance indicators
- Amicable resolution of project issue and disputes
- Proper handling of variations

Key to the success of the above objectives is having and executing a good project monitoring framework. See also Inclusion of project monitoring among the contract provisions.

Project Implementation starts when the PPP contract has been signed, all conditions precedent have been accomplished including the achievement of financial close. When all these are met, the NGA issues a notice to proceed to the private partner.

Project Implementation Flowchart (excluding Management of Variations)



Setting up a Project Management Team (PMT)

The PMT of the NGA has the following responsibilities:

- Manage the day-to-day implementation of the PPP contract
- Measure performance of the project proponent against the contract's key performance indicators
- Report issues encountered during implementation of the PPP contract
- Represent the NGA in the Project Technical Working Group
- Assist the NGA's representatives to the Project Steering Group

The PMT reports to the Head of the Agency. At the minimum, the PMT shall be composed of the following:

- Project Team Leader
- Financial Representative
- Technical Representative
- Legal Representative

Setting up the Project Steering Group (PSG) and the Project Technical Working Group (PTWG)

The PSG comprises of the following:

- High-level representatives from the NGA
- High-level representatives from the project proponent

The functions of the PSG are the following:

- Conduct regular progress review meetings
- Settle project issues and disputes elevated by the PTWG

The functions of the PTWG are the following:

- Conduct regular meetings to discuss the day-to-day progress of the project
- Settle project issues that can be resolved at their level
- Prepare reports and elevate issues and disputes for the decision of the PSG

The PTWG is composed of the following:

- Representatives from the NGA's PMT
- Representatives from the Project Proponent
- Representatives from the PPP Center
- Representatives from the Independent Consultant

Depending on project issues, the PTWG may invite resource persons from concerned stake-holders.

Contract Management Plan

The Contract Management Plan is a tool that will be used by the PMT to plan the accomplishment of each and every obligation under the PPP contract. At the minimum, this plan should identify the following:

- The project management team and their roles in the execution of the plan
- The various obligations in the contract
- The targeted due dates for the accomplishment of each obligation
- The optimal sequencing of the accomplishments of the obligations (e.g., Gantt chart, PERT-CPM)
- The responsible party/person for each obligation
- The assessment of the risk of not meeting each obligation and the risk mitigating measure/s
- The protocols for reporting and monitoring of the accomplishment of each obligation, performance against KPIs, and of contingent liabilities. See the Guidebook section on Setting up the MPSS and KPIs and on Managing contingent liabilities.
- The protocols for resolving issues and disputes that may arise during project implementation. See the Guidebook section on Resolving Disputes.

For more details on the roles of the PMT, PSG, and PTWG, and for templates on reporting, please refer to the PPP Projects Monitoring Framework and Protocols.

Critical Obligations in a PPP Contract

The following are common causes of delays of infrastructure projects and therefore must be planned and provided with sufficient resources for timely execution.

Acquiring the Right-of-Way

The acquisition of right-of-way pertains to the following:

- Acquisition of project land
- Relocation of affected utilities
- Relocation of affected informal settler families (ISFs)

Obtaining permits and relevant consents
Permits and consents are national and local approvals, authorizations, acceptances, licenses, exemptions, filings, registrations, notarizations, and other matters which are required, including any agreements or endorsements with any Government Authority, by any legal requirement or under the terms of the PPP contract. This includes the Environmental Compliance Certificate (ECC), Certificate of No Objection from LGUs, building permits, occupancy permits, and fire safety certificate, among others.

Managing Government Obligations

Obtaining the Letter of Commitment
For multi-year PPP projects, a corresponding multi-year National Government support may have to be provided. In this regard, the Department of Budget and Management (DBM) issued National Budget Circular No. 564 or the Guidelines for Issuance of LOC Covering National Government Support for Multi-year Solicited PPP Projects that covers all departments, agencies, bureaus and offices of the National Government, including State Universities and Colleges and Commissions or Offices under the Constitutional Fiscal Autonomy Group, undertaking solicited multi-year PPP projects approved by the NEDA Board.

The Circular requires a government agency to submit to the DBM, within 10 calendar days from the date the financial evaluation of the bid for the PPP project is completed, a request for the issuance of an LOC together with supporting documents. After which, the DBM shall issue the LOC within 30 calendar days from receipt of the request and the abovementioned documents. Further details on the submission and application for an LOC are laid out in NBC No. 564.

Managing Contingent Liabilities

Contingent Liabilities refer to an obligation that may or may not arise from events specified in a PPP contract, the occurrence, timing, and / or amount of which are uncertain. It is the responsibility of an NGA to ensure that contingent liabilities are monitored, and be funded in case that claims arising from contingent liabilities arise.

All PPP projects of NGAs are subject to the Implementing Guidelines for the Special Provision on the Use of Unprogrammed Appropriations for the Risk Management Program of the GAA. The NGA shall prepare a Contract Management and Risk Mitigation Plan (CMRMP) summarizing the risks in a PPP project and ways to mitigate such risks. The NGA shall update the CMRMP on a quarterly basis and shall report any material change in circumstances or an event that significantly increases the likelihood of claims arising from Contingent Liabilities, as well as the details of all remedial and mitigating actions that were taken by the NGA.

When Contingent Liabilities are realized, the NGA may use their existing funds under the General Appropriations Act or apply for the use of Programmed Appropriations for the Risk Management Program, subject to the approval of the Development Budget Coordination Committee or the President.

Managing Variations

Variations in PPP Contracts[9]

During the implementation of the PPP project, either the NGA or Project Proponent may submit proposals leading to an amendment or variation to the PPP contract, such as changes in the Minimum Performance Standards and Specifications, changes in Key Performance Indicators, Inclusion of additional works, provision of services, procurement of plant or equipment; and changes in the Detailed Design, as approved in accordance to the PPP contract.

In such cases, the NGA or the Project Proponent is expected to submit a variation proposal to the other party which includes the details of the variation, additional cost estimate, and how the additional costs are proposed to recovered. The parties shall also agree in writing on how the additional cost can be recovered through any or combination of the following methods direct payment from the NGA, adjustment of the user charges, extension of PPP contract, and other methods mutually agreed by the parties.

When the Project Proponent initiated or proposed the variation, it should bear the cost for such and none of the abovementioned methods shall be an option for the additional cost. In addition, the variations shall be subjected to applicable laws, rules, and regulations.

Approval of Variations

In all instances, a contract variation must be approved by the Head of the Agency. However, Section 12.11 of the Amended BOT Law IRR sets out the parameters where the approval of the appropriate Approving Body is also required. Under the law, the approval of the appropriate Approving Body is required if there is an impact on the basic parameters, terms and conditions as approved by the Approving Body, or increase in the agreed fees, tolls and charges or a decrease in the Agency's revenue or profit share derived from the project, except as may be allowed under a parametric formula in the contract itself, or there is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency of its obligations under the contract; or there is no additional Government Undertaking, or increase in the financial exposure of the Government under the project. The Approving Body approves the contract variation in terms of the impacts on government undertakings, performance standards, and service charges.

[9] Public-Private Partnership Book by the University of the Philippines Law Center

In instances where the approval of the appropriate Approving Body is needed, the NGA shall prepare the necessary documentation for approval, which includes, but is not limited to, the variation proposal, and PE Forms, among others. The documents are then submitted to the ICC Secretariat for review. Failure to secure approval of the Head of Agency or Approving Body as provided in this section shall render the contract variation void. In addition, thereto, the NGA shall report to the Approving Body and the PPP Center on any contract variations, including those approved by the Head of Agency.

Implementation of Variations

After the approval of the variation by the relevant approving body, both parties shall implement the variation following the terms of the said approval. The NGA then shall monitor the implementation of the variation in relation to the required works for the PPP project.

If the NGA initiated the variation and has the obligation to provide direct payment to the Project Proponent, it is advised that the NGA allocate budget for the payment of such. This is also to avoid any potential claims from the Project Proponent due to delayed payment.

Resolving Disputes

During the life of a PPP project, disputes and controversies may arise, such as but not limited to unilateral cancellation of contracts, changes in interpretation of contractual provisions and breach of material obligations. Aggrieved parties seek redress from courts or from neutral third persons following the procedures as stipulated in the PPP contract. Executive Order No. 78, requires all PPP contracts, BOT projects, JVA entered by government, including by local government with private entities must include provisions to use Alternative Dispute Resolution (ADR) mechanisms upon agreement of the parties, since the policy of government recognizes that parties may adopt or promulgate their own rules of procedures to govern settlement of disputes.

When a dispute arises, parties to the contract settles it amicably through the PSG. Within the 30-day period, when the dispute is not resolved, it shall be raised to the Project Dispute Resolution Board (PDRB). The PDRB is composed of representatives chosen by the NGA, Project Proponent, and a representative appointed by the two representatives earlier chosen. When the PDRB is constituted, parties to the contract shall agree on the selection, term of office and fees of the DPRB. When the PDRB fails to resolve the matter within the prescribed period under the contract, it shall be referred to arbitration.

When the subject matter of dispute is technical in nature, disputes may be resolved by the Independent Consultant or an expert in instances of all calculations payable by compensation or termination. The parties of the contract, shall take note, that despite the pendency of any dispute, they shall continue to perform all of their respective obligations under the contract.

TIPS FOR MANAGING THE PPP PROCESSES

Setting up the Project Management System

While a PPP project is owned by the NGA, each process (project development, approval, procurement, and implementation) that the project will undergo would involve different agencies and stakeholders. And within those agencies, there could be multiple divisions/ personnel who would perform the tasks, along with other tasks they have for other projects. There are also numerous tasks to deliver from project development to project implementation. Moreover, project documents are stored in individual agency locations and not always accessible to concerned users, even within the same agency.

The above challenges confronting NGAs in pursuing development projects call for Project Management approach. This is the over-all methodology for organizing, planning, coordination, and reporting that are needed for project among relevant agencies and stakeholders.

Project management is important because it ensures that project's progress is tracked, proper process is followed, and expectations are delivered in terms of quality and timelines. The establishment of a PMT will be necessary in order to realize the above project goals. There may be different PMTs at each process. The PMT will be led by a project manager who will provide direction, ensure clear lines of accountability, and drive the timely accomplishment of tasks. The project manager will come from an NGA, being the owner of the project. Other agencies will be included in the PMT who may have a role in each of project's processes.

The PMT for the development process is composed of the following:

- NGA project manager
- PPP Center project manager
- Representative from the consulting firm assigned to deliver the feasibility study report

The PMT for the approval process is composed of the following:

- NGA project manager
- ICC Evaluator
- ICC Secretariat

The PMT for the procurement process is composed of the following:

- NGA project manager
- PPP PBAC Secretariat
- DOF and OSG/OGCC reviewer of the draft contract

The PMT for the implementation process was discussed in the Guidebook section on Setting up a Project Management Team (PMT).

To aid the PMT in achieving the desired goal, it is necessary to set up a Project Management System (PMS). The PMS is a web-based tool to be used by the PMT members for planning, scheduling, real-time tracking, and on-demand reporting of all project milestones and tasks. The PMS allows storing, updating and downloading of project documents, thus it also has the capability of a document management system. It also can capture lessons learned and good practices that can be useful for other project managers in order to improve on the next project. The PMS can generate data, information, and reports in the preferred format by the users.

Fortunately, NGAs need not develop their own PMS. The PPP Center was granted a technical assistance (TA9292-REG) from the ADB through its Asia Pacific Project Preparation Facility (AP3F) to develop the Project Information and Management System (PIMS). The PIMS will be developed by the Sustainable Infrastructure Foundation (SIF) using the SOURCE platform in close collaboration with concerned agencies. Once developed, NGAs can use the PIMS to manage and monitor PPP projects. The PIMS is targeted to be operational by end of December 2019.

Communicating the PPP Project

Information dissemination and management of stakeholders' perceptions and expectations are crucial in undertaking PPPs especially when the project will affect and benefit various users, groups, and communities. In order to be prepared and properly address issues that will arise from implementing a PPP project, NGAs are advised to craft their own communication plan even from the beginning of the project's development stage. To start with, the NGA shall formulate a clear, specific, time-bound and measurable communication plan.

Project Communication Plan

The Communication Plan is the guide of the NGA in executing communication and information dissemination activities and preparing for communication crisis that may arise from a PPP project. It has objectives, key messages, target audience, specific activities, venue or platform, timeline, budget, and assigned people who will be responsible for each specific task. See the table below for a sample communication plan for a prison PPP project.

Objective	Key message/s	Audience	Activities	Venue/ Platform	Timeline	Budget (PhP)
To gain the support of the nearby communities where the prison facility will be established.	The prison PPP project will create job opportunities for local residents. The project will ensure security and safety in the nearby areas.	Local residents and officials; community groups/	Conduct of Stakeholders consultation Production and dissemination of information, education, and communication (IEC) materials (flyers, factsheets)	Local Council meetings Barangay hall meetings Social media	January-February	10,000 for the printing of IEC materials
To seek support of the lawmakers and lobbyist for the prison PPP project.	The existing prison facility of the country is not enough to house prisoners. Cramp prison facilities have caused widespread diseases among prisoners. The new prison facility will ensure complete safety, security, and improvement of the prisoners living conditions.	Organizations (IP group, women's group, civil society organizations)	Project presentation	One-on-one meetings with the lawmakers and their Chief of Staff	March - April	50,000 for food and other materials

Objective	Key message/s	Audience	Activities	Venue/ Platform	Timeline	Budget (PhP)
To communicate the facilities' features that follow global standards	The PPP Project will enhance the quality of life of the inmates by providing improved services and facilities.	Local residents and officials; community groups/	Conduct of consultation sessions with the inmates and prison staff Distribution of FAQs (flyers & e-flyers) on the prison facilities' features	Consultation sessions Current prison entrance/ activity center Social media Bureau of Corrections Newsletter and other publications	January - June	40,000 for printing of flyers
To relay the benefits of the prison project	The new prison facility will transform the prison system in the country from punitive justice to restorative justice.	Media	Radio interviews TV interviews One-on-one interview with a journalist Media group interview	Television, radio, press conference and social media news platforms	January - December	30,000 for press confer-ence food and kits
To encourage inmates' families to support the prison project	Inmates will be given a safer, secured and improved prison facilities.	Inmates' immediate families and relatives	Conduct Public Consultation with the families Conduct Orientation on the new prison facilities Release of communication materials featuring the new prison facilities	Consultations during family visits Conduct of family events	January - June	30,000 for print-ing of materials
To manage government employees who will be affected by the PPP project	There are several options employees can choose when the project is awarded to the private partner.	Existing prison facilities' employees	Conduct Staff consultations Conduct Orientation on the new prison facilities Distribution of IEC materials	Consultation and orientation meetings with the staff	January - June	15,000 for print-ing of materials

The implementation of the project communication plan shall be regularly monitored in order to track if the objectives set out in the plan are achieved. Part of the communication plan is also a how to engage with the media and policymakers. There are various ways on how to deal with these specific stakeholders. But based on recent experience on past PPP projects, below are some of the recommended tactics on how to deal with these stakeholders.

Working with the Media

The media is an important group in informing the public and other stakeholders of the PPP project. News coming from the media can either negatively affect the PPP project or they can help in promoting the project to the public. Below are some of the recommendations on how to engage the media in the implementation of a PPP project:

- Create a pool of beat reporters and establish rapport with them. Most of the reporters covering PPP projects are from business, transport and finance units of news agencies. They can always help in promoting the PPP project and in addressing issues on the project.

- Conduct regular press conferences to update the media on the status of the PPP project. Press conferences are also good venues to address issues on the project.

- Take a one-on-one interview with journalists who can feature PPP project in a television newscast, radio program, newspaper or online based report. More positive exposures on the PPP project can help increase acceptability and attract more support.

- Respond regularly to online or phone queries of the media on the PPP project to provide them up-to-date information.

- Publish regular press releases providing updates on the project's milestones (market sounding, bid conferences, bid submissions, etc.) and status especially during implementation (under procurement, ongoing construction, etc.).

  Reporters are more interested on the status and milestones of the PPP project than any other information. They always wanted to know how many projects will be approved or will be rolled out, when is the bidding, who are the bidders, when is the start of construction or operation, among others.

- Post constant project status updates on the website and social media accounts. Not only the public but the media regularly tracks government agency websites to gather news and information on government projects and programs to produce news reports.

Engagement and Collaboration with Policymakers

The role of the policymakers is also crucial in the implementation of national and local PPP projects. Like working with the media, collaboration with policymakers should be done to help advocate the country's PPP projects.

Based on previous experience, it is inevitable that there will be inquiries or even opposition on the PPP project from the lawmakers, lobbyists, and civil society groups. There are PPP projects in the past that have been the focus of congressional or senate hearings. In the case of the Davao Sasa Port Project, a senate hearing was conducted to discuss issues on the project raised by various stakeholders such as the local business community and city council.

To tap the support of the lawmakers and transform them as champions of the PPP projects, it is recommended that NGAs engage them through the following recommendations:

- Set regular project consultation with the lawmakers to update them on the progress of PPP projects and seek their inputs and recommendations.
- Conduct frequent PPP project briefings to the various committees in the Senate and the House, especially those that are in-charge of public infrastructure projects.
- Set a one-on-one meeting with several lawmakers and their Chief of Staff in the Senate and the House to inform them about the PPP project, seek their support and promote it.
- Select PPP champions in the Senate and the House who can become the PPP project spokespersons who will help disseminate the PPP project's objectives, purpose, and benefits to the public.
- If public hearing will be conducted to address issues raised on the PPP project, prepare a written statement that will directly respond to the issues and enlighten the participants in the hearing. Disseminate to the media the statement after the hearing.
- Provide constant updates to the lawmakers' team to keep them informed on the PPP project's status through e-mail and other available channels.

Managing Public Perceptions and Expectations

At this age of social media where the public has access to various online platforms such as Facebook, Twitter, Reddit and other social networking sites to air their concerns and grievances especially on the government's various programs and projects, it is important to manage their perceptions and expectations when it comes to implementing a PPP project. Since they are the main beneficiaries of these infrastructure and development projects, they should be properly informed. Here are some of the strategies in handling the public in implementing a PPP project:

- Set up a specific social media account for the PPP Project such as Facebook and Twitter. This can be the main source of information where the NGA can post the milestones and status of the project. It is also the venue for the public to raise their concerns on the project. The NGA shall regularly monitor and respond appropriately to the public's concern in the social media account.

- Promote the PPP Project regularly highlighting its benefits to the public. This can help in encouraging more support from the users of the facility and other groups such as civil society organizations, transport associations, business organizations, among others.

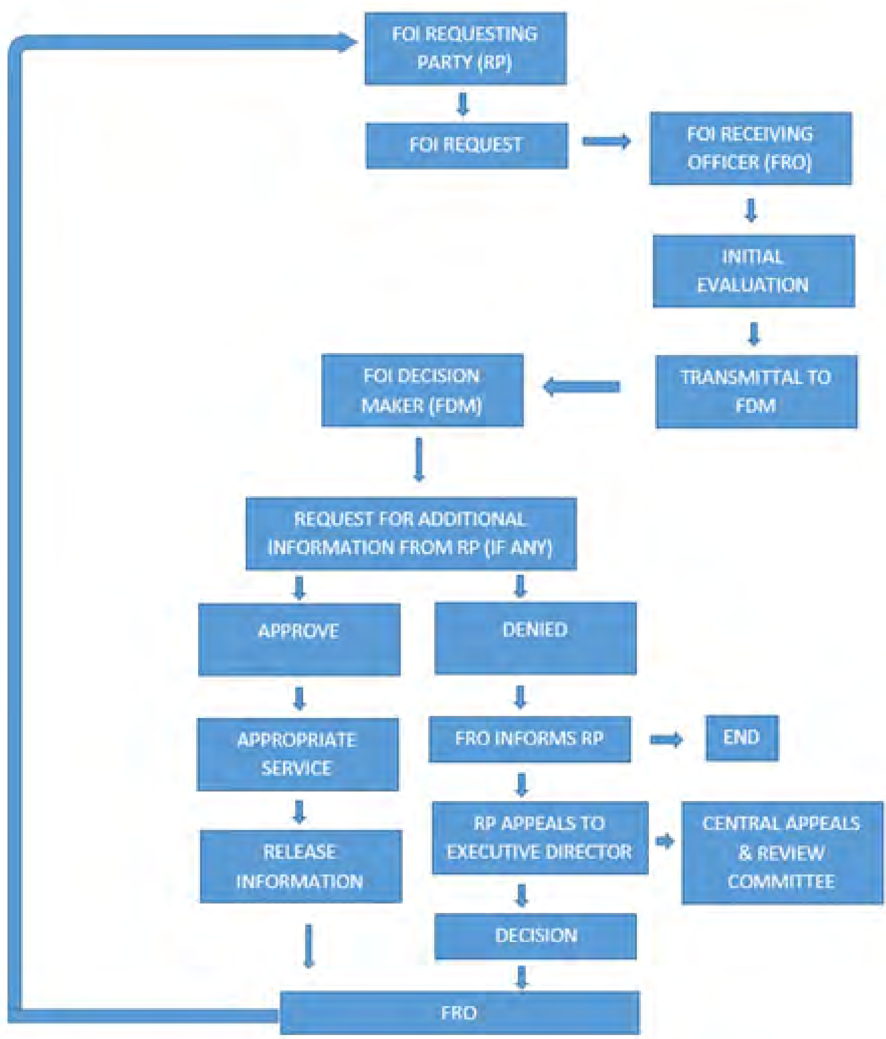
- Create a page for the PPP Project in the NGA's official website. This is another source of information that the public can access to be regularly informed on the project's status with complete data and facts.

- Implement an awareness campaign on the PPP Project that can be included in the Communication Plan. This can be done through utilizing the traditional media such a as radio, television, and newspapers and speaking engagements of the NGA's officials.

- Establish a feedback mechanism that will provide the facility users their platform to express their experience, suggestions, and comments on the facility especially when the project is already under operation.

Freedom of Information as applied to PPPs
Pursuant to the 1987 Philippine Constitution which requires the Government to adopt a policy of full public disclosure of all transactions involving public interest, and recognizes the right of the people to information on matters of public concern, Executive Order No. 2, s. 2016 was issued to operationalize the people's right to information in the executive branch. E.O. No. 02 mandates all offices under the executive branch to provide a procedure of receiving and responding to information requests from the public, subject to exceptions provided by relevant laws and policies such as those pertaining to data privacy and national security interests.

Adopting an FOI procedure can be a valuable tool in addressing questions from the public and responsiveness can help in establishing trust in PPP projects and dispel misconceptions they may have in the PPP processes and over certain PPP projects. Below is a sample FOI procedure covering information requests and release information. It also covers instances of request denials and appeals thereto.



Managing Communication Crisis in PPP Projects

Communication crisis in implementing any government program or project is inevitable. There are groups that will oppose the project, media personalities who will criticize the project, and unexpected crisis that will totally affect the project. To address an unexpected communication crisis, the NGA must beef up its media and public relations. Here are some ways to solve the crisis and limit the impact on the PPP project:

- Be proactive not reactive in addressing the communication crisis. Do not wait until the issues hurled against the PPP project are already affecting the various stakeholders and when reputational risk is already high.
- Create a crisis team and specific communication plan to address the crisis detailing the immediate actions that need to be undertaken and the long term actions that will minimize or eradicate the crisis' impact to the PPP project and stakeholders.
- Delegate a spokesperson. This will ensure that there is only one source of information and messages from the NGA in responding to the crisis at hand.
- Craft a concrete, factual, and uniform messaging. Stick to this messaging to avoid creating a bigger damage on the project and the institutions that are involved.
- Exhaust all possible platforms to communicate the message in addressing the ongoing communication crisis. Utilize new and traditional media to reach more audience in delivering the message/s.
- Choose only the important battles in solving the crisis. It means respond only to project issues that will have greater consequences to the project and the institutions involved.

HOW THE PPP CENTER CAN HELP NGAs

Capacity Building through the PPP Center

The PPP Center, through its Capacity Building Division, provides a capacity building program geared towards empowering NGAs with the competencies to craft well-structured PPP projects. The Center offers a whole range of interventions which are matched and customized according to the needs of the requesting party. These could include training, internship, briefing, and the provision of learning materials, among others.
NGAs who would like to avail of the PPP Center's capacity building services may contact the Capacity Building Division at (+632) 709-4146 or capacitybuilding@ppp.gov.ph.

PPP Center's Technical Assistance at Each Stage of the PPP Cycle

As the main driver of the Philippine PPP Program, the PPP Center provides technical assistance to NGAs in developing and implementing critical infrastructure and other development projects. The table below outlines the assistance provided by the PPP Center in all stages of the PPP project cycle.

Project Stage	Implementing Agency	PPP Center Assistance
Planning	• Build masterplan for development • Identify priority projects	• Capacity building/training support to implementing agency's PPP Team
Preparation	• Develop project concept note and feasibility studies	• Assist in the development of project concept note • Assist in providing transaction advisors through the PDMF
	• Conduct stakeholders' consultation • Conduct market sounding • Structure the project • Allocate risks • Create a project management team	• Assist in the stakeholders' consultation • Assist in the market sounding • Provide guidance and inputs in the structuring of projects • Assist in creating and planning project milestones and tasks
Approval	• Secure approval from appropriate approving body	• Conduct project appraisal
	• Establish project terms	• Participate as a member of the Technical Working Group (TWG)
Procurement	• Set up Pre-qualification, Bids and Awards Committee (PBAC)	• Participate as a non-voting member of the PBAC
Implementation	• Develop a risk management plan • Implement risk mitigation measures • Implement obligation of the implementing agency under the contract as required by relevant laws and issuances • Monitor the progress of the project • Identify bottlenecks in project implementation • Report occurrences of government liabilities	• Assist in developing a monitoring framework • Participate in monitoring activities

Project Stage	Implementing Agency	PPP Center Assistance
Unsolicited Proposals		
1. Receiving of proposal	• Receive and acknowledge documents submitted by the private sector • Check the completeness of the submitted documents	• Provide guidance and inputs in the assessment of the completeness of the documents
2. Granting of Original Proponent (OP) Status	• Check the eligibility of the project • Assess the technical and financial capability of the proponent • Grant the OP status • Create a project management team	• Provide guidance and inputs in the assessment of the proposal
3. Approval	• Secure approval from approving body • Establish project terms	• Conduct project appraisal • Participate as a member of the TWG
4. Negotiation of the Contract	• Establish project terms for negotiation • Negotiate the contract • Conduct review of contract by oversight bodies as required by relevant laws and issuances • Finalize contract	• Assist in the negotiation and review of the contract
5. Invitation for Comparative Proposals	• Advertise project for competitive bidding • Conduct competitive bidding • Award the project	• Assist in the competitive bidding process • Participate as a non-voting member of the PBAC
6. Implementation	• Develop a project risk management plan • Implement risk mitigation measures • Implement obligation of implementing agency under the contract and as required by relevant laws and issuances • Monitor the progress of the project • Identify bottlenecks in project implementation • Report occurrences of government liabilities	• Assist in developing a monitoring framework • Participate in

Project Development and Monitoring Facility

NGAs can tap the Project Development and Monitoring Facility (PDMF) to finance the use of advisors and consultants for project development, for managing transactions during procurement including those involving unsolicited proposals, and for obtaining independent assessments or advice during any of the phases of project implementation (construction, operation and maintenance, transfer).

The PDMF Service (PDMFS) of the PPP Center manages and administers the PDMF. The PDMFS receives and processes applications for PDMF support. When all requirements for obtaining support are ready, the application is sent to the PDMF Committee for approval. The PDMF Committee is an inter-agency committee composed of NEDA as the Chair and DOF, DBM, and PPP Center as members.

The funds of the PDMF are sustained by having the winning bidder of a PPP project reimburse the cost of transaction advisors used during project development and/or procurement. If the PDMF is used for independent assessment or advisory during project implementation, then the cost of an independent consultant is shared 50-50 by the NGA and the private partner.

To date, the PDMF has supported the following PPP Projects:

Name of Project	Implementing Agency	Lead Advisor	Scope of TA Services
Modernization of the Philippine Orthopedic Center Project	Department of Health	Deloitte Touche Tohmatsu India Pvt. Ltd.	Project Preparation and Transaction Support
PPP for School Infrastructure Project (PSIP) Phase I	Department of Education	Ernst & Young Australia Infrastructure Advisory	Transaction Support
New Centennial Water Source Project	Metropolitan Waterworks and Sewerage System	RebelGroup International BV	Project Preparation and Transaction Support
O&M of the Laguindingan Airport Project	Department of Transportation and Civil Aviation Authority of the Philippines	Deloitte Touche Tohmatsu India Pvt. Ltd.	Project Preparation and Transaction Support
New Bohol (Panglao) Airport Project	Department of Transportation and Civil Aviation Authority of the Philippines	RebelGroup International BV	Project Preparation and Transaction Support

Mactan-Cebu International Airport (MCIA) New Passenger Terminal Project	Department of Transportation and Mactan-Cebu International Airport Authority	Deloitte Touche Tohmatsu India Pvt. Ltd.	Project Preparation and Transaction Support
Automatic Fare Collection System	Department of Transportation	RebelGroup International BV	Project Preparation and Transaction Support
Establishment of Cold Chain Systems Covering Strategic Areas in the Philippines Project	Department of Agriculture	Pricewaterhouse Coopers Services LLP Singapore	Project Preparation
Rehabilitation, Operation and Maintenance of the Angat Hydro-Electric Power Plant (AHEPP) Auxiliary Turbines #4 and #5 Project	Metropolitan Waterworks and Sewerage System	RebelGroup International BV	Project Preparation
Integrated Transport System Project	Department of Transportation	Feedback Infrastructure Services Pvt. Ltd.	Project Preparation and Transaction Support
Improvement/ Rehabilitation of the Quirino Highway Project	Department of Public Works and Highways	ICRA Management Consulting Services Ltd.	Project Preparation
Bulacan Bulk Water Supply Project	Metropolitan Waterworks and Sewerage System	IMC Worldwide Ltd.	Project Preparation and Transaction Support
PSIP Phase II	Department of Education	IMC Worldwide Ltd.	Transaction Support
Integrated Luzon Railway Project	Department of Transportation	CPCS Transcom Ltd.	Project Preparation and Transaction Support
Regional Prison Facilities through PPP Project	Department of Justice	RebelGroup International BV	Project Preparation and Transaction Support
Mass Transit System Loop Project	Department of Transportation	RebelGroup International BV	Project Preparation and Transaction Support
Cavite-Laguna Expressway Project	Department of Public Works and Highways	KPMG – Manabat Sanagustin & Co., CPAs	Transaction Support

Operation and Maintenance of the Iloilo, Davao and Bacolod Airports Project	Department of Transportation and Civil Aviation Authority of the Philippines	Deloitte Touche Tohmatsu India Pvt. Ltd.	Project Preparation and Transaction Support
Operation and Maintenance of the Puerto Princesa Airport Project	Department of Transportation and Civil Aviation Authority of the Philippines	RebelGroup International BV	Project Preparation and Transaction Support
Upgrading of San Fernando Airport Project	Department of Transportation and Civil Aviation Authority of the Philippines	RebelGroup International BV	Project Preparation and Transaction Support
Motor Vehicle Inspection System Project (MVIS)	Department of Transportation and Land Transportation Office	CPCS Transcom Ltd.	Project Preparation and Transaction Support
LRT Line 6 Project	Department of Transportation	CPCS Transcom Ltd.	Project Preparation
Batangas-Manila Natural Gas Pipeline Project I (BatMan I)	Philippine National Oil Company	RebelGroup International BV	Project Preparation and Transaction Support
Manila Bay-Pasig River-Laguna Lake (MaPaLLa) Ferry Services Project	Department of Transportation	CPCS Transcom Ltd.	Project Preparation and Transaction Support
C-5 Transport Service Development Project	Department of Transportation	CPCS Transcom Ltd.	Project Preparation and Transaction Support
Clark International Airport Project	Bases Conversion and Development Authority	Deloitte Touche Tohmatsu India Pvt. Ltd.	Project Preparation and Transaction Support
Laguna Lakeshore Expressway-Dike Project	Department of Public Works and Highways	Jones Day	Transaction Support
NAIA Development Project	Department of Transportation and Manila International Airport Authority	Ernst & Young Solutions LLP	Project Preparation and Transaction Support

Road Transport Information Technology Infrastructure Project Phase II	Department of Transportation and Land Transportation Franchising and Regulatory Board	Deloitte Touche Tohmatsu India Pvt. Ltd.	Project Preparation and Transaction Support
Plaridel Bypass Toll Road Project	Department of Public Works and Highways	International Technical Assistance Consultant	Project Preparation and Transaction Support
LRT Line 6 Project	Department of Transportation	Ernst & Young Solutions LLP	Transaction Support

The documentary requirements and the application process for PDMF support is described in detail in the PDMF Guidelines. NGAs needing support for the kinds of consultants and advisors that the PDMF can provide may contact the PDMF through pdmfs@ppp.gov.ph.

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