THE

PROJECT DEVELOPMENT AND MONITORING FACILITY GUIDELINES

As amended on 22 March 2018

Public-Private Partnership Center

1. Introduction

1.1 These Revised Guidelines (the "Guidelines") are being issued pursuant to Section 6 of Executive Order (EO) No. 8, series of 2010, as amended by EO No. 136, series of 2013, creating and authorizing the Project Development and Monitoring Facility (PDMF) Committee to formulate, prescribe and recommend policies, procedures and guidelines on the use of the PDMF and recovery of costs charged to the PDMF Fund, subject to the approval of the PPP Governing Board.

1.2 The Guidelines shall cover the application process for PDMF support, the recruitment of consultants and management of consultants' contracts funded by the PDMF, and the management of the PDMF Fund.

1.3 The recruitment and monitoring of consultants and the disbursement of funds under the PDMF shall be in accordance with the terms of the PDMF Component of the Asian Development Bank's (ADB) Technical Assistance (TA) entitled "*Strengthening Public-Private Partnerships in the Philippines (TA 7796-PHI)*"[1].

1.4 Under the ADB-TA, the engagement of consultants shall be in accordance with the *ADB Guidelines on the Use of Consultants, 2010, as amended from time to* time, while all disbursements for the PDMF Component will be made in accordance with the *TA Disbursement Handbook (May 2010, as amended from time to time)*.

1.5 The Guidelines are consistent with *Republic Act (RA) No. 9184, otherwise known as the Government Procurement Reform Act (GPRA)*, and its 2016 Revised Implementing Rules and Regulations (IRR), which provide that any treaty or international or executive agreement to which the Government is a signatory affecting the subject matter of the Act and its IRR shall be observed. As further amplified in the Revised IRR, RA No. 9184 and its Revised IRR will not apply to foreign-funded procurement when the treaty or international or executive agreement expressly provides the use of another or different procurement procedures and guidelines.[2]

2. Definition of Terms

The following terms whenever used in the Guidelines shall be understood as follows:

2.1 **Agency** – refers to any department, bureau, office, commission, authority, agency or government entity authorized by law or their respective charters to undertake or contract Infrastructure and Development Projects.

2.2 **Consultant** – a firm or an association of firms that is selected based on appropriate qualifications and relevant experience to render any or all types and fields of consulting services as defined under Section 4 of the Guidelines.

2.3 **Contract for Consultant's Services (CCS)** – A written agreement executed between the PPP Center and the Consultant engaged for a specific assignment,

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[1] TA No. 7796: Republic of the Philippines – Strengthening Public-Private Partnership in the Philippines, dated April 2, 2011

[2] Sections 4.2-4.3 of RA No. 9184 and its Revised IRR

which defines the terms of engagement and the respective obligations of each party.

2.4 **Cost Recovery Fee** – Ten percent (10%) of the total cost of PDMF Support or actual cost drawn from the PDMF Fund.

2.5 **Independent Consultant** – A Consultant who provides independent review and monitoring of activities related to the design, construction, operations and/or maintenance phases of the project, and who possesses the appropriate qualification, experience, education and training to carry out the particular consulting services.

2.6 **Infrastructure and Development Projects –** refers to projects including, but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, commercial/real estates, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging and other infrastructure and development projects as may be authorized by an Agency pursuant to applicable laws and rules.

2.7 **Joint Venture –** an arrangement whereby a private sector entity or group of private sector entities, and an Agency or a group of Agencies, contribute money/capital, services, assets, or combination of any or all of the foregoing to undertake an Infrastructure and Development Project for the purpose of accomplishing a specific goal with the end view of facilitating private sector participation in a particular industry or sector.

2.8 **PDMF Fund** – All income sourced from the Government of the Philippines, development partners, Cost Recovery Fee and reimbursement of expenses incurred for the preparation and conduct of business case, pre-feasibility and feasibility studies, preparation of tender documents and other activities in the preparation of PPP projects, and monitoring of PPP project implementation.

2.9 **PDMF Support** – Scope of the services extended to the Agency through the PDMF-funded Consultant/s.

2.10 **Public-Private Partnership (PPP)** – A contractual arrangement for the financing, design, construction, operation, maintenance, or any combination thereof, of an infrastructure facility, which involves the bearing of risks by the party that is best able to manage them.

2.11 **Probity Advisor** – A Consultant who provides independent oversight during the bidding process with duties and responsibilities as defined in the PPP Governing Board Policy Circular No. 05A-2016 on the Appointment of Probity Advisors for PPP Procurement and its amendments, if any.

2.12 **Project Preparation and Transaction Advisory Consultant** – A Consultant who provides advisory services in: (i) the preparation/due diligence of a business case, pre-feasibility study, and/or feasibility study (FS), and project structuring; and/or (ii) the management of the bidding process and assistance until financial close is obtained.

2.13 **Recoverable Amount** – For projects that are awarded, this is the sum of the price of the CCS and the Cost Recovery Fee. For contracts that are pre-terminated, these are the amounts disbursed from the PDMF Fund pursuant to the CCS and the Cost Recovery Fee.

2.14 **Technical Assistance Agreement (TAA)** – Agreement entered into by and between the PPP Center and the Agency upon approval of the PDMF Committee to provide PDMF Support to a project (sample format of which is provided in **Appendix C,** which may be amended by such parties from time to time without need of approval).

3. The PDMF

3.1 The PDMF is a funding mechanism available to Agencies for developing bankable PPP projects and ensuring effective monitoring of project implementation.

3.2 The PDMF, formerly known as the Project Development Facility (PDF), is established as a revolving fund under EO No. 144, s. 2002, and is managed and administered by the PPP Center. The Philippine Government allocated Php300 Million as seed money to the PDMF in addition to the appropriated funds under BOT Center's PDF, pursuant to EO No. 8, s. 2010, as amended by EO No. 136, s. 2013.

4. Use of the PDMF

The PDMF shall be used to engage Consultants for any or a combination of the following services:

a. Preparation of and assistance in the management of the bidding process for solicited projects;
b. Assistance in the management of the Swiss Challenge process for unsolicited proposals;
c. Assistance until financial close;
d. Probity advisory; and
e. Monitoring of project implementation.

5. Eligibility

A potential project shall be considered eligible for PDMF Support if it is:

5.1 In the nature of a private sector infrastructure or development project, as defined under the Build-Operate-Transfer (BOT) Law,[3] as amended, and its Revised IRR.

5.2 If a solicited project, it is included in the list of priority government projects, as defined under the same Revised IRR of the BOT Law and pursuant to Section 2.3 of such IRR.

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[3] Republic Act No. 7718, *An Act Amending Certain Sections of Republic Act No. 6957, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes"*

5.3 Infrastructure and Development Projects structured as a Joint Venture arrangement in accordance with any of the following:

a) Revised Guidelines and Procedures for Entering into Joint Venture (JV) Agreements published by National Economic and Development Authority (NEDA) on 11 May 2013, as may be amended;
b) PPP Ordinance passed by the relevant legislative body of a local government unit in accordance to Section 35 of RA No. 7160, otherwise known as the Local Government Code, authorizing the same to enter into JV Arrangements/Agreements within the limitations imposed by applicable laws; and
c) Any appropriate laws, administrative issuances, rules or guidelines, as may be applicable.

6. Oversight and Management

The administration of the PDMF involves the following institutions or bodies:

The **PPP Governing Board**, created under EO No. 136, s. 2013, is the overall policy-making body for all PPP-related matters, including the PDMF. The composition is as follows:

Chairperson	:	Secretary of Socio-Economic Planning
Vice-Chairperson	:	Secretary of Finance
Members	:	Secretary of Budget and Management
		Secretary of Justice
		Secretary of Trade and Industry
		Executive Secretary
		Private Sector Co-Chairman of the National Competitiveness Council
Secretariat	:	PPP Center

6.1 The **PDMF Committee**, created under EO No. 136, s.2013, is the approving body for applications for PDMF Support, and for the proper administration and management of the PDMF. Under EO No. 136, the PDMF Committee is also tasked to formulate, prescribe and recommend policies, procedures and guidelines on the use of the PDMF and recovery of costs charged to the PDMF Fund, subject to the approval of the PPP Governing Board. The composition of the Committee is as follows:

Chairperson	:	NEDA
Members	:	PPP Center
		Department of Finance (DOF)
		Department of Budget and Management (DBM)
Secretariat	:	PDMF Service - PPP Center

7. PDMF Process

7.1 Application

The Agency shall submit a letter endorsing the project signed by the head of the Agency, supported by the following:

a. Duly accomplished PDMF Forms, as may be applicable, prescribed in **Appendix A** (as may be amended by the PPP Center);

b. Nomination of representatives to the Project Study Committee/Project Monitoring Committee/Project Implementation Committee, and Special Bids and Awards Committee and its Technical Working Group;

c. Authority to sign the TAA, as necessary; and

d. If a solicited project, certification confirming that the project complies with Section 2.3 of the IRR of the BOT Law or its amendment, if any.

7.2. Screening

The PDMF Committee Secretariat shall: (i) undertake screening and evaluation of an application, and (ii) prepare a Staff Appraisal Report within ten (10) working days from receipt of a complete application. The Evaluation Criteria for requests for Project Preparation and Transaction Advisory Consultant is provided in **Appendix B**.

7.3 Approval of Requests for PDMF Support

a. Action of the PDMF Committee
   i. The PDMF Committee shall approve, conditionally approve, disapprove, or defer action on the application for PDMF Support on the basis of the Staff Appraisal Report.
   ii. For approved or conditionally approved projects, the PDMF Committee can withdraw such approval or conditional approval pursuant to Section 7.3(b)(iii) and (iv) of the Guidelines.
   iii. Any decision of the PDMF Committee is final and executory.

b. Action of the Secretariat on Requests Acted upon by the PDMF Committee
   i. The Secretariat shall assess whether the Agency has fulfilled the requirements for a conditionally approved request.
   ii. The Secretariat shall assess whether the Agency has fulfilled the requirements for a deferred PDMF request; thereafter, the request shall be presented anew to the PDMF Committee.
   iii. In case a project has been approved by the PDMF Committee but the TAA has not been executed two (2) months therefrom, the Secretariat shall update the PDMF Committee, which may decide to withdraw its approval.
   iv. In case a project has been conditionally approved by the PDMF Committee and the Agency has not yet complied with the conditions three (3) months therefrom, the Secretariat shall update the PDMF Committee, which may decide to withdraw its approval. However, prior to the expiration of the three (3)-month period, the Agency may submit a written

request for extension to the PDMF Committee, through the Secretariat. The PDMF Committee shall evaluate and decide upon the request.

c. Preparation of Documents upon Obtaining the PDMF Committee's Approval
   i. The PPP Center shall execute a TAA with the Agency.
   ii. The PPP Center and Agency shall prepare the bidding documents for the consultant recruitment for the review and approval of the Special Bids and Awards Committee.

7.4 Recruitment of Consultants

7.4.1 The recruitment of consultants shall be in accordance with the *ADB Guidelines on the Use of Consultants (2010)*, as amended from time to time. The current procurement process and selection method for the recruitment of Consultants is shown in **Appendix D**.

7.4.2 A **Special Bids and Awards Committee (SBAC)** will be created which shall be responsible for all aspects of the bidding process. The SBAC shall be composed of two (2) representatives from the PPP Center, with one (1) designated as the Chairperson and the other as member, and one (1) representative from the Agency, designated as the Co-chairperson. The Agency may also designate as SBAC member/s, representative/s from other agencies as it deems fit. Representatives to the SBAC must be at least Director-level.

7.4.3 To assist the SBAC, a **Technical Working Group (TWG)** will be created composed of representatives from the PPP Center, the Agency, and other agencies as the Agency deems fit.

7.5 Management of Consultants' Contracts

7.5.1 The terms of the provision of services by the Consultant, including experts performing the services; experts' remuneration and staffing schedule; expected outputs and deliverables; timing of submission; terms of payment; and other terms of engagement shall be stipulated in the CCS.

7.5.2 Any modification or variation of the terms and conditions of the CCS shall be governed by the terms thereof and by this Section.

The PDMF Committee's approval shall be required for modifications or variations of the CCS due to a change in the scope of services and deliverables that have been previously approved by the PDMF Committee.

7.5.3 The performance of all Consultants shall be monitored and evaluated in accordance with the Performance Evaluation Guidelines **(Appendix E)**.

7.5.4 Contract termination or suspension may be allowed in accordance with the conditions and procedural requirements stipulated in the CCS and TAA.

7.5.5 Evaluation of output/s shall be done by the Agency through its authorized representative pursuant to the Output Evaluation Process (Annex B of TAA) and this Section.

7.5.6 A **Project Study Committee (PSC)** shall be formed and will be responsible for the: (i) review of the assessment of the Agency's and PPP Center's authorized representatives of the deliverables, completion of milestones and contract variation proposals for project preparation and transaction support services; and (ii) recommendation of the appropriate action to the PPP Center's Executive Director or his duly authorized representative. The PSC shall be composed of two (2) representatives from the PPP Center, with one (1) designated as the Chairperson and the other as member, and one (1) representative from the Agency, designated as the Co-chairperson. Representatives to the PSC must be at least Director-level.

7.5.7 A **Project Monitoring Committee (PMC)** shall be constituted for the: (i) review of the assessment of the Agency's and PPP Center's authorized representatives of the deliverables, completion of milestones and contract variation proposals for probity advisory services; and (ii) recommendation of the appropriate action to the PPP Center's Executive Director or his duly authorized representative. The PMC shall be composed of two (2) representatives from the PPP Center, with one (1) designated as the Chairperson and the other as member, and one (1) representative from the Agency, designated as the Co-chairperson. Representatives to the PMC must be at least Director-level.

7.5.8 A **Project Implementation Committee (PIC)** shall be constituted for the: (i) review of the assessment of the Agency's and PPP Center's authorized representatives of the deliverables, completion of milestones and contract variation proposals for independent consultant services; and (ii) recommendation of the appropriate action to the PPP Center's Executive Director or his duly authorized representative. The PIC shall be composed of two (2) representatives from the PPP Center, with one (1) designated as the Chairperson and the other as member, one (1) representative from the Agency, designated as the Co-chairperson, and one (1) representative from the Private Proponent/Concessionaire. Representatives of the Agency and PPP Center to the PIC must be at least Director-level.

7.5.9 The PSC/PMC/PIC's decision shall only be recommendatory to the PPP Center's Executive Director or his duly authorized representative, who shall have the sole and final determination of the appropriate actions to be taken on any claims for payment, matters relating to contract variation proposals, or other steps or remedies that can be exercised under the CCS.

8. Fund Management

8.1 Funding

The PDMF may be funded through the General Appropriations Act or other sources, consistent with existing laws, rules, and regulations.

8.2 Earmarking and Obligation of Funds

8.2.1 The amount approved by the PDMF Committee shall be earmarked for the project when the TAA has been executed by and between the PPP Center and Agency.

8.2.2 The approved amount shall be earmarked until the CCS is executed or the project is delisted.

8.2.3 Upon signing of the CCS, earmarked funds shall be obligated.[4] The obligated amount shall be equivalent to the contract price stipulated therein which may not necessarily be equal to the earmarked fund.

8.3 Disbursement

Disbursement from the PDMF Fund shall follow existing government budgeting, accounting and auditing laws, rules and regulations; and agreed arrangements with donor partners, as applicable.

8.4 Recovery of Cost of PDMF Support

8.4.1 The Recoverable Amount shall be paid in its Philippine Peso equivalent using the prevailing *Bangko Sentral ng Pilipinas* Reference Exchange Rate at the time of payment.

8.4.2 In paying the Recoverable Amount, the following shall apply –

a. For Project Preparation, Transaction Advisory, and Probity Advisory

i. The Agency shall require the winning bidder/winning comparative proponent to pay the Recoverable Amount in case of successful bidding, as a condition precedent for signing the PPP agreement.

Any increase in the Recoverable Amount, which the Agency cannot require the winning bidder/winning comparative proponent to pay, shall be reimbursed by the Agency.

ii. The Agency shall reimburse the actual cost drawn from the PDMF Fund plus the Cost Recovery Fee in case there is no or there can be no winning bidder/proponent, such as but not limited to the following instances:

(1) PDMF Support covers only the development of a feasibility study and project structuring.
(2) The Agency fails to obtain the ICC or NEDA Board approval for the project, bid out the project, conclude the PPP bidding process, issue the Notice of Award, or sign the PPP agreement with the winning bidder.

[4] Obligation refers to a commitment by a government agency arising from an act of a duly authorized official which binds the government to the immediate or eventual payment of a sum of money.

(3) In case of unsolicited proposals, if the Agency fails to obtain the ICC or NEDA Board approval for the unsolicited proposal, bid out the project, conclude the PPP bidding process, issue the Notice of Award, or sign the PPP agreement with the original or comparative proponent.
(4) The CCS has been terminated or has expired prior to the issuance of the Notice of Award.

iii. The Agency shall reimburse 50% of the actual cost drawn from the PDMF Fund plus the Cost Recovery Fee in the following instances:

(1) An official act by the President of the Republic of the Philippines ordering either: (a) the termination of a Project or (b) a change in the procurement method to a non-PPP arrangement; or
(2) Any other instance where there is no or there can be no winning bidder/proponent due to causes beyond the control of the Agency, as may be reasonably determined by the PDMF Committee upon application by such Agency.

b. For Implementation Monitoring

The Agency shall reimburse the actual cost drawn from the PDMF Fund plus the Cost Recovery Fee.

8.4.3 The reimbursement of the cost of PDMF Support by the Agency, pursuant to Section 8.4.2 of the Guidelines, may be sourced, subject to existing laws, rules and regulations, as follows:

a. from its annual budget, through the budgetary process; or
b. from its corporate funds, as may be applicable.

9. Reporting Requirements

The PPP Center shall regularly submit to NEDA, DBM, the Commission on Audit (COA), and the Bureau of Treasury (BTr), copy furnished the House Committee on Appropriations and the Senate Committee on Finance, either in printed form or by electronic document, reports on income and expenditure. Said reports shall be posted also in the PPP Center website.

10. Transitory Provision

10.1 Upon effectivity of the Guidelines, all projects that have not yet been approved by the PDMF Committee, including projects being reviewed, shall be reviewed and approved in accordance with the Guidelines.

10.2. PDMF-supported projects under implementation shall be governed by the contract provisions as stated in their respective CCS.

11. Separability Clause

If any provision of the Guidelines is held invalid, the other provisions not affected thereby shall continue in operation.

12. Effectivity Clause

The Guidelines, and any further amendments or modifications hereof, shall take effect immediately upon: (1) the approval by the PPP Governing Board; and (2) posting of the digital certified copy in the PPP Center website.

I hereby certify that the revisions on this Guidelines were approved by the PPP Governing Board at its meeting held on March 22, 2018.

Ferdinand Pecson

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