

PUBLIC-PRIVATE PARTNERSHIP GOVERNING BOARD
PPP Governing Board Resolution No. 2023-12-02

FOR: All Heads of Departments, Bureaus, Offices, Commissions, Authorities, and Implementing Agencies of the National Government, Including Government-Owned and/or Controlled Corporations, Government Financial Institutions, and State Universities and Colleges, and Local Government Units

SUBJECT: INTERIM GUIDELINES ON PPP PROJECTS WHOSE PROCESSING HAS COMMENCED BY THE EFFECTIVITY OF REPUBLIC ACT NO. 11966 AND BEFORE THE EFFECTIVITY OF ITS IMPLEMENTING RULES AND REGULATIONS

WHEREAS, Section 3 of Executive Order (EO) No. 136, series of 2013, as amended by EO No. 30, series of 2023, established the PPP Governing Board as the overall policy-making body for all PPP-related matters. This provision grants the PPP Governing Board the authority to set the strategic direction of the PPP Program and to create an enabling policy and institutional environment for PPPs;

WHEREAS, on December 8, 2023, Republic Act (RA) No. 11966, "An Act Providing for the Public-Private Partnership (PPP) Code of the Philippines", otherwise known as the "PPP Code of the Philippines" (hereinafter referred to as the PPP Code) was published in a newspaper of general circulation, and shall become effective on December 23, 2023;

WHEREAS, Section 25 of the PPP Code (*PPP Governing Board*) institutionalizes the PPP Governing Board created under EO No. 136, series of 2013, as amended by EO No. 30, series of 2023. The same section further provides that all issuances, orders, resolutions, decisions, or other acts of the PPP Governing Board shall be binding, unless otherwise stated by the PPP Governing Board;

WHEREAS, Section 34 of the PPP Code (*Implementing Rules and Regulations*) designates the PPP Governing Board as the Implementing Rules and Regulations (IRR) Committee of the PPP Code, and provides ninety (90) calendar days from the effectivity of the PPP Code for the promulgation of the IRR;

WHEREAS, pending promulgation of the IRR, there are no procedural rules to govern PPP projects whose processing has commenced by the time the PPP Code becomes effective on December 23, 2023 and before the effectivity of its IRR;

WHEREAS, consistent with the policies of the PPP Code of protecting the public interest by providing affordable, accessible, and efficient public services, improving ease of doing business, and facilitating the expedient processing of National and Local PPP Projects, the PPP Governing Board resolves that the implementation of the PPP Code shall not cause any delay in the processing of PPP projects;

WHEREAS, PPP projects referred herein shall include, among others, projects processed and/or approved under the Build-Operate-Transfer (BOT) Law, local PPP or JV ordinances, special charters of government -owned or -controlled corporations (GOCCs), the 2023 Revised Guidelines and Procedures for Entering into Joint Venture (JV) Agreements between Government and Private Entities, and all contractual arrangements under the coverage of the PPP Code as provided in Section 4 thereof;

WHEREAS, National PPP Projects referred herein shall refer to those that are undertaken by the national government, state universities and colleges, and GOCCs, while Local PPP Projects referred herein shall refer to those that are undertaken by local government units (LGUs) and local universities and colleges, pursuant to Sections 3(x) and 3(t) of the PPP Code (*National Public-Private Partnership Projects*) and (*Local Public-Private Partnership Projects*) respectively. All other capitalized terms in this interim guidelines shall take the meaning/s provided in Section 3 of the PPP Code (*Definition of Terms*);

WHEREFORE, premises considered, and by virtue of the powers vested by EO No. 136, series of 2013, as amended by EO No. 30, series of 2023, as well as Sections 25 (*PPP Governing Board*) and 34 (*Implementing Rules and Regulations*) of the PPP Code, the PPP Governing Board hereby resolves to adopt the following interim guidelines to govern the processing of PPP projects by the effectivity of the PPP Code up until the effectivity of its IRR:

Rule 1. Pursuant to Section 35 of the PPP Code (*Transitory Clause*), the enactment of the PPP Code shall not affect or alter the parameters, terms, and conditions (PTCs) of PPP projects that have already been approved by the appropriate approving body prior to the effectivity of the PPP Code.

The same principle of recognizing approved project terms shall be applicable to (a) Local PPP Projects processed and/or approved under local PPP or JV codes and ordinances, and (b) PPP projects of GOCCs processed and/or approved under their respective charters or the 2023 Revised Guidelines and Procedures for Entering into Joint Venture (JV) Agreements between Government and Private Entities.

Rule 2. Processing of Solicited Projects.

Rule 2.1. For all Solicited Projects, regardless of the legal framework/s used, where the bidding rules established by the bids and awards committee has been published before the effectivity of the PPP Code, such bidding rules shall apply, pursuant to Section 35(c).

Rule 2.2. For Solicited Projects using the BOT Law as its legal framework, whether national or local, which have been submitted to but are pending approval by the approving body, Section 35(d) of the PPP Code (*Transitory Clause*) shall apply.

Rule 2.3. For Solicited Projects using legal framework/s other than the BOT Law, whether national or local, which have been submitted to but are pending approval by the approving body, Section 7 of the PPP Code (*Approval of PPP Projects*) shall apply, pursuant to Section 35(e) of the PPP Code (*Transitory Clause*).

For National PPP Projects falling under Rule 2.3 hereof, the Investment Coordination Committee (ICC) shall provide the rules to be followed in processing these projects.

For Local PPP Projects falling under Rule 2.3 hereof, **Annex A**¹ of this interim guidelines shall be used in processing these projects.

Rule 2.4. For Solicited Projects, regardless of the legal framework used, which have been returned by the Approving Body and have not yet been resubmitted by the Implementing Agency for approval, Section 7 of the PPP Code (*Approval of PPP Projects*) shall apply.

¹ Annex A is hereby issued pursuant to the authority of the PPP Governing Board vested by Section 7(e) of the PPP Code.

For National PPP Projects falling under Rule 2.4 hereof, the ICC shall provide the rules to be followed in processing these projects.

For Local PPP Projects falling under Rule 2.4 hereof, **Annex A** of this interim guidelines shall be used in processing these projects.

Rule 2.5. For Solicited Projects to be submitted by the Implementing Agency to the appropriate Approving Body after December 23, 2023, Section 7 of the PPP Code (*Approval of PPP Projects*) shall apply.

For National PPP Projects falling under Rule 2.5 hereof, the ICC shall provide the rules to be followed in processing these projects.

For Local PPP Projects falling under Rule 2.5 hereof, **Annex A** of this interim guidelines shall be used in processing these projects.

Rule 3. All original proponent status (OPS) granted before December 23, 2023 shall remain valid unless revoked by the Implementing Agency. For those OPS to be granted after December 23, 2023 and before the effectivity of the IRR of the PPP Code, the one-year validity period indicated in Section 10(d)(3) of the PPP Code (*Unsolicited Proposals*) shall apply and shall be reckoned from the date it was granted. All Implementing Agencies are hereby instructed to submit to the PPP Center, on or before January 31, 2024, copies of all OPS granted, which satisfy the following criteria: (a) the project for which the OPS was granted has not yet reached contract award, and (b) the OPS was granted prior to December 23, 2023.

Rule 4. Processing of Unsolicited Proposals.

Rule 4.1. For all Unsolicited Proposals, regardless of the legal framework/s used, where the rules on comparative challenge process established by the bids and awards committee has been published before the effectivity of the PPP Code, such bidding rules shall apply, pursuant to Section 35(c) of the PPP Code.

Rule 4.2. For Unsolicited Proposals using the BOT Law as its legal framework, whether National or Local, which are pending approval by the Approving Body, Section 35(d) of the PPP Code (*Transitory Clause*) shall apply.

Rule 4.3. For Unsolicited Proposals using legal framework/s other than the BOT Law, whether National or Local, which are pending approval by the Approving Body, Section 7 of the PPP Code (*Approval of PPP Projects*) shall apply, pursuant to Section 35(e) of the PPP Code (*Transitory Clause*).

For National PPP Projects falling under Rule 4.3 hereof, the ICC shall provide the rules to be followed in processing these projects.

For Local PPP Projects falling under Rule 4.3 hereof, **Annex A** of this interim guidelines shall be used in processing these projects.

Rule 4.4. For Unsolicited Proposals granted with OPS but are not yet submitted for approval by the Approving Body, regardless of the legal framework used, the Implementing Agency shall either:

(a) Revoke the OPS if the Unsolicited Proposal meets any of the following:

- (i) If the feasibility study, financial model, and/or the economic model of the Unsolicited Proposal is/are more than three (3) years old;
- (ii) If the Implementing Agency deems that the Unsolicited Proposal is no longer aligned with its development plans;
- (iii) If the Implementing Agency is already developing a project with similar scope and/or similar objective;
- (iv) If there are multiple Unsolicited Proposals for the same or similar project;
- (v) If there is a substantial change in the scope of the project for which an OPS was previously granted, as determined by the Implementing Agency; or
- (vi) If there is a change in the composition of the Original Proponent that will affect its majority ownership.

Implementing Agencies which shall revoke the OPS solely on the ground as indicated in item (iv) above shall inform in writing all private proponents who have submitted the same or similar proposal of such decision, copy furnished the PPP Center. The Implementing Agency shall thereafter undertake to implement the project through the solicited PPP track, procurement under RA No. 9184, or through an official development assistance. No further unsolicited proposal shall be accepted or granted an OPS for the same or similar project.

or

- (b) Commence negotiation with the Original Proponent, as described in Section 10(d)(3) of the PPP Code (*Unsolicited Proposals; Negotiation*), within sixty (60) calendar days from December 23, 2023.

The Implementing Agency and the Original Proponent shall ensure that all requirements indicated in either the rules to be issued by the ICC in the case of National PPP Projects, or in Annex A in the case of Local PPP Projects, are complete within the set negotiation period.

In case of successful negotiation, the Implementing Agency shall re-confirm the OPS of the Original Proponent and submit the project to the Approving Body pursuant to Section 7 of the PPP Code (*Approval of PPP Projects*).

For National PPP Projects falling under Rule 4.4(b) hereof, the ICC shall provide the rules to be followed in processing these projects.

For Local PPP Projects falling under Rule 4.4(b) hereof, **Annex A** of this interim guidelines shall be used in processing these projects.

In case of failure of negotiation, the Implementing Agency shall, within seven (7) calendar days from the lapse of the negotiation period, reject the proposal and revoke the OPS in writing, copy furnished the PPP Center. Thereafter, the Implementing Agency shall have the option to:

- (a) accept a new Unsolicited Proposal, if there be any;
- (b) bid out the project as a solicited proposal, or
- (c) undertake the project on its own.

Annex B of this interim guidelines provides for the rules to be followed in conducting the negotiation process.

Rule 4.5. For Unsolicited Proposals using the BOT Law as its legal framework and which satisfy the following criteria: (a) the Original Proponent of the project holds an OPS, (b) the project was returned by the Approving Body to the Implementing Agency, and (c) the project is not yet resubmitted by the Implementing Agency to the Approving Body, Section 7 of the PPP Code (*Approval of PPP Projects*) shall apply.

For National PPP Projects falling under Rule 4.5 hereof, the ICC shall provide the rules to be followed in processing these projects.

For Local PPP Projects falling under Rule 4.5 hereof, **Annex A** of this interim guidelines shall be used in processing these projects.

Rule 4.6. For Unsolicited Proposals using legal framework/s other than the BOT Law and which satisfy any of the following criteria: (a) the Implementing Agency issued a letter of acceptance to the Original Proponent, (b) the Implementing Agency issued a letter of acceptance to the Original Proponent but have not yet commenced negotiation, or (c) the Implementing Agency and the Original Proponent have commenced negotiation, the rules for negotiation under Section 10(d)(3) of the PPP Code (*Unsolicited Proposals; Negotiation*) shall govern.

Upon successful negotiation prior to issuance of OPS and submission to the Approving Body pursuant to Section 7 of the PPP Code (*Approval of PPP Projects*), the Implementing Agency and the Original Proponent shall ensure that the Unsolicited Proposal is complete pursuant to either:

- (a) in the case of National PPP Projects, the rules to be issued by the ICC;
- or
- (b) in the case of Local PPP Projects, **Annex A** of this interim guidelines.

In case of failure of negotiation, the Implementing Agency shall, within seven (7) calendar days from the lapse of the negotiation period, reject the proposal and revoke the OPS in writing, copy furnished the PPP Center. Thereafter, the Implementing Agency shall have the option to:

- (a) accept a new Unsolicited Proposal, if there be any;
- (b) bid out the project as a solicited proposal, or
- (c) undertake the project on its own.

Rule 4.7. For all Unsolicited Proposals, regardless of the legal framework used, which satisfy the following criteria: (a) the project was submitted to the Implementing Agency by December 23, 2023, and (b) the Implementing Agency has not yet issued a letter of acceptance to the Original Proponent, the Private Proponents shall be given sixty (60) calendar days to complete their submissions pursuant to either:

- (a) in the case of National PPP Projects, the rules to be issued by the ICC;
- or
- (b) in the case of Local PPP Projects, **Annex A** of this interim guidelines.

The sixty (60) calendar days shall be reckoned from the receipt of a formal notice from the Implementing Agency, copy furnished the PPP Center, advising them of the same. Private Proponents shall then submit a complete proposal to

the PPP Center for completeness check, pursuant to either item 4.7(a) or 4.7(b), and Section 10(a) of the PPP Code (*Unsolicited Proposals; General*).

All Unsolicited Proposals submitted to the PPP Center for completeness check after December 23, 2023, and before the effectivity of the IRR shall be processed pursuant to either item 4.7(a) or 4.7(b) above.

Rule 5. The reasonable rate of return (RROR) as defined under Section 3(dd) of the PPP Code (*Definition of Terms*) shall not apply to PPP projects until the IRR Committee has promulgated the mechanisms for approving the RROR and the IRR becomes effective.

Rule 6. Local PPP and JV codes or ordinances, or any part thereof which are inconsistent with or contrary to the PPP Code are rendered inoperable, pursuant to Section 37 of the PPP Code (*Repealing Clause*). Following the principle that every law must be interpreted and brought in accordance with other laws as to form a uniform system of jurisprudence, and that the PPP Code comprehensively covers all rules and procedures covered in all stages of PPP project development, approval, procurement, and implementation, the language used in the PPP Code renders it irreconcilable with the rules and procedures found in existing local PPP codes and other local issuances².

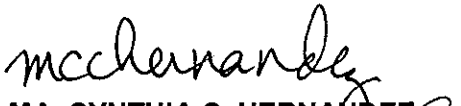
Sanctions. Actions in contravention to this interim guidelines shall not be binding and shall produce no legal effect. Such actions, including inactions that hinder the processing of PPP projects, shall subject the erring officials and employees to disciplinary actions in accordance with the appropriate administrative laws and criminal action under the Revised Penal Code and other existing penal laws.

Separability. If any provision of this interim guidelines is declared unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

Validity. This interim guidelines shall remain valid until superseded by subsequent interim guidelines to be issued by the PPP Governing Board, or upon effectivity of the IRR of the PPP Code.

Effectivity. This guidelines shall take effect immediately upon approval by the PPP Governing Board and upon its publication in the Official Gazette or a newspaper of general circulation.

By authority of the PPPGB under Resolution No. 2023-12-02.


MA. CYNTHIA C. HERNANDEZ
Undersecretary and Executive Director
Head, PPP Governing Board Secretariat

² *Republic of the Philippines v. Marcopper Mining Corporation*, G.R. No. 137174, July 10, 2000 citing *Hagad v. Gozo-Dadole*, 251 SCRA 242 (1995)