



INVESTMENT COORDINATION COMMITTEE

MEMORANDUM

FOR : Heads of Departments/Agencies of the National Government, Government-Owned and -Controlled Corporations, Government Financial Institutions, and All Other Governmental Units Concerned

FROM : **RALPH G. RECTO**
Secretary, Department of Finance
Chair, ICC-Cabinet Committee

ARSENIO M. BALISACAN
Secretary, National Economic and Development Authority
Co-Chair, ICC-Cabinet Committee

SUBJECT : **NEDA Board-Investment Coordination Committee (ICC) Guidelines on the Review and Approval of Public-Private Partnership Proposals Requiring ICC and/or NEDA Board Approval**

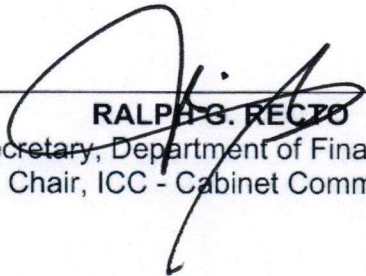
DATE : April 29, 2024

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1. In view of the effectivity of 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, and its Implementing Rules and Regulations (IRR) on December 23, 2023 and April 6, 2024, respectively, the NEDA Board approved on April 25, 2024 the ***NEDA Board-Investment Coordination Committee (ICC) Guidelines on the Review and Approval of Public-Private Partnership Proposals Requiring ICC and/or NEDA Board Approval***, and its attachments.
 2. The new ***NEDA Board-ICC Guidelines*** took effect on April 25, 2024 and supersedes the Interim Guidelines¹ issued by the ICC on April 4, 2024. All agencies shall hereby refer to the said Guidelines in the processing of PPP projects requiring the review and approval of the ICC and/or NEDA Board in accordance with the PPP Code and its IRR.

¹ The *Guidelines and Procedures on Processing Public-Private Partnership Proposals for NEDA Board/ICC Evaluation and Approval*, which was approved by the NEDA Board on November 24, 2022 and published on the NEDA website on December 23, 2022

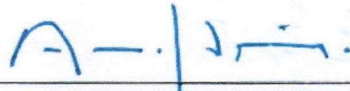
3. All agencies are reminded to strictly adhere to the requirements of the PPP Code and its IRR, and the subject Guidelines in the development and submission of their proposals requiring action from the ICC and/or NEDA Board.

For guidance and compliance.



RALPH G. RECTO
Secretary, Department of Finance and
Chair, ICC - Cabinet Committee





ARSENIO M. BALISACAN
Secretary, National Economic and
Development Authority and
Co-Chair, ICC - Cabinet Committee



ATTACHMENT:

NEDA Board-ICC Guidelines on the Review and Approval of Public-Private Partnership Proposals Requiring ICC and/or NEDA Board Approval, and its attachments

**NEDA Board-Investment Coordination Committee (ICC) Guidelines
on the Review and Approval of Public-Private Partnership Proposals
Requiring ICC and/or NEDA Board Approval**

Section I. Legal Basis

1. 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, was signed into law by President Ferdinand R. Marcos, Jr. on December 5, 2023, and took effect on December 23, 2023. The Implementing Rules and Regulations (IRR) of the PPP Code was promulgated on March 22, 2024 and became effective on April 6, 2024.
2. Section 7 of the PPP Code provides for the approval of PPP projects, including those which shall be processed and approved by the NEDA Board upon favorable endorsement of the ICC¹.
3. Section 7 of the PPP Code and Section 31 of its IRR provide for the following:
 - a. Guidelines, forms, and templates that shall be used by the Implementing Agency and the appropriate Approving Body in reviewing and approving the PPP project shall be formulated by the NEDA Board-ICC, in coordination with the PPP Center and the Department of Finance, for National PPP Projects; and
 - b. The NEDA Board-ICC shall also formulate guidelines on the approval of Government Undertakings using National Government funds for Local PPP Projects.

¹ Pursuant to Section 6. Coverage of PPP of the PPP Code IRR, this Guidelines shall cover any Infrastructure or Development Project or Service that satisfies the elements of a PPP as defined in Section 4(pp) of the IRR, or as may be approved by the appropriate Approving Body, including but not limited to the following:

- a. Joint Ventures (JVs) as defined in the Code and this IRR;
- b. Toll operation agreements or supplemental toll operation agreements, or any contractual arrangements involving the Construction, Operations and Maintenance (O&M), or a combination or variation thereof, of toll facilities in accordance with Presidential Decree (PD) No. 1112 series of 1977, PD No. 1113, series of 1977, and PD No. 1894, series of 1983;
- c. Lease agreements providing for the rehabilitation, operation, and/or maintenance, including the provision of working capital and/or improvements to, by the Private Partner of an existing land or facility owned by the government for a fixed period of time covering more than one (1) year;
- d. Lease agreements, when such lease is a component of a PPP Project, as defined under the Code and this IRR;
- e. Build-Operate-Transfer (BOT) and its variants such as, but not limited to, Build-and-Transfer (BT), Build-Lease-and-Transfer (BLT), Build-Own-and-Operate (BOO), Build-Transfer-and-Operate (BTO), Contract-Add-and-Operate (CAO), Add-Operate-and-Transfer (AOT), Develop-Operate-and-Transfer (DOT), Rehabilitate-Operate-and-Transfer (ROT), and Rehabilitate-Own-and-Operate (ROO); and
- f. O&M.

Section II. Coverage of ICC and NEDA Board Approval

1. The ***NEDA Board-ICC Guidelines on the Review and Approval of PPP Proposals Requiring ICC and/or NEDA Board Approval***, hereby referred to in this document as the “**Guidelines**”, shall be used by all concerned agencies in the review and approval of the following PPP projects requiring ICC and/or NEDA Board review and approval based on the PPP Code and its IRR:
 - a. **PPP Projects requiring action by the NEDA Board** upon favorable recommendation of the ICC-Cabinet Committee (ICC-CC):
 - i. ***National PPP Projects² 15 billion and above*** (Section 7 of the PPP Code, and Section 24.1 of the IRR);
 - ii. ***Green lane PPP Projects***. Covers only PPP Projects to be implemented by State Universities and Colleges (SUCs) with project cost of PHP 15 billion and above, and **not requiring any financial government undertakings** from the National Government (Section 7 of the Code, and Section 24.2 of the IRR);
 - iii. ***National PPP Projects costing PHP 15 billion and above and implemented by more than one National Implementing Agency (IA)*** (Section 45 of the IRR); and
 - iv. ***PPP Projects costing PHP 15 billion and above and implemented by a National and a Local IA*** (Section 47 of the IRR).
 - b. **PPP Projects requiring action by the ICC-Cabinet Committee**:
 - i. ***National PPP projects³ costing below PHP 15 billion that meet any of the following five (5) criteria*** (Section 7 of the PPP Code, and Section 24.4 of the IRR):
 - 1) *It physically overlaps with a project approved by the government authority or with a project being developed by another government entity based on national or sectoral development plans;*
 - 2) *It negatively affects the economic benefits, demand, and/or financial viability of a project approved by a government authority, or a project being developed by another government entity based on national or sectoral development plans;*
 - 3) *It requires financial Government Undertakings to be sourced and funded under the General Appropriations Act (GAA);*

² Including Local PPP Projects covering two or more Local Implementing Agencies, pursuant to Section 46 of the PPP Code IRR.

³ Including Local PPP Projects covering two or more Local Implementing Agencies, pursuant to Section 46 of the PPP Code IRR.

- 4) *It involves Availability Payments to be sourced and funded under the GAA; or*
 - 5) *The contribution of an Implementing Agency in a proposed Joint Venture (JV) exceeds fifty percent (50%) of its entire assets based on its latest audited financial statements and other pertinent documents, and subject to Section 3(gg) of the PPP Code.*
- ii. ***Proposed Government Undertakings or Availability Payments using National Government Funds for Local PPP Projects*** (Section 7 of the PPP Code and Section 36 of the IRR);
 - iii. ***National PPP Projects costing below PHP 15 billion and implemented by more than one National IA*** (Section 45 of the IRR); and
 - iv. ***PPP Projects costing below PHP 15 billion and implemented by a National and a Local IA*** (Section 47 of the IRR).
- c. **Changes in the Approved Project where the Approving Body is the ICC or NEDA Board:**
- i. ***Proposed change in the approved Parameters, Terms, and Conditions (PTCs) of the draft PPP contract prior to submission of bids for Solicited National PPP Projects*** [Sections 31(a) and 81 of the IRR];
 - ii. ***Proposed variation, expansion, or extension of all contracts covering PPP projects executed prior to or after the effectivity of the PPP Code⁴***, shall be governed by these Guidelines; provided, that the stipulations in the Guidelines on variation, expansion, or extension for contracts of PPP projects executed prior to the effectivity of the PPP Code shall be applied suppletorily to the existing contract provisions to the extent that such application does not infringe upon the substantive rights of the Private Partner.

In determining the appropriate Approving Body, the project cost to be used shall be the sum of (i) the Project Cost indicated in the financial proposal of the winning bid of the Private Partner during bid submission and (ii) the cumulative value of the proposed variations and all previously approved variations, if any.

If the sum costs PHP 15 billion and above, the Approving Body for the proposed variation shall be the NEDA Board. If the sum of the proposed variation costs below PHP 15 billion but meets any of the 5 criteria (Section 7 of the PPP Code, and Section 24.4 of the IRR), the Approving Body for the proposed variation shall be the ICC; and

⁴ Pursuant to Section 143 of the PPP Code IRR.

- iii. **Withdrawal or substitution of a consortium member** particularly, changes in, withdrawals, or substitution of Private Partners or member-firms of a consortium that results in a change of control⁵ of the Private Partner or consortium that will affect its majority ownership and/or beneficial ownership, after the approval of the project (Section 104 of the IRR).

2. This Guidelines shall also cover the following:

- a. Reasonable Rate of Return (RROR) to be set in case of single complying bid for solicited project where the ICC or the NEDA Board is the appropriate Approving Body [Section 31(c) of the IRR];
- b. In case of Unsolicited Proposals, guidelines on cases where the appropriate Approving Body requires PTCs outside of the negotiated PTCs [Section 31(b) of the IRR];
- c. Guidelines on cases where the appropriate Approving Body failed to render its decision on a PPP Project within one hundred twenty (120) calendar days from receipt of complete requirements [Section 31(e) of the IRR]; and
- d. Changes in procurement modality after the PPP project has been approved by the appropriate Approving Body (Section 33 of the IRR).

Section III. Roles and Responsibilities During the NEDA Board/ICC Evaluation and Approval Process

- 1. **Implementing Agency (IA)** – as defined in Section 4(aa) of the IRR, shall undertake activities indicated in PPP Code and its IRR, and conduct its own due diligence to ensure that its submission complies with the requirements set forth in the PPP Code and its IRR, prior to submission of the project to the ICC or the NEDA Board. For requests for contract variation, IAs may also seek a non-binding opinion from the PPP Center on the proposed contract variation.
- 2. **PPP Center** – shall be responsible for the creation and maintenance of the ICC Project Documents Portal for agency submission of project documents, preparation of the consolidated PPP Project Evaluation Report (PER), monitoring of the IA's compliance with ICC/NEDA Board instructions, if any, and presentation of the project during ICC meetings.
- 3. **PPP Evaluating Units (EUs)** – shall be composed of the NEDA, Department of Finance, and PPP Center, and shall be responsible for checking the completeness of the submitted national PPP projects. The EUs shall also be responsible for evaluating projects outlined in Section II, based on the complete documents uploaded in the ICC Project Documents Portal, against the criteria for approval of PPPs pursuant to Section 28 of the PPP Code IRR.
- 4. **ICC Core Secretariat** – shall be responsible in preparing and/or keeping the official records of the ICC-Technical Board (ICC-TB) and ICC-Cabinet Committee (ICC-CC)

⁵ As defined in Section 104 of the PPP Code IRR.

such as PPP PER, presentation materials, letters to Agencies, and minutes of the meeting, among others.

5. **NEDA Board Secretariat** – shall be responsible in preparing and/or keeping official records of the NEDA Board such as Memorandum for the NEDA Board, PPP PER, presentation materials, letters to Agencies, and minutes of the meeting.
6. **ICC-Technical Board** - shall deliberate on the project, based on the PPP PER/recommendations of the PPP EUs, and other relevant information that may be presented to the ICC-TB.
7. **ICC-Cabinet Committee** - shall deliberate on the project, based on the recommendation of the ICC-TB and the EUs, PPP PER recommendations, and other relevant information that may be presented to the ICC-CC.
8. **NEDA Board** - shall deliberate on the project, based on the recommendation of the ICC-CC, Memorandum for the NEDA Board on the project, and other relevant information that may be presented to the NEDA Board.

Section IV. ICC/NEDA Board Evaluation and Approval Procedures

1. The PPP proposals covered by Section II of this Guidelines shall be processed in accordance with the procedures in **Annex 1: General NEDA Board-ICC Procedures on the Review and Approval of National Public-Private Partnership Proposals**, which details the steps in the processing of PPP projects covered under Section II of this Guidelines, and the indicative processing timelines.
2. For changes in the approved project where the Approving Body is the ICC or the NEDA Board, the following procedures shall be followed:
 - a. **Proposed change in the approved PTCs of the draft PPP contract prior to submission of bids for Solicited National PPP Projects**
 - i. In case the IA has proposed changes in the PTCs approved by the Approving Body, the IA shall submit all documents pertaining to proposed changes in the PTCs to the Approving Body for approval. The IA shall include in its submission the results of its assessment on whether the proposed changes in the PTCs will entail the following, among others:
 1. Additional Government Undertakings/Availability Payments;
 2. Changes in the economic and/or financial viability of the project; and
 3. Additional contingent liabilities.
 - ii. The IA shall submit the results of its assessment, including the proposed changes in the PTCs, to the appropriate Approving Body, through the ICC Project Documents Portal. The PPP Center shall ensure that the IA's submission can be accessed by the EUs.

- iii. Upon completion of the uploading of documents in the portal, the IA shall send an official email informing the ICC/NEDA Board Chairperson/s, copy furnished the PPP EUs, that it is requesting for the approval of the proposed changes in the PTCs, and it has submitted the required documents through the portal. The IA shall attach a copy of its endorsement letter only in the email.
- iv. The PPP EUs shall validate the IA's assessment, require additional documents from the IA as necessary, and submit its findings and recommendations to the appropriate Approving Body, for approval.

b. Withdrawal or substitution of a consortium member

- i. In case there is a need to change, withdraw, or substitute the Private Partners or member-firm of a consortium operating/implementing the PPP project, the IA shall immediately, upon being informed in writing by the Private Partners, seek the approval of the appropriate Approving Body.
- ii. The IA shall submit all documents pertaining to proposed withdrawal or substitution of a consortium member, including the results of its assessment, through the ICC Project Documents Portal. The PPP Center shall ensure that the IA's submission can be accessed by the PPP EUs through the ICC Project Documents Portal.
- iii. Upon completion of the uploading of documents in the portal, the IA shall send an official email informing the ICC/NEDA Board Chairperson/s, copy furnished the PPP EUs, that it is requesting for the approval of the proposed withdrawal or substitution of a consortium member, and it has submitted the required documents through the portal. The IA shall attach a copy of its endorsement letter only in the email.
- iv. The PPP EUs shall validate the IA's assessment, require additional documents from the IA, as necessary, and submit its findings and recommendations to the appropriate Approving Body, for approval.

c. Setting the RROR in the case of single complying and responsive bid for solicited project where the Approving Body is the NEDA Board/ICC

- i. During the approval stage of the Solicited National PPP Project, the Approving Body shall set the maximum RROR **which shall, in no case, be disclosed during the bidding process.**
- ii. In case of a single complying and responsive bid, the IA shall negotiate the RROR for the project taking into consideration the maximum RROR set by the ICC or NEDA Board, as applicable.
- iii. If the negotiated RROR does not breach the maximum RROR, the IA shall report the same to the Approving Body. If the negotiated RROR

breaches the set maximum, the IA shall secure the Approving Body's approval of the negotiated RROR.

- iv. In case the Approving Body does not agree with the negotiated RROR (which breached the set maximum as initially prescribed), the IA shall inform the single complying and responsive bidder of such decision for bidder's consideration on whether it shall still proceed with the project. If the bidder does not agree, the IA shall declare a failure of bidding.
- v. IAs may refer to **Annex 2** for the methodology in the computation of the RROR.

d. In case of Unsolicited Proposals, guidelines on cases where the appropriate Approving Body requires PTCs outside of the negotiated PTCs

- i. In case the appropriate Approving Body approves the project but requires PTCs outside of the negotiated PTCs, the Approving Body shall inform the IA in writing of the new PTCs.
- ii. The IA shall secure the private proponent's concurrence on the new PTCs within 7 calendar days (CDs) upon receipt of the notice from the appropriate Approving Body regarding the new PTCs being required. The IA shall, within the 7-CD period, submit its response to the Approving Body on whether the private proponent agrees/disagrees with the new PTCs.
- iii. In case the private proponent agrees with the new PTCs, the IA shall use the updated PTCs as one of the bases in the drafting of tender documents and the PPP Contract.
- iv. In case the private proponent disagrees with the new PTCs, the IA shall inform the Approving Body in writing, and the project shall be returned to the IA and delisted from the ICC Project Appraisal Monitor (IPAM).

e. Changes in Procurement Modality of an Approved PPP Project

- i. In case the PPP Project has been approved by the appropriate Approving Body but the IA intends to convert the project to a different procurement modality, the IA shall submit a justification for the proposed change, as required by the PPP Code IRR, to the appropriate Approving Body of the original project, copy furnished the PPP EUs.
- ii. The original project shall be returned to the IA and delisted from the IPAM. The project with the new procurement modality shall be treated as a new submission and shall be processed in accordance with the applicable laws, rules, and regulations.

Section V. Failure of the Approving Body to render a final decision on the National PPP Project

1. The NEDA Board, as the appropriate Approving Body for the PPP project, adopts as a policy that in cases when the timeline for the NEDA Board to act on the project will expire before it can dispense its action/decision, the PTCs endorsed/approved by the ICC-CC shall be adopted by the NEDA Board as the final approved PTCs for purposes of project procurement, unless an alternate instruction is issued by the NEDA Board or the President or designated alternate.
2. In support of the aforementioned policy, the PPP Center shall inform the NEDA Board in writing of any PPP project for the latter's approval, including the total number of remaining days/deadline for the NEDA Board to act on the project, and cite the abovementioned policy/directive.
3. The same policy shall be applied to PPP projects where the ICC-CC is the appropriate Approving Body. As such, the PTCs already endorsed/approved by the ICC-TB shall be adopted by the IA as the final PTCs for purposes of project procurement, unless an alternate instruction was issued by the ICC-CC.
4. The NEDA Board or the ICC-CC, as applicable, may issue a new policy in cases when the Approving Body fails to render final decision on a PPP project.

Section VI. Computation of Periods

1. Pursuant to Section 3 of the PPP Code IRR, in computing for the period for the NEDA Board or the ICC-CC, as the appropriate Approving Body, to render a decision on a PPP project, the first day, which shall be reckoned from the day of release of the Notice of Completeness, shall be excluded and the last day shall be included.
2. If the last day of the period falls on a non-working day (i.e., Saturday and Sunday), legal holiday, special non-working holiday, or other non-working days duly declared by the President, it is understood that the last day shall be the next working day.

Section VII. Amendments to the ICC Guidelines

Pursuant to Sections 27 and 31 of the PPP Code IRR, the ICC may, as necessary:

- a. Review, evaluate, and update the project cost threshold amounts, and issue the guidelines or protocols in reviewing and updating the said threshold. The updating of the cost threshold shall be subject to the approval of the ICC.
- b. Review and update the ICC Guidelines, as well as the forms, and templates to be used for the evaluation and approval of PPP projects requiring ICC or NEDA Board approval.

Section VIII. Effectivity

The Guidelines shall be effective immediately upon approval. A copy of the approved ICC Guidelines shall be published in the NEDA, DOF and PPP Center websites.

ATTACHMENTS:

- Annex 1: General NEDA Board-ICC Procedures
- Annex 2: Sample Computation on Determining the RROR for the Toll Road Industry
- Annex 3: List of Documentary Requirements for the approval of the following PPP projects:
 - a. National PPP Projects with project cost of PHP15 billion and above
 - b. National PPP Projects with project cost of below PHP15 billion but meets any of the five (5) criteria provided in Section 7(a)(1)(ii) of the PPP Code and Section 25 of its IRR
 - c. National PPP Projects implemented by more than one (1) national implementing agency
 - d. PPP Projects implemented by a national and a local implementing agency
 - e. National PPP Projects to be implemented by State Universities and Colleges via green lane
- Annex 4: List of Documentary Requirements for the approval of the proposed government undertakings or availability payments using national government funds for Local PPP Projects
- Annex 5: List of Documentary Requirements for the approval of the changes to PTCs of the draft PPP contract prior to submission of bids
- Annex 6: List of Documentary Requirements for the approval of the contract variation, expansion, or extension of an executed PPP contract
- Annex 7: List of Documentary Requirements for the approval of the changes in, withdrawals, or substitution of private partners or member-firms of a consortium
- Annex 8: PTC Forms
- Annex 9: Private Partner Information and Qualification Form
- Annex 10: List of Requirements to Establish the Qualification of the Private Proponent for Unsolicited Proposals