



An Overview of PPPs

Alberto C. Agra

- ❑ Certified PPP and Regulation Specialist™
- ❑ PPP Law, Administrative Law and Local Government Law Professor and Political Law Bar Reviewer
- ❑ Former Acting Secretary of Justice, Acting Solicitor General and Government Corporate Counsel
- ❑ TV Host, Batas et AL, CNN Philippines
- ❑ President, Pilipinas Obstacle Sports Federation
- ❑ Founder, 5 Throws-for-All Association



Quizzer

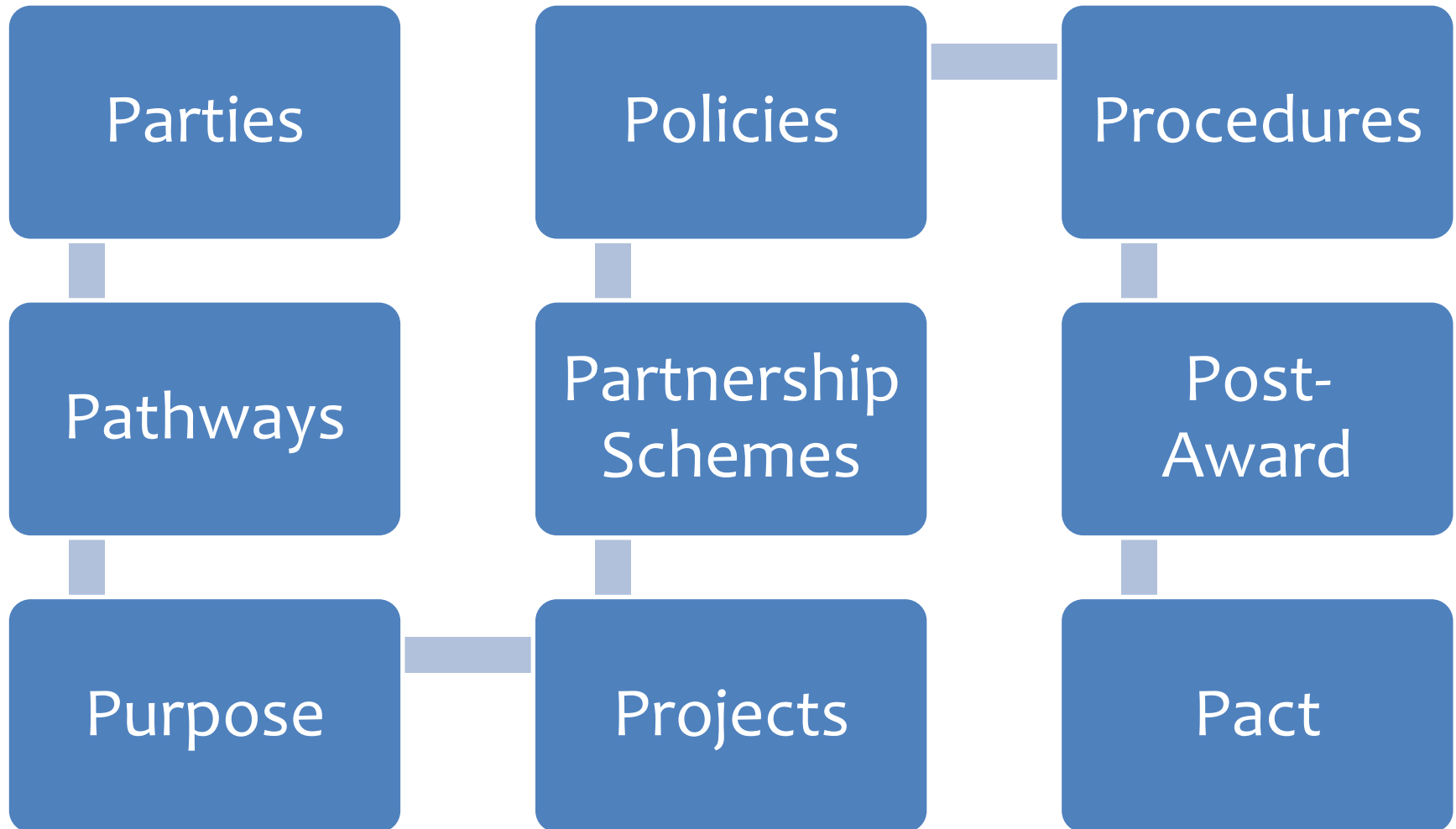
True or False

1. The Philippines has a **single PPP law**.
2. There are only **9 PPP modalities**.
3. All PPP contracts must be approved by **NEDA**.
4. All PPP projects are **single-purpose**.
5. A **feasibility study** is required in a PSP selection process.
6. Government must contribute **cash** in a PPP in order to have a share/ equity.
7. The **Charters of NGAs/ GFIs/ GOCCs/ GICPs/ LGUs** are not PPP laws.
8. The winner, in any PPP selection process, is always the proponent with the **highest bid**.
9. All GFIs/ GOCCs/ GICPs must follow the **2023 NEDA JV Guidelines**.
10. All Original Proponents in Unsolicited Proposals have the **right to match** a superior offer.

Matching Type

	<i>PPP Arrangement x Public</i>		<i>Law/ Rule</i>
A	BOT by LGU	1	2023 NEDA Guidelines
B	JV by LGU	2	COA Circular
C	JV by GOCC	3	BOT Law & Sept. 2022 IRR
D	JV by Asset-Disposing GI	4	Special Laws
E	GOCC Lessor	5	GPRA
F	GOCC Lessee – to be Built	6	Civil Code
G	GOCC Lessee – Existing	7	Corporation Code
H	GI Divestment	8	Local Ordinance
I	GI Management Contract	9	GOCC Guidelines
J	Concession	10	GI Guidelines

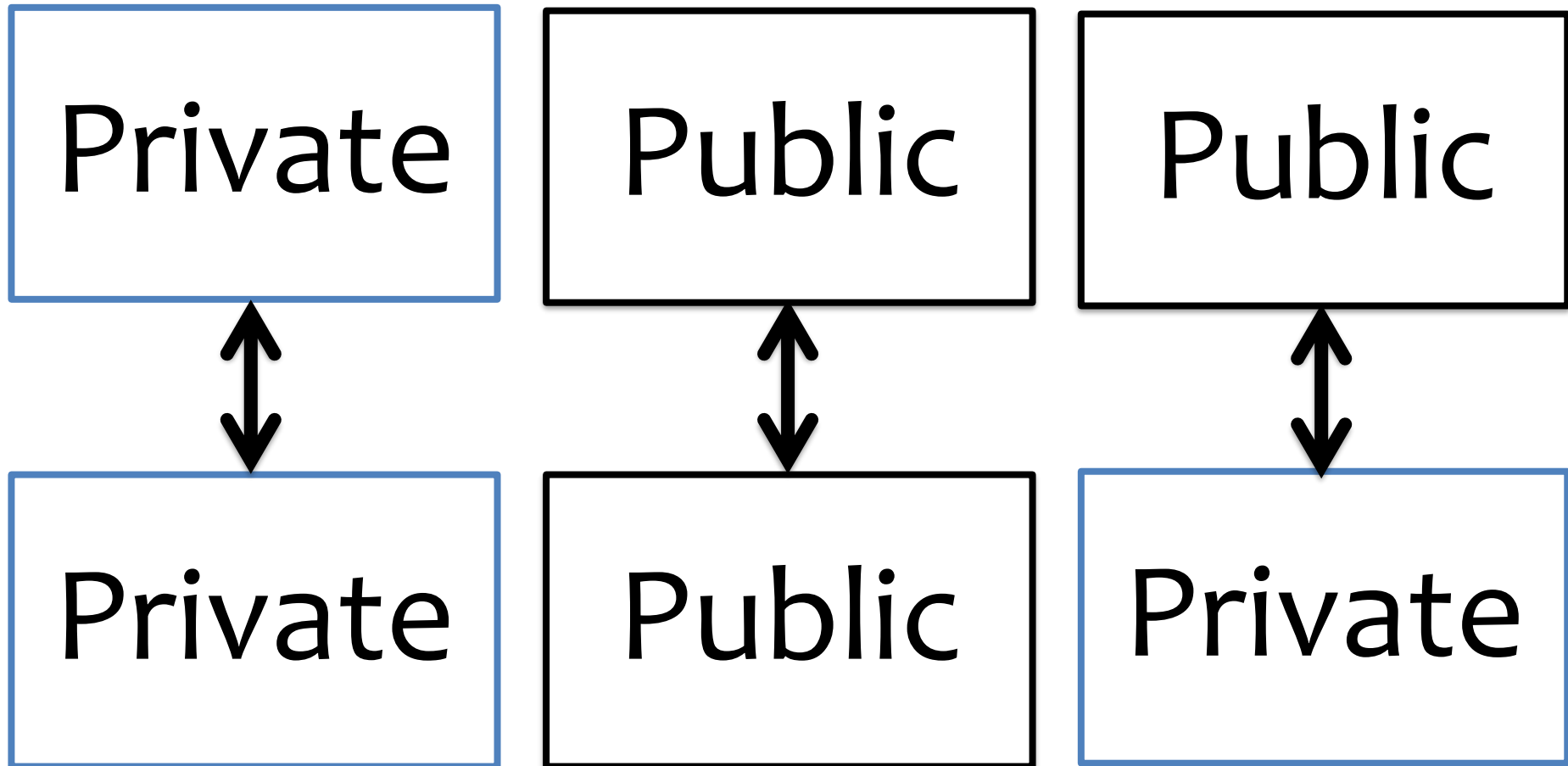
Flow: 9 Ps





The Parties

3 Levels of PPPs





PUBLIC SECTOR PPP PROPONENTS

**NATIONAL
GOVERNMENT**

**GOVERNMENT
CORPORATIONS**

STATES 

**AUTONOMOUS
REGIONS**

PROVINCES

CITIES

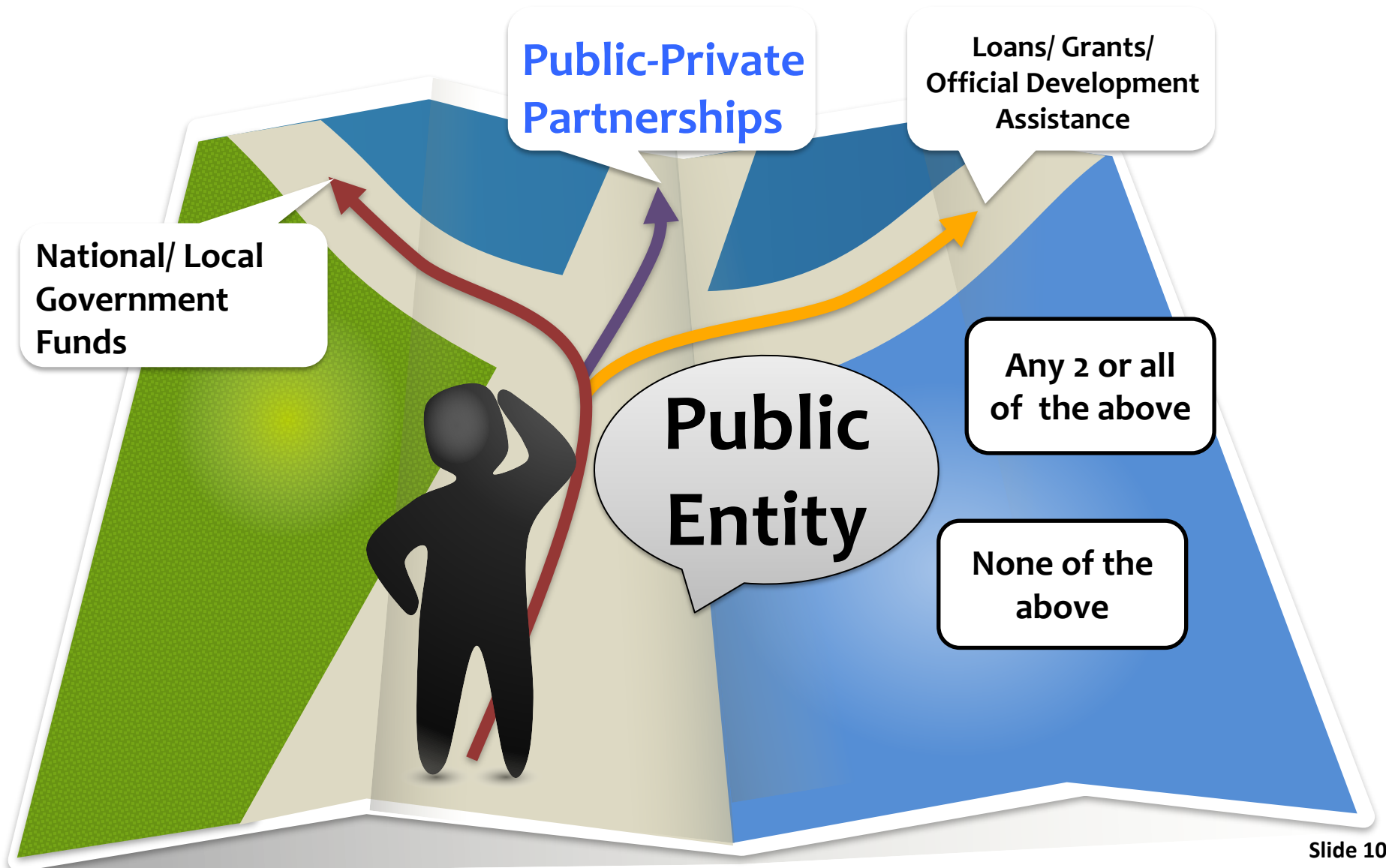
MUNICIPALITIES

BARANGAYS



The Pathways

Implementation/ Funding Schemes



Nature of PPPs

Aspects:

- Project
- Design
- Finance
- Construction
- Operations
- Governance
- Risk-Allocation
- Period
- Performance
- Payments
- Liabilities
- Procedures





The Purpose

WHY PPP?

THE 7 MAIN VALUE DRIVERS



**IMPLEMENT
CHANGE
POLICY**



**ENCOURAGE
INNOVATION**



**SERVE THE
PEOPLE**



**PROVIDE
BETTER
VALUE-FOR-
MONEY**



**ACCELERATE
DELIVERY OF
SERVICES**



**SOLVE
RESOURCE
SCARCITY**



**SPREADING
RISKS**



The Projects

HARD

INFRASTRUCTURE ASSETS

- | | |
|-----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
|  Road |  Terminal |
|  Water |  Government Buildings |
|  Power |  Parks |
|  Ports |  Information Technology |
|  Reclamation |  Cemetery |
|  Sports Complex |  Solid Waste Management |
|  Markets |  Bridges |
|  Transport Systems |  Malls |

SOFT

SOCIAL ASSETS AND SERVICES

- | | |
|-----------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
|  Classroom |  Housing |
|  Hospital |  Evacuation Center |
|  Agriculture |  Prisons |

BUNDLED



Hard and Hard



Hard and Hard



Hard and Hard



Soft and Soft



Hard, Soft and Soft



























Hard, Hard and Soft



The Partnership Arrangements

26+ PPP Modalities

1. Build-Transfer
2. Build-Lease-Transfer
3. Build-Operate-Transfer
4. Build-Own-Operate
5. Build-Transfer-Operate
6. Contract-Add-Operate
7. Develop-Operate-Transfer
8. Rehabilitate-Operate-Transfer
9. Rehabilitate-Own-Operate
10. Rehabilitate-Lease-Transfer
11. Rehabilitate-Transfer
12. Rehabilitate-Transfer-Operate
13. Concession Arrangement
14. Joint Venture
15. Lease or Affermage
16. Lease-to-Own
17. Real Property Swap
18. Management Contract
19. Management Contract (No Public Funds)
20. Service Contract
21. Service Contract (No Public Funds)
22. Divestment or Disposition
23. Corporatization
24. Subsidiary with Private Equity
25. Onerous Donation
26. Gratuitous Donation
27. Others

Modality	Government		Private Sector		
Build-Operate-Transfer					
Joint Venture					
Concession					
Management Contract					
Public Land Lease					
Policy-setting		Building			
Financing		Operating			



The Policies

Governing Laws/ Rules

PPP Modality	Governing Law
BOT Law Variants (9+)	BOT Law and 2022 IRR
Concession	Special Laws/ Special Guidelines/ Local Ordinance
Joint Ventures	2023 NEDA JV Guidelines/ Special Guidelines/ Local Ordinance
Management and Service Contract*	GPRA/ Local Ordinance
RT, RLT, RTO	[BOT Law]/ Local Ordinance
Lease/ Lease-to-Own/ Realty Swap/ Affermage/ Donations	Civil Code/ Special Guidelines/ Local Ordinance
Divestment/ Disposition	COA Circular No. 89-296/ COA Decision 2009-064
Corporatization	Corporation Code

NEDA Checkpoints

4-pass	3-pass	2-pass	1-pass	0-pass
1) BOT-UP	1) BOT-Sol, National ₱300M up	1) BOT-Sol, National ₱300M 2) BOT-Local ₱200M up 3) JV-GOCC ₱150M and up; ₱2.5B cost up; Government > 50%	Any project Rejection	1) BOT-Local ₱200M low 2) JV-local 3) JV-GOCC ₱150M low; <₱2.5B cost; Government < 50% 4) JV-other GOCCs 5) Lease, concession
NEDA-ICC-TB NEDA-ICC (IRR) NEDA-ICC (Nego) NEDA-Board	NEDA-ICC-TB NEDA-ICC NEDA-Board	NEDA-ICC-TB NEDA-ICC	NEDA-ICC-TB	NA

Comparative Matrix

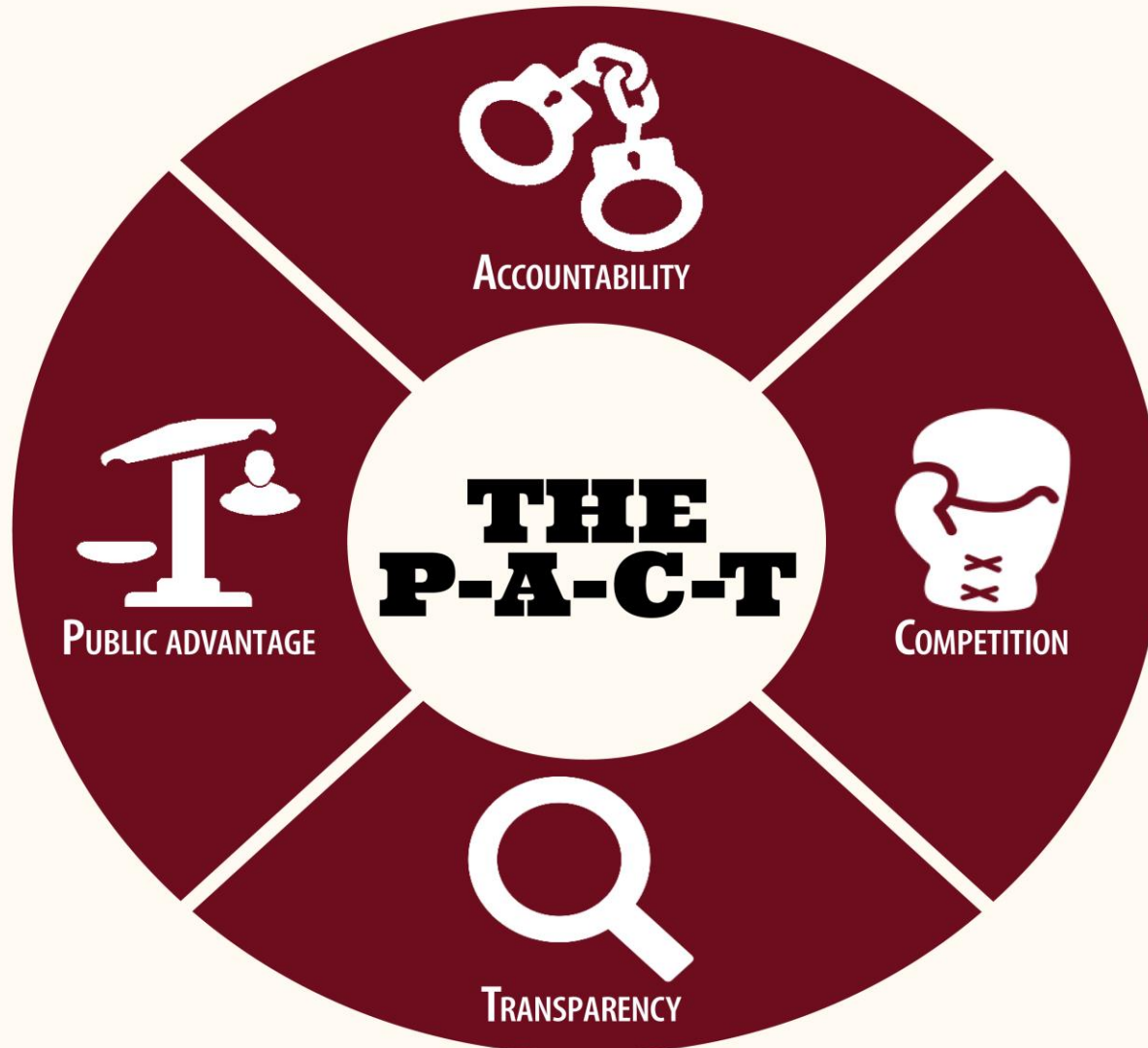
Item	GPRA	BOT Law-Variants	Joint Ventures	Long-Term Lease
Governing Law	RA 9184	BOT Law and 2022 IRR	2023 NEDA Guidelines/ Special Guidelines/ Local Ordinances	Special Guidelines/ Local Ordinances
Modalities	1	9 ++	1	1
Role of Government	Procuring Entity (PE); Buyer	Implementing Agency	Co-Venturer	Lessor
Functions of Government	PE/ Owner	Regulatory	Shared	Contract Management
Gain for Government	Goods/ Service/ Infrastructure (disburse funds)	Payment by way of fees	Revenue-Share	Receives Rent ++
Role of PSP	Seller: Supplier, Provider or Contractor	Design, Finance, Build and Operate	Shared	Lessee
PSP Revenues	Payment from Government	Reasonable Rate of Return (or 12%)	Proportionate Sharing	Rentals

Comparative Matrix

Item	GPRA	BOT Law-Variants	Joint Ventures	Long-Term Lease
Projects	Goods, Services or Infrastructure	Infrastructure/ Development	Mandate/ Investment	Real Estate
Priority Projects	As identified by NEDA, PE annual procurement plan	Only solicited (unless new tech)	Priority or not	Priority or not
Period	N/A	50 years maximum	Under NEDA Guidelines, 25+25	Depends (50 also)
Financing	Public Funds/ ODA/ Loans	PSP (or government subsidy)	Joint (cash or non-cash)	Lessee
Government Support	GAA or ODA, loan	8 forms	Sharing	Contractual
Divestment	N/A	BOO or ROO	Possible	Possible
Risk Allocation	Government/ Seller Warranty	Function-Risk	Sharing	Lessor-Lessee

The Procedures

PPP SELECTION REQUIREMENTS



3 PACT Procedures

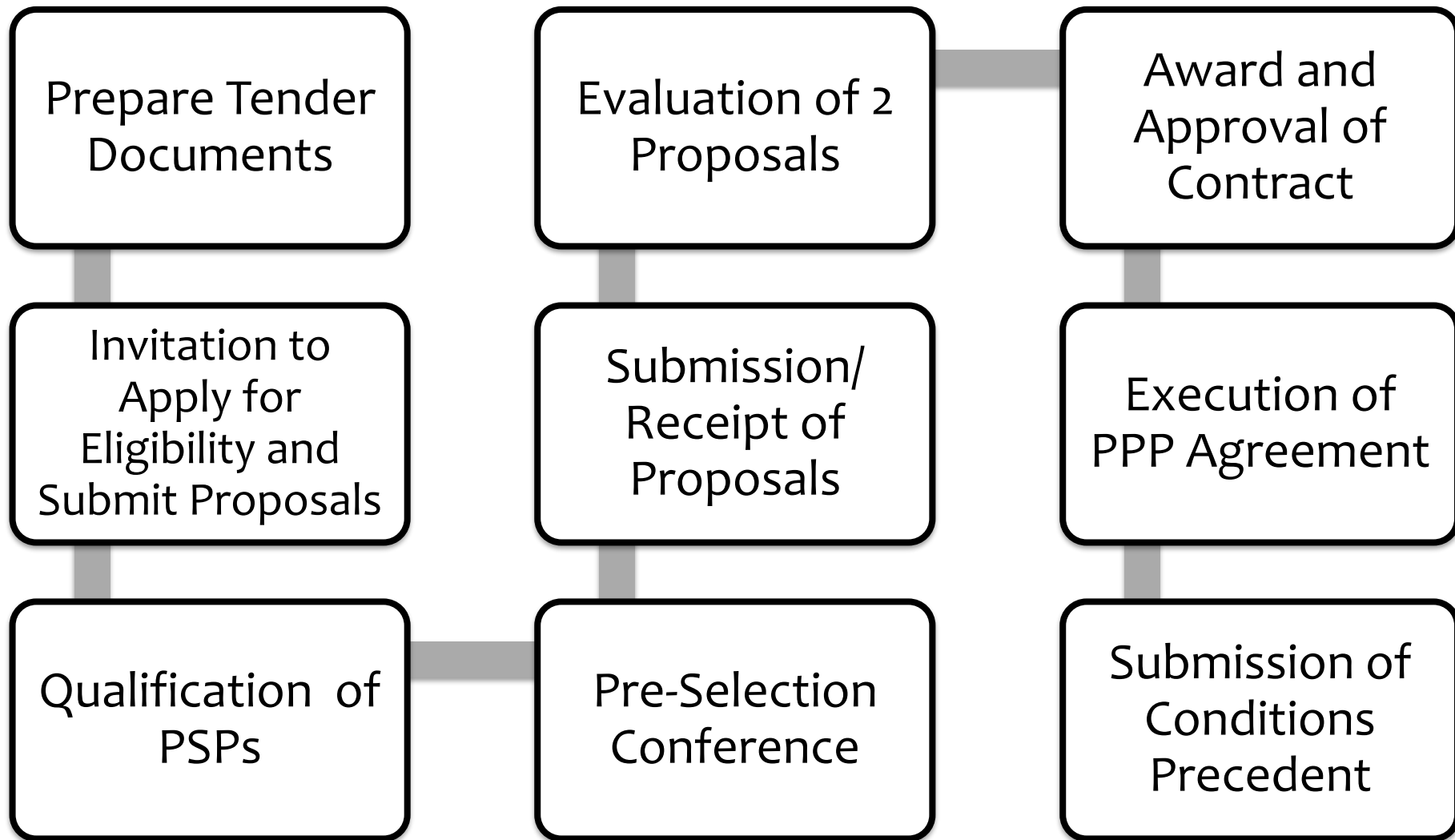
A diagram showing three PACT procedures. On the left, three white circles are connected by a vertical line. From the top circle, a diagonal line extends upwards and to the left. From the bottom circle, a diagonal line extends downwards and to the left. Each circle is connected to a horizontal rectangular box on the right.

Competitive Selection/ Open Bidding

Competitive Challenge/ Unsolicited Proposal

Competitive Negotiations

(1) Competitive Selection



And the **winner** is ...

Highest

- Payment to Government (BOT Law)
- Share in Revenues (JV)
- Purchase Price (Divestment)
- Rated Bid (Service/ Management Contract)
- Rental Payment to Government (Government as Lessor)

Lowest

- Government Subsidy (BOT Law)
- Tariff by End-User (BOT Law)
- Calculated Bid/ Price (Procurement of Goods and Infrastructure)
- Rental Payment by Government (Government as Lessee)

(2) Competitive Challenge

- Submission of UP with Project Study (FS), Draft Contract and PSP Valuation
- Initial Evaluation (Eligibility, Project Acceptability and Completeness)
- Letter of Acceptance (or Rejection)
- Conferment of Original Proponent (OP) Status*

Stage 1

Unsolicited Proposal

Stage 2

- Negotiations (Technical and Financial Terms)
- Certification of Successful (or Failed) Negotiations*
- [NEDA Approval]
- Public Consultations on Terms
- Gov't Valuation

Detailed Negotiations

- Tender Documents
- Invite Challengers
- Post Security
- Proposals Evaluated
- Right to: (1) Match; (2) Outbid; (3) Submit Better Financial Offer
- (4) Best and Final Offer
- Board/ Council Authorization
- Sign Contract
- [Reimbursement of Project Study Cost if OP not get Award]

Stage 3

Challenge Proper

Comparative Matrix

Item	GPRA	BOT Law-Variants	Joint Ventures	Long-Term Lease
Role of NEDA	Identification of priority projects	4-, 3- or 2- pass	GOCCs/ GIs under NEDA Guidelines: P150m or more; ₱ 2.5B cost or more; Government >50% Others: None	None
Bidding Parameter	Lowest Calculated (good and infra) or Highest Rated (services)	Highest Revenue or Lowest Subsidy/ Tariff	Highest Percentage Share	Highest Lease Rental (Best use)
Incorporation	N/A	PSP SPV	Incorporated or Unincorporated	PSP SPV or PSP original
Selection Procedures	Solicited/ Canvass (no unsolicited)	Solicited, Unsolicited or Limited Negotiations	Solicited, Unsolicited or Limited Negotiations	Solicited, Unsolicited or Limited or Competitive Nego

Comparative Matrix

Item	GPRA	BOT Law-Variants	Joint Ventures	Long-Term Lease
Contents of UP	N/A	Cover Letter, FS, UP, Draft Contract, Eligibility Documents	Cover Letter, FS or Study, UP, Draft Contract, Eligibility Documents	Cover Letter, Study, UP, Draft Contract, Eligibility Documents
New Technology	N/A	Required if Priority Project	Not required	Not required
Multiple Proposals	N/A	1 st in time approach	1 st in time approach (or best)	1 st in time approach (or best)
Rule on Exclusion	N/A	Upon acceptance, PSP becomes OP	Upon Successful Negotiations	Depends
Right of OP	N/A	Right to Match	Opportunity to submit better financial offer (or outbid, BAFO)	Depends

Changes in 2022 September BOT IRR

Incorporating
Cost-Sharing in
Subsidy

Allowing
Revenue-Based
PPPs

Adding Projects

Clarifying MAGA

Defining COA
Reach

Listing PTCs

Imposing
Guidelines for
Project Approval

Defining Grant
of Usufruct

Expanding the
concept of New
Technology

Limiting
Contract
Variations

Prescribing Firm
and Contingent
Liabilities

Streamlining
Selection
Procedures

Changes in 2023 NEDA JV Guidelines

Excluding JVs for
Energy and Pure
O&M

Capping Term to
25 years + 25 years

Requiring 2
Valuation of
Contributions

Prescribing PrC
and GCG approval
for divestment

Changing to
Feasibility Study

Expanding Role of
NEDA-ICC

Mandating Public
Consultations

Limiting
Participation Fees

Stating PSP No
Pending case vs.
Government

Setting Public
Disclosure of
Proposal

After allowing
proposals,
choosing Best

Clarifying
Modified
Challenge and
BAFO

The Post-Award Requirements

10 PPP POST-AWARD REQUIREMENTS

1. INCORPORATION



2. FINANCIAL CLOSURE



3. LGU PERMIT



4. ENVIRONMENTAL CLEARANCE



5. FRANCHISE



6. REGULATORY APPROVALS



7. RIGHT-OF-WAY



8. SUPPLY CONTRACT



9. INSURANCE



10. PEOPLE'S SUPPORT





The Pact

PPP CONTRACT:

10 SECTIONS



PARTIES



PROJECT



MODALITY



TERM



CONTRIBUTIONS



RISKS



GOVERNANCE



APPROVALS



AMENDMENTS



ROLES



www.albertocagra.com



09175353823



alberto agra



alberto.c.agra@gmail.com

Thank you.



End of Lecture Proper

Question & Answer SEGMENT



For your query, consulting requirements or request for in-house training programs, please contact:

Manila lines: (+63 2) 8556-8968 or 69

Telefax: (+63 2) 8842-7148 or 59

We invite you to visit our website **www.cgbp.org** for upcoming best practices programs.