



# PPPs in/ by Metro-Iloilo: The PPP Code and its **IRR**

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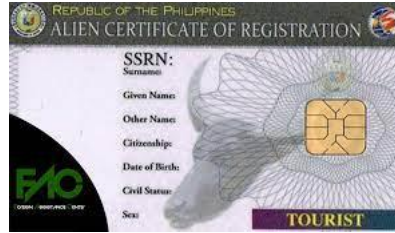
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# PPP Projects



# Quizzer: True or False



1. All possible/ permissible PPP arrangements are governed under the PPP Code.
2. LGUs can enact their own PPP Ordinances.
3. Metro-Iloilo LGUs can undertake PPP Projects.
4. All PPP Projects must be approved by NEDA.
5. The Approving Body for LGU PPP Projects is the Sanggunian.
6. Subsidies are allowed for PPP Projects.
7. Unsolicited Proposals must first be submitted to the PPP Center.
8. The PPP Center can determine if an unsolicited proposal is complete and if it contains false or erroneous assumptions.
9. The maximum period of PPP contracts is 50 years.
10. A PPP Contract cannot be amended.

# Presentation Flow: 7 Ps



1  
Policies

2  
Parties

3  
Projects

4  
Partnership  
Schemes

5  
Permissions

6  
Procedures

7  
Pact



# (1) Policy

# PPP Code and IRR



Dates	Milestones/ Activities
December 5, 2023	Republic Act No. 11966 (Public-Private Partnership Code) signed into law.
December 23, 2023	PPP Code became effective.
March 22, 2024	IRR published.
April 6, 2024	IRR will take effect.



# PPP Policies



<b><i>BOT Law and IRR</i></b>	Repealed or modified accordingly <i>IRR: Repealed</i>
<b><i>NEDA JV Guidelines</i></b>	Repealed or modified accordingly <i>IRR: Repealed</i>
<b><i>AA PPP Guidelines</i></b>	Repealed or modified accordingly
<b><i>LGU PPP Ordinances</i></b>	Repealed or modified accordingly

# AA and LGU Authority



“Upon effectivity of this Code, **no other JV guidelines, PPP guidelines, codes, or ordinances**, whatsoever may be enacted, issued and/or used by any **government entity** to enter into PPPs, **except those that are enacted, issued, and/or used in accordance with this Code and its IRR.**” (*Last paragraph, Section 35, PPP Code*)

- Under the **Principle of Subordinate Legislation and Hierarchy of Policies**, AA guidelines/ LGU ordinances **must not be inconsistent** with statutes such as the PPP Code.
- This is an **implied restriction** in local legislation and rule-making.
- AAs/ LGUs can issue guidelines/ enact ordinances on **specified PPP arrangements** that **not covered** the PPP Code.





# PPP Existing Contracts

<b><i>Existing Contracts</i></b>	Governed by the agreements <i>(PPP Code suppletory application)</i>
<b><i>Existing Franchises</i></b>	PPP Code Section on Variation/ Expansion/ Extension applicable <i>(provided not impair substantive rights)</i>



# **(1.1) PPP Defined**

# PPP defined



- A **contractual** arrangement between an **Implementing Agency (IA)** and a **Private Partner (PP)**
- to **finance, design, construct, operate, and maintain**, or any combination or variation thereof,
- **infrastructure or development projects** and services which are **typically provided by the public sector**,
- where each party **shares in the associated risks** and
- where the **investment recovery** of the PP is **linked to performance**.

# Nature of PPPs



**Implementing  
Agency**

**Private  
Proponent**



**PPP  
Project**

## *Aspects:*

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



# Rationale of PPP

- **Indispensable role of the private sector**, encourage private enterprise, and provide incentives to needed investments
- Enabling environment for the private sector to **mobilize its resources** to finance, design, construct, operate, and maintain infrastructure or development projects and services
- **Public interest** by providing affordable, accessible, and efficient public services
- **Financing** infrastructure and other development projects and services through all means available to effectively meet the objectives of the government



# Rationale of PPP

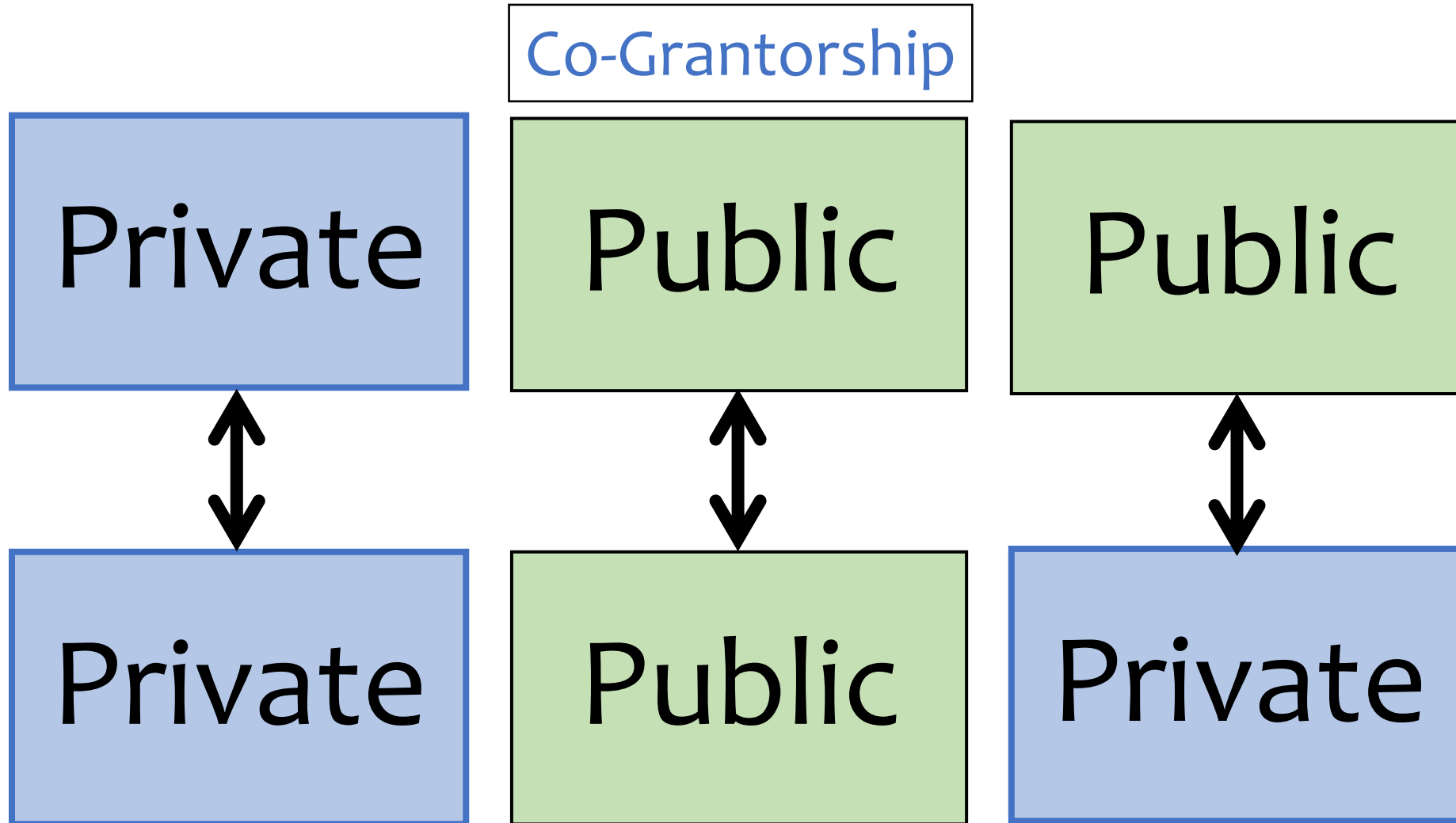
- **Better quality of PPP Projects** at lower costs
- **LGU local autonomy**, as self-reliant communities, more effective partners in the attainment of national goals
- **Integration** of climate resilience, sustainability, and gender and development policies and programs
- Open, fair, transparent, and competitive **selection** as the central tenet for securing private investment in PPP projects
- Subject partnerships that have **not been submitted through the administrative process** defined as PPPs under the Code under its jurisdiction and rules





## **(2) Parties**

# 3 Levels of PPPs





# IAs: *Public Partners*

## National

1. National Government
2. State University and College
3. Government-Owned and -Controlled Corporation
4. Government Instrumentality with Corporate Powers
5. Water Districts
6. Government Financial Institutions
7. Economic Zones

## Local

1. Local Government Unit
2. Local University and College



# Private Party

- **Private Partner** - private sector entity determined to be **financially, legally, and technically capable** to undertake obligations under an awarded PPP contract (IA may require members to form a **Special Purpose Company**)
- **Private Proponent** - private sector entity which has **submitted bid** in relation to a Solicited Project, or a private sector entity which has **submitted an Unsolicited Proposal**; may be **Filipino or foreign-owned**, and may engage the services of a foreign Contractor or foreign Facility Operator, subject to requirements and limitations provided under the Constitution, existing laws, rules, and regulations



# Private Party

- **Facility Operator** - any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the Private Partner, that shall be responsible for **operating and/or maintaining a facility**
- **Contractor** - any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the Private Partner, that shall be responsible for the **construction and/or supply of equipment or services** for PPP Projects



## **(2.1) Public Governance**



# PPP Governing Board



1. Chairperson: NEDA Secretary
2. Vice-Chairperson: DOF Secretary
3. Secretariat: PPP Center
4. DBM
5. DOJ
6. DTI
7. DILG
8. DENR
9. CHED
10. ES
11. PPP Center ED
12. Private Sector Representative from Infrastructure Sector

# PPP Governing Board



- **Overall policy-making body** for all PPP-related matters
- Responsible for setting the **strategic direction** of the PPP Program and PPP Projects
- Responsible for creating an **enabling policy** and institutional environment for PPP
- Promulgate PPP **policy matter opinions**
- Issue the **IRR** (Members form part of IRR Committee)

Prescribe guidelines on:

- improving **ease of doing business**
- **reviewing and approving Local PPP Projects**
- **negotiations** for unsolicited proposals
- monitoring the **compliance of the parties with PPP contracts**
- determination of **Termination Payments** and related reportorial requirements
- **Project Development and Monitoring Facility**
- **LGU PPP Risk Management Fund**

# Approving Bodies



NEDA  
Board

NEDA  
ICC

Sanggunian

LUC Board

Cabinet  
Secretary

GOCC/ GI  
Board

# National Economic and Development Authority (NEDA) Board



- Approve National Projects ( $\geq$  P15B Project Cost)

## Investment Coordination Committee (ICC)

- Recommend to Board ( $\geq$  P15B )
- Approve National Projects ( $<$  P15B) subject to conditions
- Approve Local Projects with **Government Undertakings** using national government funds (disapproval shall not be construed as a disapproval of the Local PPP Project)
- Approve **Availability Payments**
- Formulate guidelines, forms, and templates that shall be used by IAs and Approving Bodies in **reviewing and approving the PPP Project**
- Review, evaluate and **update P15B Threshold** (prudence & reasonableness)
- Issue **Generic Preferred Risk Allocation Matrix (GPRAM)**



# Department of Finance (DOF)

- The processing of **ODA agreements** shall adhere to policies, rules, and procedures, and/or guidelines applied for the purpose, including those issued by or that may be issued by the DOF
- The Approving Body/ LDC may consult with the DOF prior to approval in respect of the feasibility of the **Government Undertakings and/or Availability Payments**
- Reviewing Body for National PPP Projects and Local PPP Projects with National Government Undertaking or Availability Payments (**initial comments on PPP Contract and clearance**)
- IA may also involve the DOF to assist in the **negotiation process**
- DOF must be informed of **changes to PTCs** of draft PPP Contract

# PPP Center



1. Assist IAs in identifying, prioritizing, developing, and maintaining a pipeline of **PPP Projects**
2. Provide project **advisory services** and technical assistance to IAs, Approving Bodies
3. Facilitate the **appraisal and approval** of PPP Projects by **NEDA**
4. Review **contracts** for National PPPs
5. Require the submission of PPP Project **documents** from IAs
6. Provide **regular monitoring** and status reports on the implementation of all PPP Projects
7. Manage and administer the **Project Development Management Fund**
8. Manage and administer the **PPP Risk Management Fund**
9. Serve as **Secretariat for IRR Committee**
10. Coordinate with NEDA-ICC in formulation of **guidelines, forms, and templates** that shall be used by IAs and Approving Bodies in **reviewing and approving** the PPP Project
11. Coordinate with Regulatory Agencies in the drafting of **guidelines, frameworks, or mechanisms** for consultation, review, and approval of initial **tolls, fares, fees, rentals, and other charges**
12. Determine **completeness** of unsolicited proposals and appropriate Approving Body
13. Assist IAs during **negotiations** of unsolicited proposals
14. Issue **non-policy matter opinions**
15. Act as **Procurement Agent**



# Pre-qualification/ Quali, Bids and Awards Committee (PBAC) Composition (Min.)



## National IAs

1. Chairperson – At least a third ranking IA official
2. Secretary – A legal IA officer
3. IA officer knowledgeable in finance
4. IA officer knowledgeable in procurement
5. IA officer knowledgeable in the management/ operation in the technical aspects or requirements of the PPP Project

## Local IAs

1. Chairperson – the Administrator or at least a third ranking permanent official of the local IA
2. IA Treasurer or Accountant
3. IA Planning and Development Coordinator or Engineer of the Implementing
4. Legal officer of the LGU (if none, external legal advisor or higher LGU)
5. A representative from and selected by the local *Sanggunian* or by the LUC Board designated through a resolution

Nos. 2-5: can be external consultants/ entities

# PBAC Non-Voting Members and Observers (Local)



## Non-Voting

1. Local Economic Development and Investment Promotion officer
2. PPP Center
3. 2 representatives from CSOs, POs, and NGOs (members of the LDC)
4. Regulatory Body

## Observers

1. COA
2. DILG Field Unit
3. NEDA Regional Office
4. SEC-registered association related to PPP Project

# IA PBAC: Functions



- Responsible for all aspects of pre-bidding and bidding process in solicited proposals
  - preparation of the tender documents
  - publication of the Invitation to Pre-qualify and Bid
  - pre-qualification of prospective bidders
  - conduct of pre-bid conferences and issuance of supplemental notices
  - interpretation of the rules regarding the bidding
  - conduct of bidding
  - evaluation of bids
  - resolution of disputes between bidders
  - recommendation for the acceptance of the bid and/or for the award of the PPP contract



# IA PPP Units

- IA may create PPP Units (planning, overseeing, implementing, and monitoring the PPP Projects)
  - New unit or office
  - Existing unit or committee
- PPP Center to assist

Composition (minimum for National while discretionary for Local; may be outsourced)

1. Senior Official (at least 3<sup>rd</sup> ranking)
2. Technical – Project Development
3. Technical – Planning
4. Technical – Contract Management
5. Finance
6. Legal

# Regulatory Agencies

*TRB, CAAP, LTFRB, etc.*



## Mandate (defined by Charters)

- Issue and publish **guidelines**, frameworks, or mechanisms for consultation, review, and approval of **initial tolls**, fares, fees, rentals, and other charges and adjustments thereof
- Approve and uphold the **initial tolls**, fares, fees, rentals, and other charges and adjustments thereof
- Approve any **decrease in IA revenues or profit**
- Adopt a **conflict mitigation and management plan** if will implement a PPP Project that it regulates
- Approve **Alternative Sources of Funding** like bonds

## Considerations

- When **no appropriate regulatory body** – regulation by contract
- **LGUs may create a local rate-setting body**
- Regulatory action is considered a **contingent liability event**
- **MAGA** includes unanticipated regulatory risks



# Courts

- Courts (except the SC) cannot issue temporary restraining order, preliminary injunction, preliminary mandatory injunction, temporary environmental protection order, or similar **temporary or provisional reliefs or remedies**
  - Against any **IA or the PPP Center**, its officials or employees, or any person or entity, whether public or private acting under the government direction
  - Applies in all cases, disputes, or controversies instituted by any **person**, including cases filed by bidders or those claiming to have rights through such bidders
- Not apply when the matter is of **extreme urgency** involving a **constitutional issue**, such that unless a temporary restraining order is issued, **grave injustice and irreparable injury** will arise



# Courts: Covered *PPP-related Acts*

1. Evaluation, acceptance, and rejection of USPs
2. Bidding, rebidding, or declaration of failure of bidding
3. Awarding of any PPP contract
4. Acquisition, clearance, and development of the ROW, site, or location of any PPP Project
5. Construction, operation, and maintenance of any PPP Project
6. Commencement, execution, implementation, termination, or rescission of any PPP contract
7. Undertaking or authorization of any other lawful activity necessary for such PPP Project



## **(3) Projects**





# PPP Projects

- **Infrastructure or development projects** and services which are **typically provided** by the **public sector**
- Consistent and responsive to national, local, and sectoral **development and investment plans**
- Part of list **submitted** to appropriate oversight agencies, NEDA, RDC, Sanggunian and the PPP Center
- Included in the **Consolidated List of Investment Programs (CLIPs)**
- All PPP Projects which will **interconnect or interface** with a local or national facility shall be required to submit a MOA containing an interconnection and/or interface plan

# Consolidated List of Investment Programs (CLIPs)



## Requirements

- All plans must be submitted to NEDA and PPP Center within 30 days from IRR effectivity (**May 5**)
- Without prejudice to UPs
- If not submitted, excluded from list of PPP Projects
- Allows for updating of list
- For National Projects: NEDA, RDCs and PPP Center
- For Local Projects: NEDA, RDCs, PPP Center and Local Sanggunian

## Information Needed

- Name and brief description of the project
- Indicative Project Cost
- Project location
- Plan or investment program where the PPP Project is included
- Status of the Project
- Development costs
- Recommended objectives, goals and desired outcomes



# Developing PPP Projects

- Legal, technical, economic, financial, and commercial **feasibility** of the project
- **VfM** of the proposed project
- Optimal **risk allocation**
- Affordability of **fees** or tariffs
- **Climate resilience** and sustainability
- Social and environmental **safeguards**
- Requires **stakeholder consultations** and analyses

- **Commercial feasibility**
- **Market Acceptability**
- **Lessons learned** from previous or ongoing PPP Projects
- **Whole-of-government approach**

Infrastructure or Development Projects and Services - construction, improvement, rehabilitation, repair, and/ or maintenance of facilities or provision of services for **use by the public** that underlie and enable, sustain, and enhance the economic and social development of the country.

## PPP 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

- |                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  + <br>Hard and Hard |  + <br>Soft and Soft                                                                                               |
|  + <br>Hard and Hard |  +  + <br>Hard, Soft and Soft |
|  + <br>Hard and Hard |  +  + <br>Hard, Hard and Soft |

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BM GRAPHICS: JOB RUZGAL





# 29+ Eligible Types of Projects

1. Highways, including expressways, roads, bridges, interchanges, tunnels, viaducts, and related facilities
2. Land transportation systems, including railways, road-based transportation systems, bus rapid transit, high priority public utility vehicle systems, active transportation, transit-oriented developments, public utility vehicle stations, transport plazas, intermodal terminals, park and ride, and related facilities
3. Transport and traffic management projects, including transportation databases, automated fare and toll collection systems, traffic signaling, traffic monitoring systems, traffic enforcement systems, congestion and management systems, and related facilities
4. Port infrastructure like piers, wharves, quays, storage, handling, roll-on roll-off facilities, and other related facilities



# 29+ Eligible Types of Projects

5. Maritime infrastructure like navigable inland waterways, shipping and ferry services, shipping vessels or components thereof, shipping and freight enterprises, and related facilities
6. Airports, air navigation, and related facilities
7. Power generation, transmission, sub-transmission, distribution, including hydropower plants, and related facilities
8. Downstream oil and gas industry facilities, and other energy-related facilities
9. Energy efficiency and conservation, renewable energy, and electric vehicle charging stations, and related facilities
10. Telecommunications, backbone network, terrestrial, aerial, and space infrastructure, and related service facilities



## 29+ Eligible Types of Projects

11. Information technology networks and database infrastructure, geo-spatial resource mapping, cadastral survey for resource accounting and planning, and related facilities
12. Irrigation and related facilities
13. Water supply, sewerage, drainage, waste water and water treatment, desalination, and related facilities
14. Educational infrastructure, including technological equipment used to facilitate learning and teaching, and related facilities
15. Health infrastructure, hospitals, clinics, research facilities, clinical laboratories, and other related facilities
16. Multi-purpose water resources projects covering a combination of irrigation, power, water supply, flood control, and related facilities





## 29+ Eligible Types of Projects

17. Land reclamation, dredging, flood control projects, and related facilities
18. Industrial and tourism estates or townships, including ecotourism projects such as terrestrial and coastal/marine nature parks, among others and related infrastructure facilities and utilities
19. Government buildings, convention centers, and other related facilities
20. Urban redevelopment, townships, and housing projects
21. Heritage preservation and adaptive reuse projects
22. Markets, slaughterhouses, trading posts, and related facilities
23. Warehouses and post-harvest facilities
24. Public fish ports and fishponds, including storage and processing facilities





## 29+ Eligible Types of Projects

25. Agri-fishery industrial hubs, agribusiness facilities, agricultural research facilities, agricultural estates, agrilogistics systems, contract farming, and related facilities
26. Cold chain systems or centers, and related-facilities
27. Prisons, lease of security-related government assets, O&M of military facilities and equipment, and other national defense or security-related facilities
28. Environmental and solid waste management related facilities such as but not limited to waste collection, transportation and disposal facilities, transfer stations, composting plants, material recovery, landfill, and tidal barriers, among others

# 29+ Eligible Types of Projects



29. Climate change adaptation and mitigation and disaster risk reduction and management infrastructure projects, biodiversity conservation projects, and related facilities
30. Other Infrastructure or Development Projects and Services, as may be authorized by the IA pursuant to the Code and this IRR, and following applicable laws, rules, and regulations

(Related facilities may include commercial spaces within the project scope)



# Value for Money (VfM)

- Effective, efficient, and economic **use of resources**, which requires the evaluation of relevant costs and benefits, along with an assessment of risks, and of non-price attributes and/or life cycle costs, as appropriate.
- **Price alone** may not necessarily represent VfM
- All PPP Projects must yield sufficient VfM
- IAs shall identify, develop, and prepare their respective lists of PPP Projects guided by VfM
- Approving Body shall assess PPP Project based on VfM



# Government Undertakings

*Not allowed for Unsolicited Proposals*

Any **form of contribution and/or support**, which the **Government** may extend to a PP for the implementation of PPP Projects:

- VGF and other forms of subsidy
- Payment of ROW related costs (allowed if gov't received appropriate compensation but not lower than value of costs)
- Performance undertaking (**undertaking by government other than the IA in assuming responsibility for the performance of the Implementing Agency's obligations under the contractual arrangement including the payment of monetary obligations, in case of default**)



# Government Undertakings

*Not allowed for Unsolicited Proposals*

- Additional exemptions from any tax **specifically provided for the PPP Project through a legal issuance** other than those provided for by law
- Guarantee on Demand
- Guarantee on Loan Repayment
- Guarantee on Private Sector Return
- Government Equity (allowed for JVs)



# Government Undertakings

## *Not allowed for Unsolicited Proposals*

- Contribution (allowed for JVs) of assets, properties, and rights (compensation shall be considered appropriate if the value of the compensation is at least equal to the value of the contribution or undertaking as determined by a Third-party Appraiser)
- Monetary payment of Contingent Liability through the PPP Risk Management Fund of the national government, in the case of Local PPP Projects
- Credit Enhancements (support to PPP Project and Service contingent upon the occurrence of certain events and/or risks, e.g. government guarantees on the performance, or the obligation of the IA)



# Not Government Undertakings

- Availability Payments
- Permits, clearances, licenses, or endorsements from national government agencies required for Local PPP Projects

*[Allowed for Solicited Projects and Unsolicited Proposals]*



## **(4) Partnership Schemes**



# Universe of PPP Arrangements



























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

# PPP RESOURCE EXCHANGE



## Delineation of Functions ("Division of Labor")

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



# PPP Code-Covered Arrangements

PPP as defined/ satisfies elements or as may be approved by Approving Body

1. Joint Ventures
2. Toll operation agreements or supplemental toll operation agreements, or any contractual arrangements involving the Construction, O&M, or a combination or variation thereof, of toll facilities
3. Lease
4. BOT, BT, BLT, BOO, BTO, CAO, DOT, ROT and ROO
5. Operate and Maintain



# Joint Venture: Definition

- IA (proprietary function) and the PP
- Parties pool resources comprising of capital, services, or assets, including equipment, land, or intellectual property
- Joint undertaking
- Specific investment activity
- Infrastructure or Development Project (typically provided by Public Sector)
- Within a specific period of cooperation



# Joint Venture: Requirements

- Consistency with IA **mandate/ charter**
- IA and Approving Body-approved **Parameters, Terms and Conditions (PTCs)**
- Equity contribution **not exceed 50%** of Project Cost/ Outstanding Capital Stock
- Fair **valuation** of Equity Contribution
- **Formation of JV** not prevent the parties from entering into other JV PPP contracts with other parties or from profitably entering into other business ventures or markets, provided not compete with the first JV for the same product and geographic market
- Reversion to Government or **Divestment**



# Joint Venture: JVC

- The shares of the IA and the PP in the **profits, losses, assets** acquired and/or constructed, and any other interests derived from the JV shall be proportionate to their **respective contributions**
- The IA shall be represented in the **Board** of the JVC. The composition of the Board shall be based on the JV Partners' proportional contribution. The JV Partners may agree for the **IA to have greater representation in the Board**.
- The IA and the PP shall be entitled to receive **dividends** from the net profits proportionate to the equity contributions of each party (IA may have higher return; more favorable terms; **IA dividends may be used to offset against payments**)



# Lease

- Lease with:
  - Rehabilitate
  - O&M, and
  - Provision for Working Capital and/or Improvements
  - of an existing land or facility owned by the government
  - for a fixed period of time covering more than 1 year
  - Includes/ provides public infrastructure or development services
- Lease as component of PPP



# 10 Exclusions

1. Procurement of Infrastructure Projects (GPRA)
2. Exclusively ODA-Funded Infrastructure Projects
3. Management Contracts which do not possess PPP elements (excludes O&M PPP contracts)
4. Service Contracts (coal service, petroleum, mining, renewable energy and per COA and DBM)
5. Divestments or Dispositions (taking away, depriving, withdrawing of an authority, power or title over a government asset)





# 10 Exclusions

6. Corporatization or transfer of government assets into a public corporation
7. Incorporation of Subsidiaries with Private Sector Equity
8. Onerous Donations (subject to burdens, charges, or future services equal to or more in value than the thing donated)
9. Gratuitous Donations (disposed by a person without charge, in favor of another who accepts it)
10. JV Agreements and leases involving **purely commercial arrangements** that neither provide nor include public infrastructure or development services



## 10 Exclusions

- If excluded PPP arrangements **satisfies elements of PPP** under the PPP Code and IRR, covered under PPP Code and IRR
- The IA may request for a **non-policy matter opinion** from the PPP Center to determine whether a project is covered by the PPP Code and this IRR
- Subject partnerships that have **not been submitted through the administrative process** defined as PPPs under the PPP Code under its jurisdiction and rules



## **(5) Permissions**



# Approval of Local PPPs

## *Regardless of Project Cost*

- Approved by **Sanggunian** (if LGU) or **Board** (if LUC) (**non-delegable**)
- Confirmation/ **endorsement** by **LDC** prior to approval (*30 days, approval by inaction*)
  - Review if aligned/ consistent with local development plans
  - Review project and identify concerns
  - Submit confirmation and results of review



# Approval of Local PPPs

## *Regardless of Project Cost*

- Approved by **NEDA-ICC** (RDC endorsed) - Government Undertakings using national government funds
- Endorsement by **National Government** (through RDC) - Local PPP Projects affecting national or sectoral development plans and national projects (*once RDC endorsement secured, LDC shall endorse*)
- Clearance from **Statutory Counsel** - compliance with approved PTCs and applicable laws
- Clearance from **DOF** - if there is national government undertaking (*prior to LDC confirmation*)



# Approval of PPPs: Completeness

- Complete feasibility study
- Traceable economic and financial models in electronic copy
- Proposed parameters, terms, and conditions (PTCs)
- VFM analysis
- Valuation report, as applicable
- Documentation of the stakeholders' consultations conducted, including the participating sector or communities consulted
- Other documents, information, or materials that may be required by the ICC in its approval guidelines, including the forms and templates, needed to commence project evaluation



# Complete Feasibility Study

1. Problem Definition/ Objectives
2. Project Description
3. Project Context
4. Sectoral Program
5. Regional and Spatial Context
6. Expected Outcomes and Key Success Indicators
7. Analysis of Technical Solutions
8. Project Costs
9. Legal Due Diligence
10. Demand and Supply/ Market Analysis
11. Market Sounding Feedback (for Solicited)
12. Proposed Tariff Structure
13. Financial Analysis
14. Economic Analysis
15. Social and Environmental Analysis
16. Risk Allocation
17. VfM Analysis (for Solicited)
18. Contractual Arrangement Options
19. Job Creation Information
20. Land Acquisition/ Resettlement Action Plan
21. Heritage Impact Assessment
22. Geotechnical Report
23. Description of Products or Services to be provided
24. Description of the Geographic and Catchment Area

# Parameters, Terms & Conditions (PTCs)



1. Project Scope
2. Contractual Arrangement
3. Contract Duration
4. Rights and Obligations of Parties
5. Performance Standards and Key Performance Indicators
6. Safeguards for Government and Public
7. Investment Recovery Schemes
8. Revenue share, if any
9. Government Undertakings
10. Proposed Risk Allocation
11. Contingent Liabilities
12. Bid Parameter
13. Ceiling for Debt-to-Equity Ratio
14. Proposed Public Bidding Process – single or 2-stage (if solicited)
15. Proposed Period for Comparative Challenge (90 days to 1 year)



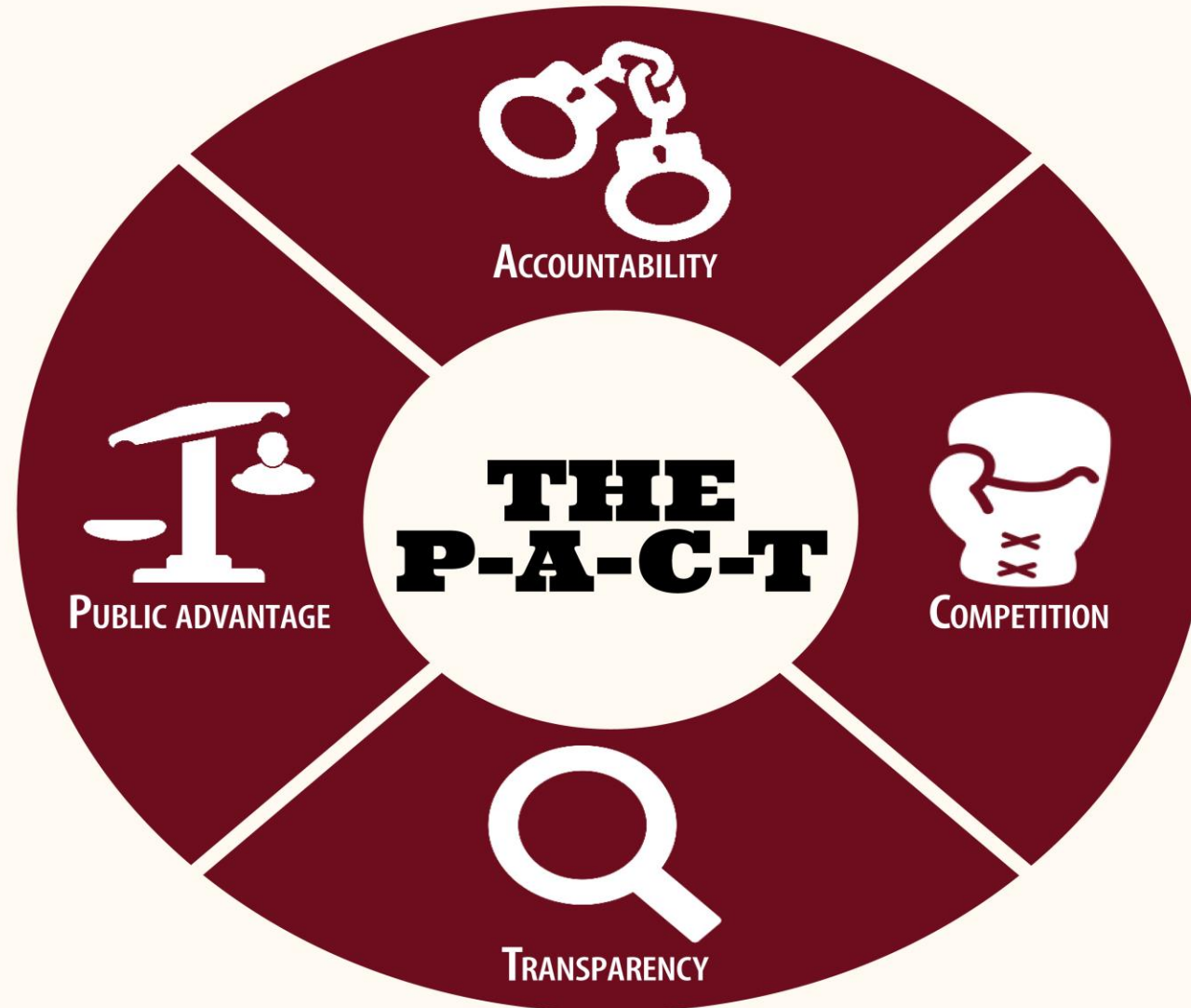


## **(6) Procedures**

# PPP SELECTION REQUIREMENTS



1. Open
2. Fair
3. Transparent
4. Competitive





# Solicited Project: **Tender Documents**

- Instructions to Bidders
- Draft PPP contract reflecting the PTCs as approved by the appropriate Approving Body
- “Bid Form” reflecting the required information to properly evaluate the bid proposal
- Forms of bid and performance securities
- Requirements and timelines/ milestones of agencies concerned in granting of franchise, if applicable
- Other documents as may be deemed necessary by the IA



# Solicited Project

- Public bidding initiated by IA
  - Stages: Single-Stage or Two-Stage (qualification requirements and/ then bid proposals – sequential or simultaneous)
  - Manner: Manual or Electronic
  - IA right to reject any and all bids, waives any defect which do not constitute a material deviation, reservation or omission
- Private Partner/ Awardee
  - Satisfies all pre-qualification and eligibility requirements
  - Submitted the most responsive bid to the bid parameter proposed by the IA (next most responsive)
  - Complied with PTCs
  - Allows substitution in composition of pre-qualified PP prior to bid submission (substitute has equal or better qualified)

# Solicited Project: **Technical Proposal**



- Compliance statements with regard to the **technical parameters** as stated in the bid/tender documents
- **Operational feasibility** of the PPP Project, which shall indicate the organization, methods, and procedures for the operation and maintenance of the PPP Project under bidding
- **Technical soundness**/ preliminary engineering design, including the proposed project timeline
- Preliminary **environmental assessment**, which shall indicate the probable adverse effects of the PPP Project on the environment and the corresponding mitigating measures to be adopted

# Solicited Project: **Technical Proposal**



- **Project Cost** as proposed by the bidder
- **Financing plan** and third-party valuation of the bidder's contribution, in the case of JV arrangements
- **Bid security** (cash, certified check, manager's check, letter of credit, or bank draft/ guarantee issued by a reputable local/foreign bank, or a surety bond callable on demand issued by the GSIS or an entity duly registered and recognized by the Office of the Insurance Commission):

Project Cost	Required Bid Security
Less than Php 5 billion	2.0% of the Project Cost
Php 5 billion to less than Php 10 billion	Php 100 million + 1.5% of the Project Cost excess over Php 5 billion
Php 10 billion and above	Php 175 million + 1.0% of the Project Cost excess over Php 10 billion



# Solicited Project: **Financial Proposal**

- Compliance statements with regard to the **financial parameters** as stated in the bid/tender documents
- **Propose Project Cost**, operations and maintenance cost and other related costs
- **Project Financial Scheme**, which may include the amount of equity to be infused, debt to be obtained for the PPP Project, and sources of financing
- **Financial Proposal** corresponding to the bid parameters set by the IA
- **Financing plan and third-party valuation** of the bidder's/challenger's contribution, in the case of JV arrangements
- Other documents



# Solicited Project: Most Responsive Bid

## Highest

- Payment to Government (Revenue-based)
- Share in Revenues (JV)
- Rental Payment to Government (IA as Lessor)

## Lowest

- Government Subsidy/ Support
- Tariff by End-User
- Rental Payment by Government (IA as Lessee)

**MRB:** bid that conforms, in all material respects, to the bid solicitation requirements and approved bid parameters, and the one that is most advantageous to the government





# Solicited Project

## Failure of Bidding

- No bids are received
- No eligible bidder
- No complying bids
- Winner bidder refuses to accept award
- IA unable to execute PPP Contract
- Non-agreement on resulting terms after negotiations when single complying bid

## Single Complying Bid

- After advertisement
  - >1 bidder applied for pre-qualification but only 1 met the pre-qualification requirements
  - 1 bidder applied for and met the pre-qualification requirements
- After pre-qualification
  - >1 bidder, only 1 submitted a bid
  - >1 bidder submitted bids but only 1 compliant

# Unsolicited Proposal (USP): 7 Stages

*Simplified per PPP Code and IRR*



- USP Completeness
- Appropriate Approving Body
- If complete, endorsed to Implementing Agency (IA)

- Successful (or failed) negotiations
- If successful, PP conferred Original Proponent Status (OP)
- USP and PTCs submitted to Approving Body for approval (120 days)

- Awarded to OP (no challenger or OP able to match superior offer) or Challenger (OP not match)
- NOA subject to conditions (20 days)

(1) Private Proponent (PP) prepares USP

(2) PPP Center checks USP (10 days)

(3) IA undertakes Detailed Evaluation (90 days)

(4) IA and PP negotiate (≠150 days)

(5) IA conducts Competitive Challenge (90-365 days)

(6) IA issues Notice of Award (NOA) (7 days)

(7) IA and PP execute PPP Contract (5 days)

PP submits to PPP Center

IA accepts or rejects

Right to Match by OP

PP compliance with conditions



# USP Completeness

1. Complete Feasibility Study
2. Traceable Economic and Financial Models
3. Minimum Parameters, Terms and Conditions
4. Certification that USP has no Government Undertakings
5. Valuation Report
6. Proposed IA
7. Information on the qualifications of the Private Proponent
8. Draft PPP Contract
9. Project Site Plan
10. If UP involves ROW, ROW and resettlement plan

Information: not older than 3 years from submission (for valuation report, not older than 1 year)



## (7) Pact

# PPP Contract



- The law between the parties and the parties shall perform their respective **prestations, obligations, and undertakings** thereunder with **utmost good faith** with the end in view of **attaining the objectives** hereof.
- Once a PPP Contract is executed by the PP and the IA, a presumption arises that the **public interest** will be served by the implementation of the PPP Project covered thereby, and immediately upon application by the PP in accordance with the guidelines of the Regulatory Body concerned.

# Mandatory Provisions in a PPP Contract



1. specific contractual arrangement, term, and scope of work
2. minimum performance standards and specification
3. KPIs (to measure the progress or success of the PP), targets, and procedures for measuring and reporting results
4. implementation milestones, including those for securing other approvals and the project completion date
5. cost recovery scheme via proposed tolls, fares, fess, rentals, and other charges, as the case may be
6. obligation of the PP to disclose loan or financing documents

# Mandatory Provisions in a PPP Contract



7. liquidated damages
8. performance security requirements, including their validity and top-up mechanism procedures, contemplated under this IRR
9. minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workmen's compensation, third party liability, force majeure, or comprehensive general liability insurance, as may be applicable
10. acceptance tests and procedures
11. warranty period and procedures (after transfer) and warranty security
12. lock-in periods, as applicable

# Mandatory Provisions in a PPP Contract



13. grounds for and effects of contract termination, including formula for termination payment
14. conditions and procedures for lender step-in rights
15. conditions for acceptable permitted security interest
16. manner and procedures for the resolution of corruption
17. procedures for resolving disputes as detailed in this IRR
18. wind-up and transfer measures
19. compliance with all other applicable laws, rules, and regulations



# Mandatory Provisions in a PPP Contract



- 20. total cost of the project, project specifications and features
- 21. Gender, social, disability and environment safeguards
- 22. provisions on the use of dispute avoidance and ADR mechanisms
- 23. ownership or retention of patents, technology and consultant reports
- 24. monitoring, evaluation and reporting scheme/ plan for all safeguard-related mandatory provisions of the PPP Contract
- 25. a period within which Financial Close shall be achieved by the PP



# PPP Contract Review

## National PPP Projects

- PPP Center, for compliance with the approved PTCs
- Statutory counsel/s, for compliance with all other applicable laws, rules, and regulations
- DOF, for national Government Undertakings or Availability Payments

## Local PPP Projects

- Statutory counsel/s, for compliance with all other applicable laws, rules, and regulations
- DOF, for national Government Undertakings or Availability Payments



# Investment Recovery Schemes

Private Partner shall be allowed to recover its investments and earn reasonable profit

1. Revenue-based - refers to a scheme where the PP is authorized to charge and collect, in whole or in part, from the users **reasonable tolls, fares, fees, rentals, and other charges** subject to appropriate regulation; Where applicable, the PP may likewise be repaid in the form of a share in the revenue of the PPP Project
2. Availability-based - refers to a scheme where the IA commits to make **predetermined payments**, which do not take the form of charges paid by the users of the works or of the service, but of regular payments by the IA in **exchange of delivering an asset or service** in accordance with the PPP contract.
3. Supplementary/ Other investment recovery schemes:
  - a) Commercial **development rights**
  - b) Grant of a portion or **percentage of a reclaimed land**, subject to the constitutional requirements on land ownership and fair valuation



# Reasonable Rate of Return (RRoR)

- **Net gain of an investment** over a specified time period, expressed as an annualized percentage as prescribed by the appropriate Approving Body and reflected in the PPP contract
- Where the realized rate of return exceeds the prescribed RRoR, the **excess** shall be remitted to the National Treasury (“Clawback”)
- **Setting of RROR shall:**
  - Only be applicable to **single complying and responsive bids for a Solicited Project**
  - Consider **prevailing market conditions, risks** to be assumed by the PP, and **duration** of the project
- Prescribed by **Approving Body** and stated in **PPP Contract**
- Considered by Regulatory Agency in assessment of **public interest**



# Contingent Liability

- An obligation that may arise from events specified in a PPP contract, the occurrence, timing, and amount of which are **uncertain**
  - Regulatory action
  - Force majeure
  - Breach of government warranties
  - Material Adverse Government Action (MAGA)
  - Others
- Payment of CL from PPP Risk Management Fund

# Material Adverse Government Action (MAGA)



- Any act of the government which the PP had no **knowledge** of, or could not be reasonably expected to have had knowledge of, prior to the effectivity of the PPP contract, and that **occurs after the effectivity** of the PPP contract, other than an act which is authorized or permitted under the PPP contract, which:
  - specifically **discriminates** against the sector, industry, or project, and
  - has a **significant negative effect** on the ability of the PP to comply with any of its obligations under the approved PPP contract
- MAGA may include **unanticipated regulatory risks**
- CL covered by National/ LGU Risk Management Fund



# Government Takeover

## Temporary

- During a temporary takeover, the IA shall retain the tolls, fares, fees, rentals, and other charges from the PPP Project and shall be responsible for the corresponding costs to rectify, operate and maintain the PPP Project
- Contract term shall be suspended until the PPP Project or operations thereof is returned to the Private Partner
- When returned to PP
  - Compensation due to the PP
  - Adjustment of KPIs to the extent that defects in the PPP Project cannot be rectified
  - Warranty in favor of the PP that the PPP Project is capable of meeting the KPIs as adjusted

## Permanent

- Private Partner shall be entitled to claim Termination Payments
- Minimum period to be defined in the PPP Contract from the date of receipt by the Private Partner of a written takeover notice shall be deemed to be a permanent takeover



# Termination

## PPP contract shall:

- Define **all events** that may lead to its termination, including but not limited to, either party event of default, force majeure and other no-fault termination events, and other termination events, as may be agreed upon by the parties to the PPP contract.
- Provide for **remedies**, curing periods, lender step-in rights, remittance procedures, default interest rates, and written notice requirements agreed upon by both parties
- Indicate the **Termination Payment** (amount payable by the government or the PP on the occurrence of an event or series of events)

## Restrictions

- No termination without **exhausting** the corresponding remedy or curing period
- **Termination** shall take place only upon failure to remedy or cure the default in accordance with the PPP contract





# “Amendments”

## *PPP Contract Variation, Expansion or Extension*

- a. Changes in the agreed **schedule** or **parametric formula** to calculate tolls, fares, fees, rentals, and other charges and adjustments thereof, as stipulated in the PPP contract
- b. Decrease in the **IA’s revenue or profit share** derived from the project, except as may be allowed under a formula approved by the relevant regulatory or Approving Body
- c. Change in the approved **scope of works**, decrease in the performance standards, deferment of committed service levels or change in the contractual arrangement
- d. Extension in the **contract term**
- e. Any variation that will result in an increase in the **financial liabilities** of the government under the PPP Project
- f. Any allowable amendments and waivers which have same effect or consequence as (a) to (e)



# Accountability

- All **PPP contracts** - clearly **define the scope** of each party's accountability under the PPP contract
- **IA Head** shall at all times be accountable to PPP Projects
- **PP** shall likewise be held accountable for the works it has delivered and services it has rendered for a PPP Project







# Liability

- Imprisonment (3 – 6 years) and fine (P1M – P5M)
  - **Downgrading** the category of the Project Cost for purposes of evading the required approvals
  - Submitting of any **false information** or falsified documents
  - Neglecting or refusing to act upon an USP within the **prescribed period**
  - Performing any act which restricts **transparency** or tend to restrain the natural rivalry of parties or operates to stifle or suppress competition in the PPP process
  - **Withdrawing a bid**, after it shall have been declared the winner, or refusing award, without just cause for the purpose of forcing the IA to award the PPP contract to another bidder
  - **Violating provisions** on Approval of Projects, Solicited and Unsolicited Proposals, JVs, Amendments, Divestment, Conflict of Interest, Confidentiality of Information
- Anti-Graft and Corrupt Practices Act

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Together, let us learn-unlearn-relearn.  
*Thank you.*