PPPs with LGUs and GOCCs

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Flow of Briefing

- Awarded PPP Contracts
- Overview of PPPs
- JVs in General
- LGU JVs
- GOCC JVs
Awarded PPP Contracts
DAANG-HARI-SLEX LINK ROAD PROJECT

PPP FOR SCHOOL INFRASTRUCTURE PROJECT (PSIP) PHASE I

NAIA EXPRESSWAY (PHASE II) PROJECT

PPP FOR SCHOOL INFRASTRUCTURE PROJECT (PSIP) PHASE II

MODERNIZATION OF THE PHILIPPINE ORTHOPEDIC CENTER (MPOC) PROJECT

AUTOMATIC FARE COLLECTION SYSTEM (AFCS) PROJECT

MACTAN-CEBU INTERNATIONAL AIRPORT (MCIA) PASSENGER TERMINAL BUILDING PROJECT

LRT LINE 1 CAVITE EXTENSION AND O&M PROJECT

SOUTHWEST INTEGRATED TRANSPORT (ITS) SYSTEM

Cavite-Laguna Expressway (Calax) Project

SOUTH INTEGRATED TRANSPORT SYSTEM PROJECT

BULACAN BULK WATER SUPPLY PROJECT

AWARDED PROJECTS

12 PROJECTS

USD 4.45 BILLION

PHP 200.48 BILLION

(AS OF FEBRUARY 2016)
PROJECTS UNDER PROCUREMENT

14 PROJECTS

PHP 556.56 BILLION
USD 12.37 BILLION

(AS OF JANUARY 2016)
## JV/PPP Projects by GOCCs/GIs

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<th>Description</th>
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<td>Cagayan Airport (CEZA)</td>
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<td>Bulk Water Supply (Zamboanga City WD)</td>
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<td>3</td>
<td>Bulk Water Supply (Butuan WD)</td>
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<td>4</td>
<td>Develop, Rehabilitate and O&amp;M (Lingayen WD)</td>
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<td>5</td>
<td>Develop, Rehabilitate and O&amp;M (Lemery WD)</td>
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<tr>
<td>6</td>
<td>Develop, Rehabilitate and O&amp;M (San Carlos WD)</td>
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<td>7</td>
<td>Develop, Rehabilitate and O&amp;M (Tarlac WD)</td>
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<td>Develop, Rehabilitate and O&amp;M (Daraga WD)</td>
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<tr>
<td>9</td>
<td>Develop, Rehabilitate and O&amp;M (San Pedro WD)</td>
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<td>10</td>
<td>Develop, Rehabilitate and O&amp;M (Camiling WD)</td>
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<td>11</td>
<td>Bulk Water Supply (Tagum WD)</td>
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<td>12</td>
<td>Bulk Water Supply (Metro Ilolio WD)</td>
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9 LGU PPP (Non-JV) Projects

1. Mandaluyong City Marketplace (BT/ BOT)
2. Cebu Property Ventures Development (Corporatization)
3. Northern Samar Provincial Hospital Pharmacy (Lease, O&M)
4. Legazpi City Bus Terminal (Lease, BOT)
5. Tarlac City Slaughterhouse (ROT)
6. Tarlac City Common Terminal (DOT)
7. Tarlac City Business Licensing Division Building (BOT)
8. Passi City CityMall (Lease)
9. Batangas Terminal (Lease)
30 LGU JV Projects

1. Cavite Province Housing
2. Camarines Sur Water
3. Camarines Sur Wind Power
4. Iloilo City Ferry Terminal
5. Pasay City Reclamation
6. Paranaque City Reclamation
7. General Tinio Reservoir
8. Calamba Regional Government Center
9. San Juan City Columbarium
10. Nueva Ecija Business Hub
11. Valenzuela City Center
12. Valenzuela City Market
13. Bataan Transport Mall
14. Bataan Capitol Redevelopment
15. Cordova Reclamation
16. Tiwi Water Supply Improvement
17. Davao Port Development
18. Malabon Socialized Housing
19. Manila Dialysis Center
20. Manila Harrison Plaza
21. Manila Quinta Market
22. Manila Sta. Ana Market
23. Manila San Andres Market
24. Manila Trabajo Market
25. Manila Sampaloc Market
26. Manila New Antipolo Market
27. Manila Reclamation
28. Quezon Bulk Water, Hydro Power and Wind Power
29. Cebu-Cordova Bridge
30. San Luis Hydropower
Overview of PPPs
Implementation/ Funding Schemes

Public-Private Partnerships

Loans/ Grants/ ODA/ MDFO

National/ Local Government Funds

Public Entity

Any 2 or all of the above
Nature of PPPs

Components:
- Project
- Design
- Finance
- Construction
- Operations
- Governance
- Risk-Allocation
- Period
- Performance
- Payments
- Liabilities
- Procedures
PPP’S TRUE NORTH

Better Quality of Life

Hard and Soft Projects

Sustaining Partnerships

More Revenues

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BM GRAPHICS: JEB RUIZGAL
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PPP ELEMENTS

10 Ps

- Parties
- Pact
- Project
- Public Good
- Performance
- Peril-Allocation
- Period
- Procedures
- Partnership
- Payment Schemes
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

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PPP PROJECTS

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

SOFT
SOCIAL ASSETS AND SERVICES
- Classroom
- Hospital
- Agriculture
- Housing
- Evacuation Center
- Prisons

BUNDLED
- Hard and Hard + Soft and Soft + Hard, Soft and Soft
- Hard and Hard + Hard and Hard + Hard, Hard and Soft
Types of Projects

Infrastructure Assets “Hard”

Social Assets and Services “Soft”
- Education, Health, Agriculture, Accommodation, Rehabilitation, Prisons, and Social Services
Implementation Options

(1) Multi-Party
- LGU
- NGA
- Project
- LGU
- GOCC

(2) Multi-Use (Bundling)
- Parking Spaces
- Gym
- School
- Office Spaces
- Office Spaces
- Bus Terminal/Evacuation Center
- Market
- Commercial Spaces
- Restaurants
- Government Land

(3) Multi-Type (Hard and Soft)
Water-Related PPP Projects

- Bulk Water
- Irrigation
- Hydropower
- Distribution
- NRW/O&M
- Septage
- Sewerage
24+ 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. Management Contract
17. Management Contract (No Public Funds)
18. Service Contract
19. Service Contract (No Public Funds)
20. Divestment or Disposition
21. Corporatization
22. Subsidiary with Private Equity
23. Onerous Donation
24. Gratuitous Donation
25. Others
# Governing Laws/ Rules

<table>
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<th>PPP Modality</th>
<th>Governing Law</th>
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<td>NEDA JV Guidelines/ Local Ordinance</td>
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<td>GPRA/ Local Ordinance</td>
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<tr>
<td>RT, RLT and RTO</td>
<td>Local Ordinance</td>
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<tr>
<td>Lease/ Affermage/ Donations</td>
<td>Civil Code/ Local Ordinance</td>
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<tr>
<td>Divestment/ Disposition</td>
<td>Commission on Audit Circular No. 89-296</td>
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<tr>
<td>Corporatization</td>
<td>Corporation Code</td>
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</table>
Joint Ventures in General
Need for a JV Framework

- 2013 NEDA JV Guidelines
- LGU PPP and JV Ordinances
68 LGU PPP CODES

46 LGUs PPP CODES REFERRING TO AGRA TEMPLATE

16 PROVINCE
- Cavite
- Camarines Sur
- Northern Samar
- Pangasinan
- Nueva Ecija
- Bataan
- Bohol
- Aklan
- Camarines Sur
- Northern Samar
- Pangasinan
- Nueva Ecija
- Bataan
- Bohol
- Aklan
- General Tinio, NE
- Cordova, Cebu
- Cainta, Rizal
- Tiwi, Albay
- Consolacion, Cebu
- Dinalupihan, Bataan
- La Trinidad, Benguet
- Coron, Palawan
- Kalibo, Aklan

21 CITIES
- Butuan
- Glomarpo
- Batangas
- Cauayan
- Paranaque
- San Juan
- Pasay
- General Santos
- Quezon City
- Imus
- Passi
- Catbalogan
- Navotas
- Legazpi
- Davao
- Baguio
- Caloocan
- San Fernando, La Union

10 LGU JV ORDINANCES REFERRING TO AGRA TEMPLATE

1 PROVINCE
- Camarines Sur

3 CITIES
- Manila
- Valenzuela
- San Fernando, La Union

4 MUNICIPALITIES
- Opol, Misamis Or
- Mendez, Cavite
- Tuburan, Cebu
- San Luis, Aurora

10 LGU JV ORDINANCES REFERRING TO 2008 NEDA GUIDELINES

- Cebu Province
- Cebu City
- Lapu-Lapu City
- Mandaue City
- Ililo City
- Pasay City
- Tacloban City
- Calamba City
- Laguna Province
- Argao, Cebu

1 LGU ORDINANCE BASED ON OWN VERSION
- Albay Province

1 LGU PPP REFERRING TO PPP CENTER TEMPLATE
- General Santos

AUTHOR: ALBERTO C. AGRA
BM GRAPHICS: JOSE RUIZ
JV *not a BOT Law Variant*

**Differences**
- Community/Pooling of Resources (JV); not purely private (BOT)
- Active participation (JV); minimum gov’t intervention (BOT)
- Proportionality (JV); not distinct assumption of benefits and obligations (BOT)
- LGU contributes (JV); LGU not contribute as a rule (BOT)
- JV Company by Parties (JV); not just by Private Sector (BOT)

**Inapplicable Provisions in BOT Law**
- Only for Projects traditionally provided by LGU
- Approval Processes (20-50-200 thresholds)
- Debt-Equity Ratio (75-25%)
- Maximum Rate of Return (12%)
- Restrictions on Unsolicited Proposals
  - Priority Projects
  - New Technology
  - Guarantee, Subsidy or Equity

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Build-Operate-Transfer

- Sponsors: Incorporate & Contribute
- Lenders: Pays, Lends
- Single-Purpose Project Company: Designs, Builds, Finances, and O&M
- Suppliers: Pays, Supplies
- Gov’t: Guarantee?
- Off-Taker: Pays, Supplies
- Users: Off-Take Agreement

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Joint Ventures

Private Sector

Public Sector

Contributions
Equity
Functions
Dividends
Income
Risks
Governance
JV Vehicle: **2 Options**

1. **JV Company or Corporate JV**
2. **Unincorporated JV or Contractual JV**
Selection Requirements for PSP

Competition

Accountability

Transparency
Selection Procedures

- Competitive Selection
- Limited Negotiations
- Competitive Challenge
LGU Contributions

Money and Capital

- Regular and Special Funds, IRA, RPT, SEF, Share in National Wealth, Calamity Fund, Development Fund, Loan Proceeds, Grants, Bonds, Securities, Subsidy, Equity, Cost-Sharing, Viability Gap Funding, Cost Avoidance or Savings (actual/current or future/monetized)

Non-Cash (Anything of Value)

- Services, Personnel, Intellectual Property, Usufruct, Land (own or expropriated), Minimum Revenue Guarantee, Right-of-Way, Goodwill, Franchise, Concession, Credit Enhancement, Tax Incentives/Holidays, Police Power
(1) Competitive Selection

Prepare Tender Documents

Invitation to Apply for Eligibility and Submit Proposals

Qualification of PSPs

Evaluation of 2 Proposals

Submission/Receipt of Proposals

Pre-Selection Conference

Award and Approval of Contract

Execution of PPP Agreement

Submission of Conditions Precedent
(2) Competitive Challenge

**Stage 1**
- Submission of UP with Project Study and Draft Contract
- Initial Evaluation (Eligibility, Project Acceptability and Completeness)
- Letter of Acceptance (or Rejection)
- Conferment of Original Proponent (OP) Status

**Stage 2**
- Negotiations (Technical and Financial Terms)
- Public Consultations on Draft Contract
- Certification of Successful Negotiations (or Failed Negotiations)

**Stage 3**
- Tender Documents
- Invite Challengers
- Post Security
- Proposals Evaluated
- Right to Match
- Council Authorization
- Sign Contract
- Reimbursement of Project Study Cost if OP not get Award

Unsolicited Proposal | Detailed Negotiations | Challenge/ Right to Match
**LGU Structures**

- Local Chief Executive
- Vice-LCE/Sanggunian
- PPP-Selection Committee (7)
- PPP-Regulatory Authority (9)
GOCC JVs
## Nature of 2013 NEDA JV Guidelines

<table>
<thead>
<tr>
<th>Classification</th>
<th>Guideline-Framework-Rule Supplementary, Substantive and Procedural Rule</th>
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<tbody>
<tr>
<td>Legal Basis</td>
<td>Section 8 of EO 423-2005 No specific statute (Law on Partnerships)</td>
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<tr>
<td>Issuing Authority</td>
<td>NEDA Director General in consultation with GPPB, OGCC and GCG; approved by NEDA Infracom and Economic Development Cluster</td>
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</tbody>
</table>
2013 NEDA JV Guidelines
Coverage

Included

1. Government-Owned and -Controlled Corporations (GOCCs)
2. Government Instrumentalities with Corporate Powers (GICPs)
3. Government Corporate Entities (GCEs)
4. Government Financial Institutions (GFIs)
5. State Universities and Colleges (SUCs)

Excluded: Transactions of:

1. GFIs in the ordinary course of business as part of their normal and ordinary banking, financial or portfolio management operations
2. (JV activities) GCEs in the exercise of their primary mandate to dispose government assets or properties
3. Local Government Units (LGUs)
Definition

JV is "[an] arrangement whereby a private sector entity or a group of private sector entities on one hand, and a Government Entity or a group of Government Entities on the other hand, contribute money/capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing to undertake an investment activity. The investment activity shall be for the purpose of accomplishing a specific goal with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transfer the activity to either the private sector under competitive market conditions or to the government. The JV involves a community or pooling of interests in the performance of the investment activity, and each party shall have the right to direct and govern the policies in connection therewith with the intention to share both profits and risks and losses subject to agreement by the parties. A JV may be a Contractual JV or a Corporate JV (JV Company)."
JV Projects-Sectors

- power plants
- highways
- (sea)ports
- airports
- canals
- dams
- hydropower projects
- water supply
- irrigation, telecommunications
- railroad and railways
- transport systems
- land reclamation projects
- industrial estates or townships
- commercial/real estates
- housing
- government buildings
- tourism projects
- public markets
- slaughterhouses
- warehouses
- solid waste management
- information technology networks and database infrastructure
- education facilities
- health facilities
- sewerage
- drainage
- dredging
- others

GE may authorize
Eligibility Requirements

Legal (capacity and ownership)

1. Legally capacitated
2. If JV activity, requires a public utility franchise
   - SEC-registered
   - At least 60% Filipino-owned
3. Compliance with nationality/ownership requirements
Eligibility Requirements

Technical (possess Track Record to carry out JV activity)

1. completed a project similar or related to the JV activity

2. whose value, adjusted to current prices using the NSO CPI, must be at least 50% of the cost of the JV activity

3. Disclosure of related ongoing and completed projects

Note: Cost of JV activity is the total amount of the contributions of the parties to the JV activity/project in present value with discount rate
Eligibility Requirements

Financial (capacity to fund JV activity)

1. Audited FS for past 3 years
2. If Filipino JV partner, submit:
   - BIR-stamped FS
   - Latest tax returns
3. Measured in terms of:
   - proof of ability of the prospective JV Partner to provide a minimum amount of equity to the JV activity (net worth of the company, or equivalent deposit)
   - Bank good financial standing certificate

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Eligibility Requirements

Others

1. If consortia, overall capability
2. Waiver, Representations and Undertakings
   a) Acceptance of qualification criteria
   b) Commitment not to file suit to restrain JV from selection to JV implementation (excludes assailing lawfulness of disqualification or rejection of proposal)
JV Vehicle: 2 Options

1. JV Company or Corporate JV (Preferred/Best Option)
2. Unincorporated JV or Contractual JV (Alternative Option; discretion of Government Entity)
Government Contribution

- Asset
- Money
- Equipment
- Land
- Intellectual Property
- Services

(1) Anything of (pecuniary) value
(2) Subject to 3rd party independent valuation
# JV Activities and Operations

## Procurement
- Financed by Government, governed by GPRA

## Audit
- JV activity subject to audit (COA and private)

## Incentives
- Approved by Board of Investments

## Termination
- Breach of major JVA conditions
- Forfeiture of performance security (optional)
Role of Administrative Agencies
Roles and Responsibilities

- Head of Government Entity
- NEDA Board – Investment Coordination Committee
- JV-Selection Committee
- Privatization Council
- Governance Commission for GOCCs
- OP, DOF, DBM, DENR, BOI
- OGCC, OSG and DOJ
- Regulatory and Audit Agencies
NEDA Board – Investment Coordination Committee

As Approving Authority

Projects where government contribution amounting to P150m or more:

1) Infrastructure or Development (Section 5.9 of 2013 Guidelines)
2) Public Utilities
3) Negotiated JVs
4) Not primary mandate of public entity
Head of Government Entity

1. Approving Authority
   a) Projects related to primary mandate of public entity and non-infrastructure projects
   b) Projects not subject to approval by NEDA ICC

2. After Approving Authority, approves draft JVA

3. Prescribes its participation in JV activity

4. Creates JV-Selection Committee

5. Chooses JV Partner selection procedure

6. Decides whether JV Company or Contractual JV
JV-Selection Committee

Composition: Regular Members (voting)
1. Chairman: at least 3\textsuperscript{rd} ranking officer
2. Secretary: legal officer
3. Member: officer knowledgeable in finance
4. Member: officer knowledgeable in JV O&M
5. Member: officer knowledgeable in technical aspect

\textit{Note}: Quorum is majority of all voting (3); Chair only votes to break ties
JV-Selection Committee

Composition: **Provisional Members** (non-voting)

1. Technical officer from regulatory agency
2. Observer: Counsel from Statutory Counsel
3. 2 Observers: 2 representatives from private sector from:
   a) Association related to JV project
   b) Facility user or accounting firm
4. Observer: Representative from COA
Privatization Council

Approves/clears divestment of government asset or property to private partner

Governance Commission for GOCCs

1. Approves formation of JV Company
2. Approves/clears divestment of government equity that is not in the form of asset or property
President

1. Approves JV activities if required by law
2. Approves creation of JV Company

DOF and DBM

Approves/ clears provision for national government undertakings, subsidies or guarantees

DENR

Issues appropriate clearances prior to actual implementation
OGCC, OSG or DOJ

1. Issues Counsel’s opinion prior to execution of JVA
2. Attends JV-SC as Provisional Member

Board of Investments
Approves/ grants investment incentives

Regulatory and Audit Agencies

e.g. ERC, TRB, NEA, (LWUA), NTC; COA
Issues concessions, administrative franchises, approvals
Selection Procedures (Private JV Partner)

Competitive Selection (A)

Direct-Limited Negotiations (B)

Competitive Challenge (B)

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Competitive Selection

- Prepare Tender Documents
- Invitation to Apply for Eligibility and Submit Proposals
- Qualification of PSPs
- Evaluation of 2 Proposals
- Submission/Receipt of Proposals
- Pre-Selection Conference
- Award and Approval of Contract
- Execution of JV Agreement
- Submission of Conditions Precedent

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Scenarios in Competitive Selection

1. 2 or more pass technical and financial standards → Successful Bidding → Award

2. Only 1 PSP meets financial standards → Single Responsive Bid → Considered for Award

3. No Bids, None eligible, No Technically-Compliant → Failure of Competitive Selection → Failed 2nd Round → Negotiations

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Direct-Limited Negotiations

Request for Submission of Financials

Ranking of Financials/PSPs

Negotiations

Submission of Conditions Precedent

Execution of JV Agreement

Award

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Competitive Challenge

Stage 1
- Eligibility of Proponent assessed
- Determination of Completeness of Proposal
- Letter of Acceptance
- 2 or more proposals – 1st in time approach

Stage 2
- Negotiations
- Certification
- [NEDA ICC endorsement]
- Original Proponent Status

Stage 3
- Tender Documents
- Invite Challengers
- Posting Proposal Security
- Eligibility determined
- [Proponent may submit 2nd Financial Proposal]
- All Proposals Evaluated
- Right to Outbid
- Reimbursement

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10 (Legal) Ways to Shorten Process

1. Government contribution to JV activity less than P150 million (No NEDA ICC)
2. No government asset or non-asset equity divestment (No PC or GCG)
3. No national government guarantees, undertakings or subsidies (No DBM or DOF)
4. Not form a JV Company (No GCG and OP)
5. Project does not require Presidential approval
6. GE adopts shorter periods
7. Simultaneous evaluation of technical and financial proposals
8. Well-prepared feasibility study/ Pre-FS/ business case
9. Statutory counsel involved in drafting of JVA
10. 3rd party valuation of GE contribution by Government
# PPP/ JV Contract Provisions

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<th>Term</th>
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<td>Contributions</td>
<td>Governance</td>
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THANK YOU.