

**NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
First Regular Session



Senate
Office of the Secretary

22 DEC 14 A11 :23

SENATE

S. B. NO. 1613

RECEIVED

Introduced by **SENATORS JUAN MIGUEL F. ZUBIRI and
JOEL VILLANUEVA**

**AN ACT
STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS,
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER
PURPOSES**

EXPLANATORY NOTE

In 2019, the World Economic Forum Global Competitiveness Report ranked the Philippines 96th out of 141 countries with regard to infrastructure competitiveness.¹ It is notable that the report indicated that among the factors that contributed to the Philippines' low ranking was road connectivity (125th rank), electricity access (103rd rank), and exposure to unsafe drinking water (105th).

In 2019, the country's infrastructure spending was equivalent to 5.4% of the country's Gross Domestic Product. Spending contracted to 4.8% of GDP in 2020, mainly due to the discontinuance of some capital outlay projects to fund the country's Coronavirus (COVID-19) response.² With road, airport, and railway projects rolled out in 2021, infrastructure spending reached Php1.12

¹ The Global Competitiveness Report 2019, World Economic Forum. Retrieved from https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf, p. 463.

² Facts and Figures: Public Infrastructure Expenditure, Congressional Policy and Budget Research Department, May 2021. Retrieved from https://cpbrd.congress.gov.ph/images/PDF%20Attachments/Facts%20in%20Figures/FF2021-30_Pub_Infra_Expenditure.pdf, p. 1.

trillion, equivalent to 5.8% of the GDP,³ and the government eyes an estimated 5%-6% spending annually between 2023-2028.⁴

Given the country's limited resources, public-private partnership (PPP) is one of the options available to be able to deliver on infrastructure gaps, which mobilizes private resources for financing the construction, operation, and maintenance of infrastructure and development projects normally financed and undertaken by the government.⁵

The law governing PPP undertakings is Republic Act No. 6957, as amended by Republic Act No. 7718. It was first enacted into law in 1990 and was later amended in 1994 to encompass other PPP variants, such as build-operate-and-transfer, build-and-transfer, build-own-and-operate, build-lease-and-transfer, build-transfer-and-operate, contract-add-and-operate, develop-operate-and-transfer, rehabilitate-operate-and-transfer, and rehabilitate-own-and-operate.⁶

Since the law's enactment, many infrastructure projects have been implemented, which include projects in power, water, toll road, port, airport, telecommunications, and many others. Based on the PPP Center's 2021 Annual Report, as of December 31, 2021, the PPP Program has a total of 183 awarded projects, amounting to at least Php2.29 trillion.⁷ This includes key project accomplishments, such as the inauguration of the Metro Manila Skyway Stage 3 on January 14, 2021, the delivery of the 4th Generation Light Rail Vehicles for the Light Rail Transit (LRT) 1 Project on January 26, 2021, and the issuance of the Notice to Proceed to the Manila North Tollways Corporation in December 2021 for the construction of the NLEX-SLEX Connector Road.⁸

Infrastructure investments likewise promote job creation, with the National Economic and Development Authority estimating that 2021's infrastructure spending may have created 2.3 million indirect and direct jobs.⁹ Further, NEDA estimates that such investments will translate to the creation of 2.5 million jobs in 2022.¹⁰

³ March 28, 2022, Infra Spending hit record Php1.12T in 2021, says DBM, Inquirer. Retrieved from <https://business.inquirer.net/344457/infra-spending-hit-record-p-1-12t-in-2021-says-dbm> (date last accessed September 18, 2022).

⁴ July 6, 2022, Gov't eyes spending 5 to 6% of GDP for infra projects annually, Inquirer. Retrieved from <https://business.inquirer.net/352288/marcos-admin-eyes-to-spend-5-to-6-of-gdp-for-build-build-build-program-annually> (date last accessed September 18, 2022).

⁵ Section 1 of Republic Act No. 6957, as amended by Republic Act No. 7718.

⁶ *Id.*

⁷ PPP Center 2021 Annual Report, PPP Center. Retrieved from <https://ppp.gov.ph/publications/ppp-center-2021-annual-report/>, p. 24-25.

⁸ *Id.*, p. 24-25.

⁹ February 8, 2022, Neda says government infrastructure projects could create 2 million jobs this year, Business Mirror. Retrieved from <https://businessmirror.com.ph/2022/02/08/neda-says-government-infrastructure-projects-could-create-2-million-jobs-this-year/?fbclid=IwAR1mYOMnFOjGRVg3qN-C7aaoJTo32BZzC--Wk7hPrvI3VwwWSTjgUE7rd2M> (date last accessed: September 18, 2022).

¹⁰ *Id.*

To bolster and strengthen the country's PPP program, incentivize the private sector through an adequate return on investment, and stimulate job generation opportunities for all Filipinos, there is a need to amend the existing framework for PPP.

Thus, the immediate passage of this bill is earnestly sought.



JUAN MIGUEL F. ZUBIRI



JOEL VILLANUEVA

**NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
First Regular Session



Senate
Office of the Secretary

'22 DEC 14 A11 :23

SENATE

S.B. No. 1613

RECEIVED BY

Introduced by **SENATORS JUAN MIGUEL F. ZUBIRI and
JOEL VILLANUEVA**

**AN ACT
STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS,
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines in
Congress assembled:*

1 **SECTION 1. Short Title.** – This Act shall be known as the “*Public-Private*
2 *Partnership (PPP) Act.*”
3

4 **SEC. 2. Declaration of Policy.** – Section 20, Article II, of the Constitution
5 declares that the State recognizes the indispensable role of the private sector,
6 encourages private enterprise, and provides incentives to needed investments. To this
7 end, the State shall provide an enabling environment for the private sector to mobilize
8 its resources for the purpose of financing, designing, construction, operations, and
9 maintenance of infrastructure and development projects. As provided by law, the
10 government shall foster robust private sector participation by providing financial
11 incentives and by reducing costs of doing business.
12

13 It is further declared that the State shall protect the public interest by providing
14 affordable, accessible, and efficient public services. In order to achieve better quality
15 of PPP Projects at lower costs, the State shall ensure equitable risk allocation in PPP
16 Projects, and that all PPP Projects yield sufficient value for money, value for people,
17 and value for planet.
18

19 The State, through all means available, shall pursue a policy of maintaining a
20 reasonable balance on the financing of infrastructure and other development projects
21 that will most effectively meet the objectives of the government. These may include
22 appropriations, official development assistance, and PPPs, as well as combinations
23 thereof. The government shall determine the appropriate financing by considering
24 budget availability, timelines, stakeholder commitments, and market capacity.
25

1 The State shall also ensure the integration of climate resilience, sustainability,
2 and gender and development policies and programs in the planning, design, and
3 implementation of PPP Projects, in accordance with relevant laws, rules, and
4 regulations.

5
6 Finally, it is declared that the State shall affirm open, fair, transparent, and
7 competitive selection as the central tenet for securing private investment in PPP
8 Projects. It shall implement a policy of full public disclosure of all its transactions
9 involving public interest, subject to terms and conditions as prescribed by pertinent
10 laws.

11
12 **SEC. 3. Scope and Application.** – This Act shall apply to all PPP Projects
13 undertaken by Implementing Agencies through PPP contracts with a Private
14 Proponent, including Joint Ventures, as defined under this Act. This shall also cover
15 lease agreements, when such is a component of a PPP Project, or possess
16 characteristics or elements of a PPP as provided in Section 5 of this Act. This Act shall
17 also apply to all contractual agreements with a Private Proponent involving the
18 construction, operation, and maintenance, or a combination thereof, of toll facilities in
19 accordance with Presidential Decree (PD) No. 1112, s. 1977 or the Toll Operation
20 Decree, P.D. No. 1113, s. 1977, and PD No. 1894, s. 1983. This Act shall likewise
21 apply to and be enforceable among all parties to said PPP contracts.

22
23 This Act shall not be applicable to infrastructure projects undertaken through
24 the design and build scheme under Republic Act No. 9184, or the Government
25 Procurement Reform Act.

26
27 Furthermore, this Act shall not cover management contracts, service contracts,
28 divestments or dispositions, corporatization, incorporation of subsidiaries with private
29 sector equity, onerous donations, gratuitous donations, and other contractual
30 arrangements that do not demonstrate the necessary characteristics or elements of a
31 PPP as provided in Section 5 of this Act. In such cases, the Implementing Agencies
32 shall implement the aforementioned arrangements in accordance with provisions of
33 other applicable laws.

34
35 **SEC. 4. Definition of Terms.** – As used in this Act:

- 36
37 (a) **Approving Body** refers to an entity authorized to approve PPP Projects, in
38 accordance with Section 7 of this Act;
39
40 (b) **Availability Payments** refer to predetermined payments by the Implementing
41 Agency to the Private Proponent in exchange of delivering an asset or service in
42 accordance with the contract. Availability Payments shall not be construed as
43 Government Undertakings, Subsidy, and/or government contribution;
44
45 (c) **Construction** refers to new construction, rehabilitation, improvement,
46 expansion, alteration, and related works and activities, including the necessary
47 design, supply, installation, testing and commissioning of equipment, systems,
48 plants, materials, labor and services, and related items needed to build or
49 rehabilitate an infrastructure or development facility;
50

- 1 (d) **Contractor** refers to any entity allowed and duly registered and licensed under
2 Philippine laws, which may or may not be the Private Proponent, and which shall
3 undertake the Construction and/or supply of equipment or services for PPP
4 Projects;
5
- 6 (e) **Contingent Liability** refers to an obligation that may or may not arise from
7 events specified in a PPP contract, the occurrence, timing, and amount of which
8 are uncertain. These events include, but are not limited to regulatory risks, force
9 majeure, breach of government warranties, and material adverse government
10 action, among others;
11
- 12 (f) **Facility Operator** refers to an entity with legal personality authorized under
13 existing laws, which may or may not be the Private Proponent, that shall be
14 responsible for operating and/or maintaining a facility, including, but not limited
15 to, the collection of tolls, fares, fees, rentals or charges from facility users;
16
- 17 (g) **Government Undertakings** refers to any form of contribution and/or support,
18 which the government may extend to a Private Proponent for the implementation
19 of PPP Projects, as provided under this Act. The procedures on proposing and
20 granting of Government Undertakings, including applicable caps, shall be
21 prescribed in the implementing rules and regulations (IRR) of this Act;
22
- 23 (h) **Green Financing** refers to investments that create environmental benefits in
24 support of green growth, low-carbon, and sustainable development;
25
- 26 (i) **Guarantee on Demand** refers to an agreement whereby the Implementing
27 Agency guarantees a minimum amount of users, consumers, traffic, or other
28 similar assumptions for the PPP Project;
29
- 30 (j) **Guarantee on Loan Repayment** refers to an agreement whereby the
31 Implementing Agency guarantees to assume responsibility for the repayment of
32 debt directly incurred by the Private Proponent in implementing the PPP Project
33 in case of a loan default;
34
- 35 (k) **Guarantee on Private Sector Return** refers to an agreement whereby the
36 Implementing Agency guarantees to provide a predetermined rate of return on
37 the investment of the Private Proponent. This shall not cover Termination
38 Payments arising from government events of default;
39
- 40 (l) **Implementing Agency** refers to a department, bureau, office, instrumentality,
41 commission, authority of the national government, state university and college
42 (SUC), local government unit (LGU), or government-owned or -controlled
43 corporation (GOCC) as defined in Republic Act No. 10149, or the GOCC
44 Governance Act of 2011, including government instrumentality with corporate
45 powers (GICP), government corporate entity (GCE), and government financial
46 institution (GFI), water districts, and economic zone authorities, which is hereby
47 authorized to undertake PPP Projects with a Private Proponent in accordance
48 with its mandate or charter and the provisions of this Act;
49

- 1 (m) **Joint Venture** refers to a contractual arrangement whereby both the
2 Implementing Agency performing a proprietary function and the Private
3 Proponent contribute to pool resources comprising of capital, services, or assets
4 (including equipment, land, or intellectual property) to jointly undertake a specific
5 investment activity to deliver an infrastructure or development project typically
6 provided by the public sector, subject to Section 11 of this Act;
7
- 8 (n) **Local PPP Project** refers to a PPP Project that shall be undertaken by LGUs
9 and local universities and colleges (LUCs) as defined in Republic Act No. 10931
10 or the Universal Access to Quality Tertiary Education Act (UAQTE Act);
11
- 12 (o) **National PPP Project** refers to a PPP Project that shall be undertaken by the
13 national government, SUCs as defined in the UAQTE Act, GOCCs including
14 GICPs, GCEs, and GFIs, water districts, and economic zone authorities;
15
- 16 (p) **Original Proponent** refers to the Private Proponent which submitted an
17 unsolicited proposal that has been accepted, has been pre-qualified by the
18 Implementing Agency, and has been conferred the "Original Proponent status
19 (OPS)", as mentioned in Section 10 of this Act;
20
- 21 (q) **PPP Project** refers to any infrastructure or development project implemented
22 under this Act;
23
- 24 (r) **Private Proponent** refers to the private sector entity which has submitted an
25 unsolicited proposal, or a bid submission in relation to a solicited PPP Project,
26 and/or has a contractual responsibility for the PPP Project. The Private
27 Proponent may be Filipino or foreign-owned, and may engage the services of a
28 foreign Contractor or foreign Facility Operator, subject to requirements and
29 limitations provided under existing laws, rules, and regulations;
30
- 31 (s) **Project Cost** refers to the estimated cost of the PPP Project, based on its nature
32 and structure, the determination of which shall be prescribed in the IRR of this
33 Act;
34
- 35 (t) **Solicited Proposal** refers to a submission by the Private Proponent to bid for a
36 PPP Project through open, fair, transparent, and competitive public bidding
37 initiated by the Implementing Agency, subject to Section 9 of this Act;
38
- 39 (u) **Subsidy** refers to an agreement whereby the Implementing Agency will: (i)
40 defray, pay for, or shoulder a portion of the Project Cost or the expenses and
41 costs in operating or maintaining the project; (ii) bear a portion of capital
42 expenses associated with the establishment of an infrastructure or development
43 project, and/or any partial financing of the project or component thereof; (iii)
44 contribute any property or assets to the project; (iv) in the case of LGUs, waive
45 or grant special rates on real property taxes on the project during the term of the
46 contractual arrangement; and/or (v) waive charges or fees relative to business
47 permits or licenses that are to be obtained for the Construction of the project, all
48 without receiving payment or value from the Private Proponent, Contractor,
49 and/or Facility Operator for such payment, contribution, or support: Provided,

1 That Subsidy falling under items (i) and (ii) shall not exceed fifty percent (50%)
2 of the total Project Cost;

3
4 (v) **Termination Payment** refers to the amount payable by the government or the
5 Private Proponent on the occurrence of an event or series of events provided for
6 in the PPP contract that results in the termination of said contract;

7
8 (w) **Unsolicited Proposal** refers to a project proposal submitted by a Private
9 Proponent not in response to a formal solicitation or request issued by the
10 Implementing Agency, subject to Section 10 of this Act; and

11
12 (x) **Viability Gap Funding (VGF)** refers to a type of Subsidy in the form of a financial
13 support that the government may provide to a revenue-based PPP Project with
14 the objective of making fees affordable, while improving the commercial
15 attractiveness of the project, excluding costs of right-of-way, resettlement, and
16 real estate taxes.

17
18 **SEC. 5. Public-Private Partnership.** – A PPP is a contractual arrangement
19 between the Implementing Agency and the Private Proponent for the financing,
20 designing, constructing, operating and maintaining, or any combination thereof, of
21 infrastructure or development projects which are typically provided by the public
22 sector, where each party shares in the associated risks. PPP Projects may also be
23 financed partly from direct government appropriations and/or from official development
24 assistance (ODA) of foreign governments or institutions.

25
26 PPP Projects may be undertaken through contractual arrangements, including
27 Joint Ventures, authorized under the Implementing Rules and Regulations (IRR) of
28 this Act, and such other variations thereof as may be approved by the appropriate
29 Approving Body. PPP also includes lease agreements providing for rehabilitation,
30 operation, and/or maintenance, including working capital and/or improvements to, by
31 the Private Proponent of an existing land or facility owned by the government for a
32 fixed period of time covering more than one (1) year.

33
34 Implementing Agencies, in accordance with their respective mandates or
35 charters, are hereby authorized to undertake PPP Projects with a Private Proponent
36 in accordance with the provisions of this Act.

37
38 **SEC. 6. Identification of PPP Projects.** – Implementing Agencies shall include
39 in their development plans, strategies, and investment programs those PPP Projects
40 that they are to undertake. In identifying these projects, the Implementing Agencies
41 shall be guided by the following principles: effectiveness in meeting government
42 objectives, appropriateness of the chosen procurement modality and source of
43 funding, value for money, accountability and transparency, consumer rights,
44 affordability, and public access, safety, and security. All PPP Projects shall be
45 consistent and responsive to national, local, and sectoral development and investment
46 plans.

47
48 The Implementing Agencies shall submit their list of PPP Projects or any update
49 thereto to the appropriate oversight agencies, including the National Economic and
50 Development Authority (NEDA), regional development councils (RDCs), and the PPP

Center, for information and in accordance with existing rules, regulations, and guidelines. Each proposed PPP Project shall be subject to the approval of the appropriate Approving Body.

The PPP Center shall ensure that the Congress of the Philippines and the public shall be provided with adequate and timely information on PPP Projects.

SEC. 7. Approval of PPP Projects. –

(a) The approval of PPP Projects under this Act shall be in accordance with the following:

(1) **National PPP Projects.** National PPP Projects shall be approved as follows:

- (i) Projects with Project Cost above five billion pesos (PhP5,000,000,000.00) shall be submitted to the NEDA Board for approval, upon favorable recommendation of the Investment Coordination Committee of the NEDA (ICC-NEDA);
- (ii) Projects with Project Cost from two billion five hundred million pesos (PhP2,500,000,000.00) to five billion pesos (PhP5,000,000,000.00) shall be submitted to the ICC-NEDA for approval;
- (iii) Projects with Project Cost below two billion five hundred million pesos (PhP2,500,000,000.00) shall be submitted to the Heads of the Implementing Agencies, or their Board, whichever is applicable, for approval.

The ICC-NEDA may, from time to time, update the aforementioned amounts when the need arises.

(2) **Local PPP Projects.** Regardless of Project Cost, Local PPP Projects shall be approved by the local Sanggunians in the case of LGUs, or by the Boards in the case of LUCs. Prior to approval, Local PPP Projects implemented by LGUs shall be confirmed by the respective local development council.

Proposed Government Undertakings using national government funds for Local PPP Projects shall be submitted to the ICC-NEDA for approval, upon review and endorsement by the respective RDCs. Such Government Undertakings shall include, among others, the following items to be provided by the national government to a Local PPP Project: (i) Guarantees on Demand, (ii) Guarantees on Private Sector Return, (iii) Guarantees on Loan Repayment; (iv) Viability Gap Funding and other forms of Subsidy; (v) payment of Contingent Liability, including Termination Payments. Permits, clearances, licenses or endorsements from national government agencies required for Local PPP Projects under laws, rules, and regulations, shall not be considered as Government Undertakings by the national government for Local PPP Projects;

1
2 The ICC-NEDA shall render its decision on such requested Government
3 Undertakings within the prescribed period in the IRR of this Act. The
4 disapproval of the requested Government Undertakings shall not be
5 construed as a disapproval of the Local PPP Project.
6

7 Local PPP Projects affecting national development or master plans and
8 national projects shall secure the endorsement of the national government
9 through the respective RDCs, prior to approval by the local Sanggunians in
10 the case of LGUs, or by the Boards in the case of LUCs. Such endorsement
11 of the RDC shall be processed in the most expeditious manner as
12 prescribed in the IRR of this Act, and shall not be unreasonably withheld.
13

14 A PPP Project covering two or more LGUs may be implemented by the
15 national government, subject to the approval process for National PPP
16 Project; or by the next higher level of LGU, subject to the approval process
17 for Local PPP Projects, or by the LGUs concerned.
18

19 In case of a Local PPP Project implemented by two or more LGUs, such
20 project shall be approved by the local Sanggunians of the LGUs concerned,
21 pursuant to Republic Act No. 7160 or the Local Government Code of 1991.
22 The respective RDCs may assist in the coordination of LGUs in the
23 development, approval, and implementation of the Local PPP Project
24 covering two or more LGUs.
25

26 (b) The Approving Body shall assess all PPP Projects based on its overall feasibility,
27 in accordance with the principle of protecting public interest through the provision
28 of affordable, accessible, and efficient public services. All PPP Projects
29 submitted to the Approving Body shall include proposed indicators to determine
30 their benefits and outcomes, which shall be used in the monitoring and evaluation
31 of PPP Projects during implementation. To ensure that all risks associated with
32 PPP Projects are managed and mitigated accordingly, all PPP contracts to be
33 entered into by the Implementing Agency shall adhere to the principles stipulated
34 under the Generic Preferred Risk Allocation Matrix (GPRAM) issued by the ICC-
35 NEDA.
36

37 (c) The appropriate Approving Body shall notify and advise, in writing, the
38 Implementing Agency of its receipt and assessment of the completeness, in form
39 and in substance, of the PPP Project proposal. Upon complete submission of the
40 requirements by the Implementing Agency, the appropriate Approving Body shall
41 render its decision on the project in the most expeditious manner considering the
42 nature and complexity of the PPP Project, as prescribed in the IRR of this Act.
43 The Implementing Agency shall be duly notified in writing of the decision of the
44 Approving Body on or before the prescribed period in the IRR of this Act. The
45 failure of the appropriate Approving Body to render its decision on the project
46 within the specified period shall be deemed an approval thereof, and the
47 Implementing Agency concerned may proceed with the procurement of the PPP
48 Project, without prejudice to any liability that the erring or negligent officials or
49 employees may incur under existing laws.
50

(d) In order to facilitate a comprehensive and timely review of PPP Projects, the ICC-NEDA, in the case of National PPP Projects, and the PPP Governing Board, in the case of Local PPP Projects, shall formulate guidelines, forms, and templates that shall be used by the Implementing Agency and the Approving Body in reviewing and approving the PPP Project. The ICC-NEDA shall also formulate guidelines on the approval of Government Undertakings using national government funds for Local PPP Projects.

(e) The decision of the Approving Body to approve and implement the project under any of the contractual arrangements or variations thereof shall be final and executory unless the Implementing Agency can provide sufficient justifiable reason to convert the PPP Project to another project under a different procurement modality.

SEC. 8. PPP Pre-qualification, Bids and Awards Committee. – The Head of the Implementing Agency undertaking PPP Projects shall create a PPP Pre-qualification, Bids and Awards Committee (PBAC), which shall be responsible for all aspects of pre-bidding and bidding process in solicited proposals, or the comparative bidding process in unsolicited proposals. The composition and specific functions of the PBAC for National PPP Projects and Local PPP Projects shall be specified in the IRR of this Act, which may include other relevant government entities.

SEC. 9. Solicited Proposals. –

(a) **General.** Solicited Proposals refer to submissions by the Private Proponent to bid for PPP Projects through open, fair, transparent, and competitive public bidding initiated by the Implementing Agency. Government Undertakings are allowed, subject to the approval of the Approving Body.

(b) **Public Bidding.** The public bidding may be conducted in a single-stage or two-stage bidding process, either manually or electronically, subject to the rules provided for in the IRR of this Act.

The contract shall be awarded to the bidder who has satisfied all pre-qualification and eligibility requirements and has submitted the most compliant bid as defined in the bid documents. In all instances, the principle of protecting public interest through the provision of affordable, accessible, and efficient public services shall be of paramount importance in awarding a PPP contract.

If the winning bidder fails to comply with any post-award requirement which shall be set as part of the bidding documents, or fails to enter into a contract with the Implementing Agency, the latter may proceed to consider the next most compliant bidder. In case the contract is awarded to the next most compliant bidder, it shall be without prejudice to legal remedies available to the Implementing Agency such as forfeiture of bid security, withdrawal of award, and such other remedies allowed under existing laws, rules, and regulations.

All PPP contracts shall require a period within which financial close shall be achieved by the Private Proponent. Failure to achieve financial close within such period shall be subject to penalties to be provided for in the signed contract:

1 Provided, That such failure to achieve financial close is not due to the fault of the
2 government.

3
4 Any change in control of the Private Proponent or composition of the consortium
5 shall be allowed, subject to rules set forth in the IRR of this Act: Provided, That
6 the Private Proponent or consortium has equal or better qualifications.

7
8 (c) **Failure of Bidding.** The PBAC shall declare failure of bidding in case of any of
9 the following:

- 10
11 (1) If no bids are received;
12 (2) If there are no complying bids; or
13 (3) If the winning bidder refuses without justifiable cause to accept the award
14 of contract, as the case may be.

15
16 The Head of the Implementing Agency, upon the recommendation of the PBAC,
17 may also declare a failure of bidding if, after advertisement, only one bidder
18 applied for and met the pre-qualification requirements, unless otherwise provided
19 in this Act.

20
21 The procedures and mechanisms in dealing with a failure of bidding shall be
22 prescribed in the IRR of this Act.

23
24 (d) **Single Complying Bid.** Without prejudice to paragraph (a) of this Section, the
25 Implementing Agency may consider, on a negotiated basis, a single complying
26 and responsive bid in case of any of the following:

- 27
28 (1) If, after advertisement, more than one bidder applied for pre-qualification
29 but only one met the pre-qualification requirements;
30 (2) If, after advertisement, only one bidder applied for and met the pre-
31 qualification requirements, provided such was allowed by the Head of the
32 Implementing Agency, upon recommendation of the PBAC;
33 (3) If, after pre-qualification of more than one bidder, only one submitted a bid;
34 or
35 (4) If, after pre-qualification, more than one bidder submitted bids but only one
36 is found by the Implementing Agency to be complying.

37
38 **SEC. 10. Unsolicited Proposals. –**

39
40 (a) **General.** Unsolicited Proposals refer to project proposals submitted by a Private
41 Proponent not in response to a formal solicitation or request issued by the
42 Implementing Agency.

43
44 The Implementing Agency may accept, reject, or convert an unsolicited proposal
45 into a solicited proposal, subject to the evaluation of eligibility and merits of the
46 project, and other conditions set forth in this Section and the IRR of this Act.

47
48 (b) **Limitations.** Unsolicited proposals may be allowed for projects in the list of PPP
49 Projects, subject to the procedures and conditions set forth in this Section and
50 the IRR of this Act. In case the Implementing Agency has already incurred any

development cost for the PPP Project, such as the conduct of feasibility study, business case, and surveys, among others, for the last five (5) years, the Private Proponent must undertake to reimburse the Implementing Agency of such documented development costs notwithstanding whether it is funded through government appropriations, grants, and other sources. Reimbursable development costs for such proposal and the procedures for such reimbursement shall be determined by the Implementing Agency.

An unsolicited proposal shall not contain any of the following Government Undertakings:

- (1) Viability Gap Funding and other forms of Subsidy;
- (2) Payment of right-of-way (ROW)-related costs;
- (3) Performance undertaking;
- (4) Exemption from any taxes as required by laws, except local taxes imposed by local government units;
- (5) Guarantee on Demand;
- (6) Guarantee on Loan Repayment;
- (7) Guarantee on Private Sector Return;
- (8) Government equity; and
- (9) Contribution of assets, properties, and rights.

As an exception, items (2) and (9) above may be allowed if the government receives appropriate compensation, which shall in no way be lower than the value of the ROW related costs, assets, properties, and rights contributed. In the case of JV arrangements, items (8) and (9) may be allowed.

(c) Special Requirements.

- (1) Within three (3) working days from receipt of the unsolicited proposal, the Implementing Agency shall inform the PPP Center in writing of such receipt and shall furnish it with a copy of the proposal. The Implementing Agency and the PPP Center shall likewise publicly disclose such receipt by posting information in their respective websites.
- (2) An unsolicited proposal involving ROW acquisition of a property, whether owned or not owned by the Original Proponent, may be considered: Provided, That the submission includes a ROW and resettlement plan and such other documents that may be required in the IRR of this Act; Provided further, That in no case shall the Implementing Agency be obliged to make an advance payment for such ROW acquisition and related costs.
- (3) Any change in control of the Original Proponent or composition of the consortium shall be allowed, subject to the rules set forth in the IRR of this Act: Provided that, the Private Proponent or consortium has equal or better qualifications.

(d) Treatment of More than One Unsolicited Proposal for the Same or Similar Project. In cases where the Implementing Agency receives more than one unsolicited proposal involving the same or similar project prior to acceptance of

the proposal and granting of OPS, the Implementing Agency may choose among the submissions the best and most advantageous proposal for the government and the public, pursuant to the rules set forth in the IRR of this Act. The chosen proposal shall be accepted pursuant to subsection (g) of this Section and shall be subject to the approval process in Section 7 of this Act. Otherwise, the Implementing Agency may reject all such proposals, and/or bid out the project as a solicited proposal.

The Implementing Agency may seek the assistance of the PPP Center in the assessment, evaluation, and review of unsolicited proposals.

(e) **Rejection of an Unsolicited Proposal.** The Implementing Agency shall have the right to automatically reject the unsolicited proposal upon receipt thereof, or formally reject it after evaluation. If the Implementing Agency fails to act on an unsolicited proposal within the period prescribed in the IRR of this Act, the project proposal shall be deemed rejected, without prejudice to any liability that the erring or negligent officials or employees may incur under existing laws.

(f) **Conversion of an Unsolicited Proposal.** The Implementing Agency may be allowed to convert an unsolicited proposal to a solicited proposal. If the Implementing Agency converts an unsolicited proposal to a solicited proposal, the Implementing Agency and the Private Proponent shall agree on the terms and conditions of such conversion: Provided, That the Private Proponent holds a valid OPS granted by the Implementing Agency and such terms and conditions are consistent with applicable laws, rules, and regulations.

Once an unsolicited proposal is converted to a solicited proposal, such proposal shall be subject to the approval process in Section 7 and the process for bidding as provided in Section 9 of this Act.

(g) **Acceptance of an Unsolicited Proposal.** The Implementing Agency shall have the right to set conditions and requirements on the project's structure, scope, and other relevant details, which the Private Proponent must comply with before its proposal can be accepted on a negotiated basis. If the Implementing Agency accepts such unsolicited proposal, it shall grant the Private Proponent who submitted the unsolicited proposal an OPS, which shall be valid for a period not exceeding six (6) months from the acceptance of the unsolicited proposal.

(h) **Comparative Challenge.** The Implementing Agency shall publish an invitation for the submission of comparative proposals.

The comparative challenge shall be conducted, either manually or electronically, by the Implementing Agency within the period proposed by it and approved by the appropriate Approving Body, taking into consideration the nature and complexity of the PPP Project: Provided, That the period shall be reasonable, fair, and upholds competition; Provided further, That the period shall not exceed one (1) year.

Comparative proposals shall be evaluated based on the best-and-final offer method between the top challenger and the Original Proponent. The rules and

1 procedures governing the comparative challenge shall be prescribed in the IRR
2 of this Act.

3
4 If no other proposal is received after the challenge period, the PPP Project shall
5 be awarded to the Original Proponent.

6
7 All PPP contracts shall require a period within which financial close shall be
8 achieved by the Private Proponent. Failure to achieve financial close within such
9 period shall be subject to penalties to be provided for in the signed contract:
10 Provided, That such failure to achieve financial close is not due to the fault of the
11 government.

12
13 **SEC. 11. Joint Ventures.** – Joint Ventures (JV) refer to a contractual
14 arrangement whereby both the Implementing Agency performing a proprietary
15 function and the Private Proponent contribute to pool resources comprising of capital,
16 services, or assets (including equipment, land, or intellectual property) to jointly
17 undertake a specific investment activity. The investment activity shall be for the
18 purpose of accomplishing a specific goal with the end view of facilitating private sector
19 initiative in a particular industry or sector. Each party shall have the right to direct and
20 govern the policies in connection therewith, with the intention to share profits, risks
21 and losses, subject to agreement by the parties. A JV may be undertaken through a
22 contract or by creating a JV company: Provided, That the following shall be observed:

- 23
24 (a) The formation of a JV company shall be in accordance with the legal mandate of
25 the Implementing Agency and provisions of the Revised Corporation Code of the
26 Philippines and other applicable laws, rules, and regulations: Provided, That the
27 equity contribution, which shall include contribution of assets, properties, and
28 rights, and other allowable Government Undertakings and/or Subsidy, of the
29 government in a JV arrangement shall in no case exceed fifty percent (50%) of
30 the Project Cost in the case of a contractual JV, or fifty percent (50%) of the
31 outstanding capital stock of the JV company, subject to applicable laws, rules,
32 and regulations.
- 33
34 (b) The formation of the JV between the Implementing Agency and Private
35 Proponent shall not prevent the parties from entering into other JV agreements
36 and/or from profitably entering into other business ventures or markets: Provided,
37 That such other ventures shall not compete with the JV between the parties.
- 38
39 (c) The cost of producing the particular product, conducting the activity, or
40 performance of service shall be efficient or potentially efficient towards earning
41 potential profits for the Implementing Agency and the Private Proponent.
- 42
43 (d) The interests of the Implementing Agency and Private Proponent in and to any
44 profits, losses, assets acquired, constructed, and otherwise derived in
45 connection with the JV shall be proportionate to their respective contributions to
46 the JV: Provided, That the Implementing Agency's share in any profits shall not
47 be less than the proportion of its contribution to the JV.
- 48
49 (e) The parties may agree to a higher percentage of profit or lower percentage of
50 losses for the government as compared to the actual percentage of government

1 contribution in the JV. The Implementing Agency may also accept any other more
2 favorable terms as may be agreed upon with the Private Proponent in the JV
3 agreement.

4
5 (f) JV agreements may allow the private sector to take over the undertaking of the
6 projects in its entirety in cases where the government deems that divestment
7 from the JV is in the best interest of the public. Such takeover shall be subject to
8 the approval of the Privatization Council and in accordance with the requirements
9 and procedure provided in the IRR of this Act.

10
11 (g) All JV agreements, whether through a contractual JV or a JV company, shall be
12 approved by the appropriate Approving Body pursuant to Section 7 of this Act:
13 Provided, That Implementing Agencies contributing a majority of their assets
14 would be subject to approval by the ICC-NEDA. Furthermore, the selection
15 process for a solicited and an unsolicited JV shall be in accordance with Sections
16 9 and 10 of this Act.

17
18 All other rules provided under this Act, such as on regulation of tolls, fares, fees,
19 rentals and other charges, divestiture/divestment, variation, expansion, or
20 extension of a JV, project monitoring and supervision, shall be applicable to all
21 JV arrangements.

22
23 (h) Formation of JV between the Implementing Agency and Private Proponent shall
24 not change the nature or alter the mandate of the Implementing Agency entering
25 into such JV. The Implementing Agency's governmental responsibility shall not
26 be diminished and shall not be a reason to avoid compliance/coverage of existing
27 laws, rules, or regulations. A JV shall not serve as a vehicle to create new
28 GOCCs.

29
30 **SEC. 12. Protest Mechanism.** – In all stages of the procurement process, the
31 protest mechanism for national and local PPP Projects shall be provided in the IRR of
32 this Act: Provided, That such protests shall be resolved in the most expeditious
33 manner.

34
35 Unless otherwise provided in this Act, in no case shall a motion for
36 reconsideration or an appeal from any decision by the PBAC, Head of Implementing
37 Agency, or Department Secretary stay or delay the bidding process. No award shall
38 however be made until a decision on any pending appeal is rendered, or deemed
39 denied.

40
41 **SEC. 13. Issuance of Franchise.** – Subject to the provisions of the Constitution
42 and other existing laws, rules and regulations, once a PPP contract is executed by the
43 Private Proponent and the Implementing Agency, a presumption arises that the public
44 interest will be served by the implementation of the PPP Project covered thereby, and
45 immediately upon application by the Private Proponent, the regulator shall
46 automatically grant in favor of the Private Proponent a franchise to operate the facility
47 and collect the tolls, fares, fees, rentals, and other charges stipulated under the PPP
48 contract.

1 **SEC. 14. Mandatory Inclusion of Dispute Avoidance and Alternative**
2 **Dispute Resolution Mechanisms in PPP Contracts.** – All PPP contracts shall
3 include provisions on the use of dispute avoidance and Alternative Dispute Resolution
4 (ADR) mechanisms. The contracting parties shall be given complete freedom to
5 choose which ADR mechanisms and venue shall govern their dispute, as well as the
6 rules or procedures to be followed involving the same.

7
8 **SEC. 15. Adoption of Contract Management and Risk Mitigation Plans in**
9 **PPP Projects.** – In order to manage the fiscal risks arising from PPP Projects,
10 strengthen the credibility of the PPP program and Projects among the private sector,
11 and to ensure the timely compliance with the contractual obligations of Implementing
12 Agencies, PPP Projects undertaken through this Act shall require the adoption of
13 contract management and risk mitigation plans. Such plans shall include the agreed
14 project execution plan, all risks assumed by the government under the contract, risks
15 assumed by the Implementing Agency, risk mitigating measures, estimated costs to
16 be incurred, target timeline to have each measure in place, and the appropriate action
17 plan by the Implementing Agency to manage each type of risk. All plans shall be kept
18 up-to-date and be submitted to the PPP Center for monitoring. The procedures in
19 creating, managing, and monitoring the contract management and risk mitigation plan
20 shall be prescribed in the IRR of this Act.

21
22 **SEC. 16. Project Supervision and Monitoring.** – Every PPP Project shall be
23 implemented in accordance with the project terms as approved by the appropriate
24 Approving Body, as well as the signed PPP contract. The coverage of the project terms
25 and the minimum required provisions in a PPP contract shall be set forth in the IRR of
26 this Act. The Implementing Agency shall be entitled to exercise sufficient powers of
27 supervision, monitoring, and control over the implementation of each PPP contract it
28 has entered into.

29
30 (a) **Supervision.** The Implementing Agency shall be responsible for the overall
31 supervision of the PPP Project and for submission of periodic monitoring reports,
32 executed under oath, to the appropriate oversight agencies. The details and
33 procedures shall be set forth in the IRR of this Act.

34
35 (b) **Monitoring.** The PPP Governing Board shall set the framework for monitoring
36 the compliance of the parties to PPP contracts, report the progress of PPP
37 projects and their expected benefits and outcomes, and determine the
38 appropriate penalties for the non-compliance of parties to the set reportorial
39 requirements.

40
41 The PPP Center shall be responsible for the coordination and monitoring of PPP
42 Projects. For this purpose, the Implementing Agency shall submit to the PPP
43 Center all executed PPP contracts, information on the status of projects
44 implemented by, as well as copies of all unsolicited proposals and related
45 documents received by, the Implementing Agency, and loan or financing
46 documents of the Private Proponent for the PPP Project. At the end of every
47 calendar year, the PPP Center shall submit a report to the President of the
48 Philippines and to the Congress of the Philippines – particularly to the Senate
49 President and the Speaker of the House of Representatives, and the

1 Chairpersons of the Committee on Public Works – on the progress of all PPP
2 Projects.

3
4 **SEC. 17. *Investment Incentives.*** – PPP Projects undertaken through this Act
5 shall be entitled to various incentives under applicable laws and existing policies of the
6 government.

7
8 **SEC. 18. *Investment Recovery Scheme.*** – In undertaking PPP Projects, the
9 Private Proponent shall be allowed to recover its investments and earn reasonable
10 profit through any of the following schemes or a combination thereof:

11
12 (a) **Revenue-based** refers to a scheme where the Private Proponent is authorized
13 to charge and collect, in whole or in part, from the public reasonable tolls, fares,
14 fees, rentals, and other charges subject to appropriate regulation in accordance
15 with Section 19 of this Act. Where applicable, the Private Proponent may likewise
16 be repaid in the form of a share in the revenue of the project; and

17
18 (b) **Availability-based** refers to a scheme where the Implementing Agency commits
19 to make predetermined payments, which do not take the form of charges paid by
20 the users of the works or of the service, but of regular payments by the
21 Implementing Agency in exchange of delivering an asset or service in
22 accordance with the contract.

23
24 Other non-monetary payments, such as commercial development rights, or the
25 grant of a portion or percentage of the reclaimed land, subject to the constitutional
26 requirements on land ownership, may also be allowed to supplement the foregoing
27 schemes.

28
29 The framework and mechanism in determining the allowable return of the
30 Private Proponent on a PPP Project, as applicable, shall be prescribed in the IRR of
31 this Act.

32
33 **SEC. 19. *Regulation of Tolls, Fares, Fees, Rentals and Other Charges.*** –
34 The collection of tolls, fares, fees, rentals, and other charges in PPP Projects
35 undertaken through this Act shall be regulated in accordance with the principles of
36 fairness, transparency, predictability, and protecting public interest. The rules and
37 procedures governing such regulation shall be prescribed in the IRR of this Act:
38 Provided, That the initial tolls, fares, fees, rentals, and other charges and adjustments
39 thereof to be included in the final draft PPP contract shall be subject to the approval
40 of the appropriate regulator; Provided further, That if the regulator does not render a
41 decision on the initial tolls, fares, fees, rentals, and other charges and adjustments
42 thereof within the period prescribed in the IRR of this Act, the initial tolls, fares, fees,
43 rentals, and other charges and adjustments thereof shall be deemed approved by the
44 regulator.

45
46 The regulator shall uphold the approved initial tolls, fares, fees, rentals, and
47 other charges and adjustments thereof during the implementation of the PPP Project.
48 The regulator may review such adjustments in cases of extraordinary circumstances
49 as defined in the PPP contract, or periodically, when stipulated in the PPP contract.

1 In cases where the Implementing Agency fails to implement the initial tolls,
2 fares, fees, rentals, and other charges and adjustments thereof as stipulated in the
3 PPP contract, the Private Proponent shall be allowed to recover the difference through
4 measures consistent with the PPP contract and applicable laws, rules, and
5 regulations.

6
7 In the absence of an appropriate regulator, the initial tolls, fares, fees, rentals,
8 and other charges and adjustments thereof shall be approved by the Approving Body.

9
10 The Implementing Agency and the PPP Center shall post in their respective
11 websites the approved initial tolls, fares, fees, rentals, and other charges and
12 adjustments thereof in a PPP Project.

13
14 **SEC. 20. Variation, Expansion, or Extension of an Existing PPP Project. –**

15 A contract variation or extension, or an expansion or extension of an existing PPP
16 Project may be allowed, subject to the rules and procedures as provided in the IRR of
17 this Act.

18
19 Application for contract variation or extension, or expansion or extension of an
20 existing PPP Project shall not impair the substantive rights of the Private Proponent,
21 and shall be governed by existing laws, decrees, orders, rules and regulations at the
22 time of application. No variation shall be implemented before the variation is approved.

23
24 **SEC. 21. Divestiture/Divestment. –** Subject to the approval of the Head of the
25 Implementing Agency, a Private Proponent may divest its ownership, rights, or interest
26 in a PPP Project: Provided, That the divestiture shall be after a holding or lock-in period
27 as indicated in the PPP contract: Provided further, That the new Private Proponent
28 has equal or better qualifications as with the previous Private Proponent.

29
30 The Implementing Agency may divest its ownership, rights, or interest in a
31 project: Provided, that projects which involve full or partial divestment or transfer of
32 ownership of government assets or properties shall be subject to approval of the
33 appropriate Approving Body and applicable laws, decrees, orders, rules and
34 regulations.

35
36 **SEC. 22. Contract Termination. –** All PPP contracts shall define all events that
37 may lead to its termination, including but are not limited to, either party event of default,
38 force majeure and other no-fault termination events, and other termination events, as
39 may be agreed upon by the parties to the PPP contract.

40
41 For such events that may lead to contract termination, the contract shall provide
42 remedies, curing periods, lender step-in rights, and written notice requirements agreed
43 upon by both parties. The contract shall likewise provide that termination shall take
44 place only upon failure to remedy or cure the default in accordance with the contract.

45
46 For avoidance of doubt, the PPP Project shall not be terminated for an event of
47 default without exhausting the corresponding remedy or curing period.

48
49 If a PPP contract is revoked, cancelled, or terminated prior to its completion,
50 either contracting party shall compensate the other party pursuant to terms as defined

1 in the PPP contract. The determination of the amount of compensation shall be in
2 accordance with guidelines to be issued by the PPP Governing Board.

3
4 **SEC. 23. *Wind-up and Transfer Measures.*** – All PPP contracts shall provide
5 for wind-up and transfer measures. Such provision shall include, among others, the
6 following:

- 7
8 (a) Mechanisms and procedures for the transfer of assets to the Implementing
9 Agency, as may be applicable;
10
11 (b) The transfer of technology required for the operation of the PPP Project, subject
12 to limitations under existing laws, rules and regulations;
13
14 (c) The training of the personnel of the Implementing Agency or of a successor in
15 the operation and maintenance of the PPP Project;
16
17 (d) The provision, by the Private Proponent, of a warranty that the PPP Project
18 meets the project technical specifications, agreed system features, and
19 performance standards and services for a certain period as may be defined in
20 the IRR of this Act after the transfer of the PPP Project to the Implementing
21 Agency; and
22
23 (e) In case of JV arrangements, the compensation to which the Private Proponent
24 may be entitled in case of buy-out and transfer of assets to the Implementing
25 Agency.
26

27 Further rules and procedures on wind-up and transfer measures may be
28 provided under the IRR of this Act.
29

30 **SEC. 24. *Prohibition on the Issuance of Temporary Restraining Orders,***
31 ***Preliminary Injunctions, Preliminary Mandatory Injunctions, and Similar***
32 ***Provisional Remedies.*** – No temporary restraining order, preliminary injunction,
33 preliminary mandatory injunction, temporary environmental protection order, or similar
34 temporary or provisional reliefs or remedies, shall be issued by any court, except the
35 Supreme Court, against any Implementing Agency or the PPP Center, its officials or
36 employees, or any person or entity, whether public or private acting under the
37 government direction, to restrain, prohibit, or compel the following acts:
38

- 39 (a) Bidding, rebidding, or declaration of failure of bidding of any PPP Project;
40
41 (b) Awarding of any PPP contract;
42
43 (c) Acquisition, clearance, development of the right-of-way, site or location of any
44 PPP Project;
45
46 (d) Construction, operation and maintenance of any PPP Project;
47
48 (e) Commencement, execution, implementation, termination or rescission of any
49 PPP contract; and
50

- 1 (f) Undertaking or authorization of any other lawful activity necessary for such PPP
2 Project or contract.
3

4 This prohibition shall apply in all cases, disputes or controversies instituted by
5 any person, including cases filed by bidders or those claiming to have rights through
6 such bidders. This prohibition shall not apply when the matter is of extreme urgency
7 involving a constitutional issue, such that unless a temporary restraining order is
8 issued, grave injustice and irreparable injury will arise. The applicant shall file a bond,
9 in an amount to be fixed by the court. The bond shall accrue in favor of the government
10 if the court should finally decide that the applicant was not entitled to the relief sought.
11

12 In addition to any civil and criminal liabilities a judge may incur under existing
13 laws, any judge who shall issue a temporary restraining order, preliminary injunction
14 or preliminary mandatory injunction, temporary environmental protection order, or
15 similar temporary or provisional reliefs or remedies in violation of this Section, shall
16 suffer the penalty of suspension of at least sixty (60) days without pay.
17

18 Any temporary restraining order, preliminary injunction, preliminary mandatory
19 injunction, temporary environmental protection order, or similar temporary or
20 provisional reliefs or remedies issued in violation of this Section is void and of no force
21 and effect.
22

23 **SEC. 25. PPP Center.** – To achieve the goals of this Act, the PPP Center
24 created under Executive Order No. 8, series of 2010, as amended by Executive Order
25 No. 136, series of 2013, is hereby institutionalized. It is hereby authorized to adopt its
26 current organizational structure, absorb its existing employees, and upgrade its human
27 resource component, as may be necessary, subject to applicable laws, rules, and
28 regulations.
29

30 In order to work towards a more efficient and effective performance of its
31 mandate, the PPP Center shall have the following powers and functions:
32

- 33 (a) Assist Implementing Agencies in identifying, prioritizing, developing, and
34 maintaining a pipeline of PPP Projects;
35
36 (b) Provide project advisory services and technical assistance to Implementing
37 Agencies, Approving Bodies, and other oversight agencies in all PPP-related
38 matters, and act as a procurement agent upon the request of the Implementing
39 Agency;
40
41 (c) Facilitate the appraisal and approval of PPP Projects by the ICC-NEDA and the
42 NEDA Board;
43
44 (d) Develop the capacities of Implementing Agencies, Approving Bodies, PPP units
45 referred to in Section 29 of this Act, and other relevant stakeholders on PPPs;
46
47 (e) Manage and administer the Project Development and Monitoring Facility
48 (PDMF), as provided in Section 27 of this Act;
49

- 1 (f) Recommend plans, policies, and implementation guidelines related to PPP, in
2 consultation with appropriate oversight committees or agencies, Implementing
3 Agencies, private sector, and other relevant stakeholders;
4
- 5 (g) Ensure sustainability of the implemented PPP program and projects through
6 monitoring, documenting, and sharing the lessons learned and best practices to
7 Implementing Agencies, Approving Bodies, oversight committees or agencies,
8 and other relevant stakeholders;
9
- 10 (h) Provide regular monitoring and status reports on the implementation of all PPP
11 programs and projects entered into by Implementing Agencies, including
12 potential public interest concerns and violations of the PPP Act, to the Office of
13 the President, the Congress of the Philippines, relevant oversight committees
14 and agencies, and publish the same in the official website of the PPP Center,
15 unless otherwise prohibited by existing laws, rules, and regulations;
16
- 17 (i) Promote and market PPP programs and projects, in collaboration with other
18 government investment promotion agencies;
19
- 20 (j) Review PPP contracts pursuant to the IRR of this Act;
21
- 22 (k) Issue non-policy matter opinions relating to PPPs;
23
- 24 (l) Draft policy matter opinions for approval by the PPP Governing Board in
25 response to requests by government agencies and private entities;
26
- 27 (m) Serve as the central repository of all PPP Project documents, including all
28 executed PPP contracts and any subsequent amendment or supplement thereto,
29 including settlement agreements, entered into by Implementing Agencies;
30
- 31 (n) Act as Secretariat to the PDMF Committee and the PPP Governing Board; and
32
- 33 (o) Perform such other functions as may be necessary to achieve the objectives and
34 purposes of this Act.
35

36 The PPP Center may receive contributions, grants, and/or other funds from,
37 among others, government agencies and corporations, LGUs, local and foreign
38 donors, development partners, and private sector/institutions subject to applicable
39 laws, rules and regulations.
40

41 The PPP Center shall report directly to the PPP Governing Board and shall be
42 attached to the NEDA for purposes of policy and program coordination.
43

44 The PPP Center shall be headed by an Executive Director with the rank
45 equivalent to an Undersecretary, who shall be appointed by and co-terminus with the
46 President of the Philippines. The Executive Director shall perform the following
47 functions:
48

- 49 (a) Undertake the day-to-day management and supervise the operations of the PPP
50 Center;

- 1
2 (b) Recommend to the PPP Governing Board such policies and measures which are
3 deemed necessary for the effective exercise and discharge of the powers and
4 functions of the PPP Center;
5
6 (c) Sit as a member of the PPP Governing Board, INFRACOM - Technical Board,
7 and ICC-NEDA - Technical Board, and other inter-agency bodies in cases where
8 PPPs are concerned; and
9
10 (d) Perform such other functions as may be assigned by the PPP Governing Board.
11

12 **SEC. 26. PPP Governing Board.** – The PPP Governing Board, created under
13 Executive Order No. 136, series of 2013, and hereinafter referred to as the Board, is
14 hereby institutionalized. It shall be the overall policy-making body for all PPP-related
15 matters, including the PDMF. It shall be responsible for setting the strategic direction
16 of PPP programs and projects and in creating an enabling policy and institutional
17 environment for PPP.
18

19 The Board shall be composed of the following:
20

- 21 (a) The Secretary of Socioeconomic Planning as Chairperson;
22 (b) The Secretary of Finance as Vice-Chairperson;
23 (c) The Secretary of Budget and Management;
24 (d) The Secretary of Justice;
25 (e) The Secretary of Trade and Industry;
26 (f) The Secretary of the Interior and Local Government;
27 (g) The Secretary of Environment and Natural Resources;
28 (h) The Executive Secretary;
29 (i) The Executive Director of the PPP Center; and
30 (j) One (1) private sector representative from the infrastructure sector to be
31 appointed by the PPP Governing Board.
32

33 The principal members of the Board may designate their respective alternates,
34 who shall in no case be lower than Assistant Secretary, and whose acts shall be
35 considered the acts of their principals.
36

37 The presence of the Chairperson and five (5) other members of the Board shall
38 constitute a quorum and a majority vote of the members present shall be necessary
39 for the adoption of any issuance, order, resolution, decision or other act of the Board
40 in the exercise of its functions. The Board shall act as a collegial body.
41

42 **SEC. 27. Project Development and Monitoring Facility.** – The PDMF
43 referred to under Executive Order No. 8, series of 2010, as amended by Executive
44 Order No. 136, series of 2013, is hereby institutionalized. The PDMF shall be used for
45 the procurement of advisory and support services related to the preparation,
46 structuring, evaluation, procurement, probity management, financial close, and
47 monitoring of implementation of PPP Projects.
48

49 The PDMF may be funded through the General Appropriations Act, official
50 development assistance, or other sources, subject to applicable laws, rules, and

1 regulations. Subject to the provisions of the General Appropriations Act and relevant
2 accounting and auditing rules and regulations, Implementing Agencies are hereby
3 authorized to reallocate their funds for purposes of the PDMF.
4

5 The PDMF shall continue to be managed and administered by the PPP Center
6 as a revolving fund. In order to sustain the PDMF, the PPP Center may recover
7 amounts disbursed and receive fees in accordance with the guidelines to be approved
8 by the PPP Governing Board. Such amount shall be retained and authorized to be
9 used by the PPP Center for the purposes indicated herein.
10

11 The PDMF Committee is hereby institutionalized which shall approve
12 applications for PDMF support submitted by the Implementing Agencies.
13

14 The PDMF Committee shall be composed of one (1) representative, who shall
15 in no case be lower than Assistant Secretary, from the following agencies: NEDA as
16 Chairperson, DOF as Vice Chairperson, DBM, and PPP Center. The PPP Center shall
17 continue to serve as the Secretariat for the PDMF Committee.
18

19 Subject to approval of the PPP Governing Board, the PDMF Committee shall
20 also formulate, prescribe, and recommend policies, procedures, and guidelines for the
21 use of PDMF, and recovery of costs charged to the fund.
22

23 **SEC. 28. Creation of a Risk Management Fund.** – To ensure fiscal
24 sustainability and negotiate better financing terms of PPP Projects, there is hereby
25 created a PPP Risk Management Fund to be used for the payment of contingent
26 liabilities arising from PPPs in accordance with its contract terms.
27

28 The target amount in the PPP Risk Management Fund is to be determined by
29 the Development Budget Coordination Committee (DBCC) using risk-adjusted
30 methods or such other means that estimate the exposure of the Government of the
31 Philippines to PPP contingent liabilities.
32

33 The PPP Risk Management Fund shall be funded from the following sources:
34

- 35 (a) Concession fees;
- 36 (b) Implementing Agency reimbursements;
- 37 (c) Bid premiums;
- 38 (d) Proceeds from negative bid premiums;
- 39 (e) Support from multilateral institutions, international finance institutions, among
40 others;
- 41 (f) Interest earnings from the PPP Risk Management Fund; and
- 42 (g) National government contributions.
43

44 National government contributions shall cover only the difference between the
45 target amount of the PPP Risk Management Fund, as mentioned above, and the
46 current value of the fund. The DOF shall regularly monitor and review the viability of
47 the PPP Risk Management Fund in relation to the magnitude of PPP Projects
48 undertaken by Government, and if necessary, recommend the increase in the target
49 amount of the PPP Risk Management Fund and the reason therefor. All national

1 government contributions to the PPP Risk Management Fund shall be included in the
2 proposed DOF budget.

3
4 When the value of the PPP Risk Management Fund is in excess of the target
5 amount, excess funds may be transferred to the general fund of the national
6 government. The agency implementing PPP Projects must seek confirmation from the
7 DOF that the national government can bear the additional contingent liabilities
8 associated with the project taking into consideration fiscal sustainability.

9
10 Further, to foster accountability and efficiency in implementing PPP Projects, it
11 is mandatory for implementing agencies to enter into a recourse agreement with the
12 DOF before any payment can be drawn from the PPP Risk Management Fund for
13 contingent liabilities that have materialized within contract terms.

14
15 The Bureau of the Treasury shall maintain the PPP Risk Management Fund in
16 the Treasury Single Account. Interest earnings therefrom shall accrue to the PPP Risk
17 Management Fund. Notwithstanding the establishment of this fund, the government
18 may still provide an un-programmed appropriation for unforeseen risks that the
19 government may incur from PPP Projects.

20
21 To monitor such government obligations on liabilities that have materialized and
22 other unforeseen risks that may arise from PPP Projects; and to develop the guidelines
23 to access the PPP Risk Management Fund, the inter-agency technical working group
24 created under DBCC Resolution No. 2015-2, is hereby institutionalized.

25
26 The procedures and mechanisms in managing the PPP Risk Management
27 Fund shall be prescribed in the IRR of this Act.

28
29 In the case of Local PPP Projects, a similar PPP Risk Management Fund may
30 be established by the LGU. The details pertaining to maintaining and administering
31 such fund shall be provided in the IRR of this Act. Sources of the fund may include the
32 budget of the LGU and the income of the LGU from PPP Projects.

33
34 **SEC. 29. Establishment of a PPP Unit.** – The Head of the Implementing
35 Agency may establish a PPP unit, an ad hoc body, or assign responsibility to an
36 appropriate unit to act as its PPP unit, which shall plan, oversee, and monitor PPP
37 Projects of the Implementing Agency.

38
39 Such unit shall be headed by a senior official and include as members, among
40 others, technical, finance, and legal personnel who are knowledgeable on PPPs.

41
42 Such unit shall provide reports to the Head of the Implementing Agency and the
43 PPP Center and shall comply with other reporting and monitoring processes and
44 procedures as may be required by the PPP Center, consistent with this Act and its
45 IRR. Furthermore, the PPP Center shall provide such unit technical assistance and
46 capacity development necessary for the performance of its roles and functions.

47
48 **SEC. 30. Safekeeping and Public Disclosure of Contracts.** – Copies of all
49 PPP contracts executed under this Act shall be considered and appropriately kept safe
50 and preserved as public documents. The Implementing Agency and the PPP Center

1 shall publicly make available copies of PPP contracts through their respective
2 websites, unless otherwise prohibited by existing laws, rules and regulations and those
3 provisions in the contract which are proprietary or may pose threats to national security
4 or public safety, the procedures for the disclosure of such shall be consistent with
5 applicable policies, laws, decrees, orders, rules and regulations.

6
7 **SEC. 31. Miscellaneous Provisions. –**
8

- 9 (a) **Independent Consultants.** An independent consultant, either individuals,
10 partnerships, or corporations, shall be procured by the Implementing Agency to
11 provide independent advice to the Implementing Agency and Private Proponent
12 or its Contractor for the design and construction of the PPP Project, and
13 monitoring of the performance of the contracting parties during such phases of
14 the PPP Project. As may be necessary, an independent consultant may also be
15 procured during the operations and maintenance phase of the PPP Project.

16
17 Costs of procurement of an independent consultant shall be borne equally by the
18 Implementing Agency and the Private Proponent. Such costs borne by the
19 Implementing Agency shall not be considered as a Subsidy.

- 20
21 (b) **Conflict of Interest.** All relevant parties shall, at all times, avoid conflicts of
22 interest in the interpretation and implementation of this Act. Conflict of interest,
23 as defined in Republic Act No. 6713 or the Code of Conduct and Ethical
24 Standards for Public Officials and Employees which refers to any act or omission
25 tending to oppose or disrupt the faithful performance of one's duty or mandate,
26 shall include personal, pecuniary, and regulatory conflicts of interests.

27
28 No Implementing Agency shall implement a PPP Project that it regulates:
29 Provided, That any regulatory agency or body which shall implement a PPP
30 Project pursuant to its mandate shall adopt a conflict mitigation and management
31 plan.

32
33 In case a conflict of interest arises for any public officer or employee, the
34 concerned parties shall inhibit themselves from the performance of their duties
35 in connection to the project. In the case of a PBAC member with a conflict of
36 interest, the concerned member shall resign from their position as PBAC member
37 within thirty (30) calendar days from the time such conflict arises.

- 38
39 (c) **Confidentiality of Information.** Confidential business information submitted by
40 entities, whether public or private, relevant to any activity being conducted
41 pursuant to this Act as well as any deliberation in relation thereto, shall not, in
42 any manner, be directly or indirectly disclosed, published, transferred, copied, or
43 disseminated: Provided, That the confidentiality rule shall not apply if the entity
44 consents to the disclosure, or the document or information is mandatorily
45 required to be disclosed by law or by a valid order of a court of competent
46 jurisdiction or of a government or regulatory agency.

- 47
48 (d) **Alternative Sources of Financing.** In addition to Private Proponent equity and
49 debt, alternative financial instruments such as Green Financing, corporate or
50 project bonds and securities, and other forms of capital market financing may be

1 allowed for PPP Projects, subject to the approval of relevant regulatory bodies
2 for such instruments under existing laws, rules, and regulations.
3

4 (e) **Mitigation of Interconnectivity and Interface Risks.** All PPP Projects which
5 will interconnect or interface with a local or national facility, shall be required to
6 submit a Memorandum of Agreement (MOA) containing an
7 interconnection/interface plan agreed upon by all relevant parties. For National
8 PPP Projects, said MOA shall be submitted to the ICC-NEDA; while for Local
9 PPP Projects, said MOA shall be submitted to the appropriate Approving Body.
10

11 (f) **Private Legal and Medical Assistance.** All the PBAC members and other public
12 officials providing services to the PBAC shall be authorized to engage the
13 services of private lawyers, or shall be provided with free legal assistance, where
14 a civil, criminal, or administrative action is filed against them by reason of the
15 performance of their official functions or duties, unless they are finally adjudged
16 in such action or proceeding to be liable for gross negligence or misconduct or
17 grave abuse of discretion. The PBAC members shall also be entitled to medical
18 assistance for injuries incurred in the performance of their functions.
19

20 (g) **Preferential Use of Filipino Labor, Domestic Materials, and Locally
21 Produced Goods.** For the implementation of infrastructure projects under this
22 Act, Contractors or Facility Operators shall, as far as practicable, use Filipino
23 labor, domestic materials, and locally produced goods in different phases of
24 implementation.
25

26 (h) **Land Value Capture Strategies.** PPP Project design shall consider adopting
27 land value capture strategies to optimize the financial and economic value of the
28 PPP Project.
29

30 **SEC. 32. Accountability in PPP Projects.** – The Head of the Implementing
31 Agency concerned shall at all times be accountable to PPP Projects undertaken
32 through this Act. The Private Proponent shall likewise be held accountable for the
33 works it has delivered and services it has rendered for a PPP Project. All PPP
34 contracts are hereby required to clearly define the scope of each party's accountability
35 under the PPP contract.
36

37 PPP Projects awarded under this Act shall be subject to the Government
38 Auditing Code of the Philippines and the 2009 Revised Rules of Procedures of the
39 Commission on Audit and any amendments thereto. The COA, in consultation and
40 coordination with the PPP Center, shall adopt and promulgate the necessary
41 framework and guidelines on accounting and auditing PPP Projects, respectively.
42

43 **SEC. 33. Administrative, Civil, and Penal Sanction.** – Any person, whether
44 private individual or public officer or employee, who commits any of the prohibited acts
45 hereunder proscribed, shall be punished by imprisonment from a minimum of three (3)
46 years to a maximum of six (6) years.
47

48 The following acts shall be prohibited:
49

- 1 (a) Downgrading the category of the Project Cost for purposes of evading the
2 required approvals under this Act;
3
4 (b) Representation that the Private Proponent has the necessary capitalization to
5 commence, complete, and implement the PPP Project when the same is false in
6 material respects;
7
8 (c) Falsification or insertion of certain provisions in the execution copy of the contract
9 which are materially and substantially different from the approved final draft
10 contract;
11
12 (d) Any violation of Sections 7, 9, 10, 11, 12, 16, 19, 20, 21, 31 (b), and 31 (c) under
13 this Act; and
14
15 (e) A public officer or employee, whether in connivance with others or acting alone,
16 negligently or by fraud commits a failure to ensure compliance with the project
17 terms as approved by the Approving Body, and the signed PPP contract, by
18 approving, issuing, or confirming any certification, required documents, or
19 deliverables of the Private Proponent, which are non-compliant with existing
20 rules, erroneous, not authentic, or fraudulent.
21

22 In addition, such acts committed by the Private Proponent and its concerned
23 officers shall cause the rescission of its contract for the said PPP Project without
24 compensation and shall be perpetually disqualified from participating in any bidding or
25 other contractual arrangement for any government project. This is without prejudice to
26 any other civil or administrative liability that erring officials or Private Proponents may
27 incur.
28

29 The liability of the public officer or employee or former public officer or employee
30 for any violation of the prohibitions under this Act shall survive the retirement of said
31 public officer or employee, and shall include the prohibition for the erring officer to hold
32 public office, either as an elected, or an appointed government official on any local or
33 national position, and to act as a consultant for the Philippine Government, the
34 termination of the project contract, and the lapse of any applicable warranty period/s.
35

36 **SEC. 34. Joint Congressional Oversight Committee.** – A Joint
37 Congressional Oversight Committee is hereby created to oversee the implementation
38 of this Act. The Committee shall be composed of five (5) members each from the
39 Senate and House of Representatives to be designated by the Senate President and
40 the Speaker of the House of Representatives, respectively. The Committee shall be
41 jointly chaired by the respective Chairpersons of the House Committee on Public
42 Works and Highways, the House Committee on Appropriations, the Senate
43 Committee on Public Works, and the Senate Committee on Finance.
44

45 **SEC. 35. Implementing Rules and Regulations.** – The IRR Committee shall
46 be composed of the members of the PPP Governing Board, except for the private
47 sector representative. The Secretary of Socioeconomic Planning shall serve as its
48 Chairperson, and the PPP Center shall serve as its Secretariat.
49

1 The principal members of the IRR Committee may designate their respective
2 alternates, whose acts shall be considered the acts of their principals.

3
4 Within sixty (60) working days from the effectivity of this Act, the IRR Committee
5 shall, in consultation with the Department of Public Works and Highways, Department
6 of Transportation, and other key Implementing Agencies, LGUs, and relevant
7 stakeholders, issue the rules and regulations to implement the provisions of this Act.

8
9 From time to time, the IRR Committee may conduct, formulate, and prescribe,
10 after due public hearing and publication, amendments to the IRR, consistent with the
11 provisions of this Act. Amendments to the IRR shall take effect fifteen (15) calendar
12 days after its complete publication in the Official Gazette or in a newspaper of general
13 circulation.

14
15 **SEC. 36. *Transitory Clause.*** – The provisions of this Act shall apply to all PPP
16 Projects: Provided, That this Act shall not, in any manner, operate to impair vested
17 rights already accruing to a party.

18
19 New projects and proposed variations already submitted by the Implementing
20 Agency for approval of the appropriate Approving Body, at the time of effectivity of this
21 Act, shall be governed by the legal framework in effect at the time the new project or
22 proposed variation was submitted to the appropriate approving body.

23
24 Upon the effectivity of this Act, JVs and other contractual arrangements for toll
25 road projects or toll facilities with a Private Proponent, including Supplemental Toll
26 Operation Agreement (STOA) and other similar arrangements, pending final approval
27 of the Toll Regulatory Board, shall be subject to the approval process under Section 7
28 of this Act.

29
30 All unexpended funds of the PPP Center at the end of the fiscal year, as well
31 as unreleased appropriations, and undisbursed funds after the end of the validity
32 period, shall revert to the National Treasury and shall not thereafter be available for
33 expenditure, except by subsequent legislative enactment. The amount necessary to
34 carry out the organizational changes of the PPP Center provided in this Act shall be
35 determined by the PPP Governing Board. Appropriations for succeeding years shall
36 be incorporated in its budget proposals, subject to the existing budgeting rules and
37 regulations.

38
39 All officials and employees of the PPP Center shall be retained and shall not
40 suffer any loss of seniority or rank or decrease in emoluments.

41
42 **SEC. 37. *Separability Clause.*** – If any provision of this Act is declared
43 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall
44 continue to be in full force and effect.

45
46 **SEC. 38. *Repealing Clause.*** – Republic Act No. 6957, as amended by
47 Republic Act No. 7718 (An Act Authorizing the Financing, Construction, Operation and
48 Maintenance of Infrastructure Projects by the Private Sector, and for other purposes)
49 and its implementing rules and regulations are hereby repealed.

1 All laws, decrees, orders, rules and regulations, and all other related national
2 and GOCC issuances, and local PPP or JV codes and ordinances, or parts thereof
3 inconsistent with or contrary to this Act, including but not limited to the following, are
4 hereby repealed or amended accordingly:
5

- 6 (a) Executive Order No. 8, s. 2010, as amended by Executive Order No. 136, s.
7 2013 (Reorganizing and Renaming the Build-Operate-and-Transfer (BOT)
8 Center to the Public-Private Partnership (PPP) Center of the Philippines and
9 Transferring its Attachment from the Department of Trade and Industry to the
10 National Economic and Development Authority and for other purposes);
11
12 (b) Section 8 of Executive Order No. 423, s. 2005 (Repealing Executive Order No.
13 109-A dated September 18, 2003, Prescribing the Rules and Procedures on the
14 Review and Approval of All Government Contracts to Conform with Republic Act
15 No. 9184, otherwise known as "The Government Procurement Reform Act");
16
17 (c) Presidential Decree No. 1112, s. 1977 (Authorizing the Establishment of Toll
18 Facilities on Public Improvements, Creating a Board for the Regulation thereof
19 and for other purposes); and
20
21 (d) Republic Act No. 7160 (Local Government Code of 1991).
22

23 Presidential Decree No. 1113, s. 1977 (Granting the Construction and
24 Development Corporation of the Philippines a Franchise to Operate, Construct and
25 Maintain Toll Facilities in the North and South Luzon Toll Expressways and for other
26 purposes) is hereby repealed and declared to have expired thirty (30) years from May
27 1, 1977.
28

29 Upon effectivity of this Act, no other JV guidelines, PPP guidelines, codes, or
30 ordinances, whatsoever may be used by any government entity in entering into PPPs,
31 except those that are issued in accordance with this Act and its IRR.
32

33 **SEC. 39. Effectivity.** – This Act shall take effect fifteen (15) calendar days after
34 its complete publication in the Official Gazette or in a newspaper of general circulation.
35

36 *Approved,*