

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

 Senate
Office of the Secretary

23 MAR -7 P4:01

SENATE

S. No. 1974

RECEIVED BY: 

INTRODUCED BY SENATOR JOSEPH VICTOR G. EJERCITO

**AN ACT
PROVIDING FOR THE ENABLING ENVIRONMENT TO FOSTER THE GROWTH
OF PUBLIC-PRIVATE PARTNERSHIPS FOR INFRASTRUCTURE AND OTHER
DEVELOPMENT PROJECTS**

EXPLANATORY NOTE

It is provided under Section 20, Article II of the 1987 Constitution:

The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

An enabling environment is essential for the successful implementation of Public-Private Partnership (PPP) programs. A favorable investor climate necessitates an enabling environment to ensure the reasonable security and predictability of the investments.

Accordingly, this proposed bill envisions the adoption of the best practices in PPPs with the end in view of attracting private investors and accelerating infrastructure development in the country. Also, it aims to adopt public disclosure policy of PPP contracts by making available copies of PPP contracts through the implementing agencies and PPP Center's respective websites.

Moreover, this proposed measure seeks to foster competitiveness and transparency in unsolicited proposals. The sixty-working-day challenge period under

the Build-Operate Transfer (BOT) Law is too short for interested challengers to submit their counter proposals in an unsolicited project. To resolve this, this Act proposes to extend the challenge period to a period not exceeding six (6) months from the acceptance of the unsolicited proposal. Additional option is also being proposed under the Act wherein the implementing agencies may be allowed to convert unsolicited proposal into a solicited project subject to the approval process of PPP projects and the same bidding process for solicited proposals.

The other salient features are as follows:

- Institutionalization of tested and proven initiatives and governance structures such as the Project Development and Monitoring Facility (PDMF), PPP Governing Board, and PPP Center,
- Expansion of the coverage of PPP by including Joint Venture and Operation and Maintenance contracts;
- Provision of clearer protests protocol or appeal mechanism in all stages of the procurement process;
- Prohibition of the issuance by courts, except the Supreme Court, of temporary restraining orders, preliminary injunctions, preliminary mandatory injunctions and similar reliefs against any implementing agency, its officials or employees, or any person or entity, whether public or private acting under the government direction;
- Prohibition against regulatory bodies from entering into joint ventures contract; and
- Mandatory inclusion of Dispute Avoidance and Alternative Dispute Resolution Mechanisms in all PPP Contracts.

Hence, the immediate approval of this bill is earnestly sought.



JOSEPH VICTOR G. EJERCITO

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

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

16 The State shall, through all means available, pursue a policy of maintaining a
17 reasonable balance on the financing of infrastructure and other development projects

1 that will most effectively meet the objectives of the government. These may include
2 appropriations, official development assistance, and PPPs, as well as combinations
3 thereof. The government shall determine the appropriate financing by considering
4 budget availability, timelines, stakeholder commitments, and market capacity. The
5 State shall also ensure the integration of climate resilience, sustainability, and gender
6 and development policies and programs in the planning, design, and implementation
7 of PPP projects, in accordance with relevant laws, rules, and regulations.

8 The State recognizes the autonomy of Local Government Units (LGUs) in
9 entering and implementing local PPP projects to enable them to attain their fullest
10 development as self-reliant communities and make them more effective partners in
11 the attainment of national goals.

12 Finally, it is declared that the State shall affirm open, fair, transparent, and
13 competitive selection as the central tenet for securing private investment in PPP
14 projects. It shall implement a policy of full public disclosure of all its transactions of
15 public interest, subject to terms and conditions as prescribed by pertinent laws.

16 *Sec. 3. Scope and Application.* – This Act shall apply to all PPP projects
17 undertaken by implementing agencies through PPP contracts with a private proponent,
18 including the contractual arrangements stated under Section 5 of this Act.

19 This Act shall not cover management contracts, service contracts, divestments
20 or dispositions, corporatization, incorporation of subsidiaries with private sector equity,
21 onerous donations, gratuitous donations, and other contractual arrangements that do
22 not demonstrate the necessary characteristics or elements of a PPP as provided for in
23 Section 5 of this Act. In such cases, the implementing agencies shall implement the
24 aforementioned arrangements in accordance with the provisions of other applicable
25 laws.

26 *Sec. 4. Definition of Terms.* – As used in this Act:

- 27 a. Approving body - refers to an entity authorized to approve PPP projects, in
28 accordance with Section 7 of this Act;
- 29 b. Availability payments - refer to predetermined payments by the implementing
30 agency to the private proponent in exchange of delivering an asset or service
31 in accordance with the contract. Availability payments shall not be construed
32 as government undertakings, subsidy, or government contribution;

- 1 c. Construction - refers to new construction, rehabilitation, improvement,
2 expansion, alteration, and related works and activities including the necessary
3 design, supply, installation, testing and commissioning of equipment, systems,
4 plants, materials, labor and services, and related items needed to build or
5 rehabilitate an infrastructure or development facility;
- 6 d. 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 *force majeure*, breach of government
9 warranties, and material adverse government action, among others;
- 10 e. Contractor - refers to any entity allowed and duly registered and licensed under
11 Philippine laws, which may or may not be the private proponent, and which
12 shall undertake the construction or supply of equipment or services for PPP
13 projects;
- 14 f. Facility operator - refers to an entity with legal personality authorized under
15 existing laws, which may or may not be the private proponent, that shall be
16 responsible for operating and maintaining a facility, including but not limited to
17 the collection of tolls, fares, fees, rentals or charges from facility users;
- 18 g. Government undertaking - refers to any form of contribution or support, which
19 the government may extend to a private proponent for the implementation of
20 PPP projects, as provided under this Act;
- 21 h. Green financing - refers to investments that create environmental benefits in
22 support of green growth, low-carbon, and sustainable development;
- 23 i. Guarantee on demand - refers to an agreement whereby the implementing
24 agency guarantees a minimum amount of users, consumers, traffic, or other
25 similar assumptions for the PPP project;
- 26 j. Guarantee on loan repayment - refers to an agreement whereby the
27 implementing agency guarantees to assume responsibility for the repayment of
28 debt directly incurred by the private proponent in implementing the PPP
29 project in case of a loan default;
- 30 k. Guarantee on private sector return - refers to an agreement whereby
31 the implementing agency guarantees to provide a predetermined rate of return

1 on the investment of the private proponent. This shall not cover
2 termination payments arising from government events of default;

3 l. Implementing agency - refers to a Department, Bureau,
4 Office, instrumentality, Commission, state university and college (SUC),
5 local university and college (LUC), LGU, or government- owned and controlled
6 corporation (GOCC) as defined in Republic Act No. 10149 otherwise known as
7 the "GOCC Governance Act of 2011", including government instrumentality
8 with corporate powers (GICP), government corporate entity (GCE), and
9 government financial institution (GFI), water district and economic zone
10 authority which is hereby authorized to undertake PPP projects with a private
11 proponent in accordance with its mandate or charter and the provisions of this
12 Act;

13 m. Joint Venture - refers to a contractual arrangement whereby both the
14 implementing agency performing a proprietary function, excluding
15 regulatory bodies, and the private proponent contribute to pool resources
16 comprising of capital, services, or assets, including equipment, land, or
17 intellectual property, to jointly undertake a specific investment activity to deliver
18 an infrastructure or development project typically provided by the public sector,
19 subject to Section 11 of this Act;

20 n. Material adverse government action (MAGA) - refers to any act of the
21 government which the private proponent had no knowledge of, or could not be
22 reasonably expected to have had knowledge of, prior to the effectivity of
23 the PPP contract, and that occurs after the effectivity of the contract, other
24 than an act which is authorized or permitted under the PPP contract, which
25 (1) specifically discriminates against the sector, industry, or project, and (2)
26 has a significant negative effect on the ability of the private proponent to
27 comply with any of its obligations under the approved PPP contract. MAGA
28 includes regulatory risks;

29 o. Original proponent - refers to the private proponent which submitted an
30 unsolicited proposal that has been accepted, has been pre-qualified by
31 the implementing agency, and has been conferred the original proponent
32 status (OPS), as mentioned in Section 10 of this Act;

- 1 p. Private proponent - refers to the private sector entity which has submitted
2 an unsolicited proposal, or a bid submission in relation to a solicited PPP project,
3 or has a contractual responsibility for the PPP project. The private proponent
4 may be Filipino or foreign-owned, and may engage the services of a
5 foreign contractor or foreign facility operator, subject to the requirements
6 and limitations provided under existing laws, rules, and regulations;
- 7 q. Project cost - refers to the total cost to be expended to plan, develop,
8 and construct the project to completion stage, including the cost of
9 feasibility studies, engineering and design, construction, equipment, land and
10 right-of-way, taxes imposed on said cost, and development cost. For
11 operations and maintenance PPP projects, the project cost refers to the present
12 value of the costs in delivering the contracted service, including any
13 reinvestment requirements as provided in the approved contract;
- 14 r. Solicited proposal - refers to a submission by the private proponent to bid for
15 a PPP project through open, fair, transparent, and competitive public bidding
16 initiated by the implementing agency, subject to Section 9 of this Act;
- 17 s. Subsidy - refers to an amount which the implementing agency may use to: (i)
18 defray, pay for, or shoulder a portion of the project cost or the expenses and
19 costs in operating or maintaining the project; (ii) bear a portion of capital
20 expenses associated with the establishment of an infrastructure or
21 development project, or any partial financing of the project or component
22 thereof; (iii) contribute any property or assets to the project; (iv) in the case of
23 LGUs, waive or grant special rates on real property taxes on the project during
24 the term of the contractual arrangement; and (v) waive charges or fees relative
25 to business permits or licenses that are to be obtained for the construction of
26 the project, all without receiving payment or value from the private proponent,
27 contractor, or facility operator for such payment, contribution, or support:
28 *Provided, That* subsidy falling under items (i) and (ii) herein shall not exceed
29 fifty percent (50%) of the total project cost;
- 30 t. Termination payment - refers to the amount payable by the government or the
31 private proponent on the occurrence of an event or series of events provided
32 for in the PPP contract that results in the termination of said contract;

- 1 u. Unsolicited proposal - refers to a project proposal submitted by a private
2 proponent not in response to a formal solicitation or request issued by the
3 implementing agency, subject to Section 10 of this Act; and
- 4 v. Viability gap funding (VGF) - refers to a type of subsidy in the form of a financial
5 support that the government may provide to a revenue-based PPP project with
6 the objective of making fees affordable, while improving the commercial
7 attractiveness of the project, excluding costs of right-of-way, resettlement, and
8 real estate taxes.

9 *Sec. 5. Public-Private Partnership (PPP).* – A PPP is a contractual arrangement
10 between the implementing agency and the private proponent for the financing,
11 designing, constructing, operating and maintaining, or any combination thereof, of
12 infrastructure or development projects which are typically provided for by the public
13 sector, where each party shares in the associated risks. PPP projects may also be
14 financed partly from direct government appropriations or from official development
15 assistance (ODA) of foreign governments or institutions.

16 PPP projects may be undertaken through contractual arrangements, including
17 the following:

- 18 a. Build-Lease-Transfer (BLT) - refers to a contractual arrangement whereby a
19 project proponent is authorized to finance and construct an infrastructure or
20 development facility and upon its completion turns it over to the implementing
21 agency concerned on a lease arrangement for a fixed period, after which
22 ownership of the facility is automatically transferred to the implementing
23 agency concerned.
- 24 b. Build-Own-and-Operate (BOO) - refers to a contractual arrangement whereby
25 a project proponent is authorized to finance, construct, own, operate and
26 maintain an infrastructure or development facility from which the project
27 proponent is allowed to recover its total investment, operating and
28 maintenance costs and a reasonable return thereon by collecting tolls, fares,
29 fees, rentals or charges from facility users: *Provided*, That all such projects,
30 upon recommendation of the Investment Coordination Committee (ICC) of the
31 National Economic and Development Authority (NEDA), shall be approved by
32 the President of the Philippines. Under this arrangement, the project

1 proponent who owns the assets of the facility may assign its operation and
2 maintenance to a facility operator.

3 c. Build-Operate-and-Transfer (BOT) - refers to a contractual arrangement
4 whereby the project proponent undertakes the construction, including
5 financing, of a given infrastructure facility, and the operation and maintenance
6 thereof. The project proponent operates the facility over a fixed term during
7 which it is allowed to charge facility users appropriate tolls, fares, fees, rentals
8 or charges not exceeding the rates proposed in its bid or as negotiated and
9 incorporated in the contract to enable the project proponent to recover its
10 investment, and operating and maintenance expenses in the project. The
11 project proponent transfers the facility to the implementing agency concerned
12 at the end of a fixed term that shall not exceed fifty (50) years: *Provided*, That
13 in the case of an infrastructure or development facility whose operation
14 requires a public utility franchise, the project proponent must be Filipino or, if
15 a corporation, must be duly registered with the Securities and Exchange
16 Commission (SEC) and owned at least sixty percent (60%) by Filipinos. This
17 BOT contractual arrangement shall include a supply-and-operate scheme which
18 is a contractual arrangement whereby the supplier of equipment and machinery
19 for a given infrastructure facility, if the interest of the government so requires,
20 operates the facility providing in the process technology transfer and training
21 to Filipino nationals.

22 d. Build-and-Transfer (BT) - refers to a contractual arrangement whereby the
23 project proponent undertakes the financing and construction of a
24 given infrastructure or development facility and after its completion turns it
25 over to the implementing agency concerned, which shall pay the project
26 proponent on an agreed schedule its total investment expended on the project,
27 and a reasonable rate of return thereon. This arrangement may be employed
28 in the construction of any infrastructure or development projects, including
29 critical facilities which, for security or strategic reasons, must be operated
30 directly by the government.

31 e. Build-Transfer-and-Operate (BTO) - refers to a contractual
32 arrangement whereby the implementing agency contracts out the construction

1 of an infrastructure facility to a private entity such that the contractor builds
2 the facility on a turnkey basis, assuming cost overruns, delays, and specified
3 performance risks. Once the facility is commissioned satisfactorily, title is
4 transferred to the implementing agency. The private entity however operates
5 the facility on behalf of the implementing agency under an agreement.

6 f. Contract-Add-and-Operate (CAO) - refers to a contractual
7 arrangement whereby the project proponent adds to an existing infrastructure
8 facility which it is renting from the government and operates the expanded
9 project over an agreed franchise period. There may or may not be a transfer
10 arrangement with regard to the added facility provided for by the project
11 proponent.

12 g. Develop-Operate-and-Transfer (DOT) - refers to a contractual arrangement
13 whereby favorable conditions external to a new infrastructure project which
14 is to be built by a project proponent are integrated into the arrangement by
15 giving the entity the right to develop adjoining property, and thus enjoy some
16 of the benefits the investment creates such as higher property or rent values.

17 h. Joint Venture (JV) – refers to a contractual arrangement as defined in Section
18 of this Act.

19 i. Lease Agreements - refers to a contractual arrangement with the private
20 proponent for the rental of a government property for the implementation of a
21 PPP project or a component thereof.

22 j. Operate-and-Maintain (OM) - refers to a contractual arrangement whereby an
23 existing facility is turned over to the project proponent to operate and maintain
24 for a franchise, at the expiry of which the facility is reverted to the implementing
25 agency.

26 k. Rehabilitate-Own-and-Operate (ROO) - refers to a contractual arrangement
27 whereby an existing facility is turned over to the project proponent to refurbish
28 and operate with no time limitation imposed on ownership. As long as the
29 operator is not in violation of its franchise, it can continue to operate the facility.

30 l. Rehabilitate-Operate-and-Transfer (ROT) - refers to a contractual arrangement
31 whereby an existing facility is turned over to the project proponent to refurbish,
32 operate and maintain for a franchise period, at the expiry of which the legal

1 title to the facility is turned over to the government. The term is also used to
2 describe the purchase of an existing facility from abroad, importing,
3 refurbishing, erecting, and consuming it within the host country.

- 4 m. Such other variations as may be approved by the appropriate approving body.
5 Implementing agencies, in accordance with their respective mandates or
6 charters, are hereby authorized to undertake PPP projects with a private
7 proponent in accordance with the provisions of this Act.

8 *Sec. 6. Identification of PPP Projects.* – Implementing agencies shall include in
9 their development plans, strategies, and investment programs those PPP projects that
10 they shall undertake. In identifying such projects, the implementing agencies shall be
11 guided by the following principles: effectiveness in meeting government objectives,
12 appropriateness of the chosen procurement modality and source of funding, value for
13 money, accountability and transparency, consumer rights, affordability, and public
14 access, safety, and security. All PPP projects shall be consistent and responsive to
15 national, local, and sectoral development and investment plans.

16 The implementing agencies shall submit their list of PPP projects or any update
17 thereto to the appropriate oversight agencies, including the NEDA, Regional
18 Development Councils (RDCs), and the PPP Center, for information and in accordance
19 with existing rules, regulations, and guidelines. Each proposed PPP project shall be
20 subject to the approval of the appropriate approving body.

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

23 *Sec. 7. Approval of PPP Projects.* –

- 24 a. The approval of PPP projects under this Act shall be in accordance with the
25 following:

26 (1) *PPP projects undertaken by the National Government.* – These projects shall
27 be approved as follows:

28 (i) Projects which cost above Five billion pesos (PhP5,000,000,000.00)
29 shall be submitted to the NEDA Board for approval, upon favorable
30 recommendation of the Investment Coordination Committee of the NEDA (ICC-
31 NEDA);

1 (ii) Projects with cost ranging from Three billion pesos
2 (PhP3,000,000,000.00) to Five billion pesos (PhP5,000,000,000.00) shall be
3 submitted to the ICC-NEDA for approval;

4 (iii) Projects which cost below Three billion pesos (PhP3,000,000,000.00)
5 shall be submitted to the following, as applicable, for approval:

6 a. To the head of the department or agency to which the
7 implementing agency is attached to; or

8 b. To the respective board of the implementing agency, in case
9 an implementing agency has a governing board. If an
10 implementing agency has a governing board and is likewise an
11 attached agency, this rule shall apply; or

12 c. To the head of the implementing agency, in case the
13 implementing agency has no governing board or is not an
14 attached agency.

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

17 (2) *PPP Projects undertaken by the LGUs or LUCs.* - Regardless of project cost,
18 these projects shall be approved by the local *Sanggunians* in the case of LGUs, or by
19 the Boards in the case of LUCs. Prior to approval, projects implemented by LGUs shall
20 be confirmed by the respective local development council.

21 Proposed government undertakings using national government funds for PPP
22 projects shall be submitted to the ICC-NEDA for approval, upon review and
23 endorsement by the respective RDCs. Such government undertakings may include the
24 following items to be provided for by the National Government to a PPP project
25 undertaken by LGUs or LUCs: (i) guarantees on demand; (ii) guarantees on private
26 sector return; (iii) guarantees on loan repayment; (iv) viability gap funding and other
27 forms of subsidy; and (v) payment of contingent liability, including termination
28 payments. Permits, clearances, licenses or endorsements from national government
29 agencies required for PPP projects under laws, rules, and regulations, shall not be
30 considered as government undertakings by the national government for PPP projects.

31 The ICC-NEDA shall render its decision on such requested
32 government undertakings within sixty (60) days upon receipt of such request.

1 PPP projects undertaken by LGUs or LUCs affecting national development or
2 master plans and national projects shall secure the endorsement of the national
3 government through the respective RDCs, prior to approval by the local *Sanggunians*
4 in the case of LGUs, or by the Boards in the case of LUCs. Such endorsement of the
5 RDC shall be processed in the most expeditious manner.

6 A PPP project covering two or more LGUs may be implemented by the national
7 government, subject to the approval process for national PPP projects; or by the next
8 higher level of LGU, subject to the approval process for PPP projects, or by the LGUs
9 concerned.

10 In case of a PPP project implemented by two or more LGUs, such project shall
11 be approved by the local *Sanggunians* of the LGUs concerned, pursuant to Republic
12 Act No. 7160 or the Local Government Code of 1991, as amended. The respective
13 RDCs may assist in the coordination of LGUs in the development, approval, and
14 implementation of the PPP project covering two or more LGUs.

15 b. The approving body shall assess all PPP projects based on its overall feasibility,
16 in accordance with the principle of protecting public interest through the
17 provision of affordable, accessible, and efficient public services. All PPP projects
18 submitted to the approving body shall include proposed indicators to determine
19 their benefits and outcomes, which shall be used in the monitoring and
20 evaluation of PPP projects during implementation. To ensure that all risks
21 associated with PPP projects are managed and mitigated accordingly, all PPP
22 contracts to be entered into by the implementing agency shall adhere to the
23 principles stipulated under the Generic Preferred Risk Allocation Matrix
24 (GPRAM) issued by the ICC-NEDA.

25 c. (c) The appropriate approving body shall notify and advise, in writing, the
26 implementing agency of its receipt and assessment of the completeness, in
27 form and in substance, of the PPP project proposal. Upon complete submission
28 of the requirements by the implementing agency, the appropriate approving
29 body shall render its decision on the project within a period of ninety (90) days.
30 The implementing agency shall be duly notified in writing of the decision of the
31 approving body. The failure of the appropriate approving body to render its
32 decision on the project within the said period of ninety (90) days from the

1 complete submission of requirements, shall be deemed an approval thereof,
2 and the implementing agency concerned may proceed with the procurement of
3 the PPP project, without prejudice to any liability that the erring or negligent
4 officials or employees may incur under existing laws.

5 d. (d) In order to facilitate a comprehensive and timely review of PPP projects,
6 the ICC- NEDA, in the case of national PPP projects, and the PPP Governing
7 Board, in the case of PPP projects undertaken by LGUs or LUCs, shall formulate
8 guidelines, forms, and templates that shall be used by the implementing agency
9 and the approving body in reviewing and approving the PPP project. The ICC-
10 NEDA shall formulate guidelines on the approval of government undertakings
11 using national government funds for PPP projects undertaken by LGUs or LUCs.

12 e. (e) The decision of the approving body to approve and implement the project
13 under any of the contractual arrangements or variations thereof shall be final
14 and executory unless the implementing agency can provide sufficient justifiable
15 reason to convert the PPP project to another project under a different
16 procurement modality.

17 *SEC. 8. PPP Pre-qualification, Bids and Awards Committee.* – The head of
18 the implementing agency undertaking PPP projects shall create a PPP Pre-
19 qualification, Bids and Awards Committee (PBAC), which shall be responsible for all
20 aspects of pre-bidding and bidding process in solicited proposals, or the comparative
21 challenge process in unsolicited proposals.

22 *SEC. 9. Solicited Proposals.* – refer to submissions by the private proponent to
23 bid for PPP projects through open, fair, transparent, and competitive public bidding
24 initiated by the implementing agency. Government undertakings are allowed, subject
25 to the approval of the approving body.

26 The public bidding may be conducted in a single-stage or two-stage bidding
27 process, either manually or electronically.

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

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

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

12 Any change in control of the private proponent or composition of the
13 consortium shall be allowed upon approval of the implementing agency: *Provided*,
14 That the private proponent or consortium has equal or better qualifications.

15 The PBAC shall declare failure of bidding in case of any of the following:

- 16 1. If no bids are received;
- 17 2. If there are no complying bids; or
- 18 3. If the winning bidder refuses without justifiable cause to accept the award of
19 contract, as the case may be.

20 The head of the implementing agency, upon the recommendation of the PBAC,
21 may also declare a failure of bidding if, after advertisement, only one bidder applied
22 for and met the pre-qualification requirements, unless otherwise provided in this Act.

23 Without prejudice to paragraph (a) of this Section, the implementing agency
24 may consider, on a negotiated basis, a single complying and responsive bid in case of
25 any of the following:

- 26 1. If, after advertisement, more than one bidder applied for pre-qualification but
27 only one met the pre-qualification requirements;
- 28 2. If, after advertisement, only one bidder applied for and met the pre-
29 qualification requirements: *Provided*, That such was allowed by the head of the
30 implementing agency, upon recommendation of the PBAC;
- 31 3. If, after pre-qualification of more than one bidder, only one submitted a bid; or

1 4. If, after pre-qualification, more than one bidder submitted bids but only one is
2 found by the implementing agency to be complying.

3 The scope of negotiation between the implementing agency and the single
4 complying and responsive bidder shall be limited to the financial proposal of the bidder
5 and in compliance with the reasonable rate of return prescribed by the appropriate
6 body.

7 *SEC. 10. Unsolicited Proposals. –*

8 a. General. - Unsolicited proposals refer to project proposals submitted by a
9 private proponent not in response to a formal solicitation or request issued by
10 the implementing agency. The implementing agency may accept, reject an
11 unsolicited proposal or convert the same into a solicited proposal, subject to
12 the evaluation of eligibility and merits of the project, and other conditions set
13 forth in this Section.

14 b. Limitations. - Unsolicited proposals may be allowed for projects in the list of
15 PPP projects, subject to the procedures and conditions set forth in this Section.
16 In case the implementing agency has already incurred any development cost
17 for the PPP project, such as the conduct of feasibility study, business case, and
18 surveys, among others, for the last three (3) years, the private proponent shall
19 undertake to reimburse the implementing agency of such documented
20 development costs notwithstanding whether it is funded through government
21 appropriations, grants, and other sources. Reimbursable development costs for
22 such proposal and the procedures for such reimbursement shall be determined
23 by the implementing agency.

24 An unsolicited proposal shall not contain any of the following
25 government undertakings:

- 26 1. Viability gap funding and other forms of subsidy;
- 27 2. Payment of right-of-way (ROW) related costs;
- 28 3. Performance undertaking;
- 29 4. Exemption from any taxes as required by laws, except local taxes imposed by
30 local government units;
- 31 5. Guarantee on demand;
- 32 6. Guarantee on loan repayment;

- 1 7. Guarantee on private sector return;
- 2 8. Government equity; and
- 3 9. Contribution of assets, properties, and rights.

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

8 c. Special requirements.

9 1. Within three (3) working days from receipt of the unsolicited proposal, the
10 implementing agency shall inform the PPP Center in writing of such receipt
11 and shall furnish it with a copy of the proposal. The implementing agency
12 and the PPP Center shall likewise publicly disclose such receipt by posting
13 information in their respective websites.

14 2. An unsolicited proposal involving ROW acquisition of a property, whether
15 owned or not owned by the original proponent, may be considered:
16 *Provided*, That the submission includes a ROW and resettlement plan and
17 such other documents that may be required by the implementing agency
18 or the appropriate approving body: *Provided, further*, That in no case shall
19 the implementing agency be obliged to make an advance payment for such
20 ROW acquisition and related costs.

21 3. Any change in control of the original proponent or composition of the
22 consortium shall be allowed: *Provided*, That the private proponent or
23 consortium has equal or better qualifications.

24 d. Treatment of more than one unsolicited proposal for the same or similar
25 project. - In cases where the implementing agency receives more than one
26 unsolicited proposal involving the same or similar project prior to acceptance
27 of the proposal and granting of OPS, the implementing agency may choose
28 among the submissions the best and most advantageous proposal for the
29 government and the public, pursuant to the rules set forth in the rules and
30 regulations to be issued to implement the provisions of this Act. The chosen
31 proposal shall be accepted pursuant to subsection (g) of this Section and shall
32 be subject to the approval process in Section 7 of this Act. Otherwise, the

1 implementing agency may reject all such proposals, or bid out the project as a
2 solicited proposal.

3 (1) The implementing agency may seek the assistance of the PPP Center in
4 the assessment, evaluation, and review of unsolicited proposals.

5 e. Rejection of an unsolicited proposal. - The implementing agency shall have
6 the right to automatically reject the unsolicited proposal upon receipt thereof,
7 or formally reject it after evaluation. If the implementing agency fails to act on
8 an unsolicited proposal within ninety (90) days upon receipt, the project
9 proposal shall be deemed accepted and shall be subject to the approval process
10 in Section 7 of this Act.

11 f. Conversion of an unsolicited proposal. - The implementing agency may
12 be allowed to convert an unsolicited proposal to a solicited proposal. If
13 the implementing agency converts an unsolicited proposal to a solicited
14 proposal, the implementing agency and the private proponent shall agree on
15 the terms and conditions of such conversion: *Provided*, That the private
16 proponent holds a valid OPS granted by the implementing agency and such
17 terms and conditions are consistent with applicable laws, rules, and regulations.

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

21 g. Acceptance of an unsolicited proposal. - The implementing agency shall have
22 the right to set conditions and requirements on the project's structure, scope,
23 and other relevant details, which the private proponent must comply with
24 before its proposal can be accepted on a negotiated basis. If the implementing
25 agency accepts such unsolicited proposal, it shall grant the private proponent
26 who submitted the unsolicited proposal an OPS, which shall be valid for a period
27 not exceeding six (6) months from the acceptance of the unsolicited proposal.

28 h. Comparative challenge. - The implementing agency shall publish, within
29 seven (7) calendar days after granting the OPS, an invitation for the
30 submission of comparative proposals. Within six (6) months, after publication
31 of the invitation, the implementing agency shall accept such comparative
32 proposal.

1 The comparative challenge shall be conducted, either manually or
2 electronically, by the implementing agency within the period proposed by it and
3 approved by the appropriate approving body, taking into consideration the nature and
4 complexity of the PPP project: *Provided*, That the period shall be reasonable, fair, and
5 upholds competition: *Provided, further*, That the period shall not exceed six (6)
6 months. Comparative proposals shall be evaluated based on the best-and-final offer
7 method between the top challenger and the original proponent.

8 If no other proposal is received after the challenge period, the PPP project
9 shall be awarded to the original proponent.

10 All PPP contracts shall require a period within which financial close shall be
11 achieved by the private proponent. Failure to achieve financial close within such period
12 shall be subject to penalties to be provided for in the signed contract: *Provided*, That
13 such failure to achieve financial close is not due to MAGA.

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

- 25 a. The formation of a joint venture company shall be in accordance with the
26 legal mandate of the implementing agency and provisions of Republic Act No.
27 11232 otherwise known as the “Revised Corporation Code of the Philippines”
28 and other applicable laws, rules, and regulations: *Provided*, That the equity
29 contribution, which shall include contribution of assets, properties, and rights,
30 and other allowable government undertakings or subsidy, of the government
31 in a joint venture arrangement shall in no case exceed fifty percent (50%) of
32 the project cost in the case of a contractual joint venture, or fifty percent (50%)

1 of the outstanding capital stock of the joint venture company, subject to
2 applicable laws, rules, and regulations. All equity contribution of the
3 government and the private proponent shall be subject to fair valuation.

4 b. The formation of the joint venture between the implementing agency and
5 private proponent shall not prevent the parties from entering into other joint
6 venture agreements or from profitably entering into other business ventures or
7 markets: *Provided*, That such other ventures shall not compete with the joint
8 venture between the parties.

9 c. The cost of producing the particular product, conducting the activity, or
10 performance of service shall be efficient towards earning potential profits for
11 the implementing agency and the private proponent.

12 d. The interests of the implementing agency and private proponent in and to any
13 profits, losses, assets acquired, constructed, and otherwise derived in
14 connection with the joint venture shall be proportionate to their respective
15 contributions to the joint venture: *Provided*, That the implementing agency's
16 share in any profits shall not be less than the proportion of its contribution to
17 the joint venture.

18 e. The parties may agree to a higher percentage of profit or lower percentage of
19 losses for the government as compared to the actual percentage of government
20 contribution in the joint venture. The implementing agency may accept any
21 other more favorable terms as may be agreed upon with the private proponent
22 in the joint venture agreement.

23 f. At the end of the joint venture agreement, all properties covered by such
24 agreement shall revert to the implementing agency. In cases where the
25 government deems that divestment from the joint venture is in the best interest
26 of the public, joint venture agreements may allow the private sector to take
27 over the undertaking of the projects in its entirety. Such takeover shall be
28 subject to the approval of the Privatization Council and in accordance with the
29 requirements and procedure provided for in Executive Order No. 323, series of
30 2000 ("Constituting the Privatization Council").

31 g. All joint venture agreements, whether through a contractual joint venture or a
32 joint venture company, shall be approved by the appropriate approving body

1 pursuant to Section 7 of this Act. Furthermore, the selection process for a
2 solicited and an unsolicited joint venture shall be in accordance with Sections 9
3 and 10 of this Act. All other rules provided for under this Act, such as on
4 regulation of tolls, fares, fees, rentals and other charges, divestment, variation,
5 expansion, or extension of a joint venture, project monitoring and supervision,
6 shall be applicable to all joint venture arrangements.

- 7 h. Formation of joint venture between the implementing agency and private
8 proponent shall not change the nature or alter the mandate of the
9 implementing agency entering into such joint venture. Subject to Section 18 or
10 as expressly permitted under this Act, the original scope of the implementing
11 agency's governmental responsibility shall not be diminished and shall not be a
12 reason to avoid compliance of existing laws, rules, or regulations. A joint
13 venture shall not serve as a vehicle to create new GOCCs.

14 *Sec. 12. Protest Mechanism.* – In all stages of the procurement process, the
15 protest mechanism for national and local PPP projects shall be provided for in the rules
16 and regulations to be promulgated to implement the provisions of this Act: *Provided,*
17 That such protests shall be resolved in the most expeditious manner.

18 Unless otherwise provided for in this Act, in no case shall a motion for
19 reconsideration or an appeal from any decision by the PBAC, head of implementing
20 agency, or department secretary stay or delay the bidding process. No award shall
21 however be made until a decision on any pending appeal is rendered or deemed
22 denied.

23 *Sec. 13. Mandatory Inclusion of Dispute Avoidance and Alternative Dispute*
24 *Resolution Mechanisms in PPP Contracts.* – All PPP contracts shall include provisions
25 on the use of dispute avoidance and alternative dispute resolution (ADR) mechanisms.
26 The contracting parties shall be given complete freedom to choose which ADR
27 mechanisms and venue shall govern their dispute, as well as the rules or procedures
28 to be followed involving the same.

29 *Sec. 14. Adoption of Contract Management and Risk Mitigation Plans in PPP*
30 *Projects.* – In order to manage the fiscal risks arising from PPP projects, strengthen
31 the credibility of the PPP program and projects among the private sector, and to
32 ensure the timely compliance with the contractual obligations of implementing

1 agencies, PPP projects undertaken through this Act shall require the adoption of
2 contract management and risk mitigation plans. Such plans shall include the agreed
3 project execution plan, the risks assumed by the government under the contract, risks
4 assumed by the private proponent, risk mitigating measures, estimated costs to be
5 incurred, target timeline to have each measure in place, and the appropriate action
6 plan by the implementing agency to manage each type of risk. All plans shall be kept
7 up-to-date and be submitted to the PPP Center for monitoring.

8 *Sec. 15. Project Supervision and Monitoring.* – Every PPP project shall
9 be implemented in accordance with the project terms as approved by the appropriate
10 approving body, as well as the signed PPP contract. The implementing agency shall
11 be entitled to exercise sufficient powers of supervision, monitoring, and control over
12 the implementation of each PPP contract it has entered into.

13 a. *Supervision.*- The implementing agency shall be responsible for the overall
14 supervision of the PPP project and for submission of periodic monitoring
15 reports, executed under oath, to the appropriate oversight agencies.

16 b. *Monitoring.*- The PPP Governing Board shall set the framework for monitoring
17 the compliance of the parties to PPP contracts, report the progress of PPP
18 projects and their expected benefits and outcomes, and determine the
19 appropriate penalties for the non-compliance of parties to the set reportorial
20 requirements.

21 The PPP Center shall be responsible for the coordination and monitoring of PPP
22 projects. For this purpose, the implementing agency shall submit to the PPP Center all
23 executed PPP contracts, information on the status of projects implemented by, as well
24 as copies of all unsolicited proposals and related documents received by
25 the implementing agency, and loan or financing documents of the private proponent
26 for the PPP project. At the end of every calendar year, the PPP Center shall submit a
27 report to the President of the Philippines and to the Congress of the Philippines,
28 particularly to the Senate President and the Speaker of the House of Representatives,
29 and the Chairpersons of the Committee on Public Works and Highways, on the
30 progress of all PPP projects.

1 Sec. 16. *Investment Incentives.* – PPP projects undertaken through this Act
2 shall be entitled to various incentives under applicable laws and existing policies of the
3 government.

4 Sec. 17. *Investment Recovery Scheme.* – In undertaking PPP projects, the
5 private proponent shall be allowed to recover its investments and earn reasonable
6 profit through any of the following schemes or a combination thereof:

- 7 a. Revenue-based - refers to a scheme where the private proponent is authorized
8 to charge and collect, in whole or in part, from the public reasonable tolls, fares,
9 fees, rentals, and other charges subject to appropriate regulation in accordance
10 with Section 19 of this Act. Where applicable, the private proponent may
11 likewise be repaid in the form of a share in the revenue of the project; and
12 b. Availability-based - refers to a scheme where the implementing agency
13 commits to make predetermined payments, which do not take the form of
14 charges paid by the users of the works or service, but of regular payments by
15 the implementing agency in exchange of delivering an asset or service in
16 accordance with the contract.

17 Other non-monetary payments, such as commercial development rights, or the
18 grant of a portion or percentage of the reclaimed land, subject to the
19 constitutional requirements on land ownership, may also be allowed to
20 supplement the foregoing schemes: *Provided,* That such non-monetary
21 payments are subject to fair valuation as determined by appropriate
22 government agency.

23 Sec. 18. *Issuance of Franchise and Regulation of Tolls, Fares, Fees, Rentals*
24 *and Other Charges.* – Once a PPP contract is executed by the private proponent and
25 the implementing agency, a presumption arises that the public interest will be served
26 by the implementation of the PPP project covered thereby, and immediately upon
27 application by the private proponent, the regulator shall automatically grant in favor
28 of the private proponent a franchise to operate and maintain the facility including the
29 collection of tolls, fares, fees, rentals, and other charges. The collection of tolls, fares,
30 fees, rentals, and other charges in PPP projects undertaken through this Act shall be
31 regulated in accordance with the principles of fairness, transparency, predictability,
32 and protecting public interest. The initial tolls, fares, fees, rentals, and other charges

1 and adjustments thereof shall be subject to the approval of the appropriate regulator
2 prior to the bidding of the project and shall be included in the draft contract that will
3 be circulated to all bidders prior to the bid submission date to be set by
4 the implementing agency: *Provided*, That if the regulator does not render a decision
5 on the initial tolls, fares, fees, rentals, and other charges and adjustments thereof
6 within a period of sixty (60) days from its receipt of the proposed initial tolls, fares,
7 fees, rentals, and other charges and adjustments thereof, and the proposed
8 parameters, terms, and conditions of the project, the initial tolls, fares, fees, rentals,
9 and other charges and adjustments thereof shall be deemed approved by the
10 regulator.

11 The regulator shall uphold the approved initial tolls, fares, fees, rentals, and
12 other charges and adjustments thereof during the implementation of the PPP project.
13 The regulator may review such adjustments in cases of extraordinary circumstances
14 as defined in the PPP contract, or periodically, when stipulated in the PPP contract.

15 In cases where the implementing agency fails to implement the initial rates for
16 tolls, fares, fees, rentals, and other charges and adjustments thereof as stipulated in
17 the PPP contract, the private proponent shall be allowed to recover the difference
18 through measures consistent with the PPP contract and applicable laws, rules, and
19 regulations.

20 In the absence of an appropriate regulator, the initial tolls, fares, fees, rentals,
21 and other charges and adjustments thereof shall be approved by the approving body.

22 The implementing agency and the PPP Center shall post in their respective
23 websites the approved initial tolls, fares, fees, rentals, and other charges and
24 adjustments of a PPP project.

25 *Sec. 19. Contract Variation.* – A contract variation may be approved by the head
26 of the implementing agency: *Provided*, That:

- 27 a. There is no increase in the agreed tolls, fares, fees, rentals and other charges
28 or a decrease in the implementing agency’s revenue or profit share derived
29 from the project, except as may be allowed under a formula approved by the
30 relevant regulator or the approving body, as the case may be;
- 31 b. There is no decrease in the performance standards, or change in the
32 contractual arrangement or extension in the contract term; or

1 c. There is no additional government undertaking, or increase in the financial
2 exposure of the government under the project.

3 Upon due diligence and recommendation of the head of the implementing
4 agency, contract variations not covered by the above shall undergo approval by the
5 approving body in terms of the impact on government undertakings, performance
6 standards, and service charges.

7 The approving body may set, as part of the approval of the project, a cap on
8 the allowable variation for items (b) and (c) herein during the entire contract.

9 In case of contract variation, any extension of the contract term shall not be a
10 substitute to compensate the private proponent, without the written approval of the
11 approving body. In the case of any government-approved variation, the performance
12 security shall be proportionately increased.

13 Failure to secure clearance or approval of the head of the implementing agency,
14 as provided in this Section, shall render the contract variation void. No variation shall
15 be implemented before the variation is approved.

16 Any pending application for contract variation of an existing PPP project, that
17 has not yet been approved prior to the effectivity of this Act shall be governed by this
18 Act.

19 The provisions of this Section shall also apply prospectively to all existing
20 franchises and concessions granted for the financing, construction, operation, and
21 maintenance of infrastructure facilities under previous laws and decrees.

22 *Sec. 20. Divestment.* – Subject to the approval of the head of the implementing
23 agency, a private proponent may divest its ownership, rights, or interest in a PPP
24 project: *Provided,* That the divestment shall be after a holding or lock-in period as
25 indicated in the PPP contract: *Provided, further,* That the new private proponent has
26 equal or better qualifications as with the previous private proponent.

27 The implementing agency may divest its ownership, rights, or interest in a
28 project: *Provided,* That projects which involve full or partial divestment or transfer of
29 ownership of government assets or properties shall be subject to approval of the
30 appropriate approving body and applicable laws, decrees, orders, rules and
31 regulations.

1 Sec. 21. *Contract Termination.* – All PPP contracts shall define all events that
2 may lead to its termination, including either party event of default, *force majeure* and
3 other no-fault termination events, and other termination events, as may be agreed
4 upon by the parties to the PPP contract.

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

10 For avoidance of doubt, the PPP project shall not be terminated for an event of
11 default without exhausting the corresponding remedy or curing period.

12 If a PPP contract is revoked, cancelled, or terminated prior to its completion,
13 either contracting party shall compensate the other party pursuant to terms as defined
14 in the PPP contract. The determination of the amount of compensation shall be in
15 accordance with guidelines to be issued by the PPP Governing Board.

16 Sec. 22. *Wind-up and Transfer Measures.* – All PPP contracts shall provide for
17 wind-up and transfer measures. Such provision shall include, among others, the
18 following:

- 19 a. Mechanisms and procedures for the transfer of assets to the implementing
20 agency, as may be applicable;
- 21 b. The transfer of technology required for the operation of the PPP project, subject
22 to limitations under existing laws, rules and regulations;
- 23 c. The training of the personnel of the implementing agency or of a successor in
24 the operation and maintenance of the PPP project;
- 25 d. The provision, by the private proponent, of a warranty that the PPP project
26 meets the project technical specifications, agreed system features, and
27 performance standards and services for a certain period, as defined in the PPP
28 contract after the transfer of the PPP project to the implementing agency; and
- 29 e. In case of joint venture arrangements, the compensation to which the private
30 proponent may be entitled in case of buy-out and transfer of assets to the
31 implementing agency.

1 Sec. 23. *Prohibition on the Issuance of Temporary Restraining Orders,*
2 *Preliminary Injunctions, Preliminary Mandatory Injunctions, and Similar Provisional*
3 *Remedies.* – No temporary restraining order, preliminary injunction, preliminary
4 mandatory injunction, temporary environmental protection order, or similar temporary
5 or provisional reliefs or remedies, shall be issued by any court, except the Supreme
6 Court, against any implementing agency or the PPP Center, its officials or employees,
7 or any person or entity, whether public or private acting under the government
8 direction, to restrain, prohibit, or compel the following acts:

- 9 a. Bidding, rebidding, or declaration of failure of bidding of any PPP project;
10 (b) Awarding of any PPP contract;
- 11 b. Acquisition, clearance, development of the right-of-way, site or location of any
12 PPP project;
- 13 c. Construction, operation and maintenance of any PPP project;
- 14 d. Commencement, execution, implementation, termination or rescission of any
15 PPP contract; and
- 16 e. Undertaking or authorization of any other lawful activity necessary for such PPP
17 project or contract.

18 This prohibition shall apply in all cases, disputes or controversies instituted by
19 any person, including, cases filed by bidders or those claiming to have rights through
20 such bidders. This prohibition shall not apply when the matter is of extreme urgency
21 involving a constitutional issue, such that unless a temporary restraining order is
22 issued, grave injustice and irreparable injury will arise. The applicant shall file a bond,
23 in an amount to be fixed by the court. The bond shall accrue in favor of the
24 government if the court shall finally decides that the applicant was not entitled to the
25 relief sought.

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

31 Any temporary restraining order, preliminary injunction, preliminary mandatory
32 injunction, temporary environmental protection order, or similar temporary or

1 provisional reliefs or remedies issued in violation of this Section is void and of no force
2 and effect.

3 *Sec. 24. PPP Center.* – To achieve the goals of this Act, the PPP Center created
4 under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136,
5 series of 2013, is hereby authorized to adopt its current organizational structure,
6 absorb its existing employees, and upgrade its human resource component, as may
7 be necessary, subject to applicable laws, rules, and regulations.

8 The PPP Center shall have the following powers and functions:

- 9 a. Assist implementing agencies in identifying, prioritizing, developing, and
10 maintaining a pipeline of PPP projects;
- 11 b. Provide project advisory services and technical assistance to implementing
12 agencies, approving bodies, and other oversight agencies in all PPP-related
13 matters, and act as a procurement agent upon the request of the implementing
14 agency;
- 15 c. Facilitate the appraisal and approval of PPP projects by the ICC-NEDA and the
16 NEDA Board;
- 17 d. Develop the capacities of implementing agencies, approving bodies, PPP units
18 referred to in Section 29 of this Act, and other relevant stakeholders on PPPs;
- 19 e. Manage and administer the Project Development and Monitoring Facility
20 (PDMF) as provided for in Section 26 of this Act;
- 21 f. Recommend plans, policies, and implementation guidelines related to PPP, in
22 consultation with appropriate oversight committees or agencies, implementing
23 agencies, private sector, and other relevant stakeholders;
- 24 g. Ensure sustainability of the implemented PPP program and projects through
25 monitoring, documenting, and sharing the lessons learned and best practices
26 to implementing agencies, approving bodies, oversight committees or agencies,
27 and other relevant stakeholders;
- 28 h. Provide regular monitoring and status reports on the implementation of all PPP
29 programs and projects entered into by implementing agencies, including
30 potential public interest concerns and violations of the PPP Act, to the Office of
31 the President, the Congress of the Philippines, relevant oversight committees

1 and agencies, and publish the same in the official website of the PPP Center
2 unless otherwise prohibited by existing laws, rules, and regulations;

- 3 i. Promote and market PPP programs and projects, in collaboration with other
4 government investment promotion agencies;
- 5 j. Review PPP contracts;
- 6 k. Issue non-policy matter opinions relating to PPPs;
- 7 l. Draft policy matter opinions for approval by the PPP Governing Board in
8 response to requests by government agencies and private entities;
- 9 m. Serve as the central repository of all PPP project documents, including all
10 executed PPP contracts and any subsequent amendment or supplement
11 thereto, including settlement agreements, entered into by implementing
12 agencies;
- 13 n. Act as Secretariat to the PDMF Committee and the PPP Governing Board; and
- 14 o. Perform such other functions as may be necessary to achieve the objectives
15 and purposes of this Act.

16 The PPP Center may receive contributions, grants, or other funds from, among
17 others, government agencies and corporations, LGUs, local and foreign donors,
18 development partners, and private institutions subject to applicable laws, rules and
19 regulations.

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

22 The PPP Center shall be headed by an Executive Director with the rank
23 equivalent to an Undersecretary, who shall be appointed by and co-terminus with the
24 President of the Philippines. The Executive Director shall perform the following
25 functions:

- 26 a. Undertake the day-to-day management and supervise the operations of the
27 PPP Center;
- 28 (b) Recommend to the PPP Governing Board such policies and measures which
29 are deemed necessary for the effective exercise and discharge of the powers
30 and functions of the PPP Center;

- b. Sit as a member of the PPP Governing Board, INFRACOM - Technical Board, and ICC-NEDA - Technical Board, and other inter-agency bodies in cases where PPPs are concerned; and
- c. Perform such other functions as may be assigned by the PPP Governing Board.

Sec. 25. *PPP Governing Board.* – The PPP Governing Board, created under Executive Order No. 136, series of 2013, and hereinafter referred to as the Board, is hereby institutionalized. It shall be the overall policy-making body for all PPP-related matters, including the PDMF. It shall be responsible for setting the strategic direction of PPP programs and projects and in creating an enabling policy and institutional environment for PPP.

The Board shall be composed of the following:

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

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

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

Sec. 26. *Project Development and Monitoring Facility (PDMF).* – The PDMF referred to under EO No. 8, series of 2010, as amended by EO No. 136, series of 2013, shall be used for the procurement of advisory and support services related to the

1 preparation, structuring, evaluation, procurement, probity management, financial
2 close, and monitoring of implementation of PPP projects.

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

8 The PDMF Committee is hereby institutionalized which shall approve
9 applications for PDMF support submitted by the implementing agencies.

10 The PDMF Committee shall be composed of the representatives of the following
11 Departments:

- 12 a. Representative of the NEDA as Chairperson;
- 13 b. Representative of the DOF as Vice Chairperson;
- 14 c. Representative of the DBM as Member; and
- 15 d. Representative of the PPP Center as Member.

16 *Provided,* That the respective representatives shall at least be an Assistant
17 Secretary of the Department. The PPP Center shall continue to act as Secretariat of
18 the PDMF Committee.

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 *Sec. 27. Establishment of a PPP Unit.* – The head of the implementing agency
23 may establish a PPP unit, an ad hoc body, or assign responsibility to an appropriate
24 unit to act as its PPP unit, which shall plan, oversee, and monitor PPP projects of the
25 implementing agency.

26 A PPP unit shall be headed by a senior official and include as members
27 personnel with technical, financial, and legal competencies who are knowledgeable on
28 PPP management and operations.

29 The PPP unit shall provide reports to the head of the agency and the PPP Center
30 and shall comply with other reporting and monitoring processes and procedures as
31 may be required by the PPP Center, consistent with this Act. Furthermore, the PPP

1 Center shall provide the necessary technical and capacity development assistance to
2 PPP Unit personnel to enhance the performance of their role and functions.

3 *Sec. 28. Safekeeping and Public Disclosure of Contracts.* – Copies of all PPP
4 contracts executed under this Act shall be considered and appropriately kept safe and
5 preserved as public documents. The implementing agency and the PPP Center shall
6 publicly make available copies of PPP contracts through their respective websites,
7 unless otherwise prohibited by existing laws, rules and regulations and those
8 provisions in the contract which are proprietary, or may pose threats to national
9 security or public safety, the procedures for the disclosure of such shall be consistent
10 with applicable policies, laws, decrees, orders, rules and regulations.

11 *Sec. 29. Miscellaneous Provisions.* –

12 a. Independent consultants. - Independent consultants, either individuals,
13 partnerships, or corporations, may be procured by the implementing agency to
14 provide independent advice to the implementing agency and private proponent
15 or its contractor for the design and construction of the PPP project, and
16 monitoring of the performance of the contracting parties during such phases of
17 the PPP project.

18 As may be necessary, an independent consultant may also be procured during
19 the operations and maintenance phase of the PPP project.

20 Costs of procurement of an independent consultant shall be borne equally by
21 the implementing agency and the private proponent. Such costs borne by the
22 implementing agency shall not be considered as a subsidy.

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

29 No implementing agency shall implement a PPP project that it regulates:
30 *Provided,* That any regulatory agency or body which shall implement a PPP
31 project pursuant to its mandate shall adopt a conflict mitigation and
32 management plan.

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

6 c. Confidentiality of information. - Confidential business information submitted by
7 entities, whether public or private, relevant to any activity being conducted
8 pursuant to this Act as well as any deliberation in relation thereto, shall not, in
9 any manner, be directly or indirectly disclosed, published, transferred, copies,
10 or disseminated: *Provided,* That the confidentiality rule shall not apply if the
11 entity consents to the disclosure, or the document or information is mandatorily
12 required to be disclosed by law or by a valid order of a court of competent
13 jurisdiction or of a government or regulatory agency.

14 d. Alternative sources of financing. - In addition to private proponent equity and
15 debt, alternative financial instruments such as Green Financing, corporate or
16 project bonds and securities, and other forms of capital market financing may
17 be allowed for PPP projects, subject to the approval of relevant regulatory
18 bodies for such instruments under existing laws, rules, and regulations.

19 e. Mitigation of interconnectivity and interface risks. - All PPP projects which shall
20 interconnect or interface with a local or national facility, shall be required to
21 submit a Memorandum of Agreement (MOA) containing an interface plan
22 agreed upon by all relevant parties. The MOAs for PPP projects to be
23 undertaken by the National Government shall be submitted to the ICC-NEDA
24 and the PPP Center, while those on PPP projects to be undertaken by the LGUs
25 and LUCs, shall be submitted to the appropriate approving body and the PPP
26 Center.

27 f. Private legal and medical assistance. - All the PBAC members and other public
28 officials providing services to the PBAC shall be authorized to engage the
29 services of private lawyers, or shall be provided with free legal assistance,
30 where a civil, criminal, or administrative action is filed against them by reason
31 of the performance of their official functions or duties, unless they are finally
32 adjudged in such action or proceeding to be liable for gross negligence or

1 misconduct or grave abuse of discretion. The PBAC members shall also be
2 entitled to medical assistance for injuries incurred in the performance of their
3 functions.

4 g. Preferential use of Filipino labor, domestic Materials, and locally produced
5 goods. - For the implementation of infrastructure projects under this Act,
6 contractors or facility operators shall, as far as practicable, use Filipino labor,
7 domestic materials, and locally produced goods in different phases of
8 implementation.

9 h. Land value capture strategies. – The design of PPP projects shall adopt land
10 value capture strategies to optimize the financial and economic value of the
11 PPP project.

12 *Sec. 30. Accountability in PPP Projects.* – The head of the implementing agency
13 concerned shall at all times be accountable for PPP projects. The private proponent
14 shall likewise be held accountable for the works it has delivered and services it has
15 rendered for a PPP project. All PPP contracts are hereby required to clearly define the
16 scope of each party's accountability under the PPP contract.

17 PPP projects awarded under this Act shall be subject to the Government
18 Auditing Code of the Philippines and the 2009 Revised Rules of Procedures of the
19 Commission on Audit and any amendment thereto. The COA, shall in consultation and
20 coordination with the PPP Center, adopt and promulgate the necessary framework and
21 guidelines on accounting and auditing PPP projects, respectively.

22 *Sec. 31. Administrative, Civil, and Penal Sanctions.* – Any person, whether
23 private individual or public officer or employee, who commits any of the prohibited
24 acts hereunder proscribed, shall be punished by imprisonment from a minimum of
25 three (3) years to a maximum of six (6) years.

26 The following acts shall be prohibited:

- 27 a. Downgrading the category of the project cost for purposes of evading the
28 required approvals under this Act;
- 29 b. Representation that the private proponent has the necessary capitalization to
30 commence, complete, and implement the PPP project when the same is false
31 in material respects;

- 1 c. Falsification or insertion of certain provisions in the execution copy of the
- 2 contract which are materially and substantially different from the approved final
- 3 draft contract; and,
- 4 d. Negligence or fraud by a public officer or employee in the failure to ensure
- 5 compliance with the approved terms and conditions of a project as defined in
- 6 the contract, whether committed alone or in connivance with others;
- 7 e. Approving, issuing, or confirming any certification, required documents, or
- 8 deliverables of the private proponent which are non-compliant with existing
- 9 rules, are erroneous, inauthentic, or fraudulent.

10 In addition, such acts committed by the private proponent and its concerned
11 officers shall cause the rescission of its contract for the said PPP project without
12 compensation, the termination of the contract, the lapse of any applicable warranty
13 period, and the perpetual disqualification of the private proponent from participating
14 in any public bidding or from being a party to other contractual arrangements for any
15 government project. This is without prejudice to any other civil or administrative
16 liability that erring officials or private proponents may incur.

17 The liability of the public officer or employee or former public officer or
18 employee for any violation of the prohibitions under this Act shall survive the
19 resignation or retirement of said public officer or employee, and shall include the
20 prohibition for the erring officer to hold public office, either as an elected, or an
21 appointed government official on any local or national position, or to act as a
22 consultant for the Philippine Government.

23 *Sec. 32. Joint Congressional Oversight Committee.* – A Joint Congressional
24 Oversight Committee is hereby created to oversee the implementation of this Act. The
25 Committee shall be composed of five (5) members each from the Senate and House
26 of Representatives to be designated by the Senate President and the Speaker of the
27 House of Representatives, respectively. The Committee shall be jointly chaired by the
28 respective Chairpersons of the House Committee on Public Works and Highways, the
29 House Committee on Appropriations, the Senate Committee on Public Works, and the
30 Senate Committee on Finance.

31 *Sec. 33. Implementing Rules and Regulations (IRR).* – Within sixty (60) days
32 from the effectivity of this Act, the PPP Governing Board shall, in coordination with

1 Department of Public Works and Highways, Department of Transportation, and other
2 key implementing agencies, LGUs, and relevant stakeholders, issue rules and
3 regulations to ensure the efficient implementation of the provisions of this Act within
4 sixty (60) days upon the effectivity of this Act. The PPP Center shall serve as its
5 Secretariat. As the necessity arises, the PPP Governing Board may amend such rules
6 and regulation.

7 In connection thereto, the PPP Governing Board shall create a Committee to
8 draft such rules and regulations for submission to the PPP Governing Board. The
9 principal members of the Committee may designate their respective alternates, whose
10 acts shall be considered the acts of their principals.

11 The PPP Governing Board may conduct, formulate, and prescribe, after due
12 public hearing and publication, amendments to the rules and regulations, consistent
13 with the provisions of this Act.

14 *Sec. 34. Transitory Clause.* – The provisions of this Act shall apply to all
15 PPP projects: *Provided,* That this Act shall not, in any manner, operate to impair vested
16 rights already accruing to a party.

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

21 Upon the effectivity of this Act, joint ventures and other contractual
22 arrangements for toll road projects or toll facilities with a private proponent, including
23 Supplemental Toll Operation Agreement (STOA) and other similar arrangements, to
24 be submitted to, or pending final approval of the Toll Regulatory Board, shall be
25 subject to the approval process under Section 7 of this Act.

26 All unexpended funds of the PPP Center at the end of the fiscal year, as well as
27 unreleased appropriations, and undisbursed funds after the end of the validity period,
28 shall revert to the National Treasury and shall not thereafter be available for
29 expenditure, except by subsequent legislative enactment. The amount necessary to
30 carry out the organizational changes of the PPP Center provided for in this Act shall
31 be determined by the PPP Governing Board.

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

3 Sec. 35. *Separability Clause.* – If any provision of this Act is declared
4 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall
5 continue to be in full force and effect.

6 Sec. 36. *Repealing Clause.* – Republic Act No. 6957, as amended by Republic
7 Act No. 7718 (An Act Authorizing the Financing, Construction, Operation and
8 Maintenance of Infrastructure Projects by the Private Sector, and for other purposes)
9 is hereby repealed.

10 The second paragraph of Section 1 of Presidential Decree No. 1894, granting
11 the Philippine National Construction Corporation the right, privilege and authority to
12 construct, maintain and operate any and all such extensions, linkages or stretches,
13 together with the toll facilities appurtenant thereto, from any part of the North Luzon
14 Expressway, South Luzon Expressway or Metro Manila Expressway or to divert the
15 original route and change the original end-points of the North Luzon Expressway or
16 South Luzon Expressway as may be approved by the Toll Regulatory Board is hereby
17 repealed.

18 All laws, decrees, orders, rules and regulations, and all other related national
19 and GOCC issuances, and PPP or joint venture codes and ordinances, or parts thereof
20 inconsistent with or contrary to this Act are hereby amended accordingly.

21 Sec. 37. *Effectivity.* – This Act shall take effect fifteen (15) days after its
22 publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,