

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

'19 DEC 11 P6:18

RECEIVED BY:

SENATE
S.B. No. 1231

A handwritten signature in black ink, appearing to read "Imee R. Marcos".

Introduced by **SENATOR IMEE R. MARCOS**

AN ACT STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS

EXPLANATORY NOTE

Article 2, Section 9 of the 1987 Constitution provides that "*the State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all*". Section 20 of the same article further states that "*the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments*".

Today, government's flagship project seeks to fill the infrastructure gap of the country through the "Build Build Build" Program, projected to be an 8.4 trillion peso undertaking. The program is to be largely financed by taxes to be raised through a series of Comprehensive Tax Reform Packages the Department of Finance is pushing. However, the expected expenditure on Republic Act No. 11223 or the "*Universal Healthcare Act*", Republic Act No. 10931 or the "*Universal Access to Quality Tertiary Education Act*" and other social programs of the government takes a heavy toll on these new revenue streams and may jeopardize infrastructure spending. The reduced access of the Philippines to Official Development Assistance (ODA) loans, as the

country enters upper-middle income status further compromises the "Build Build Build" program. Hence, there is an urgent need for government to access private capital in order to deliver on its Build Build Build commitments, as well as its social protection program.

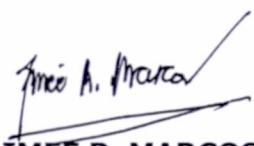
This proposed measure aims to create an enabling environment for Public-Private Partnerships by revising Republic Act No. 6957, as amended by Republic Act No. 7718, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes" otherwise known as the "Build-Operate-Transfer" (BOT) Law. This measure improves the BOT Law by expanding its coverage and offering more benefits to private sector partners of the government in infrastructure projects. It also provides for the automatic endorsement after 30 days of non-action by the Regional Development Council of PPP projects which have satisfactorily complied with the requirements, avoiding arbitrary and unreasonable withholding of endorsement of projects. In addition, it also protects PPP projects from being the subject of judicial delays in the form of temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions issued by any court, except the Supreme Court.

This measure also facilitates the process of dealing with unsolicited proposals. The sixty (60) -working-day challenge period under the existing BOT Law is too short for interested challengers to submit their counterproposals in an unsolicited project. As such, the measure proposes to extend the challenge period to a maximum period of three (3) months. The measure also gives the implementing agencies the option to convert unsolicited proposals into a solicited project, and thereafter offer it as the basis for competitive bidding. This way, the government will realize the full benefits of competitive bidding.

This measure also establishes the role of local government units (LGU) in initiating and monitoring their own PPP projects, simplifying the processes by which an LGU can undertake a PPP Project.

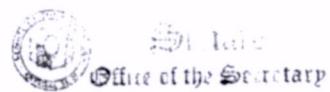
Lastly, the measure seeks to uphold transparency by requiring full public disclosure of PPP projects and contracts. The PPP Center is directly responsible for giving the public and Congress with adequate and timely information about PPP projects.

Given the abovementioned circumstances, the immediate passage of this bill is necessary.



Imee R. Marcos

IMEE R. MARCOS



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Introduced by **SENATOR IMEE R. MARCOS**

AN ACT STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS

Be it enacted by the Senate and the 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 Act".

3

ARTICLE I

5 **DECLARATION OF STATE POLICY AND OBJECTIVES, AND**
6 **DEFINITION TERMS**

7

8 Section 2. *Declaration of Policy.* – It shall be the policy of the State to recognize
9 the indispensable role of the private sector for national growth and development, to
10 promote an environment conducive to Public Private Partnerships (PPPs), and provide
11 the incentives to improve access to private capital for financing, designing,
12 constructing, operating, and maintaining much-needed infrastructure projects and
13 services. In relation, the State shall protect the interest of the public by ensuring fair,
14 reasonable, and affordable pricing and timely delivery of infrastructure, goods, and
15 services.

1 The State further affirms open, transparent, and competitive selection as the
2 fundamental principle of government procurement in securing private investment in
3 public infrastructure projects.

4 Section 3. *Definition of Terms.* – The following shall be defined in this Act, as
5 follows:

- 6 a. Approving Body refers to an entity authorized to approve PPP projects in
7 accordance with Section 5 and 11 of this Act;
- 8 b. Availability-based PPP refers to a PPP where the implementing agency or LGU
9 commits to make predetermined payments for contractually defined
10 performance delivery;
- 11 c. Concession-based PPP refers to a PPP where the implementing agency or LGU
12 grants the project proponent the right to recover its investment, operating,
13 and financing costs by charging the public a user fee or tariff;
- 14 d. Construction refers to rehabilitation, improvement, expansion, alteration,
15 installation, building of a new infrastructure facility, and related works and
16 activities, including the necessary supply of equipment, materials, labor and
17 services and related items;
- 18 e. Contingent Liability refers to obligations of the government arising from a valid
19 PPP contract whose occurrence, timing, and amount depend on some
20 uncertain future event or circumstance;
- 21 f. Contractor refers to any person, who may or may not be the project
22 proponent, and who shall undertake the actual construction of an
23 infrastructure facility of a PPP project;
- 24 g. Cooperation Period refers to the period of operation of an infrastructure
25 facility;
- 26 h. Facility Operator refers to a person registered with the Securities and
27 Exchange Commission (SEC) or Department of Trade and Industry (DTI), who
28 may or may not be the project proponent, who is responsible for all aspects
29 of operation and maintenance of an infrastructure facility, including the
30 collection of tolls, fees, rentals, or charges from facility users;

- i. Government Undertakings refer to any form of support, contribution, assistance, Viability Gap Funding (VGF), among others, which the government may provide to a solicited PPP project;
- j. Grantors refer to an implementing agency or LGU and another government agency that own the project assets or franchise;
- k. GOCC - refers to a government-owned or -controlled corporation as defined in Republic Act No. 10149 otherwise known as the "*GOCC Governance Act of 2011*";
- l. ICC- refers to the Investment Coordination Committee of the National Economic and Development Authority (NEDA) Board;
- m. Implementing Agency refers to any of the various units of the government, including a department, bureau, office, instrumentality, government owned or controlled corporation (GOCC), and state universities and colleges (SUCs).
- n. Infrastructure Facility and Related Service refers to any facility and infrastructure related service identified by the government, whether governmental or proprietary, as follows:
 - i. Infrastructure Facility - includes power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications facilities, railroads and railways, transport systems, reclaimed land, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, information technology systems and infrastructure, education and health facilities, sewerage, and drainage; and
 - ii. Infrastructure-Related Service - includes dredging, climate change mitigation and adaptation measures, and other related services;
- o. Land Value Capture refers to funding tools that leverage the increase in land and property values around transportation structures as a source of finance.
- p. LGU refers to Local Government Units as defined in Article X of the Constitution and the Local Government Code.
- q. Public-Private Partnership refers to a contractual arrangement between the implementing agency or LGU and the project proponent for the financing, design, construction, operation, and maintenance, or any combination thereof,

- 1 of an infrastructure facility, in which the project proponent bears significant
2 risk, management responsibility, or both;
- 3 r. Person refers to an individual, sole proprietorship, partnership, corporation or
4 any other form of organization, whether domestic or foreign;
- 5 s. Project Cost refers to total capital cost, financing and other expenses for the
6 design, construction, operation, and maintenance of an infrastructure facility
7 of a PPP project;
- 8 t. Project Proponent refers to the private person who shall have contractual
9 responsibility to undertake a PPP project;
- 10 u. Rate of Return refers to the project proponent's expected return from the
11 project; Provided that, in case of an unsolicited proposal, the appropriate rate
12 of return shall be determined by the appropriate Approving Body prior to the
13 call for proposals based on the prevailing cost of capital in the domestic and
14 international markets, the risk profile and the gearing ratio;
- 15 v. Services refer to services for or related to infrastructure facilities such as
16 construction supervision, management, operation, and maintenance and
17 related services, and other technical services, which may be included as part
18 of a PPP project;
- 19 w. Solicited PPP Project refers to priority projects identified by the implementing
20 agency;
- 21 x. Unsolicited PPP Project refers to a project proposal submitted by a private
22 person, which is not in response to a formal solicitation or request issued by
23 the implementing agency or LGU; and
- 24 y. Viability Gap Funding (VGF) refers to such financial support the government
25 may provide to a concession-based PPP project with the objective of making
26 user fees affordable while improving the commercial attractiveness of the
27 project, excluding costs of right-of way, resettlement, and real estate taxes.

28 Section 4. *Contractual Arrangements.* – PPP Projects may be undertaken
29 through any of the following arrangements:

- 30 a. Build-and-Transfer - A contractual arrangement where the project proponent
31 undertakes the financing and construction of a given infrastructure facility and
32 after the completion thereof, turns it over to the implementing agency or LGU

- 1 concerned, which shall pay the project proponent on an agreed schedule its
2 total investments expended on the project, plus a rate of return thereon. This
3 arrangement may be employed in the construction of any infrastructure
4 facility, including critical facilities which, for security or strategic reasons, must
5 be operated directly by the government;
- 6 b. Build-Lease-and-Transfer - A contractual arrangement where a project
7 proponent undertakes to finance and construct an infrastructure facility and
8 upon its completion turn it over to the implementing agency or LGU concerned
9 on a lease arrangement for a cooperation period, after which ownership
10 thereof is automatically transferred to the implementing agency or LGU
11 concerned;
- 12 c. Build-Operate-and-Transfer - A contractual arrangement where the project
13 proponent undertakes a PPP project and transfers ownership of the
14 infrastructure facility to the implementing agency or LGU at the end of the
15 cooperation period.
- 16 d. Build-Transfer-and-Operate - A contractual arrangement where the
17 implementing agency or LGU contracts out the construction of an
18 infrastructure facility to the project proponent. Once the facility is
19 commissioned satisfactorily, ownership is transferred to the implementing
20 agency or LGU. The project proponent, however, operates the infrastructure
21 facility on behalf of the implementing agency or LGU;
- 22 e. Contract-Add-and-Operate - A contractual arrangement where the project
23 proponent adds to an existing infrastructure facility which it is renting from the
24 government. It operates the expanded infrastructure facility over an agreed
25 cooperation period. There may, or may not be, a transfer arrangement
26 regarding said facility;
- 27 f. Develop-Operate-and-Transfer - A contractual arrangement where favorable
28 conditions external to a new PPP project which is to be built by a project
29 proponent are integrated into the arrangement by giving that entity the right
30 to develop adjoining property, and thus, enjoy some of the benefits the
31 investment creates such as higher property or rent values;

- 1 g. Joint Venture - A contractual arrangement where a private person or a group
2 of private persons, and an implementing agency or LGU contribute money,
3 services, assets, or a combination of any or all of the foregoing, to undertake
4 a PPP project, with the intention to share profits, risks and losses. Assets may
5 include equipment, land, or intellectual property. For joint venture
6 arrangements, the ownership of the infrastructure facility may be transferred
7 to either the implementing agency or to the project proponent: Provided, That
8 in the latter case, the transfer shall be made under competitive market
9 conditions: Provided, further, That the equity contribution of the implementing
10 agency in a joint venture corporation shall in no case exceed fifty percent
11 (50%) of the outstanding capital stock of the corporation: Provided, finally.
12 That the return on investment of either party shall be in proportion to their
13 respective contribution;
- 14 h. Operations and Maintenance Contract - A contractual arrangement where the
15 project proponent undertakes the day-to-day operation and maintenance of
16 an infrastructure facility owned by the implementing agency. The project
17 proponent shall undertake the acquisition or provision and upgrading of
18 equipment, systems and other items related to operation and maintenance.
19 The project proponent shall be compensated in the form of a performance-
20 based management or service fee during the cooperation period;
- 21 i. Rehabilitate-Operate-and-Transfer - A contractual arrangement where an
22 existing infrastructure facility is turned over to the project proponent to
23 refurbish, improve, operate and maintain for a cooperation period, at the
24 expiry of which the ownership of the facility is transferred to the implementing
25 agency; and
- 26 j. Supply-and-Operate - A contractual arrangement where the supplier of
27 equipment and machinery for a given infrastructure facility, if the interest of
28 the government so requires, operates such facility. Foreign firms who are
29 allowed to operate the facility shall provide technology transfer and training to
30 Filipino nationals. Other variations may be allowed upon prior approval by the
31 Investment Coordinating Committee (ICC).

1 If the proposed arrangement is not listed above, the proposed arrangement should
2 be subject to the approval of the Approving Body.

3

4 **ARTICLE II.**

5 **PPP OF NATIONAL GOVERNMENT AGENCIES**

6

7 *Section 5. Authority of Implementing Agencies.* - Implementing agencies, in
8 accordance with their respective charters, are authorized to undertake PPP projects
9 with any project proponent in accordance with the provisions of this Act.

10 Before undertaking a PPP project under this Act, a GOCC or any of its subsidiaries shall
11 secure the approval of the head of department or agency to which the GOCC is
12 attached.

13 The implementing agencies shall submit their list of PPP projects or any update
14 thereto to the PPP Center for information.

15

16 *Section 6. Approval of National PPP Projects.* - National PPP projects shall be
17 approved by the ICC or by the National Economic Development Authority (NEDA)
18 Board, or both, depending on the project cost as prescribed in the IRR of this Act.
19 Such approval shall be followed by the implementing agency or grantor concerned.
20 For national projects located on a particular region, the implementing agency shall
21 secure the endorsement of the concerned Regional Development Council (RDC) prior
22 to submitting the project for approval to the Approving Body. The RDC shall have
23 thirty (30) days from receipt of the request of the implementing agency within which
24 to issue its endorsement; otherwise, the same shall be deemed automatically endorsed
25 by the RDC.

26

27 *Section 7. Unsolicited Proposals for National PPP Projects.* – Unsolicited
28 proposals may be considered for national projects. Within ten (10) working days from
29 receipt of the unsolicited proposal, the implementing agency shall inform the PPP
30 Center in writing of such receipt and furnish it with a copy of the proposal. The PPP
31 Center shall provide assistance to the implementing agency in the evaluation of
32 unsolicited proposal.

- 1 Upon receipt of an unsolicited proposal, the implementing agency may either:
- 2 1. Accept the unsolicited proposal on a negotiated basis, subject to the following
- 3 conditions:
- 4 a. The implementing agency should invite the submission of comparative
- 5 proposals by publishing for three (3) consecutive weeks in a newspaper of
- 6 general circulation, as well as posting in the websites of the PPP Center and of
- 7 the implementing agency. If no proposal is received within a period of three
- 8 (3) months from the date of last publication in a newspaper of general
- 9 circulation, the implementing agency may accept the proposal. In the event
- 10 another proponent submits a superior counterproposal within the period
- 11 referred to above and it is accepted by the Approving Body, the original
- 12 proponent shall have the right to outbid.
- 13 b. No direct government guarantee, VGF, government subsidy or equity, or
- 14 funding for right-of-way is required; Provided, That the implementing agency
- 15 shall facilitate the acquisition of the right-of-way; and
- 16 2. Upon approval by the Approving Body, the implementing agency can use the
- 17 unsolicited proposal as the basis for public bidding as provided in Section 8 of this
- 18 Act. The original proponent thereof shall be reimbursed of the cost incurred in the
- 19 preparation of the proposal, such as the cost of any feasibility study undertaken:
- 20 Provided, That the reimbursement is:
- 21 a. in an amount specified in the IRR of this Act, not to exceed three (3%) percent
- 22 of the project cost excluding those which are borne by the implementing
- 23 agency; and
- 24 b. paid in full by the winning project proponent as a requirement for the award
- 25 of the contract, or by the implementing agency in the case of failure of bidding.
- 26 3. Reject the proposal.

27 If the implementing agency fails to act on the proposal within the period stated

28 in the IRR of this Act, the project proposal shall be deemed rejected without prejudice

29 to any liability that the erring or negligent officials or employees may incur under

30 existing laws.

31

1 Section 8. *Public Bidding of National Projects.* – The public bidding of national
2 projects shall be in accordance with the following:

3 A. Publication. - Upon approval of National PPP projects as mentioned in Section
4 7 of this Act, the head of the implementing agency concerned shall immediately cause
5 the publication of a notice inviting all prospective project proponents to participate in
6 a transparent and competitive public bidding, once every week for three (3)
7 consecutive weeks, in at least two (2) newspapers of general circulation and in at
8 least one (1) local newspaper which is circulated in the region, province, city or
9 municipality where the project will be implemented. Said notice shall also be posted
10 continuously in the websites of the implementing agency and the PPP Center.

11 B. Public Bidding. - The public bidding shall be conducted under a single or two-
12 stage system. The pre-qualification documents, technical, and financial proposals
13 shall be submitted in at least three (3) separate envelopes. The procedures for public
14 bidding, which shall be transparent and competitive, including the conduct of one-on-
15 one meetings with prequalified bidders, shall be outlined in the IRR of this Act.

16 C. Award. - The contract shall be awarded to the bidder who has passed the
17 pre-qualification stage for having satisfied the minimum financial, organizational and
18 legal standards required by this Act, has passed the technical proposal evaluation,
19 and has submitted the most favorable financial bid based on the parameters defined
20 in the bid documents.

21 D. Single Complying and Responsive Bid. - In case of a single complying and
22 responsive bidder, the implementing agency may award the PPP contract to that
23 bidder upon its compliance with the post-award requirements under the bidding rules
24 of the PPP project. A bid shall be considered a single complying and responsive bid
25 submission if it falls under any of the following circumstances:

- 26 a) If, after advertisement, only one bidder applied for prequalification and it
27 meets the prequalification requirements, after which it is required to submit a
28 bid or proposal which is subsequently found by the implementing agency to be
29 complying;
- 30 b) If, after advertisement, more than one bidder applied for prequalification but
31 only one meets the prequalification requirements, after which it submits a bid
32 or proposal which is found by the implementing agency to be complying;

- 1 c) If, after prequalification of more than one bidder, only one submits a bid
2 which is found by the implementing agency to be complying; or
3 d) If, after prequalification, more than one bidder submits bids but only one is
4 found by the implementing agency to be complying.

5 E. Protest. - In all stages of the procurement process, the following protest
6 protocol shall be strictly followed:

- 7 a) For national PPP projects, decisions of the PPP Prequalification Bids and
8 Awards Committee (PPP PBAC) may be questioned by filing a motion for
9 reconsideration within fifteen (15) working days from receipt thereof
10 b) The decision of the PPP PBAC on the motion for reconsideration in the
11 immediately preceding paragraph may be further questioned by filing an appeal
12 to the head of the implementing agency concerned and paying a non-
13 refundable appeal fee in an amount equivalent to no less than one percent
14 (1%) of the project cost within fifteen (15) working days from receipt thereof.
15 If the head of the implementing agency in the immediately preceding paragraph
16 is not a Department Secretary, the decision of the head of the implementing
17 agency may be further questioned by filing an appeal to the Secretary of the
18 Department to which the implementing agency is attached within a period
19 prescribed in the IRR of this Act.
20 c) The decision of the Department Secretary in the immediately preceding
21 paragraphs of item (b) may be questioned by filing an appeal to the Office of
22 the President within fifteen (15) working days from receipt thereof.

23 In no case shall any appeal taken from any decision treated in this Act stay or
24 delay the bidding process: Provided, however, that all appeals must first be resolved
25 before any award is made.

26 F. Failure to Comply or Execute the Contract. - If the winning bidder fails to
27 comply with any post-award requirement or fails to enter into a contract with the
28 implementing agency, the latter may proceed to a negotiation with the next
29 technically and financially qualified bidder. This is without prejudice to other legal
30 remedies available to the implementing agency such as, but not limited to, the
31 forfeiture of bid security, the withdrawal of Notice of Award, or both.

32

1 Section 9. *PPP PBAC.* – For national PPP projects, the head of the implementing
2 agency shall create a PPP PBAC which shall be responsible for all aspects of the pre-
3 bidding and bidding process in the case of solicited proposals, and for the comparative
4 bidding process in the case of unsolicited proposals. The PPP PBAC shall be chaired
5 by at least a third ranking regular official of the said agency and its composition shall
6 be specified in the IRR of this Act: Provided, That the PPP PBAC shall also include
7 other relevant government agencies as may be determined in the IRR of this Act.
8

9 Section 10. *Private Legal and Medical Assistance.* – All the PPP PBAC members
10 and other public officials providing services to the PPP PBAC shall be authorized to
11 engage the services of private lawyers, or shall be provided with free legal assistance,
12 where a civil, criminal, or administrative action is filed against them by reason of the
13 performance of their official functions or duties, unless they are finally adjudged in
14 such action or proceeding to be liable for gross negligence or misconduct or grave
15 abuse of discretion. The PPP PBAC members shall also be entitled to medical
16 assistance for injuries incurred in the performance of their functions.

17

ARTICLE III.

PPP OF LOCAL GOVERNMENT UNITS

20
21 Section 11. *Authority of Local Government Units.* - Subject to the approval of
22 the local Sangunians, LGUs may undertake PPP projects with any project proponent
23 in accordance with the provisions of this Act.

24 The LGUs shall submit their list of PPP projects or any update thereto to the
25 PPP Center for information. The PPP Center shall provide assistance to the LGU in the
26 evaluation of local PPP projects.
27

28 Section 12. *LGU Prequalification Bids and Awards Committee.* - The LGU shall
29 create an LGU Prequalification Bids and Awards Committee (LGU PBAC) which shall
30 be responsible for all aspects of the pre-bidding and bidding process in the case of
31 solicited proposals, and for the comparative bidding process in the case of unsolicited

1 proposals. The LGU PBAC should be chaired by at least a third ranking regular official
2 of the LGU and its composition shall be specified in the IRR of this Act.

3

4 Section 13. *Unsolicited Proposals to LGUs.* – Unsolicited proposals may be
5 considered for LGU PPP projects. Within ten (10) working days from receipt of the
6 unsolicited proposal, the LGU shall inform the PPP Center in writing of such receipt
7 and furnish it with a copy of the proposal. The PPP Center shall provide assistance to
8 the implementing agency in the evaluation of unsolicited proposal.

9 Upon receipt of an unsolicited proposal, the LGU may either:

10 1. Accept the unsolicited proposal on a negotiated basis, subject to the following
11 conditions:

12 a. The LGU should invite the submission of comparative proposals by
13 publishing for three (3) consecutive weeks in a newspaper of general
14 circulation, as well as posting in the websites of the PPP Center and of the
15 implementing agency. If no proposal is received within a period of three (3)
16 months from the date of last publication in a newspaper of general
17 circulation, the LGU may accept the proposal. In the event another
18 proponent submits a superior counterproposal within the period referred to
19 above and it is accepted by the Approving Body, the original proponent
20 shall have the right to outbid.

21 b. No direct government guarantee, VGF, government subsidy or equity, or
22 funding for right-of-way is required; Provided, That the implementing
23 agency shall facilitate the acquisition of the right-of-way; and

24 2. Reject the proposal.

25 If the LGU fails to act on the proposal within the period stated in the IRR of this
26 Act, the project proposal shall be deemed rejected, without prejudice to any liability
27 that the erring or negligent officials or employees may incur under existing laws.

28

29 Section 14. *Public Bidding of LGU Projects.* – The public bidding of LGU PPP
30 projects shall be in accordance with the following:

31 A. Publication. - Upon approval of PPP projects as mentioned in Section 11 of
32 this Act, the LGU shall immediately cause the publication of a notice inviting all

1 prospective project proponents to participate in a transparent and competitive public
2 bidding, once every week for three (3) consecutive weeks, in at least two (2)
3 newspapers of general circulation and in at least one (1) local newspaper which is
4 circulated in the region, province, city or municipality where the project will be
5 implemented. Said notice shall also be posted continuously in the websites of the LGU
6 and the PPP Center.

7 B. Public Bidding. - The public bidding shall be conducted under a single stage
8 system. The pre-qualification documents, technical, and financial proposals shall be
9 submitted in at least three (3) separate envelopes. The procedures for public bidding,
10 which shall be transparent and competitive, including the conduct of one-on-one
11 meetings with prequalified bidders, shall be outlined in the IRR of this Act.

12 C. Award. - The contract shall be awarded to the bidder who has passed the
13 pre-qualification stage for having satisfied the minimum financial, organizational and
14 legal standards required by this Act, has passed the technical proposal evaluation,
15 and has submitted the most favorable financial bid based on the parameters defined
16 in the bid documents.

17 D. Single Complying and Responsive Bid. - In case of a single complying and
18 responsive bidder, the implementing agency may award the PPP contract to that
19 bidder upon its compliance with the post-award requirements under the bidding rules
20 of the PPP project. A bid shall be considered a single complying and responsive bid
21 submission if it falls under any of the following circumstances:

- 22 a) If, after advertisement, only one bidder applied for prequalification and it
23 meets the prequalification requirements, after which it is required to submit a
24 bid or proposal which is subsequently found by the implementing agency to be
25 complying;
- 26 b) If, after advertisement, more than one bidder applied for prequalification but
27 only one meets the prequalification requirements, after which it submits a bid
28 or proposal which is found by the implementing agency to be complying;
- 29 c) If, after prequalification of more than one bidder, only one submits a bid
30 which is found by the implementing agency to be complying; or
- 31 d) If, after prequalification, more than one bidder submits bids but only one is
32 found by the implementing agency to be complying.

1 E. Protest. - In all stages of the procurement process, the following protest
2 protocol shall be strictly followed:

- 3 a) Decisions of the LGU PBAC may be questioned by filing a motion for
4 reconsideration within fifteen (15) working days from receipt thereof
5 b) The decision of the LGU PBAC on the motion for reconsideration in the
6 immediately preceding paragraph may be further questioned by filing an appeal
7 to the local chief executive of the LGU concerned and paying a non-refundable
8 appeal fee in an amount equivalent to no less than one percent (1%) of the
9 project cost within fifteen (15) working days from receipt thereof.

10 In no case shall any appeal taken from any decision treated in this Act stay or
11 delay the bidding process: Provided, however, that all appeals must first be resolved
12 before any award is made.

13 F. Failure to Comply or Execute the Contract. - If the winning bidder fails to
14 comply with any post-award requirement or fails to enter into a contract with the
15 implementing agency, the latter may proceed to a negotiation with the next
16 technically and financially qualified bidder. This is without prejudice to other legal
17 remedies available to the implementing agency such as, but not limited to, the
18 forfeiture of bid security, the withdrawal of Notice of Award, or both.

19

20 ARTICLE IV

21 CONTRACTUAL PROVISIONS

22

23 Section 15. *Regulatory Boards.* – No regulatory body shall be allowed to enter
24 into any PPP contract that they regulate. A regulatory agency that owns public
25 infrastructure or right-of-way that is intended for a PPP project shall assign the same
26 to the department exercising administrative supervision over it, or to the department
27 to which it is attached, in order that such department may enter into a PPP contract
28 involving such public infrastructure or right-of-way.

29

30 Section 16. *Contract Termination.* – In the event that a contract is revoked,
31 cancelled or terminated, either contracting party shall compensate the other party
32 pursuant to terms as defined in the contract.

1
2 Section 17. *Contracts and Public Disclosure.* – Copies of all PPP contracts
3 concluded under this Act shall be considered public documents. *Provided that*, any
4 information relating to national security contained in the PPP contract and its annexes
5 shall be kept confidential, as may be determined by the implementing agency, in
6 consultation with the Department of National Defense (DND).

7 The implementing agency shall transmit to the PPP Center for records and
8 monitoring purposes, a copy of the duly executed contract, within ten (10) working
9 days from its complete execution.
10

11 Section 18. *Project Supervision.* – Every PPP project undertaken under the
12 provisions of this Act shall be in accordance with the designs, plans, specifications,
13 standards, and costs approved by the implementing agency and Approving Body and
14 shall be under the supervision of the implementing agency concerned.
15

ARTICLE V

BENEFITS OF PPP CONTRACTS

19 Section 19. *Issuance of Administrative Franchise, License or Permit.* – Once a
20 PPP contract is duly executed, the regulator, licensing authority or LGUs shall
21 automatically grant in favor of the project proponent an administrative franchise,
22 license permit, or any other form of authorization required for the implementation of
23 a PPP project subject to submission by the project proponent of the requirements by
24 the regulator, licensing authority or LGU.

25 Any provision of law to the contrary notwithstanding, it shall be mandatory on
26 the part of the regulator, licensing authority or LGUs to accept and approve the
27 application for administrative franchise, license or permit. Failure to act on a proper
28 and complete application thereof within thirty (30) working days from receipt of the
29 same shall be deemed as approval thereof.
30

31 Section 20. *Prohibition on the Issuance of Temporary Restraining Orders or*
32 *Injunctions.* –

1 A. No temporary restraining order, preliminary injunction or preliminary
2 mandatory injunction shall be issued by any court, except the Supreme Court, against
3 any implementing agency or LGU, its officials or employees, or any person or entity,
4 whether public or private acting under the government direction, to restrain, prohibit
5 or compel the following acts:

- 6 a) Bidding, rebidding or declaration of failure of bidding of PPP projects, either
7 national or local;
8 b) Qualification or disqualification of bidders;
9 c) Awarding of PPP contract;
10 d) Acceptance of any unsolicited PPP project proposal, even if not acted upon
11 by the implementing agency concerned under Section 9 of this Act;
12 e) Acquisition, clearance, development of the right-of-way, site or location of
13 any PPP project;
14 f) Construction, operation and maintenance of any PPP project;
15 g) Commencement, execution, implementation, termination or rescission of any
16 PPP contract; and
17 h) Undertaking or authorization of any other lawful activity necessary for such
18 PPP project or contract.

19 B. Bond. - The applicant for such temporary restraining order, preliminary
20 injunction or preliminary mandatory injunction shall file a bond, in an amount to be
21 fixed by the court. The bond shall accrue in favor of the government if the court
22 should finally decide that the applicant was not entitled to the relief sought.

23 C. Void. - Any temporary restraining order, preliminary injunction or preliminary
24 mandatory injunction issued in violation of this section is void and of no force and
25 effect.

26

27 Section 21. *Exemption from Payment of Transfer Taxes.* – For all PPP projects,
28 the transfer of ownership of infrastructure facility to the implementing agency shall be
29 exempt from capital gains tax, documentary stamp tax and all taxes and fees, whether
30 from national or local, related to the transfer thereof.

31

1 Section 22. *Investment Incentives.* - Among other incentives, PPP projects may
2 be entitled to incentives as provided by the Omnibus Investment Code, upon prior
3 endorsement of the PPP Center and registration by the project proponent with the
4 Board of Investments.

5

6 **ARTICLE V**
7 **INCLUSIONS AND LIMITATIONS IN PPP CONTRACTS**

8

9 Section 23. *Mandatory Inclusion of Alternative Dispute Resolution (ADR)*
10 *Mechanisms in PPP Contracts.* – All PPP contracts shall stipulate therein the use of
11 ADR mechanisms. The contracting parties shall be given complete freedom to choose
12 which ADR mechanisms shall govern their dispute, as well as the rules or procedures
13 to be followed in resolving the same.

14

15 Section 24. *Recovery of Investment.* - As may be agreed in the PPP contract,
16 the project proponent may be allowed to collect tolls, fees, rentals, or charges, engage
17 in commercial development, receive VGF, and receive direct government payments,
18 among others, to recover investment.

19

20 Section 25. *Wind-up and Transfer Measures.* - The PPP contract shall provide,
21 as appropriate, for:

22

- 23 a. Mechanisms and procedures for the transfer of assets to the
24 implementing agency;
- 25 b. The compensation to which the project proponent may be entitled
26 in respect of assets transferred to the implementing agency, or to a
27 successor, or purchased by the implementing agency;
- 28 c. The transfer of technology required for the operation of the
29 infrastructure facility;
- 30 d. The training of the implementing agency's personnel or of a
31 successor in the operation and maintenance of the infrastructure
32 facility; and

1 e. The provision, by the project proponent, of a warranty that the
2 infrastructure facility meets the project technical specifications,
3 agreed system features, and performance standards and services for
4 a certain period as may be defined in the IRR of this Act after the
5 transfer of the infrastructure facility to the implementing agency or
6 to a successor.

7 Section 26. *Preferential Hiring of Filipino Workers.* - For the construction stage of
8 infrastructure facilities where the contractor is a foreigner, Filipino labor shall be
9 employed or hired in the different phases of construction where Filipino skills are
10 available.

11

12 **ARTICLE V.**
13 **THE PPP CENTER**

14

15 Section 27. *Institutionalization of PPP Center.* – The PPP Center created under
16 Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series
17 of 2013, is hereby institutionalized. It is hereby authorized to adopt its current
18 organizational structure, absorb its existing employees, and upgrade its human
19 resource component, as may be necessary. Towards a more efficient and effective
20 performance of its mandate, the PPP Center shall have the following powers and
21 functions:

- 22 a. Assist implementing agencies in identifying, developing, prioritizing and
23 maintaining a pipeline of PPP projects;
- 24 b. Explore land value capture opportunities for PPP projects;
- 25 c. Identify optimal schemes in the implementation of PPP Projects;
- 26 d. Provide advisory services, technical assistance, trainings, and capacity
27 development to implementing agencies in all PPP-related matters, and act as
28 a procurement agent upon the request of an implementing agency;
- 29 e. Manage and administer the PDMF as provided in Section 8 of this Act;
- 30 f. Work with implementing agencies in setting procurement and implementation
31 timelines for approved PPP projects;

- 1 g. 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 h. Recommend legal and regulatory reforms that would create a more conducive
5 environment for PPP Projects;
- 6 i. Facilitate, monitor, and evaluate the implementation of PPP programs and
7 projects developed by the implementing agencies;
- 8 j. Report to the Office of the President and Congress on the implementation of
9 the PPP programs and projects of the government at the end of each year;
- 10 k. Serve as a link between the government and the private sector;
- 11 l. Promote and market PPP programs and projects, in collaboration with other
12 government promotion agencies;
- 13 m. Sit as member of NEDA-Infrastructure Committee (INFRACOM), ICC, and
14 other inter-agency bodies where a PPP project is a major concern;
- 15 n. Issue advisory opinions and interpret the provisions of this Act and its IRR,
16 relating solely to technical aspects of PPP;
- 17 o. Serve as the central repository of all executed PPP contracts and any
18 subsequent amendment or supplement thereto, including settlement
19 agreements, entered into by implementing agencies;
- 20 p. Review PPP contracts prior to execution, and provide and transmit copies of
21 duly executed PPP contracts to Congress;
- 22 q. Act as Secretariat to the PDMF Committee, PPP Governing Board, and ICC
23 insofar as PPP projects are concerned;
- 24 r. Maintain an integrated projects' bank to serve as an interactive database of
25 all current and past projects; and
- 26 s. Perform such other functions, as may be necessary, to achieve the objectives
27 and purposes of this Act. The PPP Center shall report directly to the PPP
28 Governing Board and shall be attached to the NEDA for purposes of policy and
29 program coordination.

30 Section 28. *PPP Governing Board.* – The PPP Governing Board, hereinafter
31 referred to as the Board, is hereby created. It shall be the overall policy making body
32 for all PPP-related matters, including the PDMF. It shall be responsible for setting the

1 strategic direction of PPP programs and projects and in creating an enabling policy
2 and institutional environment for PPP. The Board shall be composed of the following
3 members:

- 4 1. Secretary of Socio-Economic Planning as Chairperson;
- 5 2. Secretary of the Department of Finance as Vice-Chairperson;
- 6 3. Secretary of the Department of Budget and Management;
- 7 4. Secretary of the Department of National Defense;
- 8 5. Secretary of the Department of Trade and Industry;
- 9 6. Secretary of the Department of Interior and Local Government; and
- 10 7. Executive Director of PPP Center.

11 The members of the Board may designate their respective alternates, who shall
12 be the official next-in-rank to them, and whose acts shall be considered the acts of
13 their principals. The presence of the Chairperson and three (3) other members of the
14 Board or their respective designated alternates shall constitute a quorum and a
15 majority vote of the members present shall be necessary for the adoption of any
16 issuance, order, resolution, decision, or other act of the Board in the exercise of its
17 functions.

18 The Board shall act on any matter for its consideration not later than thirty (30)
19 days from the date of submission thereof.

20
21 Section 29. *Executive Director.* – The PPP Center shall be headed by an
22 Executive Director with the rank equivalent to an Undersecretary, who shall be
23 appointed by the President of the Philippines, for a term of six years, upon
24 recommendation of the PPP Governing Board.

25 The Executive Director shall perform the following 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 he or she deems necessary for the effective exercise and discharge of the
30 powers and functions of the PPP Center;
31 c. Sit as an ex-officio member of the PPP Governing Board, INFRACOM, ICC
32 and other inter-agency bodies where a PPP project is a major concern; and

1 d. Perform such other functions as may be assigned by the PPP Governing
2 Board.

3

4 **ARTICLE IV**

5 **SPECIAL FUNDS FOR PPP PROJECTS**

6

7 Section 30. *Project Development and Monitoring Fund.* - The Project Development
8 and Monitoring Fund (PDMF) is hereby established and shall be used for the hiring of
9 advisory and support services related to PPP projects.

10 a. Funding Source. The PDMF referred to under Executive Order (EO) No. 8, series
11 of 2010, as amended by EO No. 136, series of 2013, shall be transferred to the
12 PDMF under this Act. The PDMF may be funded through and such amount as may
13 be needed and included in the General Appropriations Act, Official Development
14 Assistance or other sources.

15 b. Institutional Arrangement. The PDMF shall be managed and administered by the
16 PPP Center as a revolving fund. In order to sustain the PDMF, the PPP Center may
17 collect and receive fees and recover costs expended through PDMF in accordance
18 with the guidelines to be approved by the PPP Governing Board. Such amount
19 shall be retained and authorized to be used by the PPP Center for the purposes
20 indicated herein. The PPP Center shall approve applications submitted by
21 implementing agencies or local government units.

22

23 **ARTICLE VI**

24 **PENAL PROVISION**

25

26 Section 31. *Administrative and Criminal Liability.* - Any person, whether private
27 individual or public officer or employee, who commits any of the acts hereunder
28 proscribed, shall be punished by imprisonment from a minimum of three (3) years to
29 six (6) years:

- 1 a. Representation that the project proponent has the necessary capitalization
2 to commence, complete, and implement the project when the same is false
3 in material respects;
4 b. Falsification or insertion of certain provisions in the execution copy of the
5 contract which are materially and substantially different from the approved
6 final draft contract.

7 *Provided that*, any concerned reviewing officer/s found liable of abuse in power
8 in the performance of his /her duties shall be administratively liable with grave neglect
9 of duty and shall be dealt with in accordance with existing laws.
10

11 **ARTICLE VI**
12 **TRANSITORY PROVISIONS**
13

14 Section 32. *Transitory Provisions*. - All unexpended funds for the calendar year,
15 properties, equipment, contracts and records of the PPP Center are hereby retained.
16 The amount necessary to carry out the organizational changes of PPP Center provided
17 in this Act shall be determined by the PPP Governing Board. Appropriations for
18 succeeding years shall be incorporated in its budget proposals for Congressional
19 action. All officials and employees of the PPP Center shall be retained and shall not
20 suffer any loss of seniority or rank or decrease in emoluments.
21

22 Section 33. *Prescription*. - No one shall in any proceedings before any court or
23 tribunal allege the invalidity of any PPP contract on the ground of non-compliance with
24 the provisions of this Act after a period of one (1) year has elapsed from the signing
25 of the PPP contract.
26

27 Section 34. *Contracts, Procedures, And Authority Not Affected by this Act*. - This
28 Act shall not affect:

29 a. PPP contracts entered, and selection procedures undertaken, by implementing
30 agencies prior to the effectivity of this Act in accordance with the relevant
31 laws, regulations, guidelines, and ordinances; and

- 1 b. The authority of LGUs to enact their own PPP ordinances that are not
2 inconsistent with this Act and its IRR.

3

4 **ARTICLE VII**

5 **MISCELLANEOUS PROVISIONS**

6

7 *Section 35. Implementing Rules and Regulations.* – The members of the PPP
8 Governing Board shall designate their respective representatives who shall constitute
9 the IRR Committee. Within sixty (60) days from the effectivity of this Act, the PPP
10 Center shall formulate and prescribe, in consultation with the IRR Committee, after
11 public hearing and publication as required by law, the rules and regulations to
12 implement the provisions of this Act. The IRR shall be approved by the PPP Governing
13 Board. From time to time the PPP Governing Board may instruct the PPP Center, in
14 consultation with the IRR Committee, to conduct, formulate and prescribe, after due
15 public hearing and publication, amendments to the IRR, consistent with the provisions
16 of this Act.

17 *Section 36. Separability Clause.* - If any provision of this Act is held invalid, the
18 other provisions not affected thereby shall continue in operation.

19 *Section 37. Repealing Clause.* - All other laws, rules and regulations or parts
20 thereof inconsistent with the provisions of this Act are hereby repealed or modified
21 accordingly.

22 *Section 38. Effectivity Clause.* - This Act shall take effect fifteen (15) days after
23 its publication in the Official Gazette or at least one (1) newspaper of general
24 circulation.

25 *Approved*