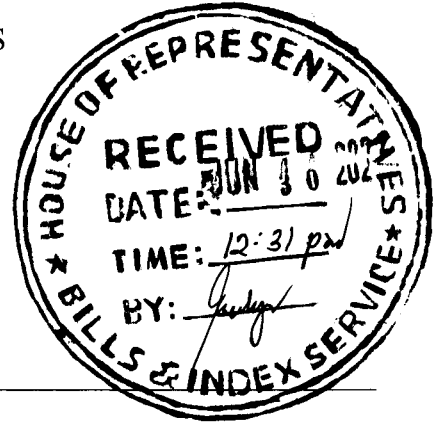


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Nineteenth Congress
First Regular Session

HOUSE BILL NO. 49



Introduced by **Representative JOEY SARTE SALCEDA**

AN ACT
STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS
AND APPROPRIATING FUNDS THEREFOR

EXPLANATORY NOTE

RA No. 6957, as amended: An Offshoot of the Important Role of the Private Sector in Nation Building. The private sector is an indispensable component in sustainable development. Recognizing the contribution of the private sector to nation building, Section 20, Article II of the 1987 Philippine Constitution explicitly provides that “The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.”

Pursuant to this declared State policy, two primary laws were enacted by Congress namely: Republic Act No. 9184 or the Government Procurement Reform Act (RA 9184) for the procurement of goods, supplies and services, and Republic Act No. 6957 as amended by Republic Act No. 7718 or the Philippine Build-Operate-and-Transfer (BOT) Law allowing for a more focused framework in PPP infrastructure development. R.A. No. 9184 was enacted to, among others, promote transparency in the procurement process and in the implementation of procurement contracts. Republic Act No. 6957 allows for LGUs to enter into contractual arrangements with the private sector to implement infrastructure projects thru a Built-Operate-And-Transfer and Build-Transfer-and-Operate. Eventually, R.A. No. 6957 was amended by Republic Act No. 7718 or the Philippine Build-Operate-and-Transfer (BOT) Law broadened the list of PPP government implementing government entities to include government owned and controlled corporations (GOCCs), government financing institutions (GFIs) and state universities and colleges (SUCs); putting up incentives for attracting private sector investments to venture into PPP projects; and allowing negotiated unsolicited proposals provided that these comply with conditions outlined in the Law. More importantly, RA 7718 allowed for other contractual arrangements or schemes to implement PPP projects.

Under existing law, the overall policy making body for all PPP-related matters is lodged with the PPP Governing Board (PPGGB), composed of the Secretary of Socio-Economic Planning as chairperson, the Secretary of Finance, as vice-chairperson and as

members, the Secretary of Budget and Management, Secretary of Justice, Secretary of Trade and Industry, Executive Secretary and the Private Sector Co-Chairman of the National Competitiveness Council.

Salient Features of the Proposed Bill. This proposed bill further enhances and reinforces the provisions of R.A. 6957, as amended to engender transparency in transactions, efficiency in the performance of project obligations, and putting additional thrust and impetus to the PPP program through a more robust cooperation between the public and private sectors. With these in mind, the bill proposes the following additional amendments to RA 6957, as amended, to wit:

Section 1, as proposed, emphasizes the role of the private sector as “prime mover” for national growth and development. It expresses in a categorical and explicit terms the bounden obligation of the government to provide support to allow the private sector to achieve reasonable rate of return on investments (ROI) in financing the construction etc. through a competitive and transparent selection process. It also makes it the declared policy of the state to abide by the principle of transparency with the end in view of protecting the interest of the public by ensuring fair and reasonable pricing and timely delivery of quality services.

Amendments to *Section 2. (Definition of Terms)* under the proposed bill are hereunder enumerated, to wit:

- a) Inclusion of “bulk grains handling facility or logistic support system” among the list of Public-Private Infrastructure or Development Projects or “projects” enumerated in R.A. 6957 as amended.
- b) Inclusion of a definition of “PPP Infrastructure AND Development Plan (PLAN)”.
- c) Under RA6957 as amended, the definition of “Facility operator” spells out in specific terms that Filipino ownership of the public utility franchise should be at least 60% which is reflective of the wording of Sec. 11 Art. XII of the 1987 Constitution. However, under the proposed bill “Facility operator” as defined makes reference not only to the nationality and equity requirements as stated in the Constitution but also to include requirements under all applicable laws.
- d) Allows for a more specific and expanded definition of “Government guarantee” to include “full or partial responsibility” by the government.
- e) The definition of “Return on Investment” as proposed specifies the factors to be considered in determining the ROI. The definition of ROI in RA6957 is more restrictive and does not take into account the aforementioned factors.
- f) More detailed definition of the “Project Cost.”

As proposed, *Section 3. Private Initiative in Infrastructure* includes a proviso that specifically requires the submission to the BOT Authority for approval of all national and local government projects; with the exception of projects that require national government guarantee or undertaking, in which case the project shall be recommended by the BOT Authority Board to the president for approval.

A new section, to be numbered as *Section 4*, defines contractual arrangements.

The previous *Section 4*, renumbered as *Section 5* in the proposed bill, makes it a requirement for government agencies and LGUs to submit to the PPP authority list of projects for possible listing in the plan and harmonized investment promotion.

Section 4-A of Republic Act No. 6957, as amended, renumbered as *Section 5-A* in the proposed bill, makes it a requirement for Unsolicited Proposals accepted by any appropriate government agencies / LGUs to be submitted to the PPP Authority for evaluation and approval, subject to certain conditions.

Section 5, to be renumbered as *Section 6* in the proposed bill, requires that projects under the law shall be done through competitive and transparent public bidding.

A new section (*Section 8*) is introduced establishing a Project Development Facility (PDF) to serve as a revolving fund to, among others, finance the proper identification, study, validation, development, and preparation for public bidding.

Section 9, as proposed, spells out the consequences of contract terminations as a result of the fault or non-fault of the project proponent. Notice that RA No. 6957, as amended, envisages two situations for contract termination, namely:

- 1) it is the government that initiates contract termination without the fault of the proponent, or
- 2) the government defaults on certain major obligations.

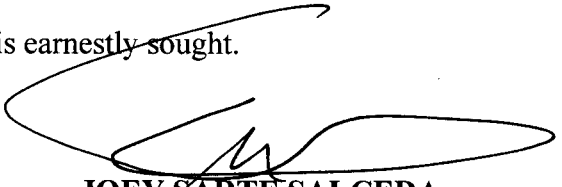
The proposed provision however shifts the emphasis and perspective to the project proponent's fault or non-fault which, for all intents and purposes, will have substantial bearing on the burden of proof.

Section 10 of the RA 6957, as amended, renumbered as *Section 12* in the proposed bill, removes the one billion peso (P1,000,000,000) threshold for projects entitled to incentives. As proposed, projects, except unsolicited projects, are entitled to incentives regardless of cost.

A new section, to be numbered as *Section 13* in the proposed bill, makes it the obligation of the Republic of the Philippines or LGUs to uphold the validity and enforceability of a duly executed contract, unless proven otherwise.

A new section (*Section 15*), which we will consider as the most substantive, allows for the creation and establishment of the Public-Private Partnership Authority to serve as the central body of the government for BOT, Private Sector Participation (PSP) or Public-Private Partnership projects (PPP), attached to the Department of Trade and Industry (DTI). This is a significant departure from the organizational structure under RA 6957 which vests upon the PPP Governing Board the power to set the policy direction of the PPP. As envisioned under the proposed bill however, the PPP Authority institutionalizes the policy-making body of the government for BOT and other contractual arrangements. This will make for a more consistent policy direction for the PPP programs. Subsequent provisions as proposed concern the composition of the Authority including its powers and functions, budget, and appointment of its personnel. To give more teeth to the proposed bill, a penalty clause is also introduced, defining the penalties and sanctions for the violation of any provision of the law and its implementing rules and regulations.

In view of the foregoing, approval of this bill is earnestly sought.



JOEY SARTE SALCEDA

Republic of the Philippines
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HOUSE BILL NO. **49**

Introduced by **Representative JOEY SARTE SALCEDA**

AN ACT
STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS
AND APPROPRIATING FUNDS THEREFOR

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

SECTION 1. *Short Title.* – This Act shall be known as the “Public-Private Partnership (PPP) Act of 2022.”

SEC. 2. *Declaration of Policy.* – Section 20, Article II, of the Constitution provides that the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments. Furthermore, it is the declared policy of the State to recognize the private sector as the main engine for national growth and development, and provide an enabling environment for private sector participation to mobilize private resources for the purpose of financing, designing, constructing, operating and maintaining development programs and projects normally undertaken by the government. Aside from financial incentives as provided by law, the government shall foster robust private sector participation by ensuring a competitive climate through reduced costs of doing business by providing cost-effective and time-saving government regulations and procedures and specific government undertakings in support of the private sector without endangering the country’s fiscal strength.

It is further declared that the State shall protect the public interest by providing affordable, accessible, and efficient public services. Subject to reasonable rules and under the guiding principle of full public disclosure of all transactions, the State shall ensure fair and reasonable pricing and timely delivery of quality infrastructure and services through equitable risk allocation inherent in PPP Projects.

Furthermore, it is declared that the State shall ensure that all PPP Projects yield sufficient value for money to optimize the use of resources in order to achieve better quality of PPP Projects at lower costs. It shall also take appropriate measures to integrate environmental sustainability and value for the communities involved in the evaluation, planning, and implementation of PPP projects.

The State shall pursue a policy of maintaining a reasonable balance on infrastructure financing through all means available that will most effectively meet the government's objectives. In optimizing value for money, the State shall determine the appropriate financing by taking into account project drivers and constraints like budget availability, timelines, stakeholder commitments, and market capacity. Alternative sources of financing may include appropriations, official development assistance, and PPPs.

Finally, it is declared that the State shall affirm open, fair, transparent, and competitive selection as the central tenet for securing private investment in PPP Projects. It shall implement a policy of full public disclosure of all its transactions involving public interest, subject to limitations under existing laws.

SEC. 3. *Scope and Application.* – This Act shall apply to all PPP Projects undertaken by Implementing Agencies through PPP contracts with a Private Proponent, including Joint Ventures, as defined under this Act. It shall likewise apply to and be enforceable among all parties to said PPP contracts.

Implementing Agencies are hereby authorized to undertake PPP Projects through PPP contracts with a Private Proponent in accordance with this Act.

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

- (a) ***Approving Body*** – refers to an entity authorized to approve PPP Projects, in accordance with Section 7 of this Act;
- (b) ***Blended Finance*** – refers to the strategic use of combined concessional funds from development institutions or partners and commercial funds from lenders and private investors to provide financing for PPP Projects.
- (c) ***Brownfield Project*** – refers to a project with existing development programs or projects;
- (d) ***Co-financing*** – refers to collaborative financing of the same PPP Project by two or more banks or other lending institutions.
- (e) ***Construction*** – refers to new construction, rehabilitation, improvement, expansion, alteration, and related works and activities including the necessary supply and installation of equipment, materials, labor and services, and related items;
- (f) ***Contractor*** – refers to any entity allowed under Philippine laws, which may or may not be the Private Proponent, and which shall undertake the actual construction or supply of equipment for the PPP Projects;
- (g) ***Cooperation Period*** – refers to the period during which the PPP contract is in effect;
- (h) ***Facility Operator*** – refers to an entity with legal personality authorized under existing laws, which may or may not be the Private Proponent, that shall be responsible for all aspects of operation and maintenance of a facility, including, but not limited to, the collection of tolls, fees, rentals or charges from facility users;

- (i) **Fair market value** – refers to the estimated amount for which a property shall exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction which is a transaction between independent, unrelated parties involving no irregularity, after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion: *Provided*, that fair market value may be higher than the value reflected in the Schedule of Market Values (SMV) enacted by the concerned Sanggunian or any other valuation undertaken by a government agency for whatever purpose prior to the transaction
- (j) **Government Undertakings** – refers to any form of contribution and support, which the government may extend to a Private Proponent for the implementation of PPP Projects;
- (k) **Greenfield Project** – refers to a pioneer development program or project;
- (l) **Green Finance** – refers to investments that create environmental benefits in support of green growth, low-carbon, and sustainable development.
- (m) **Implementing Agency** – refers to a department, bureau, office, instrumentality, commission, authority of the national government, state universities and colleges (SUCs), local government units (LGUs), or government owned-or-controlled corporation (GOCC) as defined in Republic Act No. 10149, including government instrumentalities with corporate powers (GICP), government corporate entities (GCE), government financial institutions (GFIs), which is authorized to undertake any PPP Project;
- (n) **Joint Venture (JV)** – refers to a contractual arrangement whereby both the Implementing Agency and the Private Proponent contribute to pool resources comprising of capital, services, or assets (including equipment, land or intellectual property) to jointly undertake a specific investment activity. The investment activity shall be for the purpose of accomplishing a specific goal with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transfer the activity to either the private sector under competitive market conditions or to the government. The JV involves a community or pooling of interests in the performance of the investment activity, and each party shall have the right to direct and govern the policies in connection therewith with the intention to share both profits, and risks and losses subject to agreement by the parties. A JV may be undertaken through a contract or by creating a JV entity;
- (o) **Local PPP Project** – refers to a PPP Project that shall be undertaken by an LGU;
- (p) **National PPP Project** – refers to a PPP Project that shall be undertaken by the national government, GOCC, GICP, GCE, GFI, or SUCs;
- (q) **Operation and Maintenance** – refers to activities necessary and incidental to preserve or restore the operational status of an asset or system based on specified performance indicators;
- (r) **PPP Project** – refers to infrastructure or development programs, projects, activities, facilities, and related services normally financed and undertaken by the public sector

but which shall now be wholly or partly financed, designed, built, operated and maintained by the private sector;

- (s) **Private Proponent** – refers to the private sector entity which shall have contractual responsibility for the PPP Project. The Private Proponent may be Filipino or foreign-owned, and may engage the services of a foreign Contractor or foreign Facility Operator, subject to requirements and limitations provided under the Philippine Constitution;
- (t) **Subsidy** – refers to an agreement whereby the Implementing Agency shall:
 - (1) defray, pay for, or shoulder a portion of the Project Cost or the expenses and costs in operating or maintaining the project;
 - (2) contribute any property or assets to the project;
 - (3) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/or
 - (4) waive charges or fees relative to business permits or licenses that are to be obtained for the construction of the project,all without receiving payment or value from the Private Proponent and/or Facility Operator for such payment, contribution, or support: *Provided*, That under no circumstance shall the total subsidy exceed fifty percent (50%) of the total Project Cost;
- (u) **Viability Gap Funding (VGF)** – refers to such financial support the government may provide to a concession-based PPP Project with the objective of making fees affordable, while improving the commercial attractiveness of the project, excluding costs of right-of-way, resettlement, and real estate taxes.

SEC. 5. Public-Private Partnership. – A PPP is a contractual arrangement between the Implementing Agency and the Private Proponent for the financing, designing, constructing, operating and maintaining, or any combination thereof, of PPP Projects which are normally provided by the public sector. PPP Projects may be undertaken through contractual arrangements, including joint ventures, authorized under the Implementing Rules and Regulations (IRR) of this Act.

SEC. 6. Priority Projects. – Implementing Agencies shall include in their development plans, strategies, and investment programs priority PPP Projects. In identifying those projects, the Implementing Agencies shall be guided by the following principles: effectiveness in meeting government objectives, value for money, accountability and transparency, consumer rights, affordability, public access, safety, and security. Priority projects shall be consistent with the national and local development and investment plans.

The Implementing Agencies shall submit their list of PPP Projects or any update thereto to the PPP Center, referred to in Section 22 of this Act, for information. Each proposed PPP Project shall be subject to the approval of the appropriate Approving Body.

In addition, the Implementing Agency shall adopt methodological guidelines for project screening as authorized by the PPP Governing Board pursuant to this Act. The guidelines shall define a multi-criteria analysis that integrates financial, economic, technical, legal, environmental, and social standards to attract Blended Finance, Co-financing, and Green Finance for Priority Projects.

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

SEC. 7. Approval of PPP Projects. –

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

(1) **National PPP Projects.** National PPP Projects costing up to five billion pesos (P5,000,000,000.00) shall be approved by the PPP Center unless overturned by the Investment Coordination Committee of the National Economic and Development Authority (ICC-NEDA) within thirty (30) days from the date of approval. Projects costing more than five billion pesos (P5,000,000,000.00) shall be approved by the NEDA Board, upon prior recommendation by the ICC-NEDA. The ICC-NEDA may, from time to time, update the aforementioned thresholds when the need arises. Project cost shall be determined as follows:

- (i) For Greenfield Projects, it shall refer to the total capital expenditure;
- (ii) For Brownfield Projects, it shall refer to the sum of total capital expenditure and remaining book value of the asset or system;
- (iii) For Operation and Maintenance agreements:
 - a) It shall refer to the remaining book value of the asset or system in case of concession-based PPP Project; and
 - b) It shall refer to the present value of total government payments in case of availability-based PPP Project;
- (iv) For JV projects, it shall refer to the total amount of contributions of the government to the project in present value with discount rate as prescribed by the appropriate Approving Body. The said discount rates shall be regularly published in the NEDA website.

(2) **Local PPP Projects.** Local PPP Projects shall be approved by the local Sanggunians, regardless of the project cost, *Provided*, That Local PPP Projects involving Government Undertakings using national government funds shall require the approval of the PPP Center for projects up to five billion pesos (P5,000,000,000.00) in project cost and by the ICC-NEDA for projects with project cost of above five billion pesos (P5,000,000,000.00). The disapproval of the requested national Government Undertakings shall not preclude the local government from pursuing the PPP project without the requested national Government Undertakings, notwithstanding any laws, rules, or regulations to the contrary. National Government Undertakings shall include, among others, the following items be provided by the national government to a Local PPP Project: (i) Guarantees on Demand, (ii) Guarantees on Private Sector Return, (iii) Guarantees on Loan Repayment; (iv) Viability Gap Funding and other forms of Subsidy; (v) payment of Contingent Liability, including Termination Payments.

Provided, further, That permits, clearances, licenses, or endorsements from national government agencies required for Local PPP Projects under laws, rules, and regulations, shall not be considered as Government Undertakings by the national government for Local PPP Projects.

- (b) The Approving Body shall assess all PPP Projects based on its overall feasibility analysis and accord paramount importance on the affordability of user fees and efficiency in public service. To ensure that all risks associated with PPP Projects are managed and mitigated accordingly, all PPP contracts to be entered into by the Implementing Agency shall adhere to the principles stipulated under the Generic Preferred Risk Allocation Matrix (GPRAM) issued by the ICC-NEDA.

The Implementing Agency shall set the financial bid parameters to determine the most advantageous bid based on the following guidelines which shall be included in the bidding documents:

- (1) For Revenue-based PPP Project which does not require any form of Subsidy, the bidding parameter shall be the lowest starting tariff or user charge below a prescribed ceiling, or highest revenue share above a prescribed floor, as may be appropriate;
 - (2) For solicited Revenue-based PPP Project which requires Viability Gap Funding, the bidding parameter shall be the lowest VGF or starting tariff or user charge below the prescribed ceiling;
 - (3) For Availability-based PPP, the bidding parameter shall be the lowest amortization payment or other equivalent forms;
 - (4) For Operations and Maintenance PPP Project, the bidding parameter shall be the lowest Operations and Maintenance fee.
- (c) The Implementing Agency may consider other financial bid parameters appropriate for a PPP Project, subject to the approval of the Approving Body.
- (d) The appropriate Approving Body shall act on the project within thirty (30) working days upon satisfactory compliance by the concerned Implementing Agency with the requirements of the appropriate Approving Body. Failure of the appropriate Approving Body to act on the project within the specified period shall be deemed an approval thereof and the concerned Implementing Agency may proceed with the procurement of the PPP Project.

SEC. 8. Solicited Proposals. – Solicited Proposals refer to submissions by the Private Proponent to bid for priority PPP Projects through open, fair, transparent, and competitive public bidding initiated by the Implementing Agency. Government Undertakings are allowed, subject to the approval of the Approving Body.

The public bidding may be conducted in a single-stage or two-stage bidding process. The prequalification documents, technical, and financial proposals shall be submitted in at least three (3) separate envelopes. Electronic bid submission may also be allowed.

The contract shall be awarded to the bidder who has passed the prequalification stage after having satisfied the prescribed minimum financial, organizational, and legal standards, has passed the technical proposal evaluation, and has submitted the most favorable financial bid based on the parameters defined in the bid documents. Affordable user fees and efficient public services shall be of paramount importance in awarding a PPP contract.

The Implementing Agency shall declare failure of bidding in case of any of the following:

- (a) If no bids are received;

- (b) If there are no complying bids;
- (c) If, after advertisement, only one bidder applied for and met the pre-qualification, unless otherwise allowed by the ICC-NEDA.

The Implementing Agency may consider, on a negotiated basis, a single complying and responsive bid in case of any of the following:

- (a) If, after advertisement, more than one bidder applied for pre-qualification but only one met the pre-qualification requirements;
- (b) If, after pre-qualification of more than one bidder, only one submitted a bid; or
- (c) If, after pre-qualification, more than one bidder submitted bids but only one is found by the Implementing Agency to be complying.

If the winning bidder fails to comply with any post-award requirement or fails to enter into a contract with the Implementing Agency, the latter may proceed to consider the next technically and financially qualified bidder. In case the contract is awarded to the next technically and financially qualified bidder, it shall be without prejudice to legal remedies available to the Implementing Agency like forfeiture of bid security, withdrawal of award, and such other remedies allowed under existing laws and the PPP contract.

The head of the Implementing Agency shall create a Bids and Awards Committee (BAC), which shall be responsible for all aspects of pre-bidding and bidding process in solicited proposals, or the comparative bidding process in unsolicited proposals. The composition of the BAC shall be specified in the IRR of this Act which may include other relevant government agencies.

Any change in control of the Private Proponent or composition of the consortium after the submission of a solicited proposal shall be subject to the approval of the Implementing Agency.

SEC. 9. *Unsolicited Proposals.* – Unsolicited Proposals refer to project proposals submitted by a Private Proponent not in response to a formal solicitation or request issued by the Implementing Agency.

In accordance with the provisions of this Section, the Implementing Agency may accept, reject, or convert an unsolicited proposal into a solicited proposal, subject to the evaluation of eligibility and merits of the project, and the qualifications of the Private Proponent who submitted the unsolicited proposal.

An unsolicited proposal involving a priority project may be considered if the Implementing Agency has not awarded any contract to implement such project. In case the Implementing Agency has already incurred any development cost for the priority project, such as the conduct of feasibility study, business case, and surveys, among others, for the last five (5) years, the Private Proponent must undertake to reimburse the Implementing Agency of such documented development costs. Reimbursable development costs for a specific priority project shall be determined by the Implementing Agency.

An unsolicited proposal for a priority project which requires a Government Undertaking may be accepted by the Implementing Agency: *Provided*, That such proposal shall be automatically converted to a solicited bid.

An unsolicited proposal may also be accepted for a project that is not in the list of priority projects: *Provided*, That it does not require any of the following Government Undertakings:

- (a) Viability Gap Funding and other forms of Subsidy;
- (b) Payment of Right-of-Way related costs;
- (c) Performance undertaking;
- (d) Exemption from any taxes as required by laws, except local taxes imposed by local government units;
- (e) Guarantee on Demand;
- (f) Guarantee on Loan Repayment;
- (g) Guarantee on Private Sector Return;
- (h) Government equity except in JV arrangements; and
- (i) Contribution of assets, properties, and rights except in JV arrangements.

As an exception, item (i) above may be allowed provided the government owns the Right-of-Way, asset, property or rights and receives compensation based on fair market value.

In cases where the Implementing Agency receives more than one unsolicited proposal involving the same or similar project within one (1) year, the Implementing Agency may reject all such proposals, and instead, bid out the project as a solicited proposal. Otherwise, the Implementing Agency shall evaluate the proposals using a first in time approach. Under this approach, the first complete proposal is evaluated and decided upon. The second complete proposal shall only be processed if the first one is rejected or if there is a failure in the negotiation of the first proposal within two (2) years from submission thereof.

If the Implementing Agency accepts, on a negotiated basis, an unsolicited proposal, it shall grant the Private Proponent who submitted the unsolicited proposal an “Original Proponent” status, which shall be valid for a period not exceeding one (1) year, and may be extended by the head of the Implementing Agency, *Provided*, That such extension shall not exceed a period of one (1) year.

The Implementing Agency shall publish an invitation for the submission of comparative proposals.

The comparative challenge shall be conducted either manually or electronically, by the Implementing Agency within the period proposed by it and approved by the appropriate Approving Body, taking into consideration the nature and complexity of the PPP Project; *Provided*, That the period shall start from the date of last publication of the invitation for the submission of comparative proposals and shall be reasonable, fair, and upholds the competitive nature of public bidding. Comparative proposals shall be evaluated based on the best-and-final offer method, the procedure of which shall be discussed in the IRR. If no other proposal is received after the challenge period, the PPP contract shall be awarded to the Original Proponent.

If the Implementing Agency converts an unsolicited proposal and uses it as basis for public bidding, the original proponent shall be reimbursed of the cost incurred in the preparation of the proposal, such as the cost of any feasibility study undertaken: *Provided*, That such reimbursement shall be in an amount as may be determined in the IRR of this Act, excluding those which are borne by the Implementing Agency, such as the cost of right-of-

way acquisition: *Provided*, further, That such reimbursement shall be paid in full by the winning bidder as a requirement for the award of the contract, or by the Implementing Agency in case of two consecutive failures of bidding. The PPP Governing Board, as referred to in Section 22 of this Act, may adjust the amount of reimbursement cost as the need arises. If the Implementing Agency fails to act on an unsolicited proposal within sixty (60) working days from receipt thereof, the project proposal shall be deemed rejected, without prejudice to any liability that the erring or negligent officials or employees may incur under existing laws.

Within ten (10) working days from receipt of the unsolicited proposal, the Implementing Agency shall inform the PPP Center in writing of such receipt and shall furnish it with a copy of the proposal. The PPP Center may assist the Implementing Agency in the evaluation of unsolicited proposals.

Upon submission of the unsolicited proposal, the Private Proponent shall pay an administrative fee to the Implementing Agency for processing of the same, subject to existing laws, rules and regulations.

Any change in control of the Private Proponent or composition of the consortium after the submission of an unsolicited proposal shall be subject to the approval of the Implementing Agency.

SEC. 10. *Protest Mechanism.* – In all stages of the procurement process, the following protest protocol shall be strictly followed:

(a) In case of National PPP Projects:

- (1) Decisions of the BAC may be questioned by filing a motion for reconsideration within fifteen (15) working days from receipt thereof. The BAC shall act on the motion and render a decision within forty-five (45) calendar days, otherwise it shall be deemed denied.
- (2) The decision of the BAC on the motion for reconsideration in the immediately preceding paragraph may be further questioned by filing an appeal to the head of the Implementing Agency concerned, and paying a non-refundable appeal fee in an amount equivalent to no less than ½ of 1% of the project cost within fifteen (15) working days from receipt thereof. The head of the Implementing Agency shall act on the appeal and render a decision within forty-five (45) calendar days, otherwise it shall be deemed denied.
If the head of the Implementing Agency in the immediately preceding paragraph is not a Department Secretary, the decision of the head of the Implementing Agency may be further questioned by filing an appeal to the Secretary of the Department to which the Implementing Agency is attached within fifteen (15) working days from receipt thereof. The Department Secretary shall act on the appeal and render a decision within forty-five (45) calendar days, otherwise it shall be deemed denied.
- (3) The decision of the Department Secretary in the immediately preceding paragraph may be questioned by filing an appeal to the Office of the President within fifteen (15) working days from receipt thereof. If, within forty-five (45) calendar days, the Office of the President does not act on the appeal, the same is deemed denied.

(b) In the case of Local PPP Projects:

- (1) Decision of the BAC may be questioned by filing a motion for reconsideration within seven (7) calendar days from receipt thereof. The BAC shall act on the motion and render a decision within forty-five (45) calendar days, otherwise it shall be deemed denied.
- (2) The decision of the BAC on the motion for reconsideration in the immediately preceding paragraph may be further questioned by filing an appeal to the local chief executive or his authorized representative concerned within seven (7) calendar days from receipt thereof, and paying a non-refundable appeal fee in an amount equivalent to no less than 1/2 of 1% of the Project Cost. The local chief executive shall resolve the appeal within forty-five (45) calendar days from receipt thereof, otherwise it shall be deemed denied. The selection process will be suspended for a maximum period of forty-five (45) calendar days while the appeal is being evaluated. The decision of the local chief executive or his authorized representative on the appeal shall be final and immediately executory.

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

SEC. 11. Adoption of Contract Management and Risk Mitigation Plans in PPP Projects and government contingent liabilities cap clauses. – In order to manage the fiscal risks arising from PPP Projects, strengthen the credibility of the PPP program and projects among the private sector, and to ensure the timely compliance with the contractual obligations of Implementing Agencies, projects undertaken shall require the adoption of a contract management and risk mitigation plan (CMRMP). The CMRMP shall contain the agreed project execution plan and risk mitigation plans of the contractual parties, which shall ensure that value for money derived from undertaking a PPP Project shall not be diminished and that all risks are mitigated, to avoid contingent liabilities from being realized. All CMRMPs shall be submitted to the PPP Center for monitoring. The procedures in creating, managing, and monitoring the CMRMP shall be prescribed in the IRR.

Wherever acceptable to the Private Proponent or other contracting parties, the Implementing Agency may also pursue the inclusion in the governing terms of a PPP project of a ceiling to the contingent liabilities that the government shall be contractually obliged to bear or realize in favor of the Private Proponent or other contracting parties.

SEC. 12. Project Supervision and Monitoring, Impact Evaluation, Value Engineering Studies, and Building Information Modelling. – Every PPP Project shall be implemented in accordance with the project terms as approved by the appropriate Approving Body, as well as the signed PPP contract. The coverage of the project terms and the minimum required provisions in a PPP contract shall be set forth in the IRR of this Act. The Implementing Agency shall be entitled to exercise sufficient powers of supervision, monitoring, and control over the implementation of each PPP contract it has entered into.

- (a) **Supervision.** The Implementing Agency shall be responsible for the overall supervision of the PPP Project and for submission of periodic monitoring reports, executed under oath, to the appropriate oversight agencies. The approval by any

public officer of any certificate of compliance or certificate of completion that is submitted by the Private Proponent shall also be made under oath. The liability of the public officer or former public officer for any criminal act under existing pertinent laws related to the actions made on such reports and such approvals shall survive the retirement of the public officer, the termination of the project contract, and the lapse of the applicable warranty period/s.

- (b) **Monitoring.** The PPP Governing Board shall set the framework for monitoring of the compliance of the parties to PPP contracts.

The PPP Center shall be responsible for the coordination and monitoring of projects implemented under this Act. For this purpose, the Implementing Agency shall submit to the PPP Center all executed PPP contracts, information on the status of projects implemented by, as well as copies of all unsolicited proposals and related documents received by, the former.

At the end of every calendar year, the PPP Center shall submit a report to the President of the Philippines and to the Congress of the Philippines- particularly to the Senate President and the Speaker of the House of Representatives, and the Chairpersons of the Committee on Public Works - on the progress of all projects implemented under this Act.

- (c) **Impact Evaluation.** As the primary socio-economic policy think tank of the national government, the Philippine Institute for Development Studies (PIDS) is hereby mandated to conduct periodic impact evaluation studies of PPP Projects implemented under this Act. The results of these studies shall be submitted to the PPP Governing Board, the PPP Center, and other relevant oversight agencies.
- (d) **Value Engineering Studies** - In order to improve value and eliminate unnecessary costs, value engineering, management, and analysis shall be applied in PPP projects under this Act, as necessary. The submission of value engineering strategies, and periodic reports on the status of such strategies, shall be imposed by the PPP Governing Board as a requirement for PPP projects. The details of such application shall be provided in the IRR of this Act.
- (e) **Building Information Modeling (BIM) or similar automated management tool-** For all PPP projects under this Act, Implementing Agency shall use the BIM or similar automated management tool that will provide a digital representation of the physical and functional characteristics of a facility, including time and cost elements, during its entire life-cycle. The Implementing Agency shall require the use, by all project proponents and concessionaires, of BIM or similar tool, as part of the prescribed minimum performance standards and specifications. The Implementing Agency shall also use the BIM in monitoring and evaluating the project performance in all phases of the project life-cycle.

SEC. 13. *Investment Incentives.* – PPP Projects undertaken through this Act shall be entitled to various incentives under applicable laws and existing policies of the government.

SEC. 14. *Principles of Compensation for Private Proponent.* – In determining the method and terms of compensating the Private Proponent for the functions it will undertake within the PPP, the following principles shall be observed in the terms of the PPP:

- (a) The private firm shall be given adequate opportunity to recover the costs of undertaking the functions assigned to it, including the cost of bearing the risk of undertaking these functions, subject to the conditions set under Section 15 of this Act;
- (b) Notwithstanding overriding social equity considerations, and except where clear policy objectives justify a subsidy towards operations, fees and tariffs paid by end-users shall be set at or as close as possible to the full long-run marginal cost of providing the services they receive;
- (c) A strong system of incentivizing firms to meet service or asset maintenance standards shall be in place; and
- (d) The identified method of compensating the Private Proponent shall be consistent with the risk allocation and mitigation mechanism set in place pursuant to Section 11 of this Act.

SEC. 15. *Investment Recovery Scheme.* – In undertaking PPP Projects, the Private Proponent shall be allowed to recover its investments and earn profit within an allowed Rate of Return (ROR) set in the terms of the PPP through any of the following schemes or a combination thereof:

- (a) ***Revenue-based*** - refers to a scheme where the Private Proponent is authorized to charge and collect, in whole or in part, from the public reasonable user fees or tariffs not exceeding those agreed in the contract subject to appropriate regulation in accordance with Section 15 of this Act. Where applicable, the Private Proponent may likewise be repaid in the form of a share in the revenue of the project; and
- (b) ***Availability-based*** - refers to a scheme where the Implementing Agency commits to make predetermined payments, which do not take the form of charges paid by the users of the works or of the service, but of regular payments by the Implementing Agency based on contractually-defined performance delivery.

Other non-monetary payments, such as commercial development rights, or the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirements on land ownership, may also be allowed to supplement the foregoing schemes, *Provided*, that where non-monetary payments are the option taken by the Implementing Agency, it is required to justify the option through value management and engineering analysis, cost-benefit analysis, and other quantitative and qualitative studies to ensure that the State is not unduly disadvantaged, and that the financial valuation of the non-monetary payment justifies the option and approximates the value of the monetary payment if the same were taken as the option instead: *Provided further*, that such justification shall be included in the reports to Congress required under this Act.

In determining the Rate of Return (ROR), the maximum ROR shall be equal to the post-tax weighted average cost of capital for the same or comparable businesses computed using established methodologies such as the capital asset pricing model. Income tax shall be

allowed as a cash outflow for rate-determination purposes. This provision shall not bar the application of performance based-rate regulation or any other rate methodologies, should the administrative agency regulating such public service deem it efficient and in the public interest.

Where the revenue-based option is taken such that fees or tariffs are charged the end user, the fees or tariffs shall be set at the lowest level that end users are willing to pay or that recovers the full cost of service; *Provided* that where the tariff is lower than the full cost of service, the government may set a subsidy whose mechanism maximizes the policy objective of the subsidy, reaches its intended beneficiaries in a cost-efficient manner as justified by a cost-benefit analysis, and is acknowledged by the Secretary of Finance to be fiscally sustainable; *Provided further*, that the disbursement of the subsidy shall be linked to the private partner or private proponent meeting service provision or asset maintenance standards.

SEC. 16. Regulation. – All PPP Projects shall be subject to regulation by the appropriate regulatory body or by contract in the absence of the former.

SEC. 17. Variation, Expansion, or Extension of an Existing PPP Project. – A contract variation, which includes expansion, extension, augmentation of capacity, among others, that is not within the approved scope of an existing PPP Project may be allowed by the Implementing Agency, subject to the rules and procedures as provided in the IRR of this Act: *Provided*, That upon prior approval by the Approving Body, the Private Proponent of an existing PPP Project may be allowed to expand or extend the same even without further bidding: *Provided*, further, That the cost thereof shall not exceed fifty percent (50%) of the price-adjusted original approved Project Cost: *Provided*, finally, That any subsequent expansion or extension shall no longer be allowed, and such shall be considered a new project and shall be tendered accordingly.

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

SEC. 18. Divestiture/Divestment. – Subject to the approval of the head of the Implementing Agency, a Private Proponent may divest its ownership, rights, or interest in a PPP Project: *Provided*, That the divestiture shall be after a holding or lock-in period as indicated in the PPP contract: *Provided*, further, That the new Private Proponent has equal or better qualifications as with the previous Private Proponent.

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

SEC. 19. Contract Termination. – If a PPP contract is revoked, cancelled or terminated prior to its completion, either contracting party shall compensate the other party pursuant to terms as defined in the PPP contract. Depending on the contractual stipulations, the grounds for contract termination which would warrant the right of compensation may include, but are not limited to, default, insolvency, unlawful divestment or divestiture, or other unlawful acts, by the Private Proponent or by the government.

SEC. 20. Decommissioning, Wind-up, and Transfer Measures. – All PPP contracts shall provide for decommissioning, wind-up, and transfer measures. Such provision shall include, among others, the following:

- (a) Mechanisms and procedures for the transfer of assets to the Implementing Agency;
- (b) The transfer of technology required for the operation of the PPP Project, subject to limitations under existing laws, rules and regulations;
- (c) The training of the personnel of the Implementing Agency or of a successor in the operation and maintenance of the PPP Project;
- (d) The provision, by the Private Proponent, of a warranty that the PPP Project meets the project technical specifications, agreed system features, and performance standards and services for a certain period as may be defined in the IRR of this Act after the transfer of the PPP Project to the Implementing Agency or to a successor; and
- (e) In case of JV Projects, the compensation to which the Private Proponent may be entitled in case of buy-out and transfer of assets to the Implementing Agency, or to a successor.

SEC. 21. Prohibition on the issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. – No temporary restraining order, preliminary injunction, or preliminary mandatory injunction shall be issued by any court, except the Supreme Court, against any Implementing Agency or the PPP Center, its officials or employees, or any person or entity, whether public or private acting under the government direction, to restrain, prohibit, or compel the following acts:

- (a) Bidding, rebidding, or declaration of failure of bidding of PPP Projects;
- (b) Qualification or disqualification of bidders;
- (c) Awarding of PPP contract;
- (d) Acceptance of any unsolicited PPP Project proposal, even if not acted upon by the Implementing Agency concerned under Section 9 of this Act;
- (e) Acquisition, clearance, development of the right-of-way, site or location of any PPP Project;
- (f) Construction, operation and maintenance of any PPP Project;
- (g) Commencement, execution, implementation, termination or rescission of any PPP contract; and
- (h) Undertaking or authorization of any other lawful activity necessary for such PPP Project or contract.

This prohibition shall apply in all cases, disputes or controversies instituted by any person, including, cases filed by bidders or those claiming to have rights through such bidders. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.

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

Any temporary restraining order, preliminary injunction, or preliminary mandatory injunction issued in violation of this section is void and of no force and effect.

SEC. 22. PPP Center. – To achieve the goals of this Act, the PPP Center created under Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, is hereby institutionalized. It is hereby authorized to adopt its current organizational structure, absorb its existing employees, and upgrade its human resource component, as may be necessary.

Towards a more efficient and effective performance of its mandate, the PPP Center shall have the following powers and functions:

- (a) Assist Implementing Agencies in identifying, developing, prioritizing, and maintaining a pipeline of PPP Projects;
- (b) Provide advisory services, technical assistance, trainings, and capacity development to Implementing Agencies in all PPP-related matters, and act as a procurement agent upon the request of the Implementing Agency;
- (c) Manage and administer the Project Development and Monitoring Facility (PDMF) as provided in Section 23 of this Act;
- (d) Recommend plans, policies, and implementation guidelines related to PPP, in consultation with appropriate oversight committees or agencies, Implementing Agencies, private sector and other relevant stakeholders;
- (e) Ensure the sustainability of the PPP program by monitoring, capturing, and sharing lessons learned from PPP Projects;
- (f) Submit reports to the Office of the President and the Congress of the Philippines on the implementation of PPP program and projects of the government at the end of each year;
- (g) Promote and market PPP programs and projects, in collaboration with other government investment promotion agencies;
- (h) Issue advisory opinions relating to PPPs;

- (i) Serve as the central repository of all PPP Project documents, including all executed PPP contracts and any subsequent amendment or supplement thereto, including settlement agreements, entered into by Implementing Agencies;
- (j) Act as Secretariat to the PDMF Committee and the PPP Governing Board;
- (k) Perform such other functions as may be necessary to achieve the objectives and purposes of this Act.

The PPP Center shall report directly to the PPP Governing Board and shall be attached to the Department of Finance (DOF) for purposes of policy and program coordination.

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

- (a) Undertake the day-to-day management and supervise the operations of the PPP Center;
- (b) Recommend to the PPP Governing Board such policies and measures which are deemed necessary for the effective exercise and discharge of the powers and functions of the PPP Center;
- (c) Sit as a non-voting member of the PPP Governing Board, and as a member of the INFRACOM, ICC-NEDA, and other inter-agency bodies in cases where PPPs are concerned; and
- (d) Perform such other functions as may be assigned by the PPP Governing Board.

SEC. 23. 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) The Secretary of Finance as Chairperson;
- (b) The Secretary of Socio-Economic Planning as Vice-Chairperson;
- (c) The Secretary of Budget and Management;
- (d) The Secretary of Justice;
- (e) The Secretary of Trade and Industry;
- (f) The Executive Secretary;
- (g) The Secretary of Interior and Local Government;
- (h) The Executive Director of the PPP Center, as non-voting member; and
- (i) A private sector representative, appointed by and co-terminus with the President of the Philippines.

The principal members of the Board may designate their respective alternates, who shall be the official next-in-rank to them, and whose acts shall be considered the acts of their principals.

The presence of the Chairperson and four (4) 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. In the conduct of meetings, the Chairperson shall not vote except to break a tie.

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

SEC. 24. *Project Development and Monitoring Facility.* –

- (a) The PDMF is hereby established and shall be used for the procurement of advisory and support services related to the preparation, structuring, probity management, procurement, financial close, project evaluation, and monitoring of implementation of PPP Projects.
- (b) The PDMF referred to under EO No. 8, series of 2010, as amended by EO No. 136, series of 2013, shall be transferred to the PDMF under this Act. The PDMF may be funded through and such amount as may be needed and included in the general appropriations act, official development assistance, or other sources.
- (c) The PDMF shall be managed and administered by the PPP Center as a revolving fund. In order to sustain the PDMF, the PPP Center may collect and receive fees and recover costs expended through PDMF in accordance with the guidelines to be approved by the PPP Governing Board. Such amount shall be retained and authorized to be used by the PPP Center for the purposes indicated herein.

A PDMF Committee is hereby created which shall approve applications for PDMF support submitted by the Implementing Agencies.

The PDMF Committee shall be composed of: (1) the Secretary of Socio-Economic Planning as chairperson; (2) the Secretary of Finance, (3) the Secretary of Budget and Management, and (4) the Executive Director of the PPP Center, as members. The PPP Center shall serve as the Secretariat for the PDMF Committee.

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

SEC. 25. *Creation of a Risk Management Fund.* – Under an optimal allocation of risks between the Implementing Agency and the Private Proponent, each risk in a PPP Project shall be assigned to the party that is best able to control the likelihood of its occurrence, manage its impact on the project, and absorb the risk at the lowest cost.

To ensure fiscal sustainability, enhance the ability of the Implementing Agency to discharge its obligations under risks allocated to it, and improve terms of financing of PPP

Projects, there is hereby created a trust fund named Risk Management Fund, herein referred to as the Fund, which shall be financed through dedicated budgetary appropriations and contributions from the budgets of the Implementing Agencies.

The Risk Management Fund shall provide a reliable pool from which disbursements on government obligations on liabilities that have materialized can be drawn. Any appropriation and contribution to the Fund, including accrued interests thereon, are permanently appropriated and shall not revert to the general fund if not disbursed during the fiscal year. The Fund shall be administered by the DOF following fiduciary standards for fund management. The operations of the Fund can be enhanced through official development assistance.

The initial seed fund of Three Billion Pesos (P3,000,000,000.00) shall be constituted to the Fund from the effectivity of this Act.

Notwithstanding the establishment of this fund, the government may still provide an un-programmed appropriation for unforeseen risks that the government may incur from PPP Projects.

To monitor such government obligations on liabilities that have materialized and other unforeseen risks that may arise from PPP Projects; and to develop the guidelines to access the Fund, the inter-agency technical working group created under Development Budget Coordination Committee (DBCC) Resolution No. 2015-2, is hereby institutionalized.

As part of the budget submission, the DOF shall submit an annual report on the status of the fund to Congress of the Philippines. Proceeds of the fund shall be invested in risk-free highly liquid assets.

SEC. 26. *Establishment of a PPP Unit.* – Each concerned Implementing Agency shall organize a PPP unit headed by a senior official, who shall be responsible for planning, overseeing, and monitoring PPP Projects of the Implementing Agency. The PPP unit may also include as members, among others, technical and legal personnel who are knowledgeable on the technical and legal aspects, respectively, of the PPP Projects.

SEC. 27. *Contracts and Public Disclosure.* – Copies of all PPP contracts executed under this Act shall be considered as public documents, and appropriately kept safe and preserved as such. Except those provisions in the contract which are deemed proprietary, or may pose threats to national security or safety under relevant laws, rules, and regulations, the procedures for the disclosure of such documents shall be consistent with existing policies, laws, decrees, orders, rules and regulations, including the IRR of this Act. The Implementing Agency and the PPP Center shall publicly make available copies of PPP contracts through their respective websites, unless otherwise prohibited by existing laws, rules, and regulations, including national security and public safety concerns.

SEC. 28. *Miscellaneous Provisions.* –

- (a) ***Mitigation of Interconnectivity and Interface Risks.*** All PPP Projects which will interconnect or interface with a local or national facility shall be required to submit a Memorandum of Agreement (MOA) containing an interconnection/interface plan agreed upon by all relevant parties. For National PPP Projects, said MOA shall be

submitted to the ICC-NEDA; while for Local PPP Projects, said MOA shall be submitted to the Local Sanggunian

- (b) ***Issuance of Legislative or Administrative Franchise, License or Permit.*** All PPP Projects requiring legislative franchise under existing laws shall secure the same prior to project implementation. Upon compliance by the Private Proponent of the requirements set by the appropriate regulatory body, the Private Proponent shall be automatically granted or issued by the appropriate regulatory body the franchise, permits, license, certificates, or other similar authorizations necessary for the conduct of its business.
- (c) ***Standardization of Real Property Tax Valuation.*** The DOF shall issue the guidelines on real property tax valuation of PPP Projects to ensure uniform and consistent implementation among all LGUs. All real properties which are actually, directly, and exclusively used for a Greenfield PPP Project shall be exempted from the payment of real property taxes during the period of construction and until such time the facility is used or operational, whether partial or full. The details of the exemption shall be prescribed in the IRR of this Act.
- (d) ***Exemption from Payment of Transfer Taxes.*** For all PPP Projects, the transfer of ownership of the PPP Project to the Implementing Agency shall be exempt from capital gains tax, documentary stamp tax, donor's tax, and all taxes and fees, whether from national or local, related to the transfer thereof.
- (e) ***Standardization of Required Endorsements and Permits for PPP Projects.*** The PPP Center, in consultation with relevant government agencies, bodies, and LGUs, shall ensure the adoption of standard timelines and requirements for the issuance of relevant endorsements, approvals, and permits for PPP Projects.
- (f) ***Mandatory Inclusion of Dispute Avoidance and Alternative Dispute Resolution Mechanisms in PPP Contracts.*** All PPP contracts shall include provisions on the use of dispute avoidance and Alternative Dispute Resolution (ADR) mechanisms. The contracting parties shall be given complete freedom to choose which ADR mechanisms and venue shall govern their dispute, as well as the rules or procedures to be followed in involving the same.
- (g) ***Conflict of Interest.*** Conflict of interest shall be prohibited at all times in the interpretation and implementation of this Act. Conflict of interest, which refers to any act or omission tending to oppose or disrupt the faithful performance of one's duty or mandate, shall include personal, pecuniary, and regulatory conflicts of interests: *Provided*, That no national Implementing Agency shall implement a PPP Project that it regulates: *Provided*, further, That any regulatory agency or body which implements a PPP Project shall adopt a conflict mitigation and management plan.
- (h) ***Alternative Sources of Financing.*** In addition to Private Proponent equity and debt, alternative financial instruments such as Green Financing, corporate or project bonds and securities, and other forms of capital market financing may be allowed for PPP Projects, subject to the approval of relevant regulatory bodies for such instruments under existing laws, rules, and regulations.

- (i) ***Private Legal and Medical Assistance.*** All the BAC members and other public officials providing services to the BAC shall be authorized to engage the services of private lawyers, or shall be provided with free legal assistance, where a civil, criminal, or administrative action is filed against them by reason of the performance of their official functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion. The BAC members shall also be entitled to medical assistance for injuries incurred in the performance of their functions.
- (j) ***Preferential Hiring of Filipino Workers.*** For the construction stage of infrastructure facilities where the Contractor is a foreigner, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available.
- (k) ***Safeguard Mechanisms to Protect Public Interest.*** In order to improve transparency and to promote bankability and social acceptability of PPP Projects, the following mechanisms shall be observed: (1) Whenever applicable, the Implementing Agency shall assess the affordability of fee or tariff, and conduct a willingness-to-pay survey among the users of the infrastructure facility; (2) The Implementing Agency shall conduct public consultation with notice and hearing with all potential stakeholders, the details of which shall be threshed out in the IRR; and (3) The Implementing Agency and the PPP Center shall post in their respective websites the approved starting fare or user fee in a PPP Project as well as the approved parametric formula on fare increases or adjustments, if applicable.
- (l) ***Land value capture strategies.*** In order to ensure that the government shall be able to maximize the land value gains consequent to the implementation of the PPP project, the PPP Center shall propose to the Implementing Agency land value capture strategies that will maximize the returns to the government of the PPP Project and its consequent economic benefits. Details on these strategies shall be included in the reports to Congress required herein. Such strategies may include:
 - (1) The rationalization of land valuation for taxation purposes in areas surrounding the PPP project or serviced by it, and the extension of technical assistance to local governments and other relevant valuation agencies in performing the same;
 - (2) Land-banking strategies, which may be accompanied by transit-oriented and sustainably planned urban development;
 - (3) Special fees and levies as may be allowed by law and by the terms of the PPP project;
 - (4) Auction of development rights as may be allowed by law and by the terms of the PPP project; and
 - (5) Such other strategies that may supplement the direct economic and financial returns of the PPP project itself.

SEC. 29. *Implementing Rules and Regulations.* – The IRR Committee shall be composed of representatives from the NEDA, DOF, DBM, DPWH, DOTr, DILG, DOJ, DTI, DENR, Office of the President, PPP Center, and Private Sector Representatives and other agencies, as may be identified by the PPP Governing Board. Within forty (40) working days from the effectivity of this Act, the PPP Center shall formulate and prescribe, in consultation with the IRR Committee, after public hearing and publication as required by law, the rules and regulations to implement the provisions of this Act. The IRR shall be approved by the PPP Governing Board.

From time to time, the PPP Governing Board may instruct the PPP Center, in consultation with the IRR Committee, to conduct, formulate and prescribe, after due public hearing and publication, amendments to the IRR, consistent with the provisions of this Act.

SEC. 30. *Administrative, Civil, and Penal Sanction.* – Any person, whether private individual or public officer or employee, who commits any of the prohibited acts hereunder proscribed, shall be punished by imprisonment from a minimum of three (3) years to a maximum of six (6) years and one (1) day:

- (a) Downgrading the category of the project cost for purposes of evading the required approvals under this Act;
- (b) Representation that the Private Proponent has the necessary capitalization to commence, complete, and implement the PPP Project when the same is false in material respects;
- (c) Falsification or insertion of certain provisions in the execution copy of the contract which are materially and substantially different from the approved final draft contract;
- (d) Any violation of Section 27 (G) under this Act; and
- (e) A public officer or employee, whether in connivance with others or acting alone, negligently or by fraud commits a failure to ensure compliance with the project terms as approved by the Approving Body, and the signed PPP contract, by approving, issuing, or confirming any certification, required documents, or deliverables of the Private Proponent, which are non-compliant with existing rules, erroneous, not authentic, or fraudulent.

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

SEC. 31. *Accountability in PPP Projects.* – The head of the concerned Implementing Agency shall at all times be accountable to PPP Projects undertaken through this Act. The Private Proponent shall likewise be held accountable for the works and services it has committed and delivered for a PPP Project. All PPP contracts are hereby required to clearly define the scope of each party's accountability under the PPP contract. To further promote accountability in PPP Projects, the Commission on Audit (COA) shall have jurisdiction over the activities and transactions of the PPP Project, which shall be limited to the exercise of its visitorial power as defined in the 2009 Revised Rules of Procedure of the COA, and any amendments thereto. Such power shall be further limited to determining whether the contribution or share of the Implementing Agency in the PPP Project is being allocated and utilized according to its intended purpose, and if the Implementing Agency is getting its rightful share from the revenues generated, as may be applicable.

SEC. 32. *Joint Congressional Oversight Committee on Public Private Partnerships (PPP).* - A Joint Congressional Oversight Committee on Public-Private Partnerships (PPP) is

hereby created to oversee the implementation of this Act. The Committee shall be composed of five (5) members each from the Senate and House of Representatives to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The Committee shall be jointly chaired by the respective Chairpersons of the House Committee on Public Works and Highways, the House Committee on Appropriations, the Senate Committee on Public Works, and the Senate Committee on Finance.

SEC. 33. *Transitory Clause.* – The provisions of this Act shall apply to all PPP Projects except: (a) all projects wherein a PPP contract between the winning Private Proponent and the Implementing Agency concerned has been executed prior to effectivity of this Act; and (b) all projects undertaken through competitive selection wherein the bid/s have already been opened prior to the effectivity of this Act. For PPP Projects not covered under items (a) and (b) above, this Act shall govern, provided that this Act shall not, in any manner, operate to impair vested rights already accruing to a party.

All unexpended funds for the calendar year, properties, equipment, contracts and records of the PPP Center are hereby retained. The amount necessary to carry out the organizational changes of the PPP Center provided in this Act shall be determined by the PPP Governing Board. Appropriations for succeeding years shall be incorporated in its budget proposals for congressional action.

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

SEC. 34. *Separability Clause.* – If any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

SEC. 35. *Repealing Clause.* – The following are hereby repealed:

- (a) Republic Act No. 6957;
- (b) Republic Act No. 7718;
- (c) Executive Order No. 8 (s. 2010) as amended by Executive Order No. 136 (s. 2013);
- (d) Executive Order No. 78 (s. 2012);
- (e) Section 8 of Executive Order No. 423 (s. 2005);
- (f) 2013 Revised Guidelines and Procedures for Entering Into Joint Venture Agreements Between Government and Private Entities; and
- (g) Joint Venture Guidelines issued by LGUs.

All other laws, decrees, orders, rules and regulations, and all other related national and local issuances or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

SEC. 36. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,