GUIDEBOOK ON JOINT VENTURE FOR LOCAL GOVERNMENT UNITS (LGUS)
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ABOUT THE GUIDEBOOK

Guidebook on PPP Project Developments

Supplemental Guidebook on Project Development - Water Sector
Supplemental Guidebook on Project Development - Solid Waste Management and other sectors to be determined

Guidebook on JVs for LGUs

Guidebook on PPP Project Implementation

This guidebook is a knowledge product of the Public-Private Partnership Center (PPP Center) of the Philippines in cooperation with the Cities Development Initiative for Asia (CDIA), an international partnership initiative established in 2007 by the Asian Development Bank (ADB) and the Government of Germany.

This guidebook shares with local government units (LGUs) practical insights in pursuing public-private partnership (PPP) projects through Joint Venture. It is one of the several guidebooks on PPPs that are available to implementing agencies (IAs) and the general public:

1. Guidebook on PPP Project Development – Guides both national government agencies (NGAs) and LGUs in the process of defining the project, structuring the project, and establishing the general terms and conditions that will in turn define the PPP contract (the Joint Venture Agreement in this case).

2. Guidebook on PPP Project Procurement using Republic Act (RA) 6957 as amended by RA 7718 (the Amended BOT Law) – Guides both NGAs and LGUs in the processes of securing the approval, tendering, and awarding of PPP projects following the Amended BOT Law.

3. Guidebook on Joint Venture for LGUs – Helps LGUs understand Joint Ventures as an option for pursuing PPP projects. It guides them in crafting their Joint Venture Ordinance, understand the entire processes from tendering the project to awarding the Joint Venture contract.

4. Guidebook on PPP Project Implementation – Guides both NGAs and LGUs in managing the PPP contract ensuring that obligation of parties and performance targets are met.

5. Sectoral Guidebooks for PPP Project Development – These guidebooks aim to supplement the PPP project development guidebook by providing LGUs guidance on sector-specific concerns for PPP projects. These are currently under development.

The family of PPP guidebooks that would be relevant to LGUs is illustrated above.

Lastly, it is to be noted that this guidebook does not cover projects that will be implemented using the Amended BOT Law and its IRR.
Joint Venture is one of the frameworks for LGUs to implement a PPP project. Section 2 of Executive Order No. 8 specifically mandates the PPP Center to cover all PPP programs and projects including all the variants or arrangements under the Amended BOT Law and Joint Venture Agreements, among others. Under a Joint Venture, the LGUs can partner with the private sector to undertake a PPP project that is beneficial to their constituents and communities. Here, both parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity where each of the participant is responsible for profits, losses and costs associated with it.

Below are various definitions of Joint Venture based on existing guidelines and policies.

1.1 DEFINITION OF A JOINT VENTURE

A Joint Venture can be considered as a partnership as defined in Article 1767 of the Civil Code of the Philippines. In a partnership, “two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.”

Rule 2, Section (i), of the Implementing Rules and Regulations of the Philippine Competition Act, provides an expanded definition as follows:

“A JOINT VENTURE (JV) is defined as a business arrangement by which an entity or group of entities contribute capital, services, assets, or a combination of them to undertake an investment activity or a specific project, where each entity has the right to control the policies of the activity or project, with the intention of sharing profits, risks and losses subject to agreement by the entities.”

“The Revised Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities” of the National Economic and Development Authority (NEDA Revised JV Guidelines) defined Joint Venture in the context of a partnership between a government entity and a private sector entity as follows:

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

The Guidelines for Implementation of Public-Private Partnership for the People Initiative for Local Governments (LGU P4), issued by the Department of the Interior and Local Government (DILG) defines Joint Venture as:

Joint Venture- A contractual arrangement whereby a Private Sector Partner (PSP) or a group of PSPs on one hand, and the [Provincial/City/Municipal/Barangay/ARMM] on the other hand, contribute money/capital, service, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing. The [Provincial/City/Municipal/Barangay/ARMM] shall be a minority equity or shareholder while the PSP shall be majority equity or shareholder. Each party shall be entitled to dividends, income and revenues and will bear the corresponding
losses and obligations in proportion to its share. Parties to a Joint Venture share risks to jointly undertake an investment activity in order to accomplish a specific, limited or special goal or purpose with the end view of facilitating private sector initiative in a particular industry or sector and eventually transferring ownership of the investment activity to the PSP under competitive market conditions. It involves a community or pooling of interests in the performance of the service, function, business or activity, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing both profits and losses, subject to agreement by the parties.

The above definition imposes the following restrictions:

1. That the public party shall be a minority equity (sic) or shareholder; and
2. That eventually the ownership of the investment activity shall eventually be transferred to the private sector partner.

The PPP Center recommends to refrain from adopting the restrictions in the definition of a Joint Venture in PPP ordinances. This is to allow parties flexibility in structuring the Joint Venture Agreement. If such restrictions are to be adopted, it is recommended that rationale on its adoption is elaborated in the Joint Venture Agreement.

1.2 WHAT MAKES JOINT VENTURES COMPPELLING TO LGUS?

Apart from the usual reasons for undertaking PPPs, the following are the reasons why LGUs choose Joint Ventures over contractual arrangements under the Amended BOT Law:

1. The ability to exercise autonomy, given that a Joint Venture requires approval only from the Local Sanggunian.
2. Given that Joint Ventures are governed by local PPP or Joint Venture Ordinances, the Joint Venture can follow more flexible rules.

Furthermore, the LGU can adopt a procurement process that is more suitable to the needs of the LGU by including that process in its PPP or Joint Venture Ordinance.

1.3 TYPES OF JOINT VENTURE

There are two (2) types of Joint Venture: Contractual Joint Venture and Corporate Joint Venture (See “Figure 1. Types of Joint Venture” on page 9).

The most common type of Joint Venture among LGUs is the Contractual Joint Venture. The advantages are:

a. The parties need not incorporate, saving time for faster implementation.

b. Since Joint Venture is not incorporated under the Corporation Code, there is no need for compliance and other reportorial requirements under the Corporation Code.

On the other hand, the advantages of Corporate Joint Venture are:

a. The Joint Venture company will have its own personality under the doctrine of separate juridical personality.

b. Liabilities of the parties may be limited under the principle of limited liability.

In either type of Joint Venture, a concession may be granted as part of a Joint Venture Agreement or through a separate concession agreement. The concessionaire can be the private partner as in the case of the New Marulas Public Market of Valenzuela City or a Joint Venture company as in the case of Bohol Provincial Waterworks System Project. In the former, the concessionaire is Megabuild JPG Development, Inc., while in the latter, the concessionaire is Bohol Water Utilities, Inc.

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1 Second paragraph, Introduction, The NGA Guidebook

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**Figure 1. Types of Joint Venture**

<table>
<thead>
<tr>
<th>Governing laws</th>
<th>CONTRACTUAL JOINT VENTURE</th>
<th>CORPORATE JOINT VENTURE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>the Civil Code provisions on partnerships and contracts; and the local PPP or Joint Venture Ordinance</td>
<td>the Civil Code provisions on partnerships and contracts; and the local PPP or Joint Venture Ordinance; and Corporation Code of the Philippines</td>
</tr>
<tr>
<td>Formation of a Joint Venture company</td>
<td>Joint Venture partners shall perform the primary functions and obligations under a Joint Venture Agreement without forming a Joint Venture company.</td>
<td>Formation of a Joint Venture Company through the Corporation Code of the Philippines to perform the primary functions and obligations of the Joint Venture as stipulated under the Joint Venture Agreement.</td>
</tr>
</tbody>
</table>
2.1 TRADITIONAL JOINT VENTURE PROCESSES

There are two (2) traditional processes for Joint Ventures:

- **Solicited Joint Venture** - where the LGU first develops the project using a Joint Venture structure, before tendering the project. Tendering follows what is called a competitive selection process. See Chapter 7.2 of this guidebook.

- **Unsolicited Joint Venture** - where the private proponent first develops the project using a Joint Venture structure, then proposes the Joint Venture to the LGU for consideration. If the LGU accepts the project, a negotiation of the Joint Venture Agreement ensues. If the negotiation is successful, the project, as well as the negotiated Joint Venture Agreement, is sent to the approving body (in this case the Local Sanggunian), after which the tendering proceeds if the project is approved. This tendering follows what is called a competitive challenge process. See Chapter 7.3 of this guidebook.

In both processes, project development involves the conduct of feasibility study (FS) and the structuring of the Joint Venture with the goal of arriving at terms and conditions that would be acceptable to all parties including the approving body. Undertaking a Joint Venture will require substantial resources and expertise in project development specifically in the areas of project finance, project cost, legal, and economic analysis, environmental and social considerations.

2.2 AN ALTERNATIVE JOINT VENTURE PROCESS

Cognizant of the limited resources, capacities, or time that some LGUs may have for project development, or for negotiations in the case of unsolicited Joint Ventures, the PPP Center came up with a third joint venture process for consideration by LGUs for traditional infrastructure projects like vertical infrastructure (i.e., public markets, slaughterhouses, and transport terminals).

In this process, project development phase is limited to defining project requirements that will guide private proponents in further developing the project. Such requirements would consist of:

a. Project description
b. Project objectives
c. Project scope (geographic coverage, population coverage)
d. Period of the Joint Venture
e. Minimum performance standards and specifications
f. Economic and financial viability indicators and their corresponding hurdle rates

g. Government contributions

h. Draft Joint Venture Agreement

It shall be the task of the proponents to conduct a feasibility study based on the above requirements and according to a template that shall be provided by the LGU. The template shall describe what the feasibility study shall contain. At the minimum, this shall consist of:

a. Market study

b. Technical analysis

c. Legal analysis
d. Environmental impact assessment
e. Social impact assessment

f. Project costs (Investment costs, operation and maintenance expenses)
g. Economic analysis

h. Financial analysis

i. Implementation plan

j. Risk Analysis (identification of risk and mitigating measures)

The PPP Center can assist LGUs in the development of such templates.

With the LGUs limited technical capacity and financial resources, this alternative process will help them undertake Joint Venture projects despite their limited resources as it will now be the task of the private proponent to conduct a full feasibility study of the project.

Chapter 7.4 provides more details and a table for the tendering and selection process of this alternative Joint Venture process.

The Alternative Joint Venture process may be used in processing Joint Venture projects if said process as well as its procedures are defined and stipulated in the LGU’s Joint Venture Ordinance. If there is already an existing PPP Code or Joint Venture Ordinance, the LGU may amend this ordinance to include the Alternative Joint Venture Process.
As part of its mandate, the PPP Center maintains a database of PPP projects, which includes Joint Ventures.

The table below shows selected Joint Ventures of LGUs in this database. An updated project database for PPP projects, including past and current, can be viewed on the PPP Center website: https://ppp.gov.ph/project-database/.

With the LGUs limited technical capacity and financial resources, this alternative process will help them undertake Joint Venture projects despite their limited resources as it will now be the task of the private proponent to conduct a full feasibility study of the project.

**Figure 2. Selected Joint Venture Projects**

<table>
<thead>
<tr>
<th>LGU</th>
<th>TITLE OF PROJECT</th>
<th>PROJECT DESCRIPTION</th>
<th>PRIVATE PARTNER</th>
<th>JOINT VENTURE PROCESS (SOLICITED, UNSOLICITED OR OTHER)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provincial Government of Bataan</td>
<td>Bataan Bunker Building at the Capitol</td>
<td>New Provincial Governor’s Office including other provincial government offices. It will include a business process outsourcing, commercial areas, and hotel, among others.</td>
<td>Alloy MTD Philippines</td>
<td>Unsolicited</td>
</tr>
<tr>
<td>Provincial Government of Bohol</td>
<td>Bohol Provincial Electric System</td>
<td>Installation of a 20 MVA substation, the upgrading of primary and secondary equipment distribution transformers and line protection equipment, the replacement of rotten poles, and the purchase of metering, transportation and communication tools and equipment.</td>
<td>Bohol Light Company, Inc.</td>
<td>Solicited</td>
</tr>
</tbody>
</table>
### Figure 2. Selected Joint Venture Projects (cont.)

<table>
<thead>
<tr>
<th>LGU</th>
<th>TITLE OF PROJECT</th>
<th>PROJECT DESCRIPTION</th>
<th>PRIVATE PARTNER</th>
<th>JOINT VENTURE PROCESS (SOLICITED, UNSOLICITED OR OTHER)</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Government of Cebu and Municipal Government of Cordova</td>
<td>Cebu-Cordova Toll Bridge Project</td>
<td>Financing, design, construction, implementation, operation and maintenance of an 8.25 km toll road to be known as the Cebu-Cordova Bridge.</td>
<td>Cebu Cordova Link Expressway Corp.</td>
<td>Unsolicited</td>
</tr>
<tr>
<td>City Government of Iloilo</td>
<td>Guimaras-Iloilo Ferry Terminal Complex Project</td>
<td>Redevelopment of the existing Parola Terminal into a modern ferry terminal complex that serves the needs of at least 3,500 daily passengers between Iloilo City and Guimaras Province.</td>
<td>Double Dragon Properties Corporation</td>
<td>Unsolicited</td>
</tr>
<tr>
<td>City Government of Valenzuela</td>
<td>Marulas Public Market</td>
<td>Design, construction and operation of the New Marulas Public Market with a total usable area of 1,272 square meters located in Barangay Marulas, Valenzuela City.</td>
<td>Megabuild JPG Development, Inc.</td>
<td>Solicited</td>
</tr>
<tr>
<td>City Government of Valenzuela</td>
<td>Valenzuela Town Center</td>
<td>Construction, and operation and maintenance of a two-storey commercial center located beside Valenzuela City Hall and People’s Park.</td>
<td>Megabuild JPG Development, Inc.</td>
<td>Unsolicited</td>
</tr>
</tbody>
</table>
The Public-Private Partnership Center is the government agency that facilitates the implementation of the country’s PPP Program and Projects. Based on Executive Order No. 8 and Executive Order 136, the PPP Center is also tasked to provide assistance and monitor Joint Venture projects around the country. There are several legal bases that the LGUs can use to implement Joint Venture projects.

In Section 3 of the DILG Memorandum Circular 2016-120 and in Annex 1 of the said Memorandum Circular, the legal framework for PPPs, including Joint Venture, in the LGUs is discussed. In the latter are various legal opinions that provide the basis for LGUs to formulate ordinances that would govern PPPs including Joint Venture. The legal framework is summarized below.

Section 20, Article 2, of the 1987 Constitution

Section 20 Article 2 of the 1987 Constitution provides that the State recognizes the indispensable role of the private sector as the main engine of national development.

Section 35 of Republic Act No. 7160

Section 35 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, and its Implementing Rules and Regulations encourage the participation of the private sector in local governance, particularly in the delivery of basic services, to ensure the viability of local autonomy as an alternative strategy for sustainable development.

The Civil Code of the Philippines

Joint Ventures, being akin to partnerships, are governed by the Civil Code provisions thereon.

Department of the Interior and Local Government
Legal Opinion No. 8, S. 2014

The Department of the Interior and Local Government (DILG) Legal Opinion No. 8, S. 2014, declared that “there is no specific statute on PPP nor guidelines on Joint Ventures for local governments” and that a “duly enacted local legislation (PPP Code) must be complied with in undertaking (its) PPP projects.”

Department of Justice Opinion No. 18, S. 2012

According to the Department of Justice (DOJ) Opinion No. 18, S. 2012, “xxx local governments may enact their own Public-Private Partnership (PPP) Code or omnibus ordinance outlining, among others, all applicable modalities. xxx A local government, through an enabling ordinance, is free to act to address local concerns, even without an enabling ordinance, provided no statute will be infringed.”

Department of the Interior and Local Government
Legal Opinion No. 10, S. 2014

The Department of the Interior and Local Government Legal Opinion No. 10, S. 2014, affirmed the above DOJ Opinion and further said that “the LGUs discretion xxx is consistent with the state policy of local autonomy and is in line with the operative principle of decentralization and the national goal of propelling social and economic growth and development through the active participation of the private sector.”
CHAPTER 5.
BUILDING THE LGU’S
READINESS TO UNDERTAKE JOINT VENTURES

There are several considerations for an LGU to undertake a Joint Venture.

5.1 HAVING PROJECTS THAT QUALIFY FOR IMPLEMENTATION THROUGH PPP

The implementation of a project through PPPs, shall be pursued only if there will be better value for money (VFM) for the LGU than if the project is pursued through traditional procurement. This applies as well to Joint Venture. A tool that is used to screen “PPP implementable” projects is the Multi-Criteria Analysis (MCA). (Refer to the PPP GB Guidelines on the Identification, Selection and Prioritization of Public-Private Partnership (PPP) Projects). The PPP Center’s Guidebook on Project Development describes this tool in detail. By using this tool, one is able to determine which among the LGU’s priority projects would qualify for implementation through a PPP. This tool may be used for either solicited or unsolicited projects.

5.2 HAVING A STRONG COMMITMENT FROM THE LOCAL CHIEF EXECUTIVE

Partnering with the private sector to deliver services and build infrastructure that are traditionally within the jurisdiction of government requires a change in mindset and a shift in outlook from the LGU. For a Joint Venture project to succeed, it requires the highest level of support and commitment from the Local Chief Executive (LCE). This entails overseeing the process of project development to approval, procurement, implementation and monitoring. It is also necessary for the LCE to allocate sufficient organizational and financial resources in the pursuit of the Joint Venture project. To shepherd the whole Joint Venture project cycle, the LCE needs to ensure that its LGU has an enabling Joint Venture ordinance as well as staff and officials who are competent to pursue Joint Venture projects.

5.3 HAVING AN ENABLING JOINT VENTURE ORDINANCE

A Joint Venture ordinance (also called a PPP Code) is established for the following purposes:
1. Provide the legal basis for pursuing a Joint Venture;
2. Clarify terminologies used in a Joint Venture Ordinance;
3. Authorize the LGU to enter into a Joint Venture Agreement;
4. Provide rules for approval of projects to be undertaken through Joint Venture Agreements and rules for the selection of Joint Venture partners;
5. Prescribe the rules for contract management and reporting of performance.

Chapter 6 explains in more detail how a Joint Venture Ordinance can be developed.

5.4 BUILDING THE CAPACITY TO IMPLEMENT THE JOINT VENTURE

It is essential for the LGU to recruit staff and officials competent in undertaking the entire Joint Venture project through to implementation. It is
also crucial for LGU staff and officials to undergo the appropriate capacity development interventions to update current skills and knowledge, thus ensuring that the LGU is equipped to undertake Joint Venture projects.

Some of the capacities that LGU personnel need to hone with regard to the Joint Venture project life cycle include:

- Ability to identify and prioritize potential Joint Venture projects;
- Ability to craft and enact local legislation related to PPP projects, such as Joint Venture ordinance or PPP Code;
- Ability to develop or evaluate technical documents, such as feasibility studies and PPP contracts and other project documents;
- Ability to communicate and engage with various project stakeholders who have varying and potentially conflicting interests; and
- Ability to monitor project performance and compliance to contract obligations, among others.

The PPP Center offers a wide range of capacity development interventions that can address the above needs of LGUs. Please refer to Chapter 8.2.
If the intent is to implement a PPP project through the Amended BOT Law, then the Amended BOT Law and its Implementing Rules and Regulations shall be used as the legal framework for the project.

For Joint Venture, which is the most common PPPs involving LGUs, the following minimum provisions can be used to develop a Joint Venture Ordinance or PPP Code:

6.1 TITLE OF ORDINANCE

This provides a brief description of what the ordinance is about.

6.2 DECLARATION OF POLICY

This provides the overarching goals of the LGU, preferably in terms of pursuing economic development and supporting private sector participation.

6.3 LEGAL BASES FOR JOINT VENTURES

This provides the bases for allowing the LGU to enter into Joint Venture Agreements found in law, jurisprudence, or from competent authority. The general legal bases are those enumerated in Chapter 4.

6.4 DEFINITION OF TERMS

This provides the definition of technical terms that will appear in the Joint Venture Ordinance.

6.5 GUIDING PRINCIPLES

This provides the principles that will guide the pursuit of Joint Venture projects. To be meaningful, guiding principles should be embodied in the processes for identifying, preparing, approving, tendering, awarding and implementing projects that would be implemented through Joint Ventures.

- The Guidelines for the Implementation of Public-Private Partnership for the People Initiative for Local Governments (LGU P4) provides 10 guiding principles for PPPs. “ANNEX A - Operationalizing the LGU P4 Principles in a Joint Venture Ordinance” on page 36 of this guidebook provides detailed examples of how to operationalize these 10 guiding principles.

- Another useful set of guiding principles is the Asean Principles on PPP Frameworks. The Principles are subdivided into four headings. First, the Principles address the requirement to establish a strong policy and organizational framework within government and a sound enabling environment for private sector participation. Second, the Principles deal with the PPP process—selection, development and implementation—followed by a third set of Principles to ensure affordability and budget transparency. The fourth and final heading addresses the issue of transnational PPPs for infrastructure connectivity.

6.6 ALLOWED JOINT VENTURE ARRANGEMENTS

This specifies the types of contractual arrangements allowed for Joint Ventures.

A Joint Venture may take on any combination of the following responsibilities: design, finance, build, rehabilitate, expand, operate or maintain an infrastructure or a sub-set of an infrastructure.

The LGU may form either a Contractual or a Corporate Joint Venture, subject to restrictions that may be provided by its Joint Venture Ordinance.

6.7 REQUIREMENTS FOR ELIGIBILITY

This provision provides the minimum requirements for a project to be eligible for Joint Ventures.

- The PPP Center recommends that Joint Venture projects be limited to those that cater to a development need, or public service, and to those that are technically feasible and socio-economically viable.

Both Corporate Joint Venture and Contractual Joint Venture shall have a further restriction—that both should be financially viable without the need for government payments or subsidies during the operation and maintenance phase. The Implementing Rules and Regulations of the Philippine Competition Act further illustrates this relationship by defining a Joint Venture as:

“(a) business arrangement whereby an entity or group of entities contribute capital, services, assets, or a combination of any or all of the foregoing, to undertake an investment activity or a specific project, where each entity 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 the agreement of the parties.”

Further, in the case of Kilosbayan vs. Guingona, the Supreme Court defined a Joint Venture as “an association of persons or companies jointly undertaking some commercial enterprise.” Thus, it is recommended that an LGU shall not enter into a Corporate Joint Venture or Contractual Joint Venture project that does not generate any revenue or where the revenues are insufficient to make the project financially viable.

6.8 AUTHORIZATION OF THE LGU TO ENTER INTO A JOINT VENTURE AGREEMENT

This authorizes the Local Chief Executive (LCE) to enter into a Joint Venture Agreement. Such authorization shall be done in a manner that is consistent with other laws.

6.9 RULES AND RESTRICTIONS ON LGU CONTRIBUTIONS TO THE JOINT VENTURE

This provision provides the allowed forms of support and contributions of the LGU to the Joint Venture as well as the conditions that the projects have to comply with for the provision of such LGU support. LGU contributions shall be subject to existing laws, policies, rules and regulations. Contributions may also be subject to budgetary restrictions of the LGU.

- The PPP Center recommends that the LGU’s contributions to a Joint Venture be limited only to any of the following: its available resources, fiscal capacity, and what laws and regulations allow. The LGU however should exercise prudence by ensuring that its assets are invested in the best way possible (as measured by economic and financial returns) and are assessed at fair value.

- If the LGU intends to assume contingent liabilities then the PPP Center recommends that approval by the Local Sanggunian is sought and that accountability for the management of contingent liabilities is clearly defined in the Joint Venture contract.

- The PPP Center likewise recommends that no credit guarantees be assumed by the LGU.

6.10 MANDATORY TERMS AND CONDITIONS

These pertain to those terms and conditions that a Joint Venture Agreement must have. By specifying the mandatory terms and conditions, the Joint Venture Ordinance provides guidance to those tasked with structuring the project and sets the parameters for approval of the project.

- The PPP Center recommends to use the mandatory terms and conditions that are specified in Annex A of the 2013 NEDA Revised Guidelines and Procedures for Entering into Joint Venture Agreements between Government and Private Entities. In addition to these, the PPP Center further recommends to include:

1. A provision defining how user fees, quality of public service and other matters affecting public...
interest shall be regulated;
2. Creation of a contract management unit; and

6.11 APPROVAL OF THE JOINT VENTURE AND CONCESSION AGREEMENT

This provision shall prescribe the following:
• Who the approving body is;
• When approval shall be sought;
• The minimum requirements or conditions that must be satisfied for approval to happen;
• The procedures for approval, including the time limits for each step of the procedure; and
• Period of validity of approval.

A separate set of requirements or procedures may be needed for approval of concession agreements. A separate process may be necessary because consent to enter into a Joint Venture or to accept a proposal and begin negotiation may not necessarily result to the approval of the final concession agreement. This will depend upon the discretion of the LGU.

➢ The PPP Center recommends the following minimum requirements or conditions for approval to happen:
1. The project is aligned with the regional development priorities.
2. The project is economically and financially viable.
3. The project’s cash flows are sufficient to meet debt obligations.
4. Government obligations are reasonable, doable and with clear ownership.
5. The necessary social and environmental safeguards are part of the scope of the project.

6.12 TENDERING AND SELECTION PROCESSES

This provision shall prescribe the following:
• Who the procurement body is;
• The authority who shall approve the choice of Joint Venture partner;
• The procedures for selection and the time limits for each step of the procedures;
• The requirements to qualify for participation in the selection process;
• The requirements for the tendering to commence; and
• The procedures for the settlement of disputed results of the selection processes.

6.13 VARIATIONS

A variation is a change to a contract which could include but not be limited to a change to the service level or type, product, delivery, timeframe, personnel, contractor or price.

The provision shall prescribe the following:
• Allowed types of variations;
• Procedure for approval; and
• Approving authority.

The creation and passage of the LGU’s Joint Venture Code is vital in providing both parties a defined set of rules in undertaking a Joint Venture as they start work on developing their Joint Venture project. It establishes the responsibilities and roles that each party is tasked to undertake as a participant to the Joint Venture.

The PPP Center has a separate Guidebook on Project Development that an LGU can use to help start working on its Joint Venture project.
CHAPTER 7.
TENDERING AND SELECTION PROCESSES

7.1 INTRODUCTION

Tendering refers to the process of soliciting proposals (also called bids, tenders, or offers) while selection refers to the process of choosing the best proposal. In a solicited Joint Venture, the tendering and selection process is customarily called Competitive Selection while in an unsolicited Joint Venture, the tendering and selection process is customarily called Competitive Challenge. The PPP Center proposes a third tendering and selection process which shall be referred to as Alternative Joint Venture Process. Such a tendering and selection process is implemented as part of the Alternative Joint Venture Process that was introduced in Chapter 2.2 of this guidebook.

7.2 COMPETITIVE SELECTION

In the Philippines, there is no universally mandated set of procedures for competitive selection for Joint Ventures. However, it is quite common for LGUs to adopt the procedures provided in Annex A of the “Revised Guidelines and Procedures for Entering into Joint Venture (JV) Agreements between Government and Private Entities,” commonly referred to as the Revised NEDA Joint Venture Guidelines. LGUs can adopt the Revised NEDA Joint Venture Guidelines as their legal basis in entering into Joint Ventures agreement with the private sector. While these guidelines are not imposed on LGUs, neither are LGUs prevented from adopting the rules and procedures in these guidelines.

The PPP Center recommends that procedures described in Annex A of the NEDA Revised JV Guidelines be adopted for competitive selection while tailoring rules for those procedures according to the guiding principles for PPPs (or Joint Ventures) adopted by the LGU.

“Figure 3. Step by Step Process Under a Competitive Selection for Joint Venture” on page 30 is a table on the step by step process under a competitive selection for Joint Venture and the responsible party for each step.

7.3 COMPETITIVE CHALLENGE

As with the competitive selection for Joint Ventures, there is no universally mandated set of procedures for competitive challenge for Joint Ventures in the Philippines. However, it is quite common for LGUs to adopt the procedures provided in Annex B of the NEDA Revised Joint Venture Guidelines.

The PPP Center recommends that procedures described in Annex B of the NEDA Revised JV Guidelines be adopted for competitive challenge, while tailoring rules for those procedures according to the guiding principles for PPPs (or Joint Ventures) adopted by the LGU.

The competitive challenge applies when an unsolicited proposal is received by an LGU. The proposal is subjected to an evaluation by the LGU. If accepted, a negotiation of the terms and conditions of the Joint Venture follows.
The competitive challenge starts when the Sanggunian has approved the Joint Venture proposal negotiated between the original proponent and the LGU. The table below describes the competitive challenge process.

“Figure 4. Competitive Challenge Process” on page 31 is a table detailing the step by step process under a competitive challenge and the responsible party for each step.

### 7.4 SELECTION PROCESS FOR THE ALTERNATIVE JOINT VENTURE PROCESS

The selection process for the Alternative Joint Venture process starts with the creation of the selection committee. After which, the LGU publishes its Invitation to Apply for Eligibility. The private proponent then submits its proposal including a full blown feasibility study based on the Concept Note developed by the LGU and the project’s draft contract. The rest of the selection process is described in “Figure 5. Alternative Joint Venture Selection Process” on page 32.

The Invitation to Pre-qualify and submit proposals shall consist of the following:

- **a.** Project requirements as described in Chapter 2, Section 2.2
- **b.** Instructions to pre-qualify
- **c.** Templates for required submissions

### 7.5 BEST PRACTICES IN TENDERING AND SELECTION

The following best practices are employed:

1. Clear, fair, and transparent eligibility requirements for proponents.
2. Clear, fair, and transparent rules for disqualification.
3. Ensuring only the qualified are to participate in the tender process.
4. A draft Joint Venture Agreement (and a draft concession agreement, if required) that provides the terms and conditions for the Joint Venture is provided as a reference for proposals.
5. Providing sufficient but reasonable time for proponents to submit their proposals.
6. Making all tender documents, including any changes to those documents, available to qualified proponents at the same time. There should be no advance information provided to a particular proponent.
7. Allowing proponents to pose questions and get clarifications. Such questions and corresponding
8. The performance expected from the private partner is spelled out in terms of so-called minimum performance standards and specifications (MPSS). Unlike traditional procurement, which relies on a pre-defined design provided by the government unit that proponents will offer the lowest cost to build, the Joint Venture tendering allows private proponents to come up with their own design, subject to the design meeting the required MPSS.

9. A clear criterion or set of criteria for evaluating proposals.

10. Clear, fair, and transparent rules for the selection of the private partner.

11. Clear, fair, and transparent resolution of complaints and disputes that may arise during tender.

12. Avoidance of conflict of interest whereby those tasked to evaluate proposals or approve the results of the tendering and selection process have no personal interest in the Joint Venture or in the awarding of concession agreement.
8.1 THE PPP CENTER AND ITS MANDATE

The PPP Center’s mandate, powers and functions are stated under Executive Order No. 8, titled “Reorganizing and Renaming the Build-Operate-and-Transfer (BOT) Center to the Public-Private Partnership (PPP) Center of the Philippines and Transferring its Attachment from the Department of Trade and Industry to the National Economic and Development Authority and for Other Purposes.”

The PPP Center facilitates the implementation of the country’s PPP Program. It is a government institution that serves as a central coordinating and monitoring agency for all PPP Projects in the country under the Amended BOT Law and Joint Venture frameworks. It provides technical advisory services to the LGUs in the entire life-cycle of critical PPP infrastructure and development projects under BOT and Joint Ventures—from development, approval, procurement to implementation and monitoring stages—ensuring that projects are bankable, well-structured and highly beneficial to the public.

In 2013, Executive Order No. 136 was issued creating the PPP Governing Board (PPPGB), the overall policy-making body for all PPP-related matters. The PPPGB is responsible for setting the strategic direction of the Philippine PPP Program while creating an enabling policy and institutional environment for PPPs in the Philippines.

8.2 HOW THE PPP CENTER CAN ASSIST IN CAPACITY BUILDING

The PPP Center has an institutionalized capacity building program that promotes an environment conducive to the promotion of PPP projects. The Center provides capacity building and technical advisory services for LGUs seeking to develop, bid out, and implement their PPP projects. The capacity building strategy of the Center includes programmed activities tailor-fit to the needs of the LGUs.

Training programs are designed to assist LGUs on drafting their PPP Code or Joint Venture Ordinance, identifying and prioritizing PPP projects, drafting of project concept notes, and providing an overview of the PPP project life cycle, among many others. These training programs are scheduled throughout the year and registration is made accessible to LGUs through the PPP Center website.

For LGUs that are in the advanced stages of project development, the PPP Center also offers a wide range of interventions, which are matched and customized according to the needs of the requesting party. These could include trainings, workshops, and provision of learning materials that focus on specific technical concerns in the development and implementation of actual PPP or Joint Venture projects.

LGUs interested in receiving capacity building and technical advisory services are encouraged to write a letter of request addressed to the PPP Center’s Executive Director.

8.3 ASSISTING LGUS WITH PROJECT DEVELOPMENT THROUGH THE PROJECT DEVELOPMENT AND MONITORING FACILITY

The Project Development and Monitoring Facility (PDMF) is a funding option for LGUs in developing their PPP or JV projects. The PDMF is a revolving fund available to national government agencies (NGAs), government-owned and controlled corporations (GOCCs), state universities and colleges (SUCs), and local government units (LGUs) to help develop bankable PPP projects and ensure effective monitoring of project implementation.

Projects, both solicited and unsolicited, following the Amended BOT Law and its IRR, projects in accordance with the PPP Code or Joint Venture Ordinance passed by the relevant legislative body of an LGU, and projects proposed to be structured as a Joint Venture are eligible for PDMF support.

The PDMF may be used to engage Consultants for any or a combination of the following services:
  • Undertake feasibility study;
  • Preparation of and assistance in the management of the bidding process for solicited projects;
  • Assistance in the management of the Swiss Challenge process for unsolicited proposals;
  • Project Preparation Assistance until financial close;
  • Probity advisory; and
  • Monitoring of project implementation (independent consultancy services).

To apply for PDMF support, the LGU shall submit a letter endorsing the project, signed by the Local Chief Executive (LCE) and supported by the following:
  • If a solicited project, inclusion of the Project in the list of priority projects, as defined under Section 2.3 of the IRR of the Amended BOT Law.

More information on the PDMF can be found in the PDMF Guidelines, which governs the application process for availing PDMF support, the recruitment of consultants and management of consultants’ contracts funded by the PDMF, and the management of the PDMF Fund. The link to the PDMF is found in the PPP Center website: https://ppp.gov.ph/pdmf-guidelines/.

8.4 HOW THE PPP CENTER CAN ASSIST WITH THE ALTERNATIVE JOINT VENTURE PROCESS

The PPP Center, through its Project Development Service (PDS), can assist the LGU in the development of its Joint Venture projects from the preparation of the project concept note to the evaluation of the proposals submitted by the private sector proponents.
ANNEX A - Operationalizing the LGU P4 Principles in a Joint Venture Ordinance

Section 5.2 of the DILG’s Guidelines for the Implementation of Public-Private Partnership for the People Initiative for Local Governments (LGU P4) DILG’s P4 principles can be operationalized as follows:

<table>
<thead>
<tr>
<th>DILG P4 PRINCIPLE</th>
<th>ELABORATION OF THE PRINCIPLE</th>
<th>HOW TO OPERATIONALIZE IN A JV CODE</th>
<th>AFFECTED JV PROCESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro-People</td>
<td>• P4 Project must be aligned with the development plans</td>
<td>• Include rules on eligible projects and include alignment of the project with development plans as one of the requirements for eligibility</td>
<td>• Concept note preparation</td>
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<td>• JV project must be socio-economically and financially viable</td>
<td>• Include the evaluation of economic NPV and financial IRR among the rules for project acceptance or approval</td>
<td>• Project development</td>
</tr>
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<td>• Stakeholders shall be identified and a public consultation shall be conducted</td>
<td>• Include stakeholder consultation in project development</td>
<td>• Project development</td>
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<td></td>
<td>• User fees shall be affordable</td>
<td>• Provide the rules for setting base user fees</td>
<td>• Project development</td>
</tr>
<tr>
<td></td>
<td>• The body regulating user fees and delivery of public service shall not have a conflict of interest</td>
<td>• Provide the rules for avoiding conflict of interest when approving base user fees and proposed adjustments</td>
<td>• Project approval</td>
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<td>• Repayment schemes must be anchored on pay for performance and be limited by a reasonable rate of return</td>
<td>• Require the creation of a project management team that will be responsible for getting the project through the various phases—development, approval, procurement, and implementation. This include defining, assigning, tracking and reporting all project tasks</td>
<td></td>
</tr>
<tr>
<td>DILG P4 PRINCIPLE</td>
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</table>
| Pro-Value        | • The project should be an answer to a public need and should provide the optimum technical solution among alternatives | • Include among the rules for project approval the identification of the public need and the assessment of the chosen technical solution against the alternatives | • Project development  
  • Project approval |
|                  | • Risks shall be allocated optimally to achieve best value for money | • Provide a preferred risk allocation matrix; alternatively, adopt the ICC GPRAM | • Project development  
  • Project approval |
|                  | • The choice of private partner shall be done through a competitive process | • Provide rules that promote fair, open and strong competition and an efficient procurement process | • Project procurement |
| Pro-Learning     | • The LGU shall invest in capacity building and learning activities in areas of project development, appraisal, procurement and monitoring  
  • P4 projects shall be designed and structured in a way that captures lessons learned from similar projects and from best practices  
  • Implementation bottlenecks and issues shall be analyzed so that future projects can benefit from lessons learned | • Utilize the PPP Center’s resources for project development, capacity building, knowledge management, and for project monitoring  
  • Provide rules for project development  
  • The minimum requirements for a feasibility study shall be established  
  • Establish a reporting system for bottlenecks and issues encountered during each project phase | • All project phases |
| Pro-Innovation   | • Innovation shall be encouraged through output-based project specifications that focus on outcomes expected from the private partner and not on the means to be employed to deliver those outcomes | • Provide sectoral MPSS | • Project development |
| Pro-Rule of Law  | • P4 processes and projects shall comply with all applicable laws | • Include legal due diligence as part of the feasibility study | • Project development |
| Pro-Justice      | • P4 projects shall take into account the social impacts and plan for mitigating measures | • Allow for the adoption of safeguards beyond what existing laws provide | • Project development |
| Pro-Participation| • See item 3 of Pro-People | | |
| Pro-De-centralization | • (The LGU P4 Code, by itself, is an embodiment of this principle.) | | |

For inquiries and requests for trainings please email us at: capacitybuilding@ppp.gov.ph  
or at info@ppp.gov.ph