

BENCHMARKING PPP PROCUREMENT 2017 IN THE PHILIPPINES

Regulatory and Institutional Framework for PPPs	
Does the regulatory framework in your country allow procuring PPPs?	Yes
Yes. If yes, please specify the relevant regulatory framework and the year of adoption:	<p>Section 20, Article II of the Philippine Constitution states that "The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."</p> <p>The regulatory framework for PPPs in the Philippines is made primarily of the following texts: (i) Republic Act No. ("RA") 6957, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by The Private Sector and for Other Purposes", as amended by RA 7718 (hereinafter the BOT Law) ; (ii) Revised implementing rules and regulations of R.A. no. 6957, "an act authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector and for other purposes", as amended by R.A. no. 7718 (hereinafter the IRR) ; (iii) Executive Order No. ("EO") 8, series of 2010, as amended by EO 136, series of 2013, related to the PPP center (iv) Executive Order No. 78 Mandating the inclusion of provisions on the use of alternative dispute resolution mechanisms in all contracts involving public-private partnership projects, build-operate and transfer projects, joint venture agreements between the government and private entities and those entered into by local government units</p> <p>Many policy circulars issued by the PPP Governing Board detail those texts, in particular (i) Guidelines and procedures for the appraisal of public-private partnerships (PPP) Projects, Policy circular n°01-2015 25 march 2015, PPP governing board (hereinafter the PPPGB Policy Circular No. 01-2015) ; (ii) Guidelines on the identification, selection and prioritization of public private partnerships projects, Policy Circular No 02-2015, PPP Governing Board, 25 march 2015 (Circular 02-2015) ; (iii) Institutionalization of best practices in the PPP process, Policy Circular No. 03-2015, 25 march 2015, PPP Governing Board ; (iv) Policy Circular No. 06-2015, Termination Payment for PPP Projects, 25 march 2015, PPP Governing Board (Circular 06-2015) ; (iv) Policy Circular No. 07-2015, PPP Monitoring Framework and Monitoring Protocols, PPP Governing Board ; (v) Policy Circular No. 09-2016, Assessing Value for Money in PPP Projects, 7 March 2016, PPP Governing Board (Circular 09-2016).</p> <p>The following analysis will be based on the regulations above.</p> <p>Other laws, regulations, and issuances that could impact PPPs include:</p> <ul style="list-style-type: none"> i. PPP Governing Board (PPPGB) Policy Circulars : Policy Circular No. 04-2015, Viability Gap Funding, 25 March 2015, PPP Governing Board ; Policy Circular No. 05A-2016, Appointment of Probity Advisors for PPP Procurement, March 7 2016 ; Policy Circular No. 08-2016 (Managing Government Employees Affected by PPP Projects) ii. Generic Preferred Risks Allocation Matrix (GPRAM), 2014 iii. Investment Priorities Plan, 2014 iv. NEDA JV Guidelines for Government-Owned and Controlled Corporations v. NEDA-DBM Joint Memorandum Circular (JMC) No. 2016-01, entitled "Policy Guidelines and Procedures for the Formulation of the Three (3)-Year Rolling Infrastructure Program (TRIP)"

	vi. General Appropriations Act 2016 provisions on PDMF and Risk Management Program vii. RA 10752 (Right of Way Act) viii. RA 7160 (Local Government Code) ix. RA 8975 (An Act to Ensure the Expedited Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes) x. BSP Circular No. 779, series of 2013 (Amendment to the Regulations on Single Borrower's Limit) xi. DBM National Budget Circular No. 538 (Guidelines on the Submission of the Agency's Budgetary Proposal to be Funded from the Public-Private Partnership Support Fund (PPPSF) and Project Development and Monitoring Facility (PDMF)) xii. DILG Memorandum Circular No. 2012-107 (Encouraging local government units to attend Public-Private Partnership Orientation Workshops) xiii. DILG Memorandum Circular 2011-16 (Enjoining all local chief executives to establish a PPP Sub-Committee in the Local Development) xiv. Guidelines on the Preparation, Review and Approval and Implementation of ICT Projects Proposed for Financing Under BOT Law xv. Joint Circular No. 03-01 (Guidelines in the Processing of Receipt Arising from BOT Transactions and its Variant Schemes) xvi. Office of the Court Administrator Circular No. 232-2015 (Enjoining all courts to avoid delay in issuance of writs of possession involving national government infrastructure projects.)
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	http://ppp.gov.ph/wp-content/uploads/2015/01/BOT-IRR-2012_FINAL.pdf
Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors? Transportation.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Water and irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Energy generation and distribution	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Telecom	No

If yes, please provide the relevant legal/regulatory provisions:	n/a
Health	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Education	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Other	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Section 11, Article XII, of the Philippine Constitution states that no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least 60% of whose capital is owned by such citizens.</p> <p>Section 10, Article XII, furthermore indicates that Congress shall reserve certain areas of investments to Filipinos or corporations with at least 60% capital (or a higher percentage) owned by Filipinos.</p> <p>According to RA 7042 (Foreign Investments Act of 1991), the law provides for the regular publication of a Foreign Investment Negative List, restricting foreign equity depending on industry.</p>
Please identify the PPP procuring authorities in country_name and provide their website(s) (if available):	<p>Section 3 of the BOT Law: All government infrastructure agencies, including government-owned and -controlled corporations (GOCCs) and local government units (LGUs), are authorized to enter into contracts with duly pre-qualified project proponents for any financially viable infrastructure or development facility.</p> <p>Section 2.1 of the IRR of the BOT Law: All departments, bureaus, offices, commissions, authorities or agencies of the national government, including GOCCs, government financial institutions (GFIs), state universities and colleges (SUCs), and LGUs authorized by law or their charters to undertake infrastructure or development projects are authorized to enter into contractual arrangements under the BOT Law and its IRR.</p> <p>Examples of PPP procuring authorities: Department of Transportation and Communications, Department of Public Works and Highways, Mactan Cebu International Airport Authority, Department of Education, Metropolitan Waterworks and Sewerage System, Light Rail Transit Authority</p> <p>Websites:</p> <ul style="list-style-type: none"> www.dotc.gov.ph www.dpwh.gov.ph www.mciaa.gov.ph www.deped.gov.ph www.lrta.gov.ph mwss.gov.ph
In addition to the PPP procuring authorities listed above, is there a specialized	Yes

government entity that facilitates the PPP program (PPP Unit)?	
If yes, please indicate its name, and its website (if available):	Public-Private Partnership (PPP) Center http://ppp.gov.ph/
If yes, what are the main responsibilities of the PPP Unit (check all that apply). PPP regulation.	Yes
PPP policy guidance and capacity building for other public authorities.	Yes
PPP promotion among the public and/or private sectors in national and international forums.	Yes
Technical support in implementing PPP projects.	Yes
Gatekeeping (approval of PPP projects).	No
Procurement of PPPs.	No
Oversight of PPP implementation.	Yes
Other	Yes
please specify:	(a) Manage and administer a revolving fund to be known as the Project Development and Monitoring Facility for the preparation of the business case, pre-feasibility and feasibility studies and tender documents of PPP programs and projects; (b) Establish and manage a central database system of PPP Programs and Projects; (c) Recommend improvements to timelines in processing PPP programs and project proposals, and monitor compliance of all agencies/LGUs; (d) Prepare reports on the implementation of the PPP programs and projects of the government for submission to the President at the end of each year; and, (e) Perform such other functions which may be critical in expediting and implementing effectively the PPP Programs and Projects of the Government.
Preparation of PPPs	Score: 96
Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If yes, is a second approval by the Ministry of Finance or Central Budgetary Authority required before signing the PPP contract?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	Section 2.8 of the BOT Law IRR states that the Department of Finance (DOF) must review the draft before the head of the implementing agency or the LGU approves a contract for projects of national government agencies, local projects that will involve funds of the national government, and local projects requiring ICC approval.
Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process?	Yes
If yes, please specify the relevant authority	<p>The NEDA Board, upon recommendation of the ICC, approves PPP-negotiated national projects (regardless of amount) and PPP national projects costing more than P300 million.</p> <p>The ICC approves PPP projects costing up to P300 Million and local projects costing above P200 Million.</p> <p>For local PPP projects, approval is also required from the Regional Development Councils and local development councils.</p>
and provide the relevant legal/regulatory provisions (if any):	<p>Section 2.6 of the BOT Law IRR - The approval of projects proposed under this Act shall be in accordance with the following:</p> <ul style="list-style-type: none"> a. National Projects - The projects must be part of the Agency's development programs, and shall be approved as follows: ii. projects costing more than PhP 300 million, shall be submitted to the NEDA Board for approval upon the recommendation of ICC. <p>Section 4 of the BOT Law provides for the approval of the local development councils for local projects: The list of local projects to be implemented by the local government units concerned shall be submitted, for confirmation, to the municipal development council for projects costing up to Twenty million pesos; those costing above Twenty up to Fifty million pesos, to the provincial development council; those costing up to Fifty million, to the city development council; above Fifty million up to Two hundred million pesos, to the regional development councils; and those above Two hundred million pesos, to ICC of NEDA.</p>
If yes, is a second approval by the same authority required before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>The head of the Implementing Agency/LGU approves the Draft Contract, after review of the Office of the Government Corporate Counsel (OGCC), the Office of the Solicitor General (OSG) or any other entity prescribed by law/issuances as the statutory counsel of GOCCs and LGUs, and/or DOF (as the case may be). The Draft Contract must also be in accordance with the parameters, terms, and conditions approved by the NEDA Board or ICC. Section 2.8 of the BOT Law IRR provides for the review of the draft contract of the OGCC, OSG, and/or DOF, as the case may be, prior to the Head of Agency or LGU's approval of the draft contract.</p> <p>Section 2.8 of the BOT Law IRR states that the head of the implementing agency shall review and approve the contract which shall be based on the bid parameters, terms, and conditions set forth by the NEDA Board or ICC, as the case may be.</p>

	<p>For solicited projects, changes in the terms and conditions of the draft contract after its approval by the Head of Agency/LGU may be allowed prior to submission of bids provided that the Head of Agency/LGU shall secure approval of the appropriate Approving Body (NEDA Board or ICC) for any of the following changes:</p> <ul style="list-style-type: none"> a. Changes which reduce the service levels to the public; b. Changes which reduce the economic internal rate of return below the hurdle rate used in the original analysis of the project; c. Changes which increase the total government subsidy to a project by at least five percent (5%) of the total project cost; and d. Changes in the risk profile which are detrimental to the best interest of the government. <p>The concerned Agency/LGU shall inform in writing the concerned statutory counsel as provided in this section of such changes. Changes to the terms and conditions of the draft contract after bid submission and prior to contract execution shall not be allowed except for changes to contract terms affected or decided by the winning bidder's bid.</p> <p>In Agan, Jr. v. PIATCO (G.R. No. 155001, May 5, 2003), the Supreme Court voided a contract because the signed contract was significantly different from the approved contract that was bid out.</p>
Does the government integrate the prioritization of PPP projects with all other public investment project prioritization? (e.g. in the context of a national public investment system)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 4 of the BOT Law mandates all concerned government agencies, including GOCCs and LGUs, to include in their development programs priority projects that may be subject of PPP. It is the duty of the concerned government agencies to give wide publicity to all PPP projects, including publication in national and, where applicable, international newspapers of general circulation once every six (6) months.</p> <p>Section 2.3 of the BOT Law IRR also mandates concerned agencies and LGUs to prepare their infrastructure or development programs in order to identify specific priority projects that may be subject of PPP, and to submit them for approval to the NEDA Board or ICC, as the case may be. The list of priority projects shall be consistent with the Philippine Development Plan and Provincial Development and Physical Framework Plan.</p>
If yes, which of the following options best describes the way your government prioritizes PPP projects? (Please select only one). The regulatory framework provides for the inclusion of PPPs in the national public investment system and/or details a specific procedure to ensure the consistency of PPPs with	Yes

other public investment priorities.	
If yes, please specify:	Section 2.3 of the BOT Law IRR also mandates concerned agencies and LGUs to prepare their infrastructure or development programs in order to identify specific priority projects that may be subject of PPP, and to submit them for approval to the NEDA Board or ICC, as the case may be. The list of priority projects shall be consistent with the Philippine Development Plan and Provincial Development and Physical Framework Plan.
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	No
The regulatory framework does not include any provisions.	No
Other	No
please specify:	No
Among the PPP projects procured within the last two (2) years, how many of them were prioritized along with all other public investment projects? Please elaborate:	All of the projects
Which of the following assessments are conducted when identifying and preparing a PPP? (check all that apply): 10.1. Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the project)	Yes
Relevant legal/regulatory provision (if any)	PPPGB Policy Circular No. 01-2015, section 4.1 Socio-Economic Appraisal: the analysis is made by NEDA. The Economic appraisal contains the analysis of project's costs and benefits, a valuation of costs and benefits, the measurement of economic desirability, sensitivity and economic feasibility. To analyze social effects, NEDA must take into account income distribution, employment, access to land, internal migration and resettlement, health, in general the quality of life.
Is there a specific methodology?	Yes
If yes, elaborate.	<p>Section 4.1 of PPPGB Policy Circular No. 01-2015 provides for a socio-economic appraisal by NEDA of the PPP project's desirability in terms of its net contribution to the economic and social welfare of the country as a whole and its responsiveness to national objectives of poverty alleviation, employment generation, and income redistribution.</p> <p>Circular 02-2015 provides furthermore that a social impact analysis of a project's outcomes requires an examination of the financial returns and externalities that affect each of these major stakeholder groups (annex E, 6.).</p>

Affordability assessment, including the identification of the required long term public commitments (explicit and implicit)	Yes
Relevant legal/regulatory provision (if any)	<p>Economic appraisal includes: (1) an identification of the project's costs and benefits (including externalities and secondary benefits); (2) an economic valuation of costs and benefits (using shadow prices or constant prices at the current year's level); and (3) the measurement of economic desirability, sensitivity analysis, and selection of projects based on the economic internal rate of return. The shadow exchange rate, the shadow wage rate, and the social discount rate shall be used in estimating the economic stream of costs and benefits.</p> <p>Social appraisal includes a qualitative assessment of the social benefits of the project on income distribution, employment, access to land, internal migration and resettlement, nutrition and health, and other indicators of the quality of life.</p>
Is there a specific methodology?	Yes
If yes, elaborate	PPPGB Policy Circular No. 01-2015, section 4.4 : Assessing and evaluating the cost of the fiscal commitments implied by the project structure ; Conducting a preliminary appraisal of the involved contingent liabilities; Assessing the fiscal commitments and opportunity costs to determine whether these are fiscally responsible; and Adopting appropriate strategies in the budget of the government to plan for the fiscal commitments.
Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Section 4.3 of PPPGB Policy Circular No. 01-2015 refers to Annex E for its risk allocation analysis to be undertaken by the Department of Finance (DOF). Annex E is the Generic Preferred Risk Allocation Matrix (GPRAM), adopted by the ICC – Cabinet Committee on December 7, 2010, which serves as a guide for government entities and the private sector in structuring PPP projects with regard to the risks to be borne by the government, the private sector, and the risks to be shared by both parties. GPRAM was amended by the ICC on December 22, 2014.
Is there a specific methodology?	Yes
If yes, elaborate	<p>The GPRAM identifies the risks to a PPP project, and provides for a proposed risk allocation scheme and possible risk mitigation strategies. The identified risks are: site risks; design, construction, and commissioning risks; sponsor and financial risks; operating risks; demand risks; network and interface risks; industrial relations risks; and legislative and government policy risks.</p> <p>Circular 02-2015 provides guidance as well.</p>
Financial viability or bankability assessment.	Yes
Relevant legal/regulatory provision (if any)	Section 4.3 of PPPGB Policy Circular No. 01-2015 provides for a financial appraisal of the PPP project to be undertaken by DOF. It aims to: assess the financial viability of the PPP project and its ability to meet its debt service obligations and provide a reasonable return on equity; assess financial commitments and opportunity costs of the government; determine the potential project risks; and assess project structure

	components that will mitigate government exposure and provide the best value for the government.
Is there a specific methodology?	Yes
If yes, elaborate	<p>The financial appraisal process begins with an assessment of the tariff structure for 'user pays' concession model or annual 'availability payments' model. It reviews the financing plan and debt equity structure, assesses the debt costs and repayment structure and its impact on cash flows, and determines the financial viability from the free cash flow to firm viewpoint and free cash flow to equity viewpoint. The DOF also applies sensitivity analysis by determining whether the project will remain feasible if changes in the assumptions or project structure were to take place according to the degree in which they are likely to vary from the estimated or projected values. It then assesses the business case for delivery of the project using alternate PPP structures and then selects the preferred PPP model.</p> <p>The DOF also assesses the proposed level of financial support required from the government in the form of viability gap funding (VGF) and other forms of guarantees and revenue enhancements to make the project commercially attractive, and assesses the fiscal prudence in providing these forms of support.</p> <p>Lastly, it reviews the overall project financing structured based on user tariff, payment mechanism, and type and expected sources of funds to determine whether it is achievable.</p> <p>Circular 02-2015 provides guidance as well.</p>
Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives	Yes
Relevant legal/regulatory provision (if any)	Section 4.5(b) of PPPGB Policy Circular No. 01-2015 provides for the Value for Money (VfM) appraisal to be undertaken by the PPP Center.
Is there a specific methodology?	Yes
If yes, elaborate	<p>The VfM analysis compares the net present cost (NPC) of the public procurement route against the PPP model to determine whether the PPP model provides the lowest NPC for the project. The NPC of public procurement will be represented in the form of a Public Sector Comparator.</p> <p>The appraisal process will involve an assessment of the following aspects:</p> <ul style="list-style-type: none"> i. determining the unadjusted cost of public procurement; ii. adjusting the above for expected cost or time overruns from a public procurement; iii. adjusting for any benefits that will accrue to a government agency for a public procurement; and iv. risks retained by the government. <p>The NPC of the public procurement will need to be represented in the form of a Public Sector Comparator (PSC) with its specified means of calculation. The NPC of the total PSC will be compared to the prospective PPP bid to determine VfM, which will need to be</p>

	<p>further confirmed at the contract award and financial close stage.</p> <p>Circular 09-2016 provides guidance and methodology as well.</p>
Market assessment (showing evidence of enough interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	Section 4.5(d) of PPPGB Policy Circular No. 01-2015 assesses the likely private sector interest for undertaking the project as a PPP.
Is there a specific methodology?	Yes
If yes, elaborate	<p>The PPP Center and the implementing agency begins with a formal market sounding process in association with the transaction advisor to determine interest levels of the private sector. It addresses issues raised during the project development stage, and assesses forecasts in the short, medium, and long-term periods, together with different growth scenarios. It undertakes 'willingness to use' and 'willingness to pay' demand survey assessments for the PPP project to determine the different revenue options from the user of the infrastructure facility.</p> <p>Circular 02-2015 provides guidance as well, and Circular 03-2015 makes market sounding a best practice.</p>
Among the PPP projects procured within the last two (2) years, for how many of them were all of the required assessments conducted? Please elaborate:	All of the projects
Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 4.1 (c) of the BOT Law IRR provides for the inclusion of the Draft Contract in the bid/tender documents. The Draft Contract shall reflect the contractual arrangements under which the project shall be undertaken, and the respective undertakings of the contracting parties, among others, and using the model contracts provided by NEDA/PPP Center as reference.
If no, please elaborate (provide examples):	n/a
Have standardized PPP model contracts and/or transaction documents been developed?	Yes
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	<p>http://ppp.gov.ph/?page_id=30573</p>
Does the procuring authority obtain the permits necessary to develop and operate the PPP project before calling for	Yes

tenders in any of the following areas? Environmental permits.	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Section 1.3 of the GPRAM, Government (i.e., the implementing agencies) secures Environmental Compliance Certificate (ECC) since implementing agencies prepare the FS and design (in case of solicited).
Urban and zoning permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other permits.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Land	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide explanation):	n/a
Does the procuring authority make available to PPPCo the necessary land or right of way to develop the PPP project (if any)? Right of way	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If no, please elaborate (provide explanation):	n/a
Does the regulatory framework establish any exceptions where the preparation process described above does not apply or allows for a “fast track” procedure?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
What is the average number of calendar days that the procuring authority spends on each of the following activities to prepare a PPP project? Conducting the required assessments:	360

Obtaining the required approvals from other relevant authorities:	182
Preparing the draft PPP contract:	120
Obtaining any permits, land and/or right of way that the procuring authority must provide according to the regulatory framework:	548
PPP Procurement	Score: 85
Are the bid evaluation committee members required to meet specific qualifications?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	Section 3.1 of the BOT Law IRR provides for the composition of the Pre-Qualification, Bids, and Awards Committee (PBAC).
If no, please elaborate (provide examples):	n/a
If yes, which of the following options best describes the required qualifications of the committee members? (Please select only one). The regulatory framework details the qualifications required and/or the specific membership of the bid evaluation committee.	Yes
If yes, please specify:	<p>Section 3.1 of the BOT Law IRR provides:</p> <ul style="list-style-type: none"> a. At least a third ranking regular official of the Agency/LGU - Chairman b. A legal officer - Member-Secretary c. One (1) technical officer knowledgeable with the technical aspects or requirements of the project, duly designated by the Head of Agency/LGU concerned on a project-to-project basis - Member (provisional) d. One (1) technical officer knowledgeable with aspects or requirements of the project from a concerned regulatory body, when applicable, to be invited by the Agency/LGU concerned on a project-to-project basis. - Member (provisional and non-voting) e. An officer knowledgeable in finance - Member f. An officer knowledgeable in management/operation of the project - Member g. Two (2) representatives from the private sector: one from duly recognized Contractors associations; and the other from either the facility users, or duly recognized accounting associations. - Observers (non-voting) h. A representative from the Commission on Audit - Observer (non-voting) i. One (1) representative from the PPP Center for national projects, in accordance with Section 2.6 (a) - Observer (non-voting) j. One (1) representative from the local DILG office, for LGU projects - Observer (non-voting)

The regulatory framework requires generally sufficient qualification without detailing the specific qualifications required to be a member of the bid evaluation committee.	No
The regulatory framework does not include any provisions.	No
Other	No
please specify:	n/a
Does the procuring authority issue a public procurement notice of the PPP?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>Section 5.2 of the BOT Law IRR: The Head of the Agency/LGU concerned shall, after obtaining approval for the project, forthwith cause to be published, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation and in at least one (1) local newspaper of general circulation in the region, province, city or municipality in which the projects are to be implemented, a notice inviting all prospective infrastructure or development Project Proponents to pre -qualify and bid for the projects so approved. Said invitation should also be posted continuously in the website of the Agency/LGU concerned, if available, and the PPP Center during the period stated above. If the total project cost amounts to at least PhP 500 million, the invitation may also be published in at least one (1) international publication.</p> <p>Likewise, the Agency concerned shall issue official notification of the same to Project Proponents registered with them. The published Invitation to Pre-qualify and Bid shall contain information, among others, whether the Contractor to be employed to undertake the Construction works needs to be pre-identified for prequalification purposes or not.</p> <p>For changes in the information contained in the published invitation to pre-qualify and to bid, the agency/LGU may cause the invitation reflecting said changes to be published anew in accordance with this section.</p>
If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	www.ppp.gov.ph and the concerned Agency/LGU's website, if available.
Does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 5.3 of the BOT Law IRR: The Agency/LGU concerned shall allow prospective bidders at least fifteen (15) calendar days from the last date of publication of the Invitation to Pre-qualify and Bid to prepare their respective prequalification documents. In any event, the deadline for submission of pre-qualification statements shall be indicated in the published Invitation to Pre-qualify and Bid.</p> <p>Section 6.3 of the BOT Law IRR: Sec. 6.3. Pre-bid Conference. - For projects costing less</p>

	than P300 million, a pre-bid conference shall also be conducted by the concerned Agency/LGU at least thirty (30) days before the deadline for the submission of bids to clarify any provisions, requirements and/or terms and conditions of the bidding documents and/or any other matter that the prospective bidders may raise. For projects costing P300 million and above, the pre-bid conference shall be conducted ninety (90) to one hundred-twenty (120) days before the submission of bids.
and the time in calendar days :	90
Do the tender documents detail the stages of the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Rules 5 to 8 of the IRR and section 4.1 : The Agency/LGU concerned shall prepare the bid/tender documents, which shall include the following: f. requirements and timelines/milestones of concerned Agencies in granting of franchise, if applicable.
If no, please elaborate (provide examples):	n/a
Does the procurement process include a pre-qualification stage to select a number of qualified bidders to present the full proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Sections 5.2 and 5.4 of the BOT Law IRR provides for the general conditions to publish an invitation to pre-qualify and bid and the pre-qualification requirements.
If yes, do the tender documents specify the prequalification criteria in order to make them available to all of the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
Among the PPP procurement processes conducted within the last two (2) years that had a prequalification stage, how many of them included prequalification criteria in the tender documents? Please elaborate	All of the projects
Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 6.2 of the BOT Law IRR allows the bidder to submit a written request to the agency/LGU for interpretation as to the meaning of any data or requirements or any part of the bidding documents.</p> <p>Section 6.3 of the BOT Law IRR provides for pre-bid conferences conducted between the agency/LGU and bidders (usually on one-on-one basis) before the deadline for the</p>

	<p>submission of the bids to clarify any provisions, requirements and/or terms and conditions of the bidding documents and/or any other matter that the prospective bidders may raise.</p> <p>According to the Circular 03-2015, One-on-One meetings are a best practice.</p>
If yes, does the procuring authority disclose those questions and clarifications to all of the potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 6.2 of BOT Law IRR: Any substantive interpretation given by the concerned Agency/LGU shall be issued in the form of a Supplemental Notice, and furnished to all prospective bidders.</p> <p>Section 6.3 of the BOT Law IRR: Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions of the bidding documents unless such is made as a written amendment thereto by the concerned Agency/LGU. Any amendments shall be issued by the Agency/LGU concerned to all bidders within a reasonable time to allow them to consider the same in the preparation of their bids and shall be duly acknowledged by each bidder prior to the submission of his bid and shall be so indicated in his bid. A summary of the pre-bid conference proceedings shall also be issued to all prospective bidders by the Agency/LGU concerned.</p>
Among the PPP procurement processes conducted within the last two (2) years where questions were submitted, in how many were the questions and clarifications disclosed to all of the potential bidders? Please elaborate:	All of the projects
Besides questions and clarifications, can the procuring authority conduct other types of dialogue with the potential bidders?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Section III (2) of PPPGB Circular No. 03-2015: One-on-one meetings with pre-qualified bidders shall be held to clarify any of the bidders' questions, comments, and concerns, and discuss key terms and conditions of the draft PPP agreement. It is designed to know the perspective of the bidders and serve as a venue to thresh-out all identified project issues and concerns before the formal bidding process.
If yes, does the procuring authority disclose the content and the results of the dialogue to all of the potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section III (2) of PPPGB Circular No. 03-2015: To ensure transparency, any question raised by the bidders during the conference and the answers given by the IA shall be posted in a bid bulletin to inform all bidders of the results of every conducted session. However, the name/s of bidders, officials, or any person who raised or answered the question shall not be included in the bid bulletin to protect confidential information
Among the PPP procurement processes conducted within	All of the projects

the last two (2) years where any other type of dialogue was conducted, in how many was the content and the result of the dialogue disclosed to all of the potential bidders? Please elaborate:	
Does the procuring authority require the bidders to prepare and present a financial model with their proposals ?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 7.1(c) of the BOT Law IRR: The “Financial Proposal” shall contain the following, as the case may be: i. Proposed Project Cost, operation and maintenance cost, and all other related costs; ii. Project financing scheme, which may include the amount of equity to be infused, debt to be obtained for the project, and sources of financing; and iii. Financial bid corresponding to the parameters set by the Agency/LGU in accordance with Section 4.2 (h).
If no, please elaborate (provide examples):	n/a
Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 8.1 of the IRR : The first envelope evaluation shall involve the assessment of the technical, operational, environmental and financing viability of the proposal as contained in the bidders' first envelopes vis-à-vis the prescribed requirements and criteria/minimum standards and basic parameters prescribed in the bidding documents.
Among the PPP procurement processes conducted within the last two (2) years, in how many of them was the evaluation of the bidders conducted in accordance with the criteria stated in the tender documents? Please elaborate:	All of the projects
In the case where only one proposal is submitted (sole proposals), does the procuring authority follow any special procedure before awarding the PPP?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 9.1 (a) of the BOT Law IRR: Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder: a. If, after advertisement, only one prospective Project Proponent applies for pre-qualification and it meets the pre-qualification requirements, after which, it is required to submit a bid/proposal which is subsequently found by the Agency/LGU to be complying;
If yes, what of the following options best describes the way the procuring authority deals	Yes

with sole proposals? (Please select only one). The regulatory framework details a specific procedure that the procuring authority must follow before awarding a PPP contract where only one proposal is submitted. yes	
Please specify:	Section 9.3 of the BOT Law IRR: In the instances where negotiated projects are allowed, the ICC shall determine the Reasonable Rate of Return prior to the negotiation in the case of solicited proposals as referred to under Section 9.1 of these Revised IRR. The scope of negotiation, in the case of solicited proposals referred to under Section 9.1 of these Revised IRR, shall be limited to the financial proposal of the proponent and compliance with the ICC-determined Reasonable Rate of Return. Direct negotiation should not result in a higher subsidy, or higher user fee, or lower amount of government revenue, or longer concession period.
The regulatory framework considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
The regulatory framework does not allow the award of a PPP contract if only one proposal is submitted.	No
The regulatory framework does not include any provisions.	No
Other	No
please specify:	n/a
In practice, what is the average number of calendar days between the initial publication of the PPP public procurement notice and the award of the PPP? Number of calendar days:	315
Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Section 11.4 of the BOT Law IRR: The PBAC shall post the notice of award and/or bidding results in the PHILGEPS, websites of PPP Center and of the Agency/LGU, if any, within seven (7) calendar days from the issuance of Notice of Award.
If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	ppp.gov.ph/ and implementing agency's website
Does the procuring authority provide all the bidders with	Yes

the result of the PPP procurement process?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 11.2 of the BOT Law IRR: : All unsuccessful bidders shall be informed in writing of the decision of the Agency/LGU to award the project to the winning Project Proponent. Such decision shall be made available to the public when requested.
If no, please elaborate (provide examples):	n/a
If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
Does the regulatory framework restrict or regulate in any way negotiations with the selected bidder between the award and the signature of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Section 12.1 of the BOT Law IRR: The authorized signatory(ies) of the winning bidder and the Head of Agency/LGU shall execute and sign the contract for the project as approved in accordance with Section 2.8 within five (5) calendar days from receipt by the winning bidder of the notice from the Agency/LGU that all conditions stated in the Notice of Award have been complied with.</p> <p>Section 2.8 of the BOT Law IRR: Changes to the terms and conditions of the draft contract after bid submission and prior to contract execution shall not be allowed except for changes to contract terms affected or decided by the winning bidder's bid.</p> <p>In Agan, Jr. v. PIATCO (G.R. No. 155001, May 5, 2003), the Supreme Court voided a contract because the signed contract was significantly different from the approved contract that was bid out.</p>
Among the PPP procurement processes conducted within the last two (2) years, in how many of them were the terms and conditions changed between the award and the signature of the PPP contract? Please elaborate:	None of the projects
Does the procuring authority publish the PPP contract?	No
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	n/a
If yes, is it published online?	n/a

If yes, please specify the website:	n/a
Does the regulatory framework establish any exceptions where the procurement process described above does not apply or allows for a “fast track” procedure?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Single-Stage Bidding</p> <p>Sec. 5.7 of the BOT Law IRR: Simultaneous Qualification. - In the exigency of service, the Agency/LGU Head may opt to do a simultaneous qualification instead of a pre-qualification of proponents. In case of simultaneous qualification, the publication of the invitation following the requirements in Section 5.2 shall be for the submission of qualification requirements and bid proposals. The bidders shall be asked to submit their proposal in three envelopes, the first being the qualification documents corresponding to the requirements so stated in Section 5.4 herein, the second the technical proposal and the third the financial proposal. The requirements for bid submission are covered under Rule 7 of these IRR. The period for the preparation of the qualification documents shall be subsumed under the time allotted for bid preparation.</p>
Unsolicited proposals	Score: 67
Does the regulatory framework allow for the submission of unsolicited proposals? (if no, skip to section F)	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section 10.1 of the BOT Law IRR: Any Agency/LGU may accept Unsolicited Proposals on a negotiated basis provided that all the following conditions are met (...)
If yes, please specify, to the best of your knowledge, the percentage of PPP investments in your country approved as unsolicited proposals during the last five (5) years:	12.5
Does the procuring authority conduct an assessment to evaluate unsolicited proposals?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Section 10.7 of the BOT Law IRR: The Agency/LGU is tasked with the evaluation of the proposal. The Agency/LGU shall: 1) appraise the merits of the project; 2) qualify the proponent based on the provisions of Rule 5 hereof; 3) assess the appropriateness of the contractual arrangement and reasonableness of the risk allocation; 4) recommend a reasonable Rate of Return (ROR); and, 5) inform the ICC and the PPP Center of its receipt of an Unsolicited Proposal. The Agency/LGU shall evaluate the proposal, qualify the proponent, and advise whether it accepts or rejects the proposal within one hundred and twenty (120) calendar days upon receipt of the complete proposal. The Agency/LGU shall indicate in its letter of acceptance the confirmation of the proponent as “original proponent”. In case of acceptance, the Agency/LGU shall endorse the unsolicited

	proposal and submit all pertinent documentation to the ICC/Approving Body. At this point, the Agency/LGU will no longer entertain other similar proposals unless the parties are unable to agree during the period for negotiations specified in Section 10.8 below, or the original proponent is unable to comply with the parameters set by the Approving Body, or until the solicitation of comparative proposals has been completed.
If yes, does it ensure that the unsolicited proposal is consistent with the existing government priorities?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
If yes, which of the following options best describes how unsolicited proposals are evaluated against existing government priorities? (Please select only one). The regulatory framework details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	No
If yes, please specify:	n/a
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	No
The regulatory framework does not include any provisions.	Yes
Other	No
please specify:	n/a
Among the unsolicited proposals approved within the last two (2) years, how many of them were a part of the existing government priorities? Please elaborate:	None of the projects
Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 10.11 of the BOT Law IRR (Invitation for Comparative Proposals): Within seven (7) calendar days upon issuance of the certification of a successful negotiation referred to in Section 10.8, the Agency/LGU PBAC shall publish the invitation for comparative

	proposals after receipt of the notification from the Original Proponent that the latter accepts all the terms and conditions.
Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 10.11 of the BOT Law IRR: The invitation for comparative proposals shall likewise explicitly specify a time of sixty (60) working days reckoned from the date of issuance of the tender/bidding documents upon which proposals shall be received.
and the time in calendar days:	60
Does the procuring authority use any of the following mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer.	No
Developer's fee (reimbursing the original proponent for the project development cost).	No
Bid bonus.	No
Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	Yes
Other	No
please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	Pursuant to Section 10.17 of the IRR, the original proponent shall again be given the right to match the comparative proponent's bid.
PPP Contract Management	Score: 84
Has the procuring or contract management authority established a system to manage the implementation of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any)	<p>Section 12 of the BOT Law: Coordination and Monitoring of Projects. - The Coordinating Council of the Philippine Assistance Program (CCPAP) shall be responsible for the coordination and monitoring of projects implemented under this Act.</p> <p>Section 14.3 of the BOT Law IRR : Each concerned Agency/LGU may create a PPP Unit headed by a senior official of the Agency/ LGU and shall designate a senior official as PPP Project Development officer (PDO), who shall be responsible for planning, overseeing, and monitoring projects of Agencies/LGUs authorized under the Act and these Revised IRR.</p>

If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>In the National government agency PPP manual volume 3 (contract management), a contract management committee is advised (10.3.1 Creating a Contract Management Committee).</p> <p>PPPGB Policy Circular no. 07-2015 on PPP Monitoring Framework and Protocols: Under Section IV (PPP Contract and Institutional Arrangements):</p> <p>Implementing Agency (IA)</p> <p>a.2. Together with the project proponent, create a Project Steering Group (PSG) which shall be composed of high-level representatives from the IA, the project proponent, and other relevant government authorities. The PSG shall be the forum for regular communication between the high-level representatives of the parties for the purpose facilitating the implementation of the PPP contract; and perform any other task as envisaged under the CA.</p> <p>a.3. Together with the project proponent, create a Technical Working Group (TWG) composed of technical representatives from the IA, the project proponent, and other relevant government authorities to assist the PSG in performing its functions.</p> <p>a.4. Prepare and implement a contract management plan for each PPP project, and provide periodic reports to the PPP Center, as required under Executive Order No. 136, and the Revised BOT Law IRR.</p>
Participation of the members of the PPP contract management team in the PPP procurement process.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Possibility to consult with PPP procurement experts when managing the PPP contract.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Practice
Elaboration of a PPP implementation manual or an equivalent document.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other	No
please specify:	n/a
If there is a contract management team, in how many of the PPP projects procured within the last two (2) years did the management	All of the projects

system and tools fully inform the contact management team? Please elaborate:	
Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 14.1 of the BOT Law IRR: The PPP Center shall be responsible for the coordination and monitoring of projects implemented under Contractual Arrangements or schemes authorized under these Revised IRR. Project monitoring will be undertaken to ensure that the project complies with these Revised IRR, including the proponent's required environmental clearances from the DENR.</p> <p>Section 14.3 of the BOT Law IRR: Each concerned Agency/LGU may create a PPP Unit headed by a senior official of the Agency/ LGU and shall designate a senior official as PPP Project Development officer (PDO), who shall be responsible for planning, overseeing, and monitoring projects of Agencies/LGUs authorized under the Act and these Revised IRR.</p> <p>PPPGB Policy Circular No. 07-2015 on Monitoring Framework and Protocols</p>
If yes, which of the following tools does it include (check all that apply)? PPPCo must provide the procuring or contract management authority with periodic operational and financial data.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to section 6.2 of the PPPGB Policy Circular No. 07-2015 on Monitoring Framework and Protocols, the project proponent submit necessary reports to the IA in such form and within such period as may be required in the contract
The procuring or contract management authority must periodically gather information on the performance of the PPP contract.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 12.10 of the BOT Law IRR: The Agency/LGU may inspect and check, from time to time, the project to determine whether the project is constructed, operated and maintained in accordance with the approved plans, specifications, standards and costs under the contract.
The procuring or contract management authority must establish a risk mitigation mechanism.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	The Generic preferred risk allocation Matrix - GPRAM - (Annex E of PPPGB Policy Circular No. 01-2015, Generic Preferred Risk Allocation Matrix) provides possible risk mitigation strategies and suggested contract provisions.

The PPP contract performance information must be available to the public.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Other	No
please specify:	n/a
Is PPP contract performance information publicly available online?	No
If yes, please specify the website:	n/a
Does the regulatory framework expressly regulate a change in the structure (i.e. stakeholder composition) of PPPCo?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Section 11.6 of the BOT Law IRR: Subject to the approval of the Agency/LGU, any member of the consortium, or a shareholder of the SPC created (who was a member of such consortium), or its pre-qualified Contractors may withdraw as such prior to award of the project or any time during the contract term, provided that, the remaining members or shareholders are still legally, technically, and financially capable of successfully carrying out the implementation/operation of the project.</p> <p>Section 12.20 of the BOT Law IRR: Subject to the approval of the Approving Body upon due diligence and recommendation by the Head of Agency/LGU, a project proponent may divest or accede its ownership and/or rights to a project provided that, the divestiture or accession shall be after the holding or lock-in period which shall be determined by the Agency/LGU and indicated in the contract, and provided that, the new project proponent has equal or better qualifications as with the previous project proponent.</p> <p>A divestment/accession made in violation of this section shall be a ground for disqualification of the proponent or cancellation of the contract, as the case may be, and forfeiture of the proponent's bid or performance security.</p> <p>The Agency/LGU shall inform in writing the PPP Center the change in ownership for monitoring purposes.</p> <p>PPPGB Circular 07-2015 on Monitoring Framework and Protocols</p>
If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in PPPCo during an initial period (e.g. construction and first five years of operation).	Yes

If yes, please provide the relevant legal/regulatory provisions:	Section 12.20 of the BOT Law IRR: Subject to the approval of the Approving Body upon due diligence and recommendation by the Head of Agency/LGU, a project proponent may divest or accede its ownership and/or rights to a project provided that, the divestiture or accession shall be after the holding or lock-in period which shall be determined by the Agency/LGU and indicated in the contract, and provided that, the new project proponent has equal or better qualifications as with the previous project proponent.
In case of a change affecting the controlling interest, the replacing entity must meet the same technical qualifications as the original operator.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section 11.6 of the BOT Law IRR: a member may withdraw prior to award of the project or any time during the contract term, provided that, the remaining members or shareholders are still legally, technically, and financially capable of successfully carrying out the implementation/operation of the project.
Flexibility to substitute non-controlling interest after the initial period.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section 12.20 of the BOT Law IRR: Subject to the approval of the Approving Body upon due diligence and recommendation by the Head of Agency/LGU, a project proponent may divest or accede its ownership and/or rights to a project provided that, the divestiture or accession shall be after the holding or lock-in period which shall be determined by the Agency/LGU and indicated in the contract, and provided that, the new project proponent has equal or better qualifications as with the previous project proponent.
Does the regulatory framework expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant legal/ regulatory provisions:	<p>Section 12.11 of the BOT Law IRR: A contract variation may be allowed by the Head of the Agency/LGU, Provided, that:</p> <ul style="list-style-type: none"> a. There is no impact on the basic parameters, terms and conditions as approved by the Approving Body; or b. There is no increase in the agreed fees, tolls and charges or a decrease in the Agency/LGU's revenue or profit share derived from the project, except as may be allowed under a parametric formula in the contract itself; or c. There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract; or d. There is no additional Government Undertaking, or increase in the financial exposure of the Government under the project. <p>Upon due diligence and recommendation of the Head or Agency/LGU, contract variations not covered by above shall undergo approval by the Approving Body in terms of the impacts on government undertakings/exposure, performance standards and service charges. Failure to secure clearance/approval of the Head of Agency/LGU or</p>

	<p>Approving Body as provided in this section shall render the contract variation void.</p> <p>The Agency/LGU shall report to the Approving Body and the PPP Center on any contract variations including those approved by the Head of Agency/LGU.</p>
If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section 12.11 of the BOT Law IRR: there can be a variation if: there is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract
A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section 12.11 of the BOT Law IRR: there can be a variation if there is no additional Government Undertaking, or increase in the financial exposure of the Government under the project.
A change in the investment plan or duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section 12.11 of the BOT Law IRR: there can be a variation if: there is no [...] extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract.
Does the regulatory framework expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Force majeure risks are apprehended by the Generic preferred risk allocation matrix (section 9). Moreover, Circular 06-2015 details consequences of termination due to force majeure.
Material Adverse government action.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section IV of the Policy Circular No. 06-2015 identifies material adverse government action as a cause for termination.
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory provisions:	Change in the law risks are apprehended by the Generic preferred risk allocation matrix (section 8.2)
Refinancing.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Other.	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a

Does the regulatory framework establish a specific dispute resolution mechanism for PPPs?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions	Executive Order No. 78 Mandating the Inclusion of Provisions on the Use of Alternative Dispute Resolution Mechanisms in all Contracts Involving PPP Projects, BOT Projects, JV Agreements Between the Government and Private Entities and those entered into the Local Government Units Section 1: All contracts involving PPP projects (...) shall include provisions on the use of ADR mechanisms at the option and upon agreement of the parties to said contracts.
If yes, which of the following options best describes the dispute resolution mechanism for PPPs? (Please select only one). The regulatory framework details specific resolution mechanisms for disputes arising during the implementation of the PPP.	No
If yes, please specify:	n/a
The regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract.	Yes
The regulatory framework provide the parties with recourse to arbitration but no other alternative dispute resolution mechanism.	No
Other	No
please specify:	n/a
Does the regulatory framework allow for the lenders to take control of the PPP project (lender step-in right) if either PPPCo defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	Yes
If yes, please provide the relevant legal/regulatory provisions:	Section 12.21(b) of the Revised IRR: If the Project Proponent refuses or fails to perform any of the provisions of the approved contract with such diligence as will ensure the project's completion, operation and maintenance in accordance with the prescribed technical and performance standards or otherwise fails to satisfy any of the contract provisions including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of the approved contract, the Agency/LGU shall notify the Project Proponent in writing of the same and if not corrected within the time specified, the Agency/LGU concerned may rescind the contract. In such an event, the Agency/LGU concerned may either: i. Take over the facility; or ii. Allow the Project

	Proponent's lenders/creditors/banks to exercise their rights and interests under the loan and collateral documents with respect to the project.
If yes, which of the following options best describes the lender step-in right? (Please select only one). The regulatory framework expressly regulates the lender step-in rights.	Yes
If yes, please specify:	Section 12.21(b) of the Revised IRR: the decision of allowing lenders or taking over the facility is made by the Agency/LGU concerned.
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
Other	No
please specify:	n/a
Does the regulatory framework expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify:	<p>Section IV of the Policy Circular No. 06-2015 enumerates the following events that may lead to termination:</p> <ul style="list-style-type: none"> i. Failure of the Concessionaire or the IA to satisfy the conditions precedent under the contract; ii. Occurrence of a force majeure event, the effects of which is prolonged or not remediable; iii. Abandonment of works by the Concessionaire; iv. Violation of any laws, rules and regulations of the republic of the Philippines; v. When the concessionaire assigns, transfers or otherwise disposes of any of the rights under the PPP Contract without the consent of the IA; vi. Insolvency; vii. Poor performance of the concessionaire of persistent breach of its obligations under the PPP contract; viii. Material adverse government action (MAGA) event where the parties are unable to agree to a MAGA compensation; ix. Default of the government as defined in the contract; and x. When banks or lenders call the concessionaire in default
and provide the relevant legal/regulatory provisions:	<p>Section 12.21 of the Revised IRR: The contract may be terminated/rescinded in the following events:</p> <ul style="list-style-type: none"> a. If the Agency/LGU concerned fails to comply with any major obligation prescribed in the approved contract, and such failure is not remediable or if remediable shall remain unremedied for an unreasonable length of time, the Project Proponent may, with prior notice to the concerned Agency/LGU, specifying the turn-over date, terminate the

	<p>contract. In such an event, the Project Proponent shall be reasonably compensated by the Government for equivalent or proportionate contract cost, as defined in the contract subject to (c) below.</p> <p>b. If the Project Proponent refuses or fails to perform any of the provisions of the approved contract with such diligence as will ensure the project's completion, operation and maintenance in accordance with the prescribed technical and performance standards or otherwise fails to satisfy any of the contract provisions including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of the approved contract, the Agency/LGU shall notify the Project Proponent in writing of the same and if not corrected within the time specified, the Agency/LGU concerned may rescind the contract. In such an event, the Agency/LGU concerned may either:</p> <ul style="list-style-type: none"> i. Take over the facility; or ii. Allow the Project Proponent's lenders/creditors/banks to exercise their rights and interests under the loan and collateral documents with respect to the project. In any case, the Agency/LGU concerned shall likewise forfeit the performance security of the defaulting Project Proponent. c. In the event that the project/contract is: (a) revoked, cancelled, or terminated by (i) the Agency/LGU in accordance with the contract through no fault of the Project Proponent or (ii) by mutual agreement, or (b) revoked or canceled by a court by final judgment through no fault of the Project Proponent, the Agency/LGU shall compensate the said Project Proponent for its actual expenses incurred in the project plus a Reasonable Rate of Return thereon not exceeding that stated in the contract, as of the date of contract termination, provided that the interest of the Government in these instances shall be duly insured with the GSIS or any other insurance entity duly accredited by the office of the Insurance Commissioner, provided further that the cost of the insurance coverage shall be included in the terms and conditions of the approved contract. <p>Section IV of the Policy Circular No. 06-2015: The following events may lead to termination:</p> <ul style="list-style-type: none"> i. Failure of the Concessionaire or the IA to satisfy the conditions precedent under the contract; ii. Occurrence of a force majeure event, the effects of which is prolonged or not remediable; iii. Abandonment of works by the Concessionaire; iv. Violation of any laws, rules and regulations of the republic of the Philippines; v. When the concessionaire assigns, transfers or otherwise disposes of any of the rights under the PPP Contract without the consent of the IA; vi. Insolvency; vii. Poor performance of the concessionaire of persistent breach of its obligations under the PPP contract; viii. Material adverse government action (MAGA) event where the parties are unable to agree to a MAGA compensation; ix. Default of the government as defined in the contract; and x. When banks or lenders call the concessionaire in default
If yes, does the regulatory framework also establish the	Yes

consequences for the termination of the PPP contract?	
If yes, please provide the relevant legal/regulatory provisions:	<p>Section 12.21 (c) of the Revised IRR: In the event that the project/contract is: (a) revoked, cancelled, or terminated by (i) the Agency/LGU in accordance with the contract through no fault of the Project Proponent or (ii) by mutual agreement, or (b) revoked or canceled by a court by final judgment through no fault of the Project Proponent, the Agency/LGU shall compensate the said Project Proponent for its actual expenses incurred in the project plus a Reasonable Rate of Return thereon not exceeding that stated in the contract, as of the date of contract termination, provided that the interest of the Government in these instances shall be duly insured with the GSIS or any other insurance entity duly accredited by the office of the Insurance Commissioner, provided further that the cost of the insurance coverage shall be included in the terms and conditions of the approved contract.</p> <p>Circular 06-2015 provides details of payment calculation for termination.</p>
Are you aware of any reforms (in practice or in laws, regulations, policies, etc.) related to PPPs that: Took place in 2015, are ongoing and/or are planned to be adopted BEFORE June 1, 2016?	Yes
Please describe:	PPP Act which will amend the BOT Law: On 16 December, President certified the PPP Bill as an urgent measure in both the Senate (Senate Bill No. 3035) and House of Representatives (House Bill No. 6331).
Are you aware of any reforms (in practice or in laws, regulations, policies, etc.) related to PPPs that: 50.2. Are ongoing and/or are planned to be adopted AFTER June 1, 2016?	No
Please describe:	n/a