

Public-Private Partnerships: “What It Is” and “What It Is Not”

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KEY MESSAGE

✓ PPP in the Philippines has a strong legal and regulatory framework:

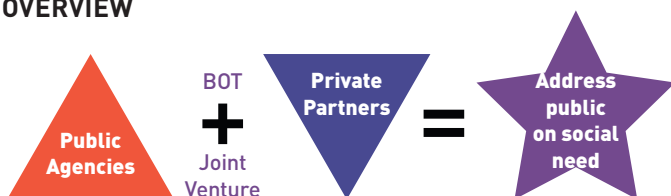


RA 7718
B-O-T

EO 423 s. 2005
Revised NEDA Joint Venture
Guidelines

It's not PPP if doesn't conform to
existing legal frameworks

OVERVIEW



- Public-Private Partnerships (PPPs) are cooperative ventures or contractual agreements between public agencies and private partners with clearly defined objectives to address a public or social need.
- PPP, as a mechanism, utilizes a more diversified approach and ensures social obligation through built-in expertise, experience, and human resource available in the private sector that fosters new solutions.
- PPP aids in efficiency and sustainability of public services such as water, sanitation, energy, transport, telecommunications, education and healthcare (World Bank Group 2018).
- Through long-term contracts, PPP expedites the delivery of an infrastructure project, facility or service, and shares the resources, risks, and benefits between the public and private sectors based on clearly defined terms of agreement (Schneider & Davis 2006; Asian Development Bank, 2008; World Bank Group, 2016).

Public-Private Partnership in the Philippines

Under the Philippine BOT Law, there are two (2) means to develop a PPP project.

A) Solicited track. Under this track, Implementing Agencies (IAs) identify projects from a priority list (e.g. PIP, CIIP, PDP, etc.). IAs then select private partner/s through competitive bidding in compliance to the provisions of RA 7718.

B) Unsolicited track. Projects under this track should involve a new concept or technology which are not part of the priority list of projects as provided for in the solicited track. The private sector then submits the proposal to the IAs without solicitation, which then the IA either accepts or rejects. If accepted, the IA then subjects the accepted project to a swiss challenge.

Joint Venture is a contractual arrangement whereby a private sector entity and a government entity contributes money/capital, services, or a combination of any or all of the foregoing to undertake an investment or project activities. Through JVs, each party shall have the right to direct and govern the policies with the intention to share both profits, risks, and losses subject to the agreement by the parties (NEDA JV Guidelines 2013).

There are a number of modalities/forms for BOT and JV projects as defined by law. These are the following:

A) Build-Transfer

A contractual arrangement whereby a private proponent is involved in the construction of any infrastructure or development projects and after its completion turns the completed project to the government;

B) Build-Lease-Transfer (BLT)

Private proponent is authorized to finance and construct an infrastructure project and turns it over to the government on a lease arrangement for a fixed period, ownership of the facility is automatically transferred to the government;

(C) Build-Operate-Transfer (BOT)

Private proponent undertakes the construction, financing, and operation and maintenance of a given project over a fixed term as defined by any government entity. After the concession period, the ownership of the project is transferred back to the government.

(D) Build-Transfer-Operate (BTO)

The government contracts out the construction of a project on a turnkey basis whereby the private entity assumes cost overrun, delay, and specified performance risk. The private entity, however, operates the facility on behalf of the government under an agreement.

(E) Corporate Joint Venture

Pertains to the formation of a JV company between a government entity and a private sector partner through the Corporation Code of the Philippines (Batas Pambansa Bilang 68) to perform the primary functions and obligations of the JV as stipulated under a JV agreement.

(F) Contractual Joint Venture

A government and a private sector partner shall perform the primary functions and obligations of a JV agreement without forming a JV Company to undertake a project or investment activity.

RECOMMENDATIONS

- Use legal frameworks to plan and execute PPP projects.
- Reassess current PPP projects for consistency with legal frameworks.



For the purpose of project regulation and qualification, only projects structured under the Amended BOT Law and the Revised JV Guidelines are legally considered PPPs.

- Agreements between a government entity and a private sector partner are typically referred to as PPPs.
- Using of the term “PPP” to denote any agreement by DOH entities, but did not follow the provisions of the PPP regulatory frameworks, is inaccurate.
- Projects executed and identified as PPP without having followed either the Amended BOT Law or the Revised JV Guidelines should be effected pursuant to the Government Procurement Reform Act.

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