

Streamlining Identification, Development, and Approval of PPP projects for the Department of Health

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This policy brief presents the process of project identification, structuring, development, and approval of Public-Private Partnership (PPP) projects in the National Government and the Department of Health. It also discusses the salient points of recognized legal frameworks for PPPs, namely, Republic Act (RA) 7718 (the “Amended Build-Operate-and-Transfer (BOT) Law”), and the Executive Order (EO) No. 426 Revised Guidelines for Entering into Joint Venture Agreements between Government and Private Entities (the “Revised JV Guidelines”) issued by the National Economic and Development Authority (NEDA). This will also propose how the Department of Health (DOH) facilities/entities should develop, structure, and facilitate approval of projects to ensure compliance to prevailing laws and frameworks and contribute to the attainment of the national health sector goals.

In order for the DOH and its hospitals and other entities to ensure compliance to existing PPP frameworks, this brief proposes a five-point intervention to ensure proper PPP project identification, development, and approval, and to address issues related to PPP project management in the DOH, which were identified during a forum and workshop on PPP for Universal Health Care. The participants were representatives from DOH hospitals and health facilities, DOH Centers for Health Development, legislative bodies of the Philippines, National Government Agencies (NEDA, PPPC, DILG), the academe, and civil society organizations.

BACKGROUND

PPP is widely adopted in the global health sector, particularly in the development and delivery of infrastructure and health services. The United Kingdom focused its health sector-based PPPs on the development, rehabilitation, and management of facilities, which were structured through its Private Financing Initiative. In Australia, this approach was followed in several states. Meanwhile in India, a PPP model was adopted to reflect a service delivery PPP scheme where projects were not only developed in terms of facilities but also in terms of services provided. This approach enabled private hospitals to build on public land with a defined condition to make a certain number of beds available to publicly-funded patients. In some cases, the concessionaire would provide payments to the government for the right to operate the concession (World Bank Group, 2018).

In the Philippines, PPP projects are developed based on project structuring as prescribed by the Public-Private Partnership Center of the Philippines, a National Government Agency charged with coordinating the overall project development process for PPPs. These include infrastructure projects within the scope of the amended BOT Law and joint ventures¹ (for which the Revised JV guidelines are applicable). All PPP projects are identified and governed through the Amended BOT Law and the Revised JV Guidelines.

PPP Project Identification, Structuring, and Development in the Philippines

a. Project Identification and Development

Project Identification involves the conduct of preparatory project development activities to determine the viability, bankability, feasibility, and alignment of projects to the overall national and health sector goals. This includes the use of tools and manuals developed for implementing agencies (IAs). In the DOH, projects are identified, prioritized, and developed using the DOH PPP Hospital Project Screening and PPP Scoping Guidebook and through the conduct of a pre-feasibility study (on a project to project basis). The PPP Center validates the projects identified by IAs by conducting a multi-criteria analysis for each project. From then, a full project feasibility study is usually commissioned to finalize the project development phase. Depending on the result of these exercises, the head of the IA (the Secretary, in the case of the DOH) will approve and endorse the project to the NEDA Investment Coordination Committee and/or NEDA Board for appropriate approval.

b. Project Structuring

Agreements between a government entity and a private sector partner are typically referred to as PPPs. However, 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. Hence,

¹ Contractual arrangements 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 activity. Through JVs, parties 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.

the use of the term “PPP” to denote any agreement by DOH entities that does not follow the provisions of the above regulatory frameworks is inaccurate, and such ‘agreements’ would therefore be subject to the Government Procurement Reform Act (which does not support long term agreements and has restrictions on realigning or revising approved budgets)

For PPPs within the Under the Amended BOT Law, there are two (2) means to identify and develop a PPP project. First is through the solicited track. Under this track, the IA identifies projects based on a priority list (e.g., Public Investment Program, Comprehensive and Integrated Infrastructure Program, Philippine Development Plan, Philippine Health Facility Development Plan, etc.). The IA, such as the DOH, then selects private partner/s through competitive bidding in compliance with the provisions of RA 7718.

Second is through the unsolicited track. Projects under this track should involve a new concept or technology and should not be a priority project listed under the solicited track. The private sector submits this new proposal to the IA without solicitation. The IA then evaluates the proposal, qualifies the proponent, and advises whether it accepts or rejects the proposal based on its detailed evaluation comprising of a review of the proposal’s technical, socio-economic, legal, and environmental feasibility. If accepted, the IA then subjects the accepted project to a Swiss challenge.

c. Project Approval

After the approval of the Secretary of Health and or the DOH Executive Committee, a PPP project will then be endorsed to the NEDA Investment Coordination Committee (ICC) and/or the NEDA Board for final project approval. The approving body for a project is based on its total cost. Projects costing Php 300 million or less require approval of the NEDA-ICC, while projects costing above Php 300 million shall require NEDA Board approval. Moreover, any negotiated projects, regardless of the amount, should be submitted to the NEDA Board for approval.

Meanwhile, the approving authority for JV projects depends on the nature of the JV. Projects that require a government contribution of more than Php 150 million, and all infrastructure, public utility, and negotiated JVs will be subjected to the approval of the NEDA-ICC. On the other hand, JV projects that are directly related to the primary corporate mandate of a government entity and JV projects not specified under the terms for approval of the NEDA-ICC should be approved by the head of the government entity (in the case of the DOH, the Secretary of Health). All JV projects to be implemented in the DOH require the concurrence of the Secretary of Health.

Policy Implications:

- The term “PPP” is being loosely used for various agreements entered into by different government entities in the health sector resulting in unclear project identification and regulation that may possibly result in legal challenges.
- Projects that are demonstrating characteristics of a BOT project or a JV project should comply with the legal and regulatory provisions of the Amended BOT Law or the Revised JV Guidelines, respectively.
- DOH entities should utilize existing tools and guidelines in PPP project identification, such as the DOH PPP Hospital Project Screening and PPP Scoping Guidebook and the NEDA-PPPC Multi Criteria Analysis (MCA) tool in planning and developing their PPP project proposals.
- PPP projects that are identified and entered into by DOH entities should seek concurrence of the DOH regional and central office pursuant to DO 2017-0117.
- DOH entities entering into PPPs should be able to properly categorize their agreements based on existing legal and policy frameworks for PPPs (i.e., Amended BOT Law or the Revised JV Guidelines). Any projects structured outside of this framework should not be labelled as PPP (for the purpose of project regulation).

A Call to Action:

Existing issues at various stages of PPP project management are common. Policies and guidelines pertaining to PPP project identification and development do not translate well in the health sector, especially at the hospital level, despite the presence of a solid legal and regulatory framework for PPPs in the Philippines. In addition, the awareness and capacity of many DOH hospitals to identify and develop PPP projects based on prevailing guidelines are also limited. This resulted in the mushrooming of PPP concepts and projects among DOH hospitals and facilities that are not structured under the prescribe PPP frameworks of the Philippine Government. Hence, many of these projects were implemented and inaccurately labeled as PPP.

The lack of a coordinated process to implement PPP policies must be addressed through the establishment of governing structures for PPPs at the different levels of the bureaucracy. DOH hospitals should create and operationalize a PPP project steering committee to facilitate and coordinate all PPP project identification and development activities and initiatives in their respective facilities. Meanwhile, DOH Centers for Health Development should establish a PPP committee to coordinate and oversee the overall efforts to identify, develop, and approve PPP projects in their respective regions. And the DOH central office through the DOH

PPP Committee should serve as the overall clearing authority for all PPP projects to be implemented under the Department of Health.

Through these mechanisms the DOH can ensure compliance of project implementers to prevailing laws, guidelines, and frameworks for PPPs and harmonize the planning and identification of PPP projects for the health sector. Therefore, DOH calls on the DOH hospital management and heads of Centers for Health Development are called to:

1. Perform an inventory of private sector engagements and categorize agreements based on existing legal and policy frameworks for PPPs (i.e., Amended BOT Law or the Revised JV Guidelines).
2. Develop PPP project steering committees at the hospital/facility level to coordinate project development initiatives and activities.
3. Utilize existing tools and guidelines in PPP project identification, such as the DOH PPP Hospital Project Screening and PPP Scoping Guidebook and the NEDA-PPPC MCA tool.
4. Institutionalize a PPP committee at the regional level to streamline project identification including the conduct of project feasibility studies.
5. Coordinate all PPP projects identified with the Central Office for approval and inclusion in the national pipeline of PPP projects, and ensure compliance with existing legal and regulatory frameworks.

Support for these efforts will significantly improve compliance with the DOH to prescribed PPP frameworks and improve the process of PPP project identification, development, and approval to implement projects that could potentially contribute in the overall objective of operationalizing a service delivery network that guarantees availability of services for the sick and well Filipinos.

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