



Republic of the Philippines  
BATANGAS CITY

Office of the Sangguniang Panlungsod

Tel. No. 723-2175

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Continuation of Ordinance No. 3 S. 2013

AN ORDINANCE ADOPTING AND PURSUING A PUBLIC-PRIVATE PARTNERSHIP (PPP) APPROACH TOWARDS DEVELOPMENT, CREATING A PPP REGULATORY AUTHORITY, AND PROVIDING APPROPRIATIONS AND INCENTIVES THEREFOR AND FOR OTHER PURPOSES

fixed fee and/or performance-based management or service fee during the contract term.

- (q) **Negotiated Projects** - Refer to instances where the desired project is the result of an unsolicited proposal from a PSP or, where the CITY has failed to identify an eligible private sector partner for a desired activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding.
- (r) **New Technology** - Refers to having at least one of the following attributes:
- a. A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/economic disturbances or disruptions during either the project implementation/construction phase or the operation phase; or
  - b. A process for which the project proponent or any member of the proponent joint venture/consortium possesses exclusive rights, either world-wide or regionally; or
  - c. A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights.
- (s) **Private Sector Proponent (PSP)**- Refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate track record in the concerned industry, as well as technical capability and financial base consisting of equity and firm commitments from reputable financial institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost of the project to implement the said project.
- (t) **Public-Private Partnerships (PPP)** - PPP is a form of legally enforceable contract between the CITY and PSP, which requires new investments from the PSP and which transfers key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service traditionally provided by the public



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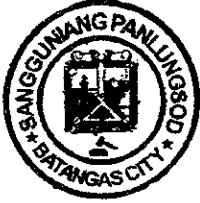
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sector. PPP shall also include disposition of an asset, facility, project owned or entity created by the CITY to a PSP; assumption by a PSP of a proprietary function of the CITY; grant of a concession or franchise to a PSP by the CITY; or usage by the PSP of public property owned or possessed by the CITY.

- (u) **Reasonable Rate of Return (RROR)** - Refers to the rate of return that a PSP shall be entitled to, as determined by the PPP Regulatory Authority taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the PSP and the level of CITY undertakings extended for the project.
- (v) **Service Contract** - A contractual arrangement whereby the PSP shall provide a particular service to the CITY involving the CITY's proprietary authority or to entities or corporation created by the CITY. The PSP shall be entitled to paid a fee per unit of work done during the term of the contract.
- (w) **Unsolicited Proposal** - Refers to project proposals submitted by a PSP to the CITY to undertake a Development Projects without a formal solicitation issued by the CITY.
- (x) **Value for Money (VFM)** - Refers to the concept that over the whole-life of a project finance- PPP project, government's total expenditures (i.e., its payments to the private sector), adjusted for the risks that have been transferred to the private sector, will be less, on a Net Present Value (NPV) basis, than if the government will perform the services itself. VFM considers monetary and non-monetary factors such as: (i) risk transfer; (ii) reduced whole life costs; (iii) speed of implementation; and (iv) quality and reliability of service.
- (y) **Viability Gap Funding (VGF)** - Refers to an explicit subsidy that is performance-driven (i.e., based on private party achieving measurable outputs) and targeted to socio-economically disadvantaged users or groups of users.

**SECTION 6. RULES OF INTERPRETATION.** - This Code and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives set forth in Sections 2, 3 and 4 hereof.



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**SECTION 7. AUTHORITIES.** - (a) This Code is being adopted pursuant to the CITY's constitutional and statutory authorities enumerated under Section 3 hereof.

(b) In pursuing BOT Variants, the CITY shall comply with Republic Act No. 6957 as amended by RA No. 7718 and its implementing Rules and Regulations.

(c) In entering into Management and Service Contracts, the CITY shall comply with Republic Act 9184 and its implementing Rules and Regulations.

(d) For Dispositions, Commission on Audit Circular No. 89-296 (January 27, 1989) shall govern.

(e) This Code shall govern the adoption and implementation of the other PPP Modalities.

(f) The authority to accept and process unsolicited proposals for joint venture projects between local governments and the private sector has been affirmed by the Office of the Executive Secretary in a letter to the City of Camarines Sur dated October 25, 2011.

**CHAPTER 2. PPP PROJECTS AND PPP MODES**

**SECTION 8. PPP PROJECTS.** - The CITY, through the appropriate and viable PPP mode, may undertake Development Projects including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, sewerage, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, prisons, and hospitals.

**SECTION 9. LIST OF PRIORITY PROJECTS.** - The CITY shall identify specific priority projects that may be undertaken under any of the PPP Modalities defined under Sec. 10 hereof.

**SECTION 10. PPP MODALITIES.** - In undertaking specific PPP Projects, the CITY may adopt and pursue the following 16 PPP Modalities:

- (a) Build-and-Transfer (BT);
- (b) Build-Lease-and-Transfer (BLT);
- (c) Build-Operate-and-Transfer (BOT);
- (d) Build-Own-and-Operate (BOO);



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- (e) Build-Transfer-and-Operate (BTO);
- (f) Contract-Add-and-Operate (CAO);
- (g) Develop-Operate-and-Transfer (DOT);
- (h) Rehabilitate-Operate-and-Transfer (ROT);
- (i) Rehabilitate-Own-and-Operate (ROO);
- (j) Concession Arrangement;
- (k) Joint Venture (JV);
- (l) Lease or Affermage;
- (m) Management Contract;
- (n) Service Contract;
- (o) Divestment or Disposition; and
- (p) Corporatization.

**SECTION 11. GENERAL REQUIREMENTS.** - (a) Undertaking a PPP for a Development Project must be premised on any or all of the reasons and drivers mentioned in Section 4 hereof.

(b) The list of projects to be implemented by the CITY under any of the BOT variants shall be submitted for confirmation to the City Development Council for projects costing up to Fifty Million pesos; above Fifty Million up to Two Hundred Million Pesos to the regional development councils; and those above Two Hundred Million Pesos to the Investment Coordination Committee of the National Economic Development Authority.

(c) Projects included in the List of Priority Projects shall not be eligible for unsolicited proposals under any of the BOT variants, unless involving a new concept or technology; provided, that for any of the other PPP Modalities, unsolicited proposals may be accepted even if the project is included in the List of Priority Projects or whether the same features a new concept or technology or not.

(d) The prohibition for unsolicited proposals under Republic Act No. 6957 as amended by RA No. 7718 on providing Direct City Government Guarantee, Direct City Government Subsidy and Direct City Government Equity only applies to BOT variants.

(e) For Concession Arrangements, Lessees or Affermage, Management and Service Contracts, and Joint Ventures, the CITY may provide Direct City Government Guarantee, Direct City Government Subsidy, Direct City Government Equity, or Viability Gap Funding; provided, that the CITY may use a portion of its general fund, its development fund comprising 20% of its annual share in the Internal Revenue Allotment, or its equitable share in the proceeds of the utilization and development of the national wealth found within its territory for this purpose; provided further, that any amount used for subsidy or equity for a PPP project shall be deemed for development purposes and for the



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direct benefits of the inhabitants pursuant to Sections 287 and 289 of the 1991 LGC respectively.

(f) For all PPP Modalities, the CITY may provide Credit Enhancements.

(g) Official Development Assistance (ODA) as defined in R.A. 8182, otherwise known as the ODA Act of 1996, as amended by R.A. 8555 may be availed of for PPP projects where there is difficulty in sourcing funds; provided, that ODA financing shall not exceed 50% of the project cost, the balance to be provided by the PSP.

(h) Any subsidy that will be extended by the CITY must be targeted, transparent and efficiently administered.

(i) Each PPP Modality adopted for a specific PPP project must specifically provide and adopt a tariff-mechanism such as but not limited to cash-needs, price cap, revenue cap, rate of return, hybrid of the foregoing, or any other appropriate scheme.

(j) The CITY shall have the option to form or allow the formation of a special purpose vehicle or single-purpose project company to implement the PPP project as may be appropriate under the chosen PPP Modality.

(k) In participating in PPPs' the CITY may, subject to Sections 16, 17, 18, 19 and 20 of the 1991 LGC, exercise police power, perform devolved powers, apply and generate resources, expropriate and reclassify and provide zoning regulations.

**SECTION 12. GOVERNMENT-TO-GOVERNMENT JOINT PPP UNDERTAKINGS.**

- The CITY by mutual agreement in a Government-to-Government arrangement with other local governments, national government agencies, government-owned-and-controlled corporations, government instrumentalities and government corporate entities, may implement PPP Projects for projects located within the CITY's territory or those projects that will benefit the CITY and its community even if the project site is outside the CITY's territory; provided, that the collaborating or partner government entity jointly undertakes with the CITY the selection of the PSP using the appropriate PPP Modality.

**CHAPTER 3. PPP PROCEDURES**

**SECTION 13. PPP PROCEDURES.** - (a) For BOT variants, the CITY

must comply with the procedure set forth in Republic Act No. 6957 as amended by RA No. 7718 and its implementing Rules and Regulations.



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(b) For Management and Service Contracts, the CITY shall comply with Republic Act 9184 and its implementing Rules and Regulations.

(c) For concessions, Joint Ventures and Leases or Affermage, the procedures specified herein shall govern.

(d) For Divestment or Disposition of a property, Commission on Audit Circular No. 89-296 (January 27, 1989) shall be applicable.

(e) For the Divestiture of a subsidiary or corporation incorporated by the CITY under Corporatization, the sale may be pursued via a public offering or through a public auction or other relevant schemes under Commission on Audit Circular No. 89-296 (January 27, 1989).

(f) If the CITY opts to select a PSP using the Competitive Selection or Competitive Challenge approach, the CITY in the first approach and the PSP in the second approach must prepare and submit a Feasibility Study.

(g) All recommendations of the PPP Selection Committee shall be submitted to the Mayor for consideration and approval.

(h) All PPP contracts must be signed by the Mayor with prior authorization by the Sanggunian.

(i) After the signing of the PPP Contract by the Mayor, the PPP-SC shall issue the Notice of Award to the PSP

**SECTION 14. PPP SELECTION COMMITTEE.** - (a) There is hereby created a PPP Selection Committee or PPP-SC for purposes of selecting a PSP for a specific PPP Project. The PPP-SC shall be composed of the following:

- (i) Chairperson - At least a third ranking officer of the City;
- (ii) Secretary-City Legal Officer;
- (iii) The City Treasurer;
- (iv) The City Planning and Development Officer; and
- (v) One representative from the Sangguniang Panlungsod who must be a member of either the Committee on Laws Rules and Regulations or the Committee on Ways and Means

A quorum of the PPP-SC shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie. The PPP-SC with the approval of the Mayor may invite provisional non-voting members from the national government



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agencies, regulatory agencies, National Economic Development Authority, Department of Interior and Local Governments, private sector, non-governmental and people's organization to observe in the proceedings of the PPP-SC; and form a support staff composed of employees and staff of the CITY.

(b) The PPP-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the Feasibility Study, selection/tender documents; determine the minimum designs, performance standards/specifications, economic parameters and reasonable rate of return or tariff-setting mechanism appropriate to the PPP Modality; drafting or evaluation of the PPP contract, publication of the invitation to apply for eligibility and submit proposals or comparative proposals; define the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes; pre-qualification of prospective PSPs' bidders or challengers; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; the conduct of the selection or challenge process; evaluation of the legal, financial and technical aspects of the proposals; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/or for the award of the contract.

**SECTION 15. COMPETITIVE SELECTION.** - (a) The Competitive Selection procedure shall consists of the following steps: advertisement, issuance of instructions and tender documents, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, posting of proposal securities, evaluation of bids, post-qualification, and award of contract.

(b) The Mayor shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/bidders.

**SECTION 16. LIMITED NEGOTIATIONS.** - Where the CITY has failed to identify an eligible PSP for a desired PPP activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding or where the desired PPP project is the subject of an unsolicited proposal from a PSP, Limited Negotiations may take place. The negotiations will cover all the technical and financial aspects of the PPP Project or activity; provided, that the minimum designs, performance standards/specifications and economic parameters stated in the Feasibility Study and Terms of Reference for the Competitive Selection are complied with. The Mayor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP.



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**SECTION 17. COMPETITIVE CHALLENGE.** - The Competitive Challenge process shall be divided into three (3) Stages, described as:

**Stage One - The steps are:**

- (i) A PSP submits an unsolicited proposal accompanied by a Feasibility Study to the CITY for a projected PPP Project.
- (ii) The PPP-SC shall make an initial evaluation of the proposal and determination of the eligibility of the PSP.
- (iii) Upon completion of the initial evaluation, the Mayor, upon recommendation of the PPP-SC, shall either issue an acceptance or non-acceptance of the proposal for purposes of detailed negotiations.
- (iv) If there are more than one unsolicited proposal submitted for the same PPP Project, the Mayor, upon recommendation of the PPP-SC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the greater advantage and benefits to the community and revenues to the CITY.

**Stage Two-The steps are:**

- (i) The parties shall negotiate and agree on the terms and conditions of the PPP Project concerning its technical and financial aspects.
- (ii) Once negotiations are successful, the Parties shall issue a joint certification stating that an agreement has been reached and specifying the eligibility of the PSP and the technical and financial aspects of the PPP Project as agreed upon.
- (iii) The issuance of the certification commences the activities for the solicitation for comparative proposals.
- (iv) However, should negotiations not result to an agreement acceptable to both parties, the CITY shall have the option to reject the proposal by informing the PSP in writing stating the grounds for rejection and thereafter may accept a new proposal from other PSPs, decide to pursue the proposed activity through other PPP Modalities or subject the PPP Project to a Competitive Selection.





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Stage Three - The steps are:

- (i) The PPP-SC shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the private sector entity shall be the same as those stated in the tender documents. Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.
- (ii) The Mayor shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
- (iii) The PPP-SC shall publish the invitation for comparative proposals.
- (iv) The PSP or Original Proponent shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.
- (v) In the evaluation of proposals, the best offer shall be determined to include the original proposal of the PSP. If the CITY determines that an offer made by a comparative PSP or challenger other than the negotiated terms with original proponent is superior or more advantageous to the CITY than the original proposal, the PSP who submitted the original proposal shall be given the right to match such superior or more advantageous offer. Should no matching offer be received within the stated period, the PPP Project shall be awarded to the comparative PSP submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the PPP Project shall be awarded to the original proponent. If no comparative proposal is received by the CITY, the PPP Project shall be immediately awarded to the original proponent.

**SECTION 18. SCHEDULES AND TIMELINES.** - The CITY shall have the authority to adopt and prescribe the appropriate schedules and timelines for each PSP selection process: provided, that the periods are reasonable and will not undermine free competition, transparency and accountability.

**CHAPTER 4. REGULATION**

**SECTION 19. PPP REGULATORY AUTHORITY.** - (a) There shall be created a PPP Regulatory Authority (PPP-RA) composed of the following:



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- (i) Chairperson - The Mayor or the City Administrator if so designated by the Mayor;
- (ii) Vice-Chairperson - A member of the Sangguniang Panlungsod to be chosen by said Sanggunian;
- (iii) City Legal Officer;
- (iv) The City Treasurer; and
- (v) The City Planning and Development Officer.

**SECTION 20. MANDATE.** - The PPP-RA shall perform contract management functions such as partnership management, performance management, risk management, and contract administration for all the PPPs arrangements entered into by the CITY.

**SECTION 21. TARIFF-SETTING AND SUBSIDY ADMINISTRATION.** The PPP-RA shall be responsible for setting and monitoring the tariff and administering the subsidy pursuant to the PPP contract.

**CHAPTER 5. FINAL PROVISIONS**

**SECTION 22. APPROPRIATION.** - The Batangas City Government shall annually appropriate funds for carrying out the directives of this Ordinance.

**SECTION 23. IMPLEMENTING RULES.** - While this Code and the provisions hereof are already operative upon the Code's effectivity, the Mayor may issue the appropriate and relevant rules and regulation for the proper implementation of the Code or its provisions.

**SECTION 24. APPLICATION OF OTHER PPP LAWS AND REGULATIONS.** - Whenever relevant and appropriate as determined by the Mayor, upon recommendation of the PPP-SC, the provisions of Republic Act No. 6957 as amended by R.A. No. 7718 or the BOT Law, R.A. 9184 or the Government Procurement Reform Act, Executive Order No. 301 (26 July 1987), Commission on Audit Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the Joint Venture Guidelines adopted by the National Economic Development Authority shall apply in a supplementary manner.

**SECTION 25. SEPARABILITY CLAUSE.** - If, for any reason, any section or provision of this Code or any part thereof, or the application of such section, provision or portion is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

**SECTION 26. REPEALING CLAUSE.** - All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.



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SECTION 27. EFFECTIVITY. - This Code shall take effect fifteen (15) days after its posting in two conspicuous places within the CITY.

ENACTED by the Sangguniang Panlungsod this 22nd day of April, 2013.

ATTY. OLIVA D. TELEGATOS  
Secretary  
Sangguniang Panlungsod

ATTESTED:

JOSE Y. TOLENTINO  
Presiding Officer

APPROVED:

VILMA A. DIMACUHA  
City Mayor

Date Approved: May 10, 2013