



## OFFICE OF THE MUNICIPAL MAYOR

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### EXECUTIVE ORDER NO. 026-2018

**AN ORDER PROVIDING THE RULES AND REGULATIONS IMPLEMENTING ORDINANCE NO. 02-2018 ENTITLED "MUNICIPAL CODE PURSUING A PUBLIC-PRIVATE PARTNERSHIP FOR THE PEOPLE (PPPP) APPROACH TOWARDS DEVELOPMENT, PROVIDING FOR THE PROCEDURES FOR SELECTING THE PRIVATE SECTOR PROPONENT, ADOPTING A CONTRACT MANAGEMENT FRAMEWORK, AND PROVIDING APPROPRIATIONS AND FOR OTHER PURPOSES".**

WHEREAS, on September 25, 2017, the Sangguniang Bayan of Pinamalayan through Resolution No. 178-2017 adopted Provincial Ordinance No. 72-2017 otherwise known as "Provincial Code Pursuing a Public-Private Partnership for the People (PPPP) Approach Towards Development;

WHEREAS, on March 19, 2018, the Sangguniang Bayan of Pinamalayan enacted Ordinance No. 02-2018, entitled "A Municipal Code pursuing a Public-Private Partnership for the People (PPPP) approach towards development, providing for the procedures for selecting the private sector proponent, adopting a contract management framework, and providing appropriations and for other purposes";

WHEREAS, this Executive Order is being issued in order to implement the provisions of the PPPP Code in line with all applicable laws;

WHEREAS, in the implementation of the PPPP Code, the following PPPP Code implementing Rules and Regulations shall apply:

#### IMPLEMENTING RULES AND REGULATIONS (IRR) OF THE PPPP CODE OF PINAMALAYAN

##### I. PPPP PROCEDURES

In the implementation of PPP Projects by the Municipality, the following procedures shall apply:

1. For BOT variants, the Municipality must comply with the procedures set forth in Republic Act No. 6957, as amended by Republic Act No. 7718, and its Implementing Rules and Regulations.
2. For Management and Service Contracts funded by local government financing, the Municipality shall comply with Republic Act No. 9184 or the Government Procurement Reform Act and its Implementing Rules and Regulations.
3. For Concessions, Joint Ventures, and Leases or Affermage, the procedures specified in this Executive Order shall govern.
4. For Divestment or Disposition of local government property, Commission on Audit (COA) Circular No. 89-296 (January 27, 1989) shall be applicable.
5. For the Divestiture of a subsidiary or corporation incorporated by the Municipality 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).
6. If the Municipality opts to select a Private Sector Proponent (PSP) using either Competitive Selection or Competitive Challenge, the Municipality in the Competitive Selection and the PSP in the Competitive Challenge approach must prepare and submit a Feasibility or Project Study. The costs of preparing the Feasibility or Project Study may be reimbursed by the winning PSP to the Municipality under the Competitive Selection mode.



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7. All recommendations of the PPP Selection Committee (PPP-SC) shall be submitted to the Mayor for consideration and approval.
8. All PPP contracts must be signed by the Mayor with prior authorization from the Sangguniang Bayan.
9. During the review and consideration of the PPP Contract by the Sangguniang Bayan, a public consultation shall be conducted explaining the PPP Project, PPP Contract, accountability mechanisms built into the PPP arrangement, the benefits and costs of the PPP Project, among other relevant matters.
10. After recommendation of award is approved by the Mayor, the Mayor or the PPP-SC shall issue the Notice of Award to the PSP. Once Sangguniang Bayan authorization is obtained, the PPP Contract shall be signed by the Mayor and the winning PSP.
11. Jointly or at the instance of the Municipality or the PSP, the PPP Contract may be submitted for judicial, executive or administrative confirmation from the appropriate government authority.

### II. PPP SELECTION COMMITTEE

1. There is hereby created a PPP Selection Committee for the purpose of reviewing and selecting a PSP for a specific PPP Project. The PPP-SC shall be composed of the following:
  - a) Chairperson – at least a third ranking officer of the Municipal Government of Pinamalayan selected by the Municipal Mayor from among the members of the PPP-SC except for the Legal Officer;
  - b) Secretary - Legal Officer;Members:
  - c) Municipal Treasurer;
  - d) Municipal Planning and Development Coordinator;
  - e) Municipal Budget Officer;
  - f) One representative from and selected by the Sangguniang Bayan designated in an appropriate resolution;
  - g) Two representatives from and chosen by the accredited CSOs, POs, and NGOs who are members of the Municipal Development Council;
  - h) One third ranking officer designated by the Municipal Mayor;

In the absence of the Municipal Legal Officer, the Local Chief Executive can designate a third ranking Officer to act as Secretary of the Committee who shall be considered as a non-voting member.

2. The PPP-SC with the approval of the Mayor, may invite provisional non-voting members from other national government agencies, regulatory agencies, National Economic and Development Authority, Department of the Interior and Local Government, and the private sector to observe the proceedings of the PPP-SC.
3. The PPP-SC shall form a secretariat or technical support staff composed of employees or staff of the Municipality.
4. Committee Meetings and Quorum. The PPP-SC shall meet at least once every quarter or as often as necessary. A simple majority shall constitute a quorum. Decisions by the PPP-SC shall be by consensus whenever possible; otherwise, the vote of a simple majority will suffice. The Chairperson shall be allowed to vote only for the purpose of breaking a tie.





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5. All decisions of the PPP-SC shall be in the form of a signed resolution or memorandum. The PPP-SC shall be responsible for the framing of the resolutions or memoranda, which shall be numbered consecutively every fiscal year indicating the number of the resolution/memorandum and the year the resolution or memorandum was passed or approved.
6. In the absence of the Chairperson, the members shall elect among themselves a temporary Chairperson to act in the position.
7. The PPP-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the Feasibility or Project Study and selection/tender documents; determination of the minimum design, performance standards and specifications, economic parameters and reasonable rate of return or tariff-setting mechanism appropriate to the PPP modality; drafting or review of the PPP Contract; publication of the invitation to apply for eligibility and submission of proposals or comparative proposals; defining the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the competitive selection and challenge processes; prequalification of prospective PSPs, bidders or challengers; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; 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 appeal mechanisms; and recommendation for the acceptance of the proposal and/or for the award of the contract.
8. PPP Selection Committee Secretariat. The PPP Selection Committee shall designate a PPP-SC Secretariat as their support staff which shall have the following functions and responsibilities:
  - a) Provide administrative and technical support to the PPP Selection Committee;
  - b) Organize and make the necessary arrangements for the PPP Selection Committee meetings;
  - c) Attend all PPP Selection Committee meetings and prepare the minutes thereof;
  - d) Keep all records of meetings and decisions made by the PPP Selection Committee; and
  - e) Perform such other functions as may be provided by the PPP Selection Committee.
9. Creation of Technical Working Group (TWG). The PPP-SC may recommend to the Municipal Mayor for the creation of TWG to assist them in their functions.

### III. COMPETITIVE SELECTION

- (a) The Local Chief Executive shall create Bids and Awards Committee through an Executive Order defining its compositions and functions.
- (b) The Competitive Selection procedure shall consist of the following steps:
  1. Advertisement – In line with principles of transparency and competition, all invitations to bid for contracts under competitive bidding or selection shall be advertised by the PPP-SC in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof, such as, but not limited to posting in the procuring entity's premises, in newspaper of general circulation and in the Municipality website.

The invitation to bid shall contain, among others:

- a) A brief description of the subject matter of the proposal;



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- b) A general statement on the criteria to be used by the PPP-SC for the eligibility check, the short listing of PSPs, the examination and evaluation of bids, and post-qualification.
- c) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipts of bids, and the opening of bids;
- d) The Approved Budget for the Contract to be bid (if applicable);
- e) The source of funds (if applicable);
- f) The period of availability of the Bidding Documents, and the place where these may be secured;
- g) The contract duration; and,
- h) Such other necessary information deemed relevant by the PPP-SC.

### 2. Issuance of Instructions and Tender Documents

#### a) Instruction to Bidders

The instructions to bidders, which establish the rules of the bidding, shall be clear, comprehensive and fair to all bidders and shall, as far as necessary and practicable, include the following information:

- a.1. General description and objectives of the project, including a statement that the project shall be procured following the procedures of the PPP Code and this Executive Order;
- a.2. Contractual arrangement under which the project shall be undertaken;
- a.3. Bid submission procedures and requirements, which shall include information on the manner of bid submission, the number of copies of bid proposal to be submitted, where the bids are to be submitted, the deadline for the submission of bids, permissible mode of transmission of bid proposals, etc.;
- a.4. Bid security and bid security validity period;
- a.5. Method and criteria for the evaluation of the technical component of the bids;
- a.6. Parameters and criteria for evaluation of financial component of the bids;  
Any one or more of the following criteria may be used in the evaluation of the financial component of the bid for determining the most advantageous bid for the Municipality:
  - i. Lowest proposed toll, fee, rental or charge at the start of project operation, if a pre-agreed parametric tariff adjustment formula is prescribed in the bid document;
  - ii. Lowest present value of Municipal subsidy to be provided for the period covered by the contract;
  - iii. Highest present value of proposed payments/ revenues to the Municipality, such as: concession fees, lease/rental payments, fixed/guaranteed payments, and/or variable payments/percentage shares of revenue for the period covered by the contract; or
  - iv. Any other appropriate financial bid parameter as may be approved by the Approving Body.
- a.7. Minimum amount of equity as prescribed by the Approving Body;
- a.8. Formula and appropriate indices to be used in the adjustments of tolls/fees/rentals/charges, when applicable. Said formula shall take into account the reasonableness of the same to users of the project/facility under bidding;
- a.9. Requirements of concerned regulatory bodies, such as, but not limited to: the Department of Environment and Natural Resources (DENR), for the issuance of an Environmental Compliance Certificate (ECC); National Water Resources Board





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(NWRB), for the issuance of the Water Permit; the PCAB, for the registration requirements of Contractors; and, the toll Regulatory Board (TRB), for the review of toll rates and adjustment formula;

- a.10. Requirements and timelines/milestones of the Municipality in granting of franchise, if applicable;
- a.11. Current rules and regulations of the BSP;
- a.12. Revenue sharing arrangements, if any;
- a.13. Expected commissioning date; and
- a.14. Nationality and ownership requirements as, required by law.

### b) Tender Documents

The PPP-SC shall prepare the tender documents, which shall include the following:

- b.1. Instructions to PSPs;
- b.2. Minimum Design, Performance Standards/Specifications, and Economic Parameters such as discount rate, inflation factor and foreign exchange rate, where applicable, among others;
- b.3. Draft PPP Contract (as approved in accordance with Section 19) reflecting the contractual arrangement under which the project shall be undertaken, and the respective undertakings of the contracting parties, among others, and using the model contracts provided by PPP Center as reference;
- b.4. Bid Forms reflecting the required information to properly evaluate the proposal;
- b.5. Forms of bid and performance securities;
- b.6. Requirements and timelines/milestones of concerned Agencies in granting of franchise, if applicable; and
- b.7. Other documents as may be deemed necessary by the Municipality.

The PPP-SC shall make available the related bid documents to all pre-qualified bidders upon completion of pre-qualification evaluation and issuance of notice of pre-qualification/disqualification to provide respective bidders ample time to examine the same and to prepare their respective bids prior to the date of opening of bids.

The Mayor, upon recommendation of PPP-SC, shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/ bidders.

3. Pre-Bid Conference – At least one pre-bid conference shall be conducted for each project. Subject to the approval of the PPP-SC, a pre-bid conference may also be conducted upon written request of any prospective PSPs.

For projects costing less than Php 300 million, a pre-bid conference shall also be conducted by the Municipality at least thirty (30) calendar 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 PSPs may raise. For projects costing Php 300 million and above, the pre-bid conference shall be conducted no later than sixty (60) calendar days before the submission of bids. 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 Municipality. Any amendments shall be issued by the Municipality 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 PSPs by the Municipality. Attendance to the pre-bid conference by prospective PSPs shall not be mandatory.



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4. Eligibility screening of prospective PSPs – The eligibility requirements for PSPs shall provide for fair and equal access to all prospective PSPs. The prospective PSP shall certify under oath as to the correctness of the statements made, and the completeness and authenticity of the documents submitted.

A prospective PSP may be allowed to submit his eligibility requirements electronically if specifically permitted. However, said bidder must certify under oath as to the correctness of the statements made and the completeness and authenticity of the electronic documents submitted.

The eligibility of prospective PSPs shall be evaluated using the criteria for short listing, pre-qualification or eligibility for the Competitive Bidding concerned, within the period stated in the invitation to Bid to determine the short list of PSPs who shall be allowed to submit their respective proposals.

5. Receipt and Opening of Bids - The bids or proposals shall be received by the PPP-SC on such date, time and place specified in the invitation to bid. The deadlines for the receipt of the bids or proposals shall be fixed by the PPP-SC, giving sufficient time for the PPP-SC to complete the bidding process and for the eligible PSPs to study and prepare their bids or proposals. The deadline shall also consider the urgency of the project involved. Bids submitted after the deadline shall not be accepted.

The PPP-SC shall publicly open all proposals at the time, date, and place specified in the bidding documents. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee.

6. Posting of Proposal Securities – All proposals shall be accompanied by a bid or proposal security which shall serve as the guarantee that, after receipt of the notice of award, the winning bidder shall enter into the PPP contract with the Municipality within the stipulated time and shall furnish the required performance security, if any.

The PPP-SC shall determine which form of bid or proposal security it will require which may be in cash, certified check, manager's check, letter of credit, or bank draft/ guarantee issued by a reputable local/foreign bank, or a surety bond callable on demand issued by the Government Service Insurance System (GSIS) or an entity duly registered and recognized by the office of the Insurance Commissioner and acceptable to the Province, or any combination thereof payable to the Municipality based on the total Project Cost in accordance with the following schedules:

PROJECT COST <i>(as estimated by the LGU or proposed by the PSP)</i>		REQUIRED BID SECURITY
Less than PhP 100 million		3% of the Project Cost
PhP 100 million to less than 500 million	PhP	2.5 % of the Project Cost or PhP 3,000,000.00, whichever is higher
PhP 500 million to less than 1 billion	PhP	2% of the Project Cost or PhP12,500,000.00, whichever is higher
PhP 1 billion to less than 5 billion	PhP	1.5% of the Project Cost or PhP20,000,000.00, whichever is higher
PhP 5 billion or higher		1% of the Project Cost or PhP75,000,000.00, whichever is higher





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In case the bid security is issued by a bank, said bank must be duly licensed and authorized to conduct business by the Bangko Sentral ng Pilipinas.

7. Evaluation of Bids - The evaluation of bids shall be undertaken in two (2) stages, in accordance with the procedures described below.

The first stage evaluation shall involve the assessment of the legal, technical, operational, environmental and financial feasibility of the proposal as contained in the PSP's first envelope which shall be determined by applying the prescribed requirements and criteria/minimum standards and basic parameters provided for in the bidding documents. Only those PSPs who have passed the first stage evaluation shall be qualified and considered for the second stage evaluation.

The Municipality shall evaluate the technical proposals of the PSPs in accordance with the following criteria:

- a) Technical soundness - The basic design of the project should conform to the minimum design and performance standards and specifications set by the Municipality as prescribed in the bidding documents. Any engineering surveys, plans and estimates should be undertaken within +/- 20% of the final quantities. The Construction methods and schedules should also be presented and shown to be feasible or "doable."
- b) Operational feasibility - The proposed organization, methods, and procedures for operating and maintaining the completed facility must be well defined, should conform to the prescribed performance standards, and should be shown to be workable. Where feasible, it should provide for the transfer of technology used in every phase of the project.
- c) Environmental Standards - The proposed design and the technology of the project to be used must be in accordance with the environmental standards set forth by the Department of Environment and Natural Resources (DENR), as indicated in the bid documents. Any adverse effects on the environment as a consequence of the project as proposed by the prospective PSP must be properly identified, including the corresponding corrective/mitigating measures to be adopted.
- d) Project Financing - The proposed financing plan should positively show that the same could adequately meet the Construction cost as well as the operating and maintenance costs requirements of the project. The Municipality shall assess the financing proposals of the PSPs if the same matches and adequately meets the cost requirements of the project.

The PPP-SC shall complete the evaluation of the technical proposals within twenty (20) calendar days from the date the bids are opened.

The rules on preferences in respect of contract awards in favor of Filipino PSPs under relevant Philippine laws may apply.

8. Post-Qualification - Prior to award, the most responsive bid or proposal may undergo post-qualification in order to determine whether the PSP concerned complies with and is responsive to all the requirements and conditions as specified in the bidding documents.
9. Award of Contract - Within three (3) calendar days from the date of completion of the evaluation of financial bids or proposals, the PPP-SC will submit to the Mayor the recommendation of award. The PPP-SC will prepare and submit a detailed



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evaluation/assessment report on its decision regarding the evaluation of the financial bids and explain in clear terms the basis of its recommendations.

Within ten (10) calendar days from the submission by PPP-SC of the recommendation to award, the Mayor shall decide on the award. The approval shall be manifested by signing and issuing the "Notice of Award" to the winning PSP within five (5) calendar days from approval thereof.

All unsuccessful PSPs shall be informed in writing of the decision of the PPP-SC to award the project to the winning PSP. Such decision shall be made available to the public when requested.

The Notice of Award, which is issued by the Mayor, shall indicate, among others, that the winning PSP must submit within twenty (20) calendar days from official receipt of the Notice of Award the following:

- a) Prescribed Performance Security (if any);
- b) Proof of commitment of the required equity contribution, as specified by the PPP-SC:
  - i. In the case where the PSP is a corporation - e.g., treasurer's affidavit attesting to actual paid-up capital, subscription agreement(s) between a shareholder(s) of the PSP and the PSP itself covering said equity contribution, or shareholders agreement between and amongst two or more shareholders of the PSP undertaking to contribute/subscribe the required equity contribution; or
  - ii. In the case of a consortium - an undertaking of the members thereof to infuse the required equity contribution to the consortium.
- c) Proof of firm commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project;
- d) In the case of a consortium, the agreement indicating that the members are jointly and severally liable for the obligations of the PSP under the contract;
- e) In case a special purpose company (SPC) is formed for purposes of undertaking the project, proof of registration of the SPC in accordance with Philippine laws; and/or
- f) Such other conditions that may be imposed by the PPP-SC.

Failure to submit the requirements within the prescribed twenty (20)-calendar day period will result in the disqualification of the PSP and the forfeiture of the bid security. Within five (5) calendar days upon receipt of the foregoing requirements for award, the PPP-SC shall determine and notify the winning PSP of its compliance of all the conditions stated in the said notice.

The PPP-SC shall post the notice of award and/or bidding results in the websites of the Municipality and other applicable government procurement portals, within seven (7) calendar days from the issuance of the Notice of Award.

#### IV. LIMITED NEGOTIATIONS

Where the Municipality has failed to identify an eligible PSP for a desired PPP project 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 design, performance standards/





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specifications and economic parameters stated in the Feasibility or Project Study and Terms of Reference for the Competitive Selection are complied with. The Mayor, upon recommendation of PPP-SC, shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP.

In the instances where negotiated projects are allowed, the PPP-SC shall determine the Reasonable Rate of Return prior to the negotiation in the case of unsolicited proposals. The scope of negotiation in the case of unsolicited proposals shall be limited to the financial proposal of the PSP and in line with the PPP-SC-determined Reasonable Rate of Return. Direct negotiation should not result in a higher subsidy, or higher user fee, or lower amount of Municipal revenue, or longer concession period.

### V. COMPETITIVE CHALLENGE

The Competitive Challenge process in the case of unsolicited proposals shall be divided into three (3) stages, as follows:

#### A. Stage One/ Unsolicited Proposal - The steps are:

1. A PSP submits an unsolicited proposal accompanied by a Feasibility or Project Study to the Municipality for a proposed PPP Project.
2. The PPP-SC shall make an initial evaluation of the proposal and determination of the eligibility of the PSP.
3. Upon completion of the initial evaluation, the Mayor, upon recommendation of the PPP-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations. Non-issuance of the certificate within thirty (30) days from the transmittal of the recommendation shall mean the rejection thereof. If accepted, the PSP shall be conferred Original Proponent status for the purpose of detailed negotiations on the PPP project concerned.
4. If there is 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 Municipality.

#### B. Stage Two/ Detailed Negotiations - The steps are:

1. If the proposal is accepted, the Parties shall negotiate and agree on the terms and conditions of the PPP project concerning its technical and financial aspects.
2. 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. The PSP shall continue to have the status of Original Proponent for the purpose of the Competitive Challenge.
3. The issuance of the certification commences the activities for the Competitive Challenge or solicitation of comparative proposals.

In the event that the Original Proponent has an exclusive franchise, right or concession, such as an energy service contract, water rights, or mining contracts/rights vested, granted or awarded by the relevant government authority, or has ownership over real, personal or intellectual property, without which the PPP project or activity cannot be undertaken without the participation or consent of the Original Proponent, subjecting



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the unsolicited proposal to competitive challenge under Stage Three hereof should be done in accordance with such exclusive franchise or rights.

4. However, should negotiations not result to an agreement acceptable to both parties, the Municipality shall have the option to reject the proposal by informing the PSP in writing stating the grounds for rejection and thereafter it may accept a new proposal from other PSPs, pursue the proposed project through other PPP modalities, or subject the PPP project to a Competitive Selection.

C. Stage Three/ Competitive or Swiss Challenge Proper -The steps are:

1. The PPP-SC shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the PSP 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 documents.
2. The Mayor, upon favorable recommendation by the PPP-SC, shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
3. The PPP-SC shall publish in two(2) newspapers, one (1) of general and the other one (1) of local circulation, at least once the invitation for comparative proposals.
4. 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 Paragraph 6, Part III hereof.
5. In the evaluation of comparative proposals, the most responsive comparative proposal shall be the one that offers the best price or financial bid submitted during the Competitive Challenge, which in all cases should be better than the financial proposal of the Original Proponent.
6. If the Municipality determines that an offer made by a challenger which fully conforms to the negotiated terms with Original Proponent is superior or more advantageous to the Municipality than the original proposal, the Original Proponent shall be given the right to match such superior offer or most responsive comparative proposal. If the Original Proponent matches the superior offer within the stated period, the PPP project shall be immediately awarded to the Original Proponent. However, if the Original Proponent fails to match the superior offer received by the Municipality, the PPP project shall be awarded to the challenger submitting such superior offer.
7. In the event that the Original Proponent is not able to match the superior offer of the challenger, the winning challenger shall reimburse the Original Proponent, within twenty (20) days from issuance of the notice of award, the cost of preparing the Project Study and the unsolicited proposal, provided, that this reimbursement arrangement and the cost of preparing the Project Study and unsolicited proposal are expressly stated in the terms of reference for the Competitive Challenge, which the PPP-SC has determined to be reasonable.





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### VI. SCHEDULES AND TIMELINES

#### 1. Competitive Selection

<i>Steps/ Stage</i>	<i>Days/ Periods</i>
<b>1. Preparation of Bid Documents:</b> Pursuant to the Municipal Development Plan, programs and priorities, the Mayor shall direct the PPP-SC and/ or appropriate provincial departments to prepare the Project Study (PS), draft PPP Agreement (PPPA), Tender Documents such as Pre-Qualification documents and Requests for Proposals (collectively referred to as "Bid Documents") for a particular PPP Project. The PPP-SC shall prepare a cover memorandum attaching thereto the Bid Documents. These shall be submitted to the Mayor for consideration and approval.	Within 60 days from the directive of the Mayor
<b>1.1 Public Consultations:</b> The PPP-SC shall conduct at least one (1) public consultation about the Project with identified end-users, civil society organizations, affected public offices, and other stakeholders.	Within the same 60 day period (#1)
<b>2. Action of Mayor:</b> The Mayor shall either approve or disapprove the Bid Documents. If the Mayor disapproves, the proposed Bid Documents shall be returned to the PPP-SC for further study and revision. If the Mayor confirms the recommendation of the PPP-SC, he shall affix his signature to the cover memorandum prepared by the PPP-SC. If the Mayor takes an adverse position, he shall issue a written resolution in support of his action.	Within 10 days from submission of Bid Documents
<b>3. Publication of Invitation:</b> After the approval of the Bid Documents, the PPP-SC shall publish the Invitation to Pre-Qualify and Bid/ Participate in the Competitive Competition in two (2) newspapers, one (1) of general and the other of local circulation.	Within 5 days from the approval
<b>4. Release of Bid Documents:</b> The PPP-SC shall release the Pre-Qualification Documents (PQDs) and the interested PSPs shall submit their PQDs to the PPP-SC.	Within 30 days from date of 2 <sup>nd</sup> publication
<b>4.1 No Interested PSPs:</b> If there are no interested PSPs, the PPP-SC shall declare a failed bidding. The Mayor may shelve the Project, re-bid the same PPP Project under the same or modified Bid Documents or the Municipality may accept Unsolicited Proposals (UPs) for the PPP Project.	On the last day to submit PQDs (#4)
<b>5. Pre-Qualification of PSPs:</b> The PPP-SC shall pre-qualify the PSPs that submitted PQDs. The PPP-SC shall determine which are the qualified and disqualified PSPs and notify the concerned PSPs of the action taken by the PPP-SC. The PPP-SC shall prepare a memorandum justifying its action. If none of the PSPs are qualified, then the PPP-SC shall declare a failed bidding. The Mayor may shelve the Project, re-bid the same PPP Project under the same or modified Bid Documents or the Municipality may accept UPs for the PPP Project.	Within 15 days from submission of PQDs
<b>5.1. Appeal:</b> The disqualified PSP(s) may file an appeal of the decision of the PPP-SC with the Mayor.	Within 5 days from receipt of notice
<b>5.2. Ruling on Appeals:</b> The Mayor shall evaluate and decide the appeal(s). The Mayor shall issue a written resolution in support of his action.	Within 5 days from receipt of appeal



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<i>Steps/ Stage</i>	<i>Days/ Periods</i>
6. <b>Notice of Developments:</b> The PPP-SC shall notify the Mayor, Vice-Mayor, Sanggunian and participating PSPs of the developments.	Within 5 days from notice to concerned PSPs (#5)
7. <b>RFPs Issued:</b> The PPP-SC shall issue the Request for Proposal (RFP) to the qualified PSPs.	Within the same 5-day period (#6)
8. <b>Pre-Bid Conferences:</b> The PPP-SC shall conduct at least one pre-bid conference and set the deadline for the submission of proposals.	<p>For project less than 300Million: All meetings shall be conducted 30 calendar days before the deadline of submission of bids</p> <p>For project costing 300Million &amp; above: All meetings shall be conducted 60 calendar days before the deadline of submission of bids</p>
9. <b>Submission of Proposals:</b> The pre-qualified PSPs shall prepare and submit their technical and financial proposals simultaneously. The technical and financial proposals shall be submitted in one (1) sealed envelope.	Within 30 days from last pre-bid conference
9.1 <b>No Proposal Submitted:</b> (1) If there are no proposals submitted by PSPs; (2) if none of the proposals are compliant with the technical and financial parameters stated in the Bid Documents; (3) if there is only one (1) proposal but such proposal is only compliant with the technical aspects of the Bid Documents; or (4) if there are several proposals where only one (1) is compliant with the technical aspects of the Bid Documents and the rest are not compliant with the technical and financial aspects, the PPP-SC shall declare a failed bidding. The Mayor may shelve the Project, re-bid the same PPP Project under the same or modified Bid Documents or the Municipality may accept UPs for the PPP Project.	
10. <b>Evaluation of Proposals:</b> The PPP-SC shall evaluate the proposals and submit its recommendation to the Mayor. The PPP-SC shall determine the winning bidder/ PSP. If there are two (2) or more proposals that are compliant, the PPP-SC shall declare a successful bidding. The winning bidder/ PSP shall be determined on the basis of the bid parameters stated in the Bid Documents. The PPP-SC shall prepare a memorandum justifying its action.	Within 20 calendar days from the date the bids are opened
10.1 <b>Limited Negotiations:</b> (1) Should there be only one (1) eligible PSP that submits technical and financial proposals compliant with the Bid Documents; and (2) should there be more than one (1) proposal but only (1) is compliant, the PPP-SC shall inform the Mayor of any of this development. The Mayor may authorize Limited Negotiations or declare a failed bidding. He may shelve the Project, re-bid the same PPP Project under the same	Negotiations to be completed in 10 days





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<i>Steps/ Stage</i>	<i>Days/ Periods</i>
<p>or modified Bid Documents or the Municipality may accept UPs for the PPP Project. 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 Bid Documents are complied with. The Mayor shall set or approve the terms of the negotiations on the part of the Municipality which shall be the scope of the authority of the PPP-SC in negotiating with the lone eligible PSP.</p>	
<p>10.2 <i>Best-and-Final-Offer</i>: If there are no PSP that submits a technically and financially compliant tender but there are two (2) or more proposals that are technically compliant but financially non-compliant, the PPP-SC, upon approval by the Mayor, can require the PSPs concerned to submit their best-and-final-offers (BAFO) on the financial aspect of the Bid Documents. The Mayor can also declare a failed bidding and may shelve the Project, re-bid the same PPP Project under the same or modified Bid Documents, or the Municipality may accept UPs for the PPP Project.</p>	<p>BAFO must be submitted within 10 days from the notice of the PPP-SC</p>
<p>11. <i>Action by Mayor</i>: The Mayor shall either confirm or reject the recommendation to award made by the PPP-SC. If the Mayor confirms the recommendation of the PPP-SC, he shall affix his signature to the memorandum prepared by the PPP-SC. If the Mayor takes an adverse position, he shall issue a written resolution in support of his action. If the Mayor confirms, then the PPPA shall be submitted to the Sanggunian.</p>	<p>Within 10 days from submission of recommendation by the PPP-SC</p>
<p>12. <i>Notice to the Sanggunian</i>: The PPP-SC shall inform the Vice-Mayor and the Sanggunian of the developments.</p>	<p>Within 2 days from the decision of the Mayor</p>
<p>13. <i>Legislative Action</i>: The PPP-SC shall forward to the Sanggunian a copy of the draft PPPA. The Sanggunian shall review and thereafter approve or disapprove the PPPA or terms and provisions thereof. If the Sanggunian approves, it shall issue a Resolution authorizing the Mayor to sign the PPPA. The Sanggunian may conduct public consultation(s) with identified end-users, civil society organizations, affected public offices, and other stakeholders.</p>	<p>Within 15 days from receipt of the draft PPPA</p>
<p>14. <i>Notice of Award</i>: The PPP-SC shall issue the Notice to Award (NOA) to the winning PSP with the instruction to the latter to comply with the requirements set forth in the NOA.</p>	<p>Within the 5 days from approval of the recommendation of award</p>
<p>15. <i>Compliance</i>: The winning PSP shall submit to the PPP-SC all the requirements stated in the NOA.</p>	<p>Within 20 days from receipt of NOA</p>
<p>16. <i>Signing of PPPA</i>: Acting pursuant to the Resolution, the Mayor and the representative of the winning PSP shall sign the PPPA.</p>	<p>Within 5 days from receipt of Sanggunian Resolution</p>
<p>17. <i>Notice to Proceed</i>: The PPP-SC shall issue the Notice to Proceed and Notice of Acceptance (NP/NA) of all compliance statements and conditions precedent if the same are in order.</p>	<p>Within 5 days from receipt of conditions precedent</p>
<p>18. <i>Posting of PPPA</i>: The PPP-SC shall cause the posting</p>	<p>Within 7 days from</p>



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<i>Steps</i>	<i>Days/ Periods</i>
If the Mayor takes an adverse position, he shall issue a written resolution in support of his action.	
<b>7. Acceptance or Rejection of UP:</b> The Mayor shall either accept or reject the UP. If the Mayor accepts the UP as recommended by the PPP-SC, he shall issue a CA for the purpose of proceeding to Detailed Negotiations (Stage 2). If the Mayor rejects the UP as recommended by the PPP-SC, a Certificate of Non-Acceptance (CNA) will be issued. The Mayor can only affirm and approve the recommendation of the PPP-SC. The Mayor can disapprove the action of the PPP-SC recommending the acceptance of the UP but he cannot accept the UP if the PPP-SC recommends to reject the UP. If the Mayor confirms the recommendation of the PPP-SC, he shall affix his signature to the memorandum prepared by the PPP-SC. If the Mayor takes an adverse position, he shall issue a written resolution in support of his action.	Within 10 days from the receipt of the recommendation of the PPP-SC
<b>8. Conformity by PSP:</b> The PSP shall affix its conformity to the CA. At this point, the PSP becomes the Original Proponent (OP-PSP) and no other UP may be evaluated, processed and accepted by the Municipality and PPP-SC. In the case of rejection of the UP, the PSP must acknowledge receipt of the CNA.	Within 15 days from receipt of a copy of the CA
<b>9. Sanggunian Updated:</b> The PPP-SC shall inform the Sanggunian about the completion of Stage 1.	Within 7 days from receipt of a copy of the CA signed by the OP-PSP
<b>Stage 2: Detailed Negotiations</b>	
<b>1. Notification:</b> The PPP-SC shall notify the OP-PSP in writing about the commencement of the detailed negotiations.	Within 15 days from receipt of a copy of the CA signed by the OP-PSP
<b>2. Scope of Detailed Negotiations:</b> The PPP-SC shall negotiate with the OP-PSP. The Mayor shall set or approve the terms of the negotiations on the part of the Municipality which shall be the scope of the authority of the PPP-SC in negotiating with the OP-PSP. The parties shall negotiate and agree on the terms and conditions of the JV Project concerning its technical and financial aspects ("Terms"). Minutes shall be taken of all meetings. The negotiations may include the determination of confirmation of the eligibility of the OP-PSP.	Negotiations to be completed in not more than 30-75 days from receipt of the OP-PSP of the Notice or maybe extended within the reasonable period depending on the complexity of proposals
<b>3. Recommendation to Mayor:</b> Upon agreement on all the Terms of the Project and PPPA, the PPP-SC shall recommend to the Mayor the acceptance of the Terms of the PPP for the sole purpose of submitting the Terms for Competitive Challenge (Stage 3). The PPP-SC shall prepare a memorandum justifying its action.	Within the period indicated in step 2
<b>4. Action of Mayor:</b> The Mayor shall either accept or reject the Terms of the PPP as negotiated between the PPP-SC and OP-PSP. If the Mayor accepts the terms as recommended by the PPP-SC, she and the OP-PSP shall issue a Joint Certification (JC) stating that: (1) an	Within 10 days from receipt of the recommendation of the PPP-SC





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Steps	Days/ Periods
<p>agreement has been reached for the purpose of submitting the terms for Competitive Challenge; (2) the eligibility of the PSP; and (3) the technical and financial aspects of the PPP Project as agreed upon. The Mayor may modify the Terms agreed between the PPP-SC and OP-PSP, provided, the OP-PSP agrees to them. If the Mayor confirms the recommendation of the PPP-SC, he shall affix his signature to the memorandum prepared by the PPP-SC. If the Mayor takes an adverse position, he shall issue a written resolution in support of his action.</p>	
<p><b>4.1 Non-Agreement:</b> Should negotiations not result to an agreement on the Terms of the Project, the Mayor shall have the option to reject the UP by informing the OP-PSP in writing stating the grounds for rejection. In which case, the Municipality may: (1) accept a new UP from other PSPs; (2) decide to pursue the proposed activity through other PPP Modalities; (3) subject the PPP Project to a Competitive Selection; or (4) shelve the Project. The PPP-SC shall prepare a memorandum in this regard.</p>	---
<p><b>5. Sanggunian Updated:</b> The PPP-SC shall inform the Sanggunian of the developments and shall be furnished a copy of the agreed Terms.</p>	Within 5 days from the signing of JC by PSP
<p><b>6. Issuance of Conformity by the Sanggunian:</b> The Sanggunian may issue a resolution confirming the Terms. The issuance of the JC commences the activities for Competitive Challenge (Stage 3) or the solicitation for comparative proposals.</p>	Within 5 days from the receipt of PPP-SC report
<p><b>Stage 3: Competitive Challenge</b></p>	---
<p><b>1. Preparation of Tender Documents:</b> The PPP-SC shall prepare the tender documents or terms of reference (TOR) for the Competitive Challenge based on the agreed Terms. The eligibility criteria used in determining the eligibility of the OP-PSP shall be the same as those stated in the TOR. Proprietary information supplied by the OP-PSP shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the TOR.</p>	Within 30 days from the signing of the JC
<p><b>2. Submission to Mayor:</b> The PPP-SC shall submit the TOR and draft PPPA to the Mayor for consideration and approval. The PPP-SC shall prepare a cover memorandum.</p>	Within the same 30-day period (#1)
<p><b>3. Approval by Mayor:</b> The Mayor shall approve the TOR and draft PPPA. He shall affix his conformity to the PPP-SC memorandum. The Mayor may introduce formal amendments to the TOR, provided, there is no substantive or material deviation from the agreed Terms.</p>	Within 10 days from receipt of the documents from the PPP-SC
<p><b>4. Publication of Invitation:</b> The PPP-SC shall cause the publication in two (2) newspapers, one (1) of</p>	Publication to be made within 5 days



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<i>Steps</i>	<i>Days/ Periods</i>
general and the other of local circulation and posting in at least two (2) conspicuous places and official website of the Municipality of the invitation for comparative proposals specifying the period whereby prospective challengers/ other PSPs must submit their written and notarized Expressions of Interest (EOI) to participate in the Competitive Challenge. The publication/ notice may state that if no EOI is submitted within the prescribed period, the PPPA for the PPP Project shall be awarded to the OP-PSP.	from approval of the Mayor; EOIs must be submitted within 10 days from date of 2 <sup>nd</sup> publication
<b>4.1 Posting of Bid Security:</b> The OP-PSP shall post the proposal security on 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.	First day of publication
<b>4.2 Action if no Challenger:</b> If no EOI is submitted by a challenger/ other PSP, the OP-PSP shall be awarded the contract for the PPP project.	On or after the deadline for the submission of EOIs
<b>5. Release of TOR:</b> On the date set for the availability of the TOR, the PPP-SC shall furnish the interested PSPs the TOR for the Competitive Challenge after paying the required amount set by the PPP-SC.	On or after the date of publication of the invitation
<b>6. Pre-Proposal Conference:</b> The PPP-SC shall conduct at least one (1) pre-proposal conference with the challengers or other PSPs and the OP-PSP.	After the publication of the invitation and before the deadline for submission of comparative proposals
<b>7. Submission of Comparative Proposals:</b> Those PSPs which have submitted their EOIs shall submit their respective comparative proposals (eligibility documents, technical proposals and financial proposals) on the date set for the submission of comparative proposals.	Within 30-45 days (or other appropriate period determined by the PPP-SC depending on the PPP project) from the first date when the TOR was made available for purchase and distribution
<b>8. Eligibility Determination:</b> The PPP-SC shall determine the eligibility of the challengers/ other PSPs. Only those determined to be eligible will have their technical and financial proposals opened and evaluated. The PPP-SC shall notify the PSPs determined to be eligible and ineligible. The PPP-SC shall prepare a memorandum justifying its action.	Within 15 days from the submission of comparative proposals
<b>8.1 Appeal:</b> The disqualified PSPs may file an appeal of the decision of the PPP-SC with the Mayor.	Within 5 days from receipt of notice
<b>8.2 Ruling on Appeals:</b> The Mayor shall evaluate and decide the appeal(s). The Mayor shall issue a written resolution in support of his action.	Within 5 days from receipt of appeal
<b>9. Opening and Evaluation of Technical and Financial Proposals:</b> The eligible challengers/ other PSPs shall have their technical proposals opened and evaluated. The eligible challengers who pass the	Within 5 days from receipt of notice of eligibility/non-eligibility





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<i>Steps</i>	<i>Days/ Periods</i>
technical evaluation shall be given notice and shall have their financial proposals opened and evaluated on a subsequent date. Eligible challenger who do not pass the technical evaluation shall be given notice and shall have their financial proposals returned unopened.	
10. <b>Final Evaluation:</b> The PPP-SC shall evaluate the financial proposals and shall determine the best offer received during the Competitive Challenge.	Within 5 days from the opening of financial proposals
11. <b>Notice to OP-PSP:</b> If the PPP-SC determines that an offer made by a challenger that fully conforms to the negotiated terms with the OP-PSP is superior or more advantageous to the Municipality, the OP-PSP shall be given the right to match such superior or more advantageous offer. If there is such an offer, the PPP-SC shall notify the OP-PSP of the latter's right to match the offer by the challenger.	OP-PSP to be notified within 5 days from determination by PPP-SC that there is a superior offer
12. <b>Right to Match:</b> The OP-PSP shall either exercise or waive its right to match. Should no matching offer be received within the stated period, the PPP project shall be awarded to the challenger submitting the most advantageous proposal. If the OP-PSP exercises its right to match within the prescribed period, the PPP project shall be awarded to the OP-PSP.	Within 3 days from receipt of notice of OP-PSP
13. <b>Notice of Results:</b> The PPP-SC shall inform the Mayor, Sanggunian, OP-PSP and challenger(s) of the outcome of the Competitive Challenge.	Within 5 days from receipt in writing of the action of the OP-PSP
14. <b>Notice of Award:</b> The PPP-SC shall issue the Notice to Award (NOA) to the winning PSP with the instruction to the latter to comply with the requirements set forth in the NOA.	Within the 5 days from acceptance of the recommendation of award
15. <b>Compliance:</b> The winning PSP shall submit to the PPP-SC all the requirements stated in the NOA.	Within 15 days from receipt of NOA
16. <b>Legislative Action:</b> The PPP-SC shall forward to the Sanggunian a copy of the draft PPP contract. The Sanggunian shall review and approve or ratify the PPP contract. If the Sanggunian approves or ratifies the PPP contract, it shall issue a Resolution ratifying or approving the contract terms and authorizing the Mayor to sign the PPP contract. The Sanggunian may conduct public consultation(s) with identified end-users, civil society organizations, affected public offices, and other stakeholders.	Within 20 days from receipt of the draft PPP contract
17. <b>Signing of PPP Contract:</b> Acting pursuant to the Resolution, the Mayor and the representative of the winning PSP shall sign the PPP contract.	Within 5 days from receipt of Sanggunian Resolution
18. <b>Notice to Proceed:</b> The PPP-SC shall issue the Notice to Proceed and Notice of Acceptance (NP/NA) of all compliance statements and conditions precedent if the same are in order.	Within 5 days from receipt of conditions precedent
19. <b>Posting of PPPA:</b> The PPP-SC shall cause the posting of the signed and executed PPPA in at least two conspicuous places in and the official website of the Municipality.	Within 2 days from issuance of NP/NA



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The Mayor, depending on the nature and complexity of the PPP Project and acting on the recommendation of the PPP-SC, may extend or shorten the above-stated periods, provided, that the new schedule is reasonable, applied fairly, will ensure competition, transparency and accountability, and will not prejudice vested rights of any PSP.

### VII. PPP CONTRACT

- A. The PPP Contract shall be signed by the Mayor on behalf of the Municipality with the prior authorization or ratification by the Sangguniang Bayan, and the duly authorized representative of the PSP.
- B. The direct and ultimate beneficiary of any PPP Contract shall be the constituents of the Municipality.
- C. The principal PPP Contract shall describe the PPP Project, the rights, obligations and responsibilities of and risks assumed by each of the contracting parties, dispute mechanisms and all other applicable provisions of these rules and the PPP Code.
- D. The other ancillary contracts may include insurance contracts; loan agreements; bonds; guarantee arrangements; equity arrangements; operations and maintenance contracts; and engineering, procurement and construction (EPC) contracts.

Effectivity. This Executive Order shall take effect immediately.

Done this 18<sup>th</sup> day of July 2018 at Pinamalayan, Oriental Mindoro.

  
ARISTEO A. BALDOS, JR.  
Municipal Mayor