



# Technical Assistance Report

---

Project Number: 45515-001  
Capacity Development Technical Assistance (CDTA)  
February 2011

**Republic of the Philippines: Strengthening Public–  
Private Partnerships in the Philippines**  
(Cofinanced by the Government of Australia and the Government  
of Canada)

Asian Development Bank



## CURRENCY EQUIVALENTS

(as of 6 January 2011)

Currency Unit	–	peso (P)
P1.00	=	\$0.023
\$1.00	=	P43.81

## ABBREVIATIONS

ADB	–	Asian Development Bank
BOT	–	build–operate–transfer
DOF	–	Department of Finance
GDP	–	gross domestic product
GOCC	–	government-owned and/or controlled corporation
IDC	–	indefinite delivery contract
LGU	–	local government unit
NEDA	–	National Economic and Development Authority
PDMF	–	Project Development and Monitoring Facility
PIFF	–	Philippines Infrastructure Financing Facility
PPP	–	public–private partnership
ROWA	–	right-of-way acquisition
SBAC	–	special bids and awards committee

## TECHNICAL ASSISTANCE CLASSIFICATION

<b>Type</b>	–	Capacity development technical assistance (CDTA)
<b>Targeting classification</b>	–	General intervention
<b>Sector (subsectors)</b>	–	Public sector management (economic management and management of public affairs; public expenditure and fiscal management)
<b>Themes (subthemes)</b>	–	<b>Private sector development</b> (public–private partnerships), economic growth (promoting economic efficiency and business enabling environment)
<b>Location impact</b>	–	Urban (high), national (high)
<b>Partnerships</b>	–	Cofinancing from the Government of Australia, through the Australian Agency for International Development, and the Government of Canada, through the Canadian International Development Agency

## GLOSSARY

- infrastructure – Refers to power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, solid-waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, and dredging.
- nonbank finance sector – This sector comprises companies that do not accept deposits or handle accounts like traditional banks but provide all other form of services such as loans, share trading accounts, and investment banking.
- public–private partnership – The term describes a range of possible relationships among public and private entities in the context of infrastructure and other services. The public partners in a public–private partnership are government entities, including ministries, departments, municipalities, or state-owned enterprises. The private partners can be local or international and may include businesses or investors with technical or financial expertise relevant to the project. The government’s contribution to a public–private partnership may take the form of capital for investment (available through tax revenue), a transfer of assets, or other commitments or in-kind contributions that support the partnership. The government also provides social responsibility, environmental awareness, local knowledge, and an ability to mobilize political support. The private sector’s role in the partnership is to make use of its expertise in commerce, management, operations, and innovation to run the business efficiently. The private partner may also contribute investment capital depending on the form of contract.

## NOTE

In this report, "\$" refers to US dollars.

<b>Vice-President</b>	C. Lawrence Greenwood, Jr., Operations 2
<b>Director General</b>	K. Senga, Southeast Asia Department (SERD)
<b>Country Director</b>	N. Jain, Philippines Country Office, SERD
<b>Team leader</b>	J. Lindborg, Advisor (Private-Public Partnerships), SERD
<b>Team members</b>	F. Thomas, Senior Investment Specialist, Private Sector Operations Department
	A. Haydarov, Country Economist, SERD

In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

## I. INTRODUCTION

1. The Government of the Philippines requested the Asian Development Bank (ADB) to provide technical assistance (TA) to strengthen its capacity to successfully develop and implement public-private partnerships (PPPs). The TA is in line with ADB's country strategy and program 2005–2007<sup>1</sup> and thrusts of the country partnership strategy 2011–2016 that is under preparation. A joint fact-finding mission of ADB, the Australian Agency for International Development, and the Canadian International Development Agency was conducted on 6–13 December 2010, which agreed with the government on the TA's objective, scope, implementation arrangements, and financing plan. The design and monitoring framework is in Appendix 1.<sup>2</sup>

## II. ISSUES

2. Investment in infrastructure, a critical factor of economic growth, in the Philippines is insufficient, and inadequate infrastructure is a major development constraint in the country.<sup>3</sup> Infrastructure development has not kept pace with continued population growth and increasing urbanization. In 1980–2009, total infrastructure investment in the Philippines averaged 2.1% of gross domestic product (GDP),<sup>4</sup> well below the recommended benchmark of 5% of GDP.<sup>5</sup>

3. Private investment in infrastructure in the Philippines has decreased significantly due to weak governance. From a peak of 15.5% of GDP in 1997, private infrastructure commitments have declined to an average of 2.1% in 2000–2009. The Philippines has had successful experience with PPPs in the power sector. However, due to weak governance and an increase in unsolicited proposals, successful private investment in other infrastructure sectors has been rather limited.

4. The PPP policy, legal, and regulatory frameworks in the Philippines are inadequate. The Philippines was one of the first developing countries with a BOT law<sup>6</sup> and a dedicated BOT center. However, enabling policy and legal and regulatory frameworks are not entirely clear or consistently applied. Many infrastructure projects have not been competitively tendered as PPPs. Financial viability of several PPP projects has been undermined by the unwillingness or inability of the government to carry out its contractual agreements. Right-of-way acquisition (ROWA) processes and lack of adequate government budget for land acquisition have severely hindered implementation of PPP projects. Similarly, the inability of the government to grant an automatic franchise has resulted in a high degree of uncertainty for private sector project proponents. A lack of schemes for viability gap financing for PPP projects with substantial economic benefits but limited commercial viability has often resulted in a low response from the private sector. The lack of credible mechanisms for guaranteeing risks, particularly for regulatory-related risks, is one of the major deterrents to private sector infrastructure investment.

5. The government's institutional set-up and capacity are insufficient to effectively promote and implement PPP projects in the Philippines. The PPP Center lacks the necessary technical capacity and authority to optimally perform its role as the government's central PPP unit. In such aspects as PPP strategy and policy formulation, updating the PPP legal and regulatory

---

<sup>1</sup> ADB. 2005. *Country Strategy and Program: Philippines, 2005–2007*. Manila.

<sup>2</sup> The TA first appeared in the business opportunities section of ADB's website on 31 January 2011.

<sup>3</sup> ADB. 2007. *Philippines: Critical Development Constraints*. Country diagnostic study. Manila.

<sup>4</sup> American Chamber of Commerce of the Philippines. 2010. *Arangkada Philippines 2010: A Business Perspective*. Manila.

<sup>5</sup> World Bank. 2005. *Philippines: Meeting Infrastructure Challenges*. Manila.

<sup>6</sup> Republic Act no. 6957, dated 9 July 1990 (as amended by Republic Act no. 7718, dated 8 May 1994).

framework, and provision of expert PPP advisory services to other government agencies, there seems to be lack of clarity in delineation of responsibilities between the PPP Center and the BOT Group of the National Economic and Development Authority (NEDA). There is also insufficient clarity on the delimitation of responsibilities between the PPP Center and government agencies, both at the central and local levels.

6. In the Philippines, systems and capacity are insufficient to prepare bankable PPP projects. Government agencies have insufficient project preparation capacity to address the wide range of complex economic, financial, technological, institutional, social, environmental, legal, and risk-sharing issues associated with large-scale infrastructure projects. Many government agencies lack sufficient resources to attract quality expert advice to help prepare bankable PPP projects. The Project Development Facility set up at the BOT Center in 1999 with donor funding has essentially become nonoperational.

7. Banks in the Philippines dominate the country's financial system but are reluctant to provide long-term loans (beyond 10 years) for infrastructure projects. Consortium lending, while growing, is uncommon among domestic lenders. The nonbank finance sector is relatively weak and underdeveloped. The corporate debt market remains small relative to other countries in the region. Equity markets have not been very active in supplying risk capital for infrastructure. Pension funds and insurance companies are relatively small, and face structural and performance issues that limit their ability to invest in infrastructure.

8. The government has shown strong commitment to moving the PPP agenda forward. In September 2010, the former BOT Center was reorganized as the PPP Center and was attached to NEDA.<sup>7</sup> The Project Development Facility has been revitalized as the Project Development and Monitoring Facility (PDMF), managed by the PPP Center as a revolving fund. The government allocated P300 million in the 2011 budget for the PDMF to help implementing agencies to structure, prepare, and competitively tender bankable PPP projects. Separately, significant funding has been earmarked in the 2011 budget for PPP projects in selected line departments. In addition, the government is in the process of developing an interim scheme to provide access to long-term financing for PPP projects until a dedicated infrastructure finance facility can be established. In 2010, NEDA initiated a review of the BOT law and its implementing rules and regulations. The government demonstrated its top-level political commitment to foster PPPs, and presented a substantial number of prospective projects at the international PPP investment conference held in Manila on 18–19 November 2010.

### **III. THE PROPOSED TECHNICAL ASSISTANCE**

#### **A. Impact and Outcome**

9. The TA's impact will be increased private sector investment in infrastructure. The TA's outcome is an improved government capacity to promote, develop, and implement PPP projects.<sup>8</sup>

---

<sup>7</sup> Executive Order 8 dated 9 September 2010.

<sup>8</sup> A flow chart showing pre-implementation milestones for developing PPP projects in the Philippines with indication of support from this TA is presented in Supplementary Appendix A (available on request).

## B. Methodology and Key Activities<sup>9</sup>

10. The TA will achieve its outcome through (i) capacity building to improve the government's PPP systems and capacity; and (ii) funding for the PDMF for preparation, competitive bidding, negotiation, and monitoring of environmentally friendly PPP projects.<sup>10</sup>

### 1. Capacity Building

11. **Output 1: Strengthened PPP enabling framework.** The TA will help strengthen PPP policies and procedures to improve the capacity of the government to competitively tender PPP projects, develop PPP-related fiscal incentives and rules, improve coordination mechanisms of sector PPP plans, and mainstream environmental sustainability and gender equality aspects into PPP policies and procedures. The TA will help review PPP-related legal and regulatory frameworks to, among other things, systemically address issues related to ROWA and granting of franchise for public utility PPP projects. The TA will also help the government develop approaches for viability gap financing for socially beneficial but commercially less-viable projects. The TA will also help the government streamline and optimize the PPP institutional set-up to ensure efficiency and effectiveness of the PPP system as a whole.

12. **Output 2: Strengthened capacity of the PPP Center.** The TA will provide comprehensive capacity building support to the PPP Center's staff in various policy and project aspects of PPP with specific emphasis on learning-by-doing activities involving participation in the actual PPP transactions. The TA will help the PPP Center establish twinning partnerships with its best-practice counterparts in other countries, and develop or improve PPP toolkits and model PPP agreements, including environmental risk and sustainability analysis and gender sensitivity assessments. The TA will also help improve the content and design of the PPP Center's website, as well as develop a modern, web-based PPP management information system.

13. **Output 3: Institutionalized PPP best practices.** The TA will build capacity of PPP-involved staff in NEDA, Department of Finance (DOF), Department of Budget and Management, and other government agencies in such aspects of PPPs as project appraisal, risk assessment and risk sharing, bidding process, legal implications of PPP contracts, monitoring and management of project implementation.

14. **Output 4: Established long-term financing and risk guarantee mechanisms.** The TA will support the government in developing the regulatory and institutional frameworks for an infrastructure investment financing facility, which will also be provided with some initial basic capacity building support. The TA will support the government in developing a credible risk guarantee mechanism to decrease the overall high level of uncertainty for the private sector with implementation of PPP projects.

### 2. Funding of the Project Development and Monitoring Facility

15. **Output 5: Well-structured bankable PPP projects developed.**<sup>11</sup> The TA will augment the P300 million allocated by the government to the PDMF, which will function as a revolving

<sup>9</sup> The TA design drew from the lessons learned by ADB in PPP-related projects in India and Indonesia, and global best practices. Critical assumptions, potential risks, and the proposed mitigation measures are in Supplementary Appendix B (available on request).

<sup>10</sup> The TA will complement and build on the work of ADB's ongoing projects and initiatives on PPPs. Close coordination with development partners and the private sector will continue through the existing coordination mechanisms.

<sup>11</sup> Delivery of this output will be delegated to the PPP Center. Taxation-related issues will be governed by the relevant provisions of the TA framework agreement between the government and ADB, dated 8 February 1996.

fund. The PPP project development cost will be shared on a project-by-project basis, with 44% coming out of the TA's cofinancing to the PDMF and 56% coming out of the government's contribution to the PDMF. This will cover (i) project feasibility studies, assessment of PPP options, and business case development, including environmental and social and gender safeguards considerations; (ii) financial analysis and/or modeling and project structuring; (iii) preparation of the bidding documents and draft contract; and (iv) support throughout the bidding process and contract negotiations.

### **C. Cost and Financing**

16. The total cost of the TA is estimated at \$17,700,000. ADB will provide \$1,500,000 on a grant basis financed by ADB's Technical Assistance Special Fund (TASF-other sources). The Government of Canada will provide grant cofinancing of \$1,200,000. ADB and the Government of Canada will finance technical assistance as indicated in point (i) of para. 10. The Government of Australia will provide grant cofinancing of \$7,000,000, of which \$1,000,000 will be for technical assistance as per point (i) of para. 10, and \$6,000,000 will be the cofinancing of the PDMF as per point (ii) of para. 10. Both the Government of Australia and the Government of Canada's cofinancing will be on an untied basis and will be administered by ADB. The government will provide \$8,000,000 equivalent, consisting of \$1,000,000 in-kind contribution (office accommodation, transportation, remuneration of counterpart staff, and other support facilities) and \$7,000,000 for the PDMF. Details of the cost estimates and financing plan are in Appendix 2.<sup>12</sup>

### **D. Implementation Arrangements**

17. The NEDA will be the executing agency. The PPP Center (attached to the NEDA) and the DOF will be the implementing agencies.<sup>13</sup> A special committee of the NEDA board's Committee on Infrastructure will serve as the project steering committee and will provide the overall policy guidance.<sup>14</sup> NEDA's Expanded PPP Group will act as the technical working group to the project steering committee.<sup>15</sup> Oversight of the PDMF will be performed by the PDMF board.<sup>16</sup> The PPP Center will serve as secretariat for the PDMF board. A technical advisor recruited by ADB will advise the PDMF board on, among other issues, the quality of the submitted proposals for PDMF funding. The TA is expected to commence in April 2011 and be completed by July 2013.

18. Implementation of activities listed in point (i) of para. 10 will require 94 person-months of international consultants and 186 person-months of national consultants, to be recruited through firms and through individual consultants' selection. The consultants will be engaged by ADB in accordance with ADB's Guidelines on the Use of Consultants (2010, as amended from time to time). The consultants will report to the NEDA and ADB. The outline terms of reference are in

<sup>12</sup> The financing and disbursements falling under activities in point (i) of para. 10 will be on a pro-rata basis.

<sup>13</sup> The NEDA deputy director general (National Development Office for Investment Programming) will be the executing agency's focal point. The executive director of the PPP Center and the DOF undersecretary (International Finance Group) will be the implementing agencies' focal points.

<sup>14</sup> The special committee will be comprised of secretaries of NEDA (chair), DOF, Department of Budget and Management, Department of Transportation and Communications, and Department of Public Works and Highways, and co-opt other members, if needed.

<sup>15</sup> The NEDA's Expanded PPP Group, chaired by the NEDA deputy director general (National Development Office for Investment Programming), will comprise NEDA staff on infrastructure (secretariat), public investment, project monitoring, legal, information technology and from the office of the NEDA director general, with ex-officio membership from the Department of Finance (International Finance Group) and the PPP Center.

<sup>16</sup> Details on the proposed PDMF processes and procedures are in Supplementary Appendix C (available on request).

Appendix 3. All disbursements will be in accordance with ADB's *Technical Assistance Disbursement Handbook* (2010, as amended from time to time).

19. Recruitment of consulting firms for delivery of output 5 (para. 10, point [ii]) will be conducted by the PPP Center in accordance with ADB's Guidelines on the Use of Consultants.<sup>17</sup> Engagement of these consulting firms will be under an indefinite delivery contract (IDC) facility involving prequalification and retention (without commitment) for a 3-year period using fixed budget selection, and selection for IDC assignments using quality-based selection based on evaluation of a biodata technical proposal. An individual international consultant specializing in IDC design and implementation will support the PPP Center, and also help build its capacity and systems for efficient and effective recruitment of high-quality consultant advice for PPP project preparation, including development of procedures for IDC facilities and assignments. Selection of the firms for the IDC facility and the first IDC assignment will follow the agreed procedures and will be subject to prior review by ADB.

20. The TA proceeds for PDMF cofinancing will be disbursed in accordance with ADB's *Loan Disbursement Handbook* (2007, as amended from time to time) and detailed arrangements agreed upon between the government and ADB.<sup>18</sup> To facilitate timely payments under the PDMF-financed project development consultancy contracts, the PPP Center will open within 1 month of TA effectiveness, and maintain and manage an imprest account in dollars at the Land Bank of the Philippines. The maximum amount to be advanced to the imprest account will not exceed 6 months of estimated expenditures to be funded from the imprest account, or 10% of the TA PDMF cofinancing amount, whichever is less. The PPP Center will ensure that records, accounts, and related financial statements are adequately maintained according to Philippine Financial Accounting Standards.<sup>19</sup> The Commission on Audit will audit project accounts, including the imprest account, and certified copies of such audited accounts and financial statements will be submitted to ADB in English not later than 6 months after the fiscal year to which the report relates.

#### **IV. THE PRESIDENT'S RECOMMENDATION AND DECISION**

21. The President recommends that the Board approve ADB administering a portion of technical assistance not exceeding the equivalent of \$7,000,000 to the Government of the Philippines for Strengthening Public–Private Partnerships in the Philippines, to be financed on a grant basis by the Government of Australia. If the Board approves ADB administering the technical assistance, the President, acting under the authority delegated by the Board, will approve (i) ADB administering a portion of technical assistance not exceeding the equivalent of \$1,200,000 to be financed on a grant basis by the Government of Canada, and (ii) ADB providing the balance not exceeding the equivalent of \$1,500,000 on a grant basis, to the Government of the Philippines for Strengthening Public–Private Partnerships in the Philippines.

---

<sup>17</sup> The procurement capacity assessment of the PPP Center, which confirmed suitability of the PPP Center for delegating the responsibility for PPP project development consultant selection, is in Supplementary Appendix D (available on request).

<sup>18</sup> Details on the disbursements of TA PDMF cofinancing are in Supplementary Appendix C (available on request). Taxation issues will be treated on the basis of the TA framework agreement between the government and ADB, dated 8 February 1996.

<sup>19</sup> The TA will provide support to the PPP Center's finance division to strengthen its financial management capacity, including management of the imprest account.

## DESIGN AND MONITORING FRAMEWORK

Design Summary	Performance Targets and Indicators	Data Sources and Reporting Mechanisms	Assumptions and Risks
<p><b>Impact</b> Increased private sector investment in infrastructure</p>	<p>For the next 3 years after TA completion:</p> <p>Gross value of public sector construction as percentage of overall construction gross value increases on average by 2 percentage points annually (2009 baseline: 46.6%)<sup>a</sup></p> <p>Private sector's investment in infrastructure (except in energy) increases by on average 5 percentage points annually (2009 baseline: \$947 million)</p>	<p>NSCB's Philippines statistical yearbooks</p> <p>Annual reports on infrastructure availability, including reports of DOF and NEDA</p> <p>World Bank Private Participation in Infrastructure Database</p>	<p><b>Assumption</b> Stable macroeconomic internal and external environments, internal sociopolitical situation</p> <p><b>Risks</b> Deterioration of the government's fiscal situation Weakening of government political will and support for PPP Business-unfriendly decisions of the government or the judiciary Threatened stability of major banks</p>
<p><b>Outcome</b> Improved government capacity to promote, develop, and implement PPP projects</p>	<p>At least five competitively tendered PPP projects (except in the energy sector), of which at least two are gender-responsive,<sup>b</sup> are ready for implementation by the end of June 2013</p>	<p>Government reports including from DOF, NEDA, and other line departments and agencies</p> <p>Annual reports of project sponsors and financiers</p>	<p><b>Assumptions</b> Approvals for an improved PPP enabling framework are granted without delays Appropriate incentives for private sector participation provided (e.g., risk guarantee mechanism, ROWA)</p> <p><b>Risk</b> Delays in development of bankable PPP projects due to capacity constraints</p>
<p><b>Outputs</b> 1. Strengthened PPP enabling framework</p>	<p>By the end of June 2013:</p> <p>Amendments to PPP-related legal and regulatory framework developed, including on mainstreaming environmental and gender aspects</p> <p>Rules and regulations enforced on (i) fiscal impact of PPPs, (ii) viability gap financing, and (iii) risk-sharing mechanisms in PPP projects</p> <p>Streamlining of the government's PPP institutional set-up enforced</p>	<p>Draft bills and IRRs</p> <p>Relevant orders of the government or line-departments</p> <p>Websites and reports of DOF, NEDA, and the PPP Center</p>	<p><b>Assumption</b> Timely and efficient review of amendments in the executive and the legislature</p> <p><b>Risk</b> Delays in legal and regulatory policy reforms due to vested interest or weak capacity</p>
<p>2. Strengthened capacity of the PPP Center</p>	<p>By the end of June 2013:</p> <p>At least one twinning partnership established with other countries' PPP centers</p> <p>At least 10 standardized PPP documents, toolkits, and sector-specific guidelines (including environmental sustainability and gender responsiveness check lists)</p>	<p>PPP Center reports and website</p>	<p><b>Assumption</b> Adequate funding (including for website and knowledge management) and staffing of the PPP Center</p>

Design Summary	Performance Targets and Indicators	Data Sources and Reporting Mechanisms	Assumptions and Risks
	<p>enforced</p> <p>PPP Center website updated and all relevant documents uploaded</p> <p>PPP management information system developed</p>		<p><b>Risk</b></p> <p>Staff turnover at the PPP Center</p>
<p>3. Institutionalized PPP best practices</p>	<p>By the end of 2012:</p> <p>Successes in PPP analyzed and institutionalization suggestions developed</p> <p>100 staff members involved with PPP in DOF, NEDA, DBM, and other line departments are successfully trained in various aspects of PPP, including on environmental and social/gender assessment and analysis</p>	<p>DOF, NEDA, and other department and line agency reports</p>	<p><b>Assumption</b></p> <p>Institutional and organizational arrangements in place in the government agencies for PPP capacity building</p> <p><b>Risk</b></p> <p>Reorganization of government agencies</p> <p>Government staff turnover</p>
<p>4. Established long-term financing and risk guarantee mechanisms</p>	<p>By the end of 2012:</p> <p>Two regulatory frameworks for infrastructure financing facilities and guarantees against selected PPP-related risks are adopted</p> <p>At least two PPP projects provided with long-term financing from the infrastructure financing facility</p> <p>Guarantee products against political and regulatory risks available to private sector and financial intermediaries at affordable prices</p>	<p>Government or its agencies' orders or other legal acts</p> <p>NEDA and DOF reports and websites</p>	<p><b>Assumptions</b></p> <p>Commitment from private investors to invest in the facility</p> <p>Timely and sufficient government contribution provided to the facility</p> <p><b>Risk</b></p> <p>Limited supply of PPP projects</p>
<p>5. Well-structured bankable PPP projects developed</p>	<p>At least three well-structured PPP projects, of which at least two are gender-responsive, developed annually through the PDMF</p> <p>PDMF governance structure and transaction advisors' selection process adopted by June 2011</p>	<p>World Bank Private Participation in Infrastructure Database</p> <p>NEDA and PPP Center reports and websites</p>	<p><b>Assumption</b></p> <p>Adequate budgetary allocations to PDMF for 2011 and subsequent years.</p> <p><b>Risk</b></p> <p>Lack of acceptance of mandate and capacity to prepare, bid, and manage implementation of PPP projects</p>
<p><b>Activities with Milestones</b></p> <p><b>Output 1: Strengthened PPP enabling framework</b></p> <p>1.1. Coordinate preparation (by Q3 2011) of and help realize a time-bound action plan to implement measures included in the PPP enabling framework improvement road map developed under ADB support (by Q4 2012).</p> <p>1.2. Develop and/or draft amendments to PPP policies, guidelines, and fiscal rules, and sector PPP plans submitted (by Q4 2011).</p> <p>1.3. Draft amendments to PPP-related legal and regulatory framework (by Q1 2012).</p> <p>1.4. Conduct study of risk-sharing mechanisms that can be implemented in the Philippines (by Q4 2011).</p> <p>1.5. Draft rules and regulations on fiscal impact, viability gap financing, and risk-sharing mechanisms (by Q1 2012).</p> <p>1.6. Analyze and draft required legal acts for streamlining the government's PPP institutional set-up (by Q4 2011).</p> <p>1.7. Draft strategic environment assessment and safeguard policy for PPPs (by Q2 2012).</p> <p>1.8. Draft strategic gender equality policy and analysis guidelines (by Q2 2012).</p>			<p><b>Inputs</b></p> <p>ADB, Government of Australia, Government of Canada:</p> <p>\$9.7 million</p> <p>Government:</p> <p>\$8.0 million</p>

<b>Activities with Milestones</b>	
<p><b>Output 2: Strengthened capacity of the PPP Center</b></p> <ol style="list-style-type: none"> <li>2.1. Conduct workshops and on-the-job trainings for the PPP Center staff in various aspects of PPP policies and projects, including training of PPP Center staff and units responsible for environmental, gender, and resettlement issues (by Q4 2011).</li> <li>2.2. Facilitate and advise PPP Center on establishing twinning partnerships with its counterparts abroad (by Q2 2012)</li> <li>2.3. Prepare standardized PPP documents, toolkits, and sector-specific guidelines to cover risk-sharing arrangements, appropriate contractual mechanisms (including environmental sustainability and gender responsiveness guidelines and check lists) for use by line departments and other agencies (by Q4 2011).</li> <li>2.4. Prepare a manual on selection of PPP project preparation consultants (by Q4 2012).</li> <li>2.5. Update PPP Center website structure and design (by Q4 2011).</li> <li>2.6. Develop PPP management information system, including relevant sex-disaggregated information (by Q2 2013).</li> </ol> <p><b>Output 3: Institutionalized PPP best practices</b></p> <ol style="list-style-type: none"> <li>3.1 Conduct training of PPP-engaged staff of line departments and agencies in various PPP aspects, including on environmental risk analysis and gender responsiveness issues (by Q2 2012)</li> <li>3.2 Conduct analysis of successes and failures in PPPs at the national and local level and suggest optimal institutionalization of PPP best practices at the national and local government levels (by Q3 2012).</li> </ol> <p><b>Output 4: Established long-term financing and risk guarantee mechanisms</b></p> <ol style="list-style-type: none"> <li>4.1 Assess options for setting up a guarantee fund to cover risks that are not offered by the market (by Q3 2011).</li> <li>4.2 Develop regulatory and other measures for establishing long-term infrastructure investment financing and risk guarantee mechanisms (by Q4 2011).</li> <li>4.3 Conduct initial capacity building of the established financing and guarantee mechanisms and develop its/their institutional and HR development strategies (by Q2 2012).</li> </ol> <p><b>Output 5: Well-structured bankable PPP projects developed</b></p> <ol style="list-style-type: none"> <li>5.1 Develop recommendations to improve governance and sustainability of PDMF (by Q4 2011).</li> <li>5.2 For PDMF-approved projects, prepare (i) project feasibility studies and PPP options, including environmental and social/gender safeguards considerations (and, if needed, development of plans on mitigating and managing environmental and social and gender risks and impact); (ii) financial analyses/modeling and project structuring; (iii) bidding documents and draft contracts; and (iv) support throughout the bidding process and contract negotiations (by Q2 2013).</li> </ol>	

ADB = Asian Development Bank, BOT = build–operate–transfer, DBM = Department of Budget and Management, DOF = Department of Finance, IRRs = implementing rules and regulations, NEDA = National Economic Development Authority, NSCB = National Statistics Coordination Board, PDMF = Project Development and Monitoring Facility, PPP = public–private partnership, Q = quarter, ROWA = right-of-way acquisition, TA = technical assistance.

<sup>a</sup> In the Philippines System of National Accounts, all construction owned by the government, whether government or privately managed, is classified as public construction. All other construction is classified as private. Source: NSCB

<sup>b</sup> A gender-responsive approach assesses the different needs, interests, and impact of initiatives on women and men. It develops gender-responsive programming so that women and men have equal access to project resources and benefits, and gender gaps in access, control, decision making, and outcome can be reduced. Gender-responsiveness will be defined following the NEDA Harmonized Gender and Development Guidelines for Project Development, Implementation, Monitoring and Evaluation.

Sources: Asian Development Bank, National Statistics Coordination Board, and World Bank's Private Participation in Infrastructure Database.

**COST ESTIMATES AND FINANCING PLAN**  
(\$'000)

Item	Total Cost
<b>A. Asian Development Bank (ADB)</b>	
1. Consultants	
a. Remuneration and per diem	
i. International consultants	810.0
ii. National consultants	415.0
b. International and local travel	55.0
c. Reports and publications	20.0
2. Trainings, seminars, and conferences	100.0
3. Miscellaneous administration and support costs	20.0
4. Contingencies	80.0
<b>Subtotal (A)</b>	<b>1,500.0</b>
<b>B. Government of Australia <sup>a</sup></b>	
1. Consultants	
a. Remuneration and per diem	
i. International consultants	540.0
ii. National consultants	275.0
b. International and local travel	35.0
c. Reports and publications	15.0
2. Trainings, seminars, and conferences	65.0
3. Miscellaneous administration and support costs	6,015.0
a. Funding of Project Development and Monitoring Facility (PDMF) <sup>b</sup>	6,000.0
b. Miscellaneous administration and support costs	15.0
4. Contingencies	55.0
<b>Subtotal (B)</b>	<b>7,000.0</b>
<b>C. Government of Canada <sup>c</sup></b>	
1. Consultants	
a. Remuneration and per diem	
i. International consultants	650.0
ii. National consultants	330.0
b. International and local travel	45.0
c. Reports and publications	15.0
2. Trainings, seminars, and conferences	80.0
3. Miscellaneous administration and support costs	15.0
4. Contingencies	65.0
<b>Subtotal (C)</b>	<b>1,200.0</b>
<b>D. Government of the Philippines</b>	
1. Office accommodation and transport	500.0
2. Remuneration and per diem of counterpart staff	500.0
3. Financing of PDMF <sup>d</sup>	7,000.0
<b>Subtotal (D)</b>	<b>8,000.0</b>
<b>Total (A+B+C+D)</b>	<b>17,700.0</b>

<sup>a</sup> Administered by ADB. This amount also includes ADB's administration fee, audit costs, bank charges, and a provision for foreign exchange fluctuations (if any), to the extent that these items are not covered by the interest and investment income earned on this grant, or any additional grant from the Government of the Philippines.

<sup>b</sup> The \$6 million financing of the PDMF will co-share costs of consulting firms to be recruited for development of PPP projects, as approved by the PDMF board. The co-sharing will be at 44% of the cost of each contract with the consulting firms under the PDMF board-approved PPP project development proposals. This percentage will apply to each invoice from the consultants on a gross basis.

<sup>c</sup> Administered by ADB. This amount also includes ADB's administration fee, audit costs, bank charges, and a provision for foreign exchange fluctuations (if any), to the extent that these items are not covered by the interest and investment income earned on this grant, or any additional grant from the Government of the Philippines.

<sup>d</sup> The government has allocated P300 million to PDMF. The balance from the Project Development Facility of the former BOT Center is P7.250 million. Hence, total government financing of PDMF is P307.25 million, out of which 56% of the cost of contracts with consulting firms under PDMF board-approved PPP project development proposals will be covered. The \$ equivalent of the government financing of PDMF was obtained by applying the exchange rate of P43.81 per \$.

Source: Asian Development Bank estimates.

## OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

1. For the delivery of outputs 1-4, the technical assistance (TA) will provide 94 person-months of international and 186 person-months of national consultancy support through firms and through individual consultants' selection.<sup>1</sup> Two international firms, three international individual consultants, and 11 individual national consultants will be recruited. For the selection of firms the quality- and cost-based selection and quality-based selection procedures will be used.<sup>2</sup> The consultants will report to the National Economic and Development Authority (NEDA) and Asian Development Bank (ADB). The consultants' reports will be first submitted to the NEDA, Department of Finance (DOF), and Public-Private Partnership (PPP) Center for comments, and then submitted to ADB in accordance with the agreed reporting requirements. The reports will be ultimately submitted to the project steering committee for discussion and decision-making purposes. Knowledge transfer to all relevant PPP-involved government agencies will be mainstreamed into the activities of all consultants recruited under the TA. Workshops and seminars, including with the private sector, will be conducted as required.

### 1. Technical Advisor (individual, international, 24 person-months)

2. The technical advisor should have a post-graduate degree in business administration, economics, finance, or other PPP-relevant field from a reputable university, and at least 15 years of experience in PPP projects and/or policy. The NEDA and ADB will jointly assess the performance of the technical advisor periodically. Among other things, the consultant will be responsible for

- (i) substantively coordinating all inputs and outputs under the TA in consultation with the NEDA, DOF, PPP Center, and ADB;
- (ii) helping the executing agency and ADB with preparing detailed terms of reference, assessing submitted proposals, and conducting negotiations with the consultants to be hired under the TA and support monitoring of the consultants' performance;
- (iii) leading the team of national consultants to be hired under the TA, in close coordination and consultation with the NEDA, DOF, and PPP Center;
- (iv) ensuring that the crosscutting themes of gender equality (including the protection of vulnerable groups) and environmental sustainability are integrated in the project;
- (v) helping the PPP Center streamline work flow, policies, and procedures of the Project Development and Monitoring Facility (PDMF), including financial management of the project accounts;
- (vi) working as technical advisor to the PDMF board; in that capacity he or she will advise the PDMF board on, among other issues, the quality of the submitted proposals for PDMF funding of PPP project preparation. His or her opinion will be reflected in the minutes of the PDMF board meetings. The technical advisor will keep ADB informed of the PDMF decisions with respect to each project;
- (vii) advising government agencies, whose PPP project proposals were approved for PDMF funding on quality and/or technical aspects of the terms of reference and bidding documents for the transaction advisors;
- (viii) providing professional advice to the NEDA, DOF, and PPP Center on various PPP issues;

<sup>1</sup> See Supplementary Appendix E (available on request) for the proposed generic terms of reference of the consultants and transaction advisors to be recruited by the PDMF for PPP project development (output 5).

<sup>2</sup> All consultants will be hired in accordance with ADB's Guidelines on the Use of Consultants.. Disbursements will be made in accordance with ADB's *Technical Assistance Disbursement Handbook* (2010, as amended from time to time).

- (ix) timely submitting reports to the NEDA and ADB and any PPP-related ad hoc briefs or analyses, if required; and submitting quarterly reports on project implementation to the NEDA and DOF in the format and style required; and
- (x) taking part in project administration missions and contributing to drafting the missions' memoranda of understanding.

**2. Public–Private Partnership Policy, Legal, and Capacity Development Consultants** (firm, international, 57 international and 51 national person-months)

3. An internationally recruited consulting firm should make available experts with at least 10 years of proven expertise in (i) PPP policy and enabling environment development and PPP project development processes; (ii) PPP legal and regulatory framework improvement; (iii) PPP information management systems improvement, including developing modern internet and intranet sites; and (iv) capacity building of government staff in conceptualizing, developing, bidding, contracting, implementing, and evaluating PPP projects.

**a. Public–Private Partnership Policy and Enabling Environment Development and Project Development Processes**

4. The firm should make available the right mix of experts for carrying out the following indicative tasks:

- (i) Help rationalize the Philippines PPP institutional set-up, including strengthening of the PPP Center.
- (ii) Review current approaches to risk allocation, and help understand the concept and rationale of viability gap funding and the application thereof in the context of PPPs in the Philippines.
- (iii) Develop a comprehensive PPP manual. This manual would contain detailed instructions on dispute resolution mechanisms and processes and procedures to be followed (a) during the project identification, planning, preparation, procurement, implementation, and monitoring phases; and (b) for the project to comply with national and local environmental laws and requirements.
- (iv) Develop PPP toolkits and model PPP agreements and other standardized documents, including environmental sustainability and gender and vulnerable group filters and check lists, for various stages of the PPP project cycle.
- (v) Review and improve specific sector guidelines, with special attention paid to environmental safety standards included as part of the requirements for PPP projects.
- (vi) Recommend necessary policy reforms and design institutional structures and arrangements to facilitate private sector participation in the social sector (e.g., education and health sectors).
- (vii) Help the PPP Center prepare a check list that shall include environmental risk sustainability and gender and vulnerable group filters to be used for identification of potential projects for development under PPP mode.
- (viii) Improve the Project Development and Monitoring Facility managed by the PPP Center in terms of its structure, funding, operations, staffing, and sustainability.
- (ix) Prepare and develop a national strategic environmental assessment policy that shall govern and be applied in the identification, design, planning, implementation, and monitoring of the PPP program and projects.
- (x) Help the NEDA develop manuals and guidelines for (a) appraising PPP projects submitted for Investment Coordination Committee's approval; and (b) monitoring and evaluating PPP projects during implementation, at closing, and 3 years after completion.
- (xi) Help develop standard methodology and toolkits for ICC processing of proposed PPP projects.

**b. Public–Private Partnership Legal and Regulatory Framework Improvement**

5. The firm should make available the right mix of experts for carrying out the following indicative tasks:

- (i) Critical analysis of PPP-relevant national government-, sector- and LGU-level legislation and regulatory arrangements, and draft required amendments or new legal acts.
- (ii) Provide guidance to the PPP Center, NEDA, line agencies, and legislative and judicial bodies on PPP-related legal and regulatory reforms and practices based on a comparative analysis of international best practice.
- (iii) Build capacity of the PPP Center and line agencies in assessing possible projects from a legal perspective to avoid delays and problems during processing and implementation.
- (iv) Support the government in terms of drafting regulations and other associated legal requirements for the establishment of (a) a dedicated infrastructure financing facility; and (b) a mechanism for guarantees against risks, against which there is no insurance available in the market.

**c. Public–Private Partnership Information Management Systems Improvement, Including Developing Modern Internet and Intranet Sites**

6. The firm should make available the right mix of experts for carrying out the following indicative tasks to help the PPP Center:

- (i) Develop a central database on PPP projects at the PPP Center, including developing a methodology and format for collecting and tracking data and information on PPP projects, including relevant people-level, sex-disaggregated information on vulnerable groups, affected communities, and user groups.
- (ii) Ensure online connectivity to databases in other entities to regularly update the central database at the PPP center.
- (iii) Develop and maintain an information system that can be used to track project management, including effective internet and intranet sites.
- (iv) Structure and design the PPP Center website and ensure links with NEDA website and PPP websites of other agencies.
- (v) Identify and document best practices in PPP management information systems in the Philippines and abroad so that they are accessible to the PPP Center and other line departments.
- (vi) Help ensure that information on all PPP projects is available in a public access database.
- (vii) Train PPP Center staff on the use and maintenance of the information system and on database search.

**d. Capacity Building of Government Staff in Conceptualizing, Developing, Bidding, Contracting, Implementing, and Evaluating Public–Private Partnership Projects**

7. The firm should make available the right mix of experts for carrying out the following indicative tasks:

- (i) Help the PPP Center to establish twinning arrangement(s) with a counterpart in a country known for successful implementation of PPPs.
- (ii) Help the PPP Center to strengthen its knowledge management function, specifically help institutionalize the train-the-trainer approach for PPP Center staff to enable them to conduct PPP-related trainings for other government staff.
- (iii) Develop training manuals to be used by PPP Center staff for capacity building of implementing agencies.

- (iv) interactively train staff of the PPP Center, PPP Units in selected line-agencies, NEDA and DOF (through learning-by-doing activities involving real project cases) in (a) various PPP variants, (b) application of value for money principles, (c) reviewing requests for proposals and PPP agreements, (d) carrying out project evaluation and negotiation, monitoring and managing project implementation, (e) developing a public sector comparator to determine comparable risk-adjusted cost indicators, (f) various aspects on viability gap funding, and (g) developing financial models (including sensitivity analysis) to determine the likely value of private sector bids, etc.
- (v) Train PPP Center staff to (a) conduct environmental risk assessment and analysis of PPP projects, including applying necessary environmental safeguards and filters throughout the PPP project cycle; and (b) apply the gender tools and filters for rapid gender analysis to identify critical gender issues and mitigation measures.
- (vi) Develop an inventory of all domestic and foreign sources of finance and guarantees for PPP projects, and help the PPP Center to develop tools to disseminate this inventory through the website.
- (vii) Train government lawyers and representatives of the judiciary in developing and negotiating PPP project agreements and adjudication of PPP disputes, including arbitration options.
- (viii) Conduct workshops with stakeholders from the public and private sector to ensure adequate consultations during the work in areas (i)–(iii) of para. 3.
- (ix) Conduct other capacity building as might be identified during TA implementation.

**3. Transaction Advisor Selection Specialist** (individual, international, intermittent on indefinite delivery contract)

8. The transaction advisor selection specialist, engaged under an indefinite delivery contract (IDC), will help the PPP Center conduct selection of consultants and transaction advisors in a timely, efficient, transparent, and competitive manner. The specialist should have at least 15 years of direct experience in conducting and/or supervising consultant selection under projects funded by ADB or the World Bank. The specialist's main activities will include the following:

- (i) Support the PPP Center's procurement unit and Special Bids and Awards Committee to engage a panel of consulting firms under an IDC facility; and support the PPP Center's procurement unit, Special Bids and Awards Committee, and, if required, the line agencies in drafting required documents (e.g., terms of reference, bidding documents, advertisements) for the selection of consultants and transaction advisors to be paid out of the PDMF for IDC assignments.
- (ii) Support the PPP Center's procurement unit and SBAC in conducting evaluation of submitted proposals, negotiating a contract with the winning consulting or transaction advisory firm, and if needed, negotiating contract variations.
- (iii) Monitor and support the transaction advisor selection processes for compliance with ADB's Guidelines on the Use of Consultants. Specifically, for every selection of PDMF-paid consultants and transaction advisors.
- (iv) Support the PPP Center in implementing the recommendations of the procurement capacity assessment.
- (v) Develop a dedicated operations manual and standard documents on selection of consultants and transaction advisors for preparation of PPP projects.

**4. Public–Private Partnership Risk Management and Guarantee Expert** (individual, international, 3 person-months)

9. The expert, who will be located at the DOF, should have at least 10 years of experience in assessing and mitigating risks in PPP projects, and assessing fiscal and macroeconomic risks associated with implementation of PPP projects. The consultant's main activities will include the following:

- (i) Identify any mismatch in supply and demand of risk sharing and guarantees, and assess the need for, viability of, and requirements for setting up a dedicated guarantee mechanism in the Philippines.
- (ii) Support the DOF in establishing a clear appraisal and claim framework for government-issued guarantees in order to improve the creditworthiness and quality of PPP projects.
- (iii) Support the DOF in improving the governance and implementation of government guarantee provisions, and developing a framework for protecting government contingent liability with regard to guarantees issued for PPP projects.
- (iv) Recommend best-in-class practices, frameworks, and standard operating procedures for government-issued guarantees.
- (v) Support the DOF in assessing the legal and institutional frameworks related to guarantees in PPP projects, and mainstreaming the PPP guarantees into the overall DOF fiscal risk management systems.

**5. Infrastructure Financing Facility Consultant** (firm, international, 10 international and 15 national consultancy person-months)

10. The consulting firm will have to provide a team of experts with established expertise in incorporation and development of operational processes for commercially oriented infrastructure investment financing institutions in developed or developing countries. The firm's tasks will include the following:

- (i) Support the DOF in designing policies and procedures, and an organization structure for the proposed Philippines Infrastructure Financing Facility (PIFF), and support with activities related to the incorporation of the PIFF.
- (ii) Help the PIFF prepare an institutional development plan to cover, among other issues, the PIFF risk management approach and strategy, and the organizational structure and human resources management plan.
- (iii) Conduct preliminary capacity building of the PIFF staff in core areas of PIFF work, and help select and establish twinning partnership arrangements with a similar organization in a developed or developing country with a successful track record in PPP financing.

**6. Public–Private Partnership Center Support Consultants** (national, individual, 120 person-months)

11. To provide immediate support to the reorganized PPP Center and line agencies in preparing priority PPP projects, 11 national consultants will be recruited on an individual basis. The national consultants will need to have at least 10 years of proven expertise in their respective areas, and have solid knowledge of the government processes relevant to PPPs. The consultants, who will be located at the PPP Center office, will comprise (i) two legal advisors (15 person-months each), (ii) an infrastructure engineer (18 person-months), (iii) a finance/economics expert (12 person-months), (iv) a risk management expert (6 person-months), (v) two safeguard experts (4 person-months each) on environmental sustainability and gender sensitivity, (vi) a resettlement expert (4 person-months), (vi) a capacity building and knowledge management expert (12 person-months), (vii) a procurement specialist (18 person-months), and (viii) a financial management specialist (12 person-months).