



REPUBLIC OF THE PHILIPPINES
SANGGUNIANG PANLUNGSOD
CITY OF MANDALUYONG

ORDINANCE NO. 927, S-2023



AN ORDINANCE GOVERNING PUBLIC-PRIVATE PARTNERSHIP IN THE CITY OF MANDALUYONG PROVIDING THE PREFERRED MODALITY, REGULATING THE PROCEDURE FOR APPLICATION, SELECTION AND AWARDDING AND OTHER CONNECTED PURPOSES

WHEREAS, under Section 20, Article II of the 1987 Constitution, the "State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments";

WHEREAS, the private sector participates in infrastructure, development and social service-related projects of the State and local government units (LGUs) through what is popularly known as Public-Private Partnerships (PPPs);

WHEREAS, the Department of the Interior and Local Government (DILG) Legal Opinion No. 8, S. 2014 declared that "there is no specific statute on PPP nor guidelines on joint ventures for local governments" and that a "duly enacted local legislation (PPP Code) must be complied with in undertaking (its) PPP projects";

WHEREAS, according to the Department of Justice (DOJ) Opinion No. 18, S. 2012, "xxx local governments may enact their own Public-Private Partnership (PPP) Code or omnibus ordinance outlining, among others, all applicable modalities, xxx A local government, through an enabling ordinance, is free to act to address local concerns, even without an enabling ordinance, provided no statute will be infringed";

WHEREAS, in Legal Opinion No. 10, S. 2014, the DILG affirmed the above-quoted DOJ Opinion and further said that, "the LGUs' discretion xxx is consistent with the state policy of local autonomy and is in line with the operative principle of decentralization and the national goal of propelling social and economic growth and development through the active participation of the private sector"; and

WHEREAS, in furtherance of and consistent with local autonomy, fiscal autonomy, the principle of subsidiarity, public good and welfare, general welfare, and full autonomy over proprietary powers, the City is free, provided no statute is violated, to adopt its definition of a PPP undertaking and prescribe the requirements, procedures and conditions for City PPP, and incorporate these in an operative framework.

NOW THEREFORE, BE IT ORDAINED, by the *Sangguniang Panlungsod* of Mandaluyong in session assembled:

**CHAPTER 1
BASIC PRINCIPLES**

SECTION 1. SHORT TITLE. This Ordinance shall be known as the "Mandaluyong City PPP Code."

SECTION 2. OPERATIVE PRINCIPLES. The City shall be guided by the following principles:

- a.) Under Section 18 of Republic Act No. 7160 or the Local Government Code of 1991 (Local Government Code), the City may acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes.
- b.) Under Section 22 (d) of the Local Government Code, the City enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare.
- c.) Under Section 25 (b) of the Local Government Code, the City may collaborate or cooperate with other local governments, national government agencies, government-owned and controlled corporations, government instrumentalities and government corporate entities for the implementation of local projects.
- d.) Under the Charter of the City, Sections 16,17,19 and 129 of the Local Government Code and other statutes, the City has been given the responsibility and mandate to exercise devolved and delegated powers.
- e.) Under Sections 34, 35 and 36 of the Local Government Code and in the exercise of its powers, the City may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations (POs and NGOs) to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people; provide assistance, financial or otherwise, to such POs and NGOs for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.
- f.) The City, under Section 3 (I) of the Local Government Code, is duty-bound to ensure the active participation of the private sector in local governance.

- g.) **Procurement of projects without using any public funds** fall outside the coverage of Republic Act No. 9184, the Government Procurement Reform Act, and therefore such projects shall be governed by this Ordinance instead.

SECTION 3. RATIONALE FOR PPP. PPP shall be promoted to provide cost-effective and timely services to the community. In pursuing PPP, the City shall be guided by the following:

- a.) **PPP projects should provide good economic value** as far as practicable, including allocation of risks to the party best able to control, manage, mitigate or ensure these risks, and maximization of the benefits of private sector efficiency, expertise, flexibility and innovation, while ultimately serving the public good.
- b.) **PPP projects should be undertaken whenever possible** to avoid public costs and public borrowing. By tapping private sector investment, scarce City funds may be directed to other priority sectors.
- c.) **The City shall award the PPP project based on the principles of honesty, integrity, probity, diligence, fairness, trust, respect and consistency for all proponents.**

SECTION 4. PPP PROJECTS. The City may undertake developmental projects, namely projects that advance and promote the general welfare and public good, with a private sector proponent ("Proponent") through any appropriate PPP modality ("PPP Projects").

- a.) For purposes of this Ordinance, the City's preferred PPP modalities shall be Management or Service Contract, or Joint Venture.

"Management or Service Contract" means an arrangement where the Proponent manages, administers or takes over operation of a City-owned or City-operated facility, or provides a service to the City that involves the City's property or proprietary authority. The Proponent may collect tolls, fees, rents or charges that shall be turned over to the City. The Proponent shall be compensated in the form of a fixed fee, a share in the revenues and/or performance-based management or service fee.

"Joint Venture" means an arrangement whereby a Proponent on one hand, and the City on the other hand, contribute capital, services, assets (including equipment, land, intellectual property or anything of value), to a pooled interests in the performance of a service, function, business or activity, with each party having a right to direct and govern

the venture, and with a view of sharing both profits and losses. The City's contributions may include, without limitation, goodwill, grant of license or franchise, concession, usufruct, right-of-way, equity, subsidy or guarantee, cost-sharing and credit enhancement mechanisms, exercise of police power, tax incentives or tax holidays, performance of devolved government powers, expropriation, and reclassification or enactment of zoning ordinances.

- b.) The City shall have the option to form or allow the formation of a special purpose vehicle or single-purpose project company to implement the PPP project as may be appropriate.
- c.) The City may enter into arrangements with other local governments, national government agencies, or government corporate entities, for PPP Projects located within or even outside the City's territory, provided the projects will benefit the City.

CHAPTER 2 PPP PROCEDURES AND PPP CONTRACT

SECTION 5. OVERVIEW. The City, through a Selection Committee as defined below, may solicit a PPP Project through public bidding. Alternatively, a Proponent may submit an unsolicited proposal to the Selection Committee. The Selection Committee shall subject the unsolicited proposal to competitive challenge, provided that the original Proponent shall have the right to match any superior offers.

SECTION 6. SELECTION COMMITTEE. There is hereby created a Selection Committee for purposes of selecting a Proponent for a specific PPP Project, composed of the following:

- a.) Chairperson - City Mayor;
- b.) Member - City Legal Officer;
- c.) Member - City Planning and Development Officer;
- d.) Member - City Engineer; and
- e.) Member - One (1) representative from the City Council designated in an appropriate resolution.

A quorum of the Selection Committee shall be composed of a simple majority of its members. If the Chairperson is absent, any of the Members may act as Chairperson.

The Selection Committee may invite observers from relevant national government agencies or the private sector. The Selection Committee may also form a support staff composed of City employees.

The Selection Committee shall be responsible for all aspects of the pre-selection and selection process, including, among others, initiating, preparing or evaluating proposals; tender documents; contract drafting or evaluation; publication and deadlines; eligibility requirements, selection and challenge processes; prequalification and/or post-qualification; evaluation of the legal, financial and technical aspects; resolution of disputes and appeals; bid/proposal/performance security; and recommendations of award/notice to proceed.

The Selection Committee may publicly solicit and invite Proponents to bid on a proposed PPP Project through Competitive Selection, as defined below. Alternatively, a Proponent may submit an unsolicited proposal to the Selection Committee, which shall be subject to Competitive Challenge, as defined below.

SECTION 7. COMPETITIVE SELECTION. The Competitive Selection procedure shall consist of the following steps:

- a.) Preparation of bid/tender documents including instructions to bidders, terms of reference, draft PPP Contract, required bid security and performance security, and other relevant documents.

Unless determined otherwise by the Selection Committee:

- (i) the bid/performance security may be in the form of cash, certified check, cashier's/manager's check, bank draft, letter of credit, bank guarantee or surety bond;
 - (ii) the bid security shall be at least 2% of the proposed project cost; and
 - (iii) (iii) the performance security shall be at least 5% of the proposed project cost.
- b.) Publication of notice to bid, which shall be made in a newspaper of general circulation once per week for two consecutive weeks. The notice shall also be posted in at least two conspicuous places in the City Hall during the period stated above.
- c.) Submission of bids not later than thirty (30) days from the date that the notice to bid was first published.

- d.) Opening of bids, determination of compliance with eligibility/qualification, technical and financial requirements and determination of winning bidder.
- e.) Any other applicable or appropriate procedure.

SECTION 8. COMPETITIVE CHALLENGE. The Competitive Challenge process shall proceed as follows:

- a.) A Proponent should submit its unsolicited proposal to the Selection Committee, which should be accompanied by a project study (which may be a business case, business plan, pre-feasibility study, feasibility study or any other reasonably informative form]. The Proponent may optionally include a draft PPP Contract.
- b.) The Selection Committee shall evaluate and determine the eligibility of the Proponent, the necessity and potential public benefits of the proposed project, the consistency of the terms of the draft PPP contract, if any, with this Ordinance. If the Proponent did not submit a proposed PPP contract, the Selection Committee may draft such contract based on the proposal. The Selection Committee may conduct preliminary meetings with the Proponent to clarify any aspect of its proposal.
- c.) Upon completion of the initial evaluation, the City Mayor, upon recommendation of the Selection Committee, shall either issue a certificate of acceptance or non-acceptance of the proposal. Upon the issuance of the certificate of acceptance, the Proponent shall be deemed to have Original Proponent status.
- d.) If there is more than one unsolicited proposal submitted for the same PPP Project, the City Mayor, upon recommendation of the Selection Committee, may reject all proposals and pursue Competitive Selection, or accept the unsolicited proposal that provides the greater overall benefit to the City.

- e.) If after acceptance of the proposal, further detailed negotiations are necessary, the Proponent and the City (through the Selection Committee) may proceed accordingly. In such case, the parties shall further refine and agree upon the terms and conditions of the PPP Project including its technical and financial aspects. If detailed negotiations are not successful, the City Mayor may, upon recommendation of the Selection Committee, revoke the acceptance of the proposal. Thereafter, the City shall be free to pursue the PPP Project by any other lawful modality.
- f.) After conclusion of the detailed negotiations (or immediately after acceptance of the proposal if detailed negotiations are not necessary), the Selection Committee shall proceed to subject the proposal to Competitive Challenge.
- g.) The Selection Committee shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the Proponent shall be the same as those stated in the tender documents. Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents. Unless determined otherwise by the Selection Committee:
 - (i) the proposal security may be any of the same forms and in the same amount as the bid security mentioned above; and
 - (ii) the performance may likewise be in the same form and amount.
- h.) The Selection Committee shall publish a notice inviting comparative proposals in a newspaper of general circulation once per week for two consecutive weeks. The notice shall also be posted in at least two conspicuous places in the City Hall during the period stated above.

- i.) The Original Proponent shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.
- j.) In the evaluation of proposals, the best offer shall be determined to include the original proposal of the Proponent. If the Selection Committee determines that an offer made by a challenger is superior to the original proposal, the Original Proponent shall be given the right to match such superior offer. Should no matching offer be received within the stated period, the Selection Committee shall recommend to the City Mayor and City Council the award of the PPP Project to the superior proposal. If a matching offer is received within the prescribed period, the PPP Project shall be awarded to the original proponent. If no comparative proposal is received by the City, the PPP Project shall be immediately awarded to the Original Proponent.

SECTION 9. RECOMMENDATION OF AWARD. After completion of the Competitive Selection or Competitive Challenge process, the Selection Committee shall recommend to the City Mayor the award of the PPP Project to the winning Proponent.

SECTION 10. NOTICE OF AWARD. If the City Mayor approves the above recommendation, the City Mayor shall sign and issue a Notice of Award to the winning Proponent. The Notice of Award and bidding results shall be published once every week for two (2) consecutive weeks, in a newspaper of general circulation. Said notice of award/bidding results should also be posted in at least two (2) conspicuous places in the City Hall.

The Notice of Award shall require the Proponent to submit the following to the Selection Committee within two (2) weeks from receipt of the Notice:

- a.) Prescribed performance security;
- b.) Proof of credit or financial capacity sufficient to cover the total estimated cost of the project;

c.) Proof of formation of any consortium or special purpose company necessary for the PPP Project; and

d.) Any other appropriate conditions required by the Selection Committee.

Failure to submit the requirements within the prescribed period will result in confiscation of the bid security or proposal security, as the case may be.

After receipt of the foregoing requirements, the City Mayor, upon recommendation of the Selection Committee, shall notify the winning Proponent to execute and sign the PPP Contract within seven (7) calendar days from receipt of the notice.

If the winning Proponent fails to execute the contract within the period provided, the Proponent's bid security shall be forfeited.

In such case, the City shall consider the bidder with the next ranked complying bid. If the same likewise fails to execute the contract, its bid security shall likewise be forfeited, and the City shall consider the next ranked complying bid, and so on until the PPP Contract shall have been executed. If the City is unable to enter into the PPP Contract with any of the compliant bidders, the Selection Committee may declare a failure of Competitive Selection or Competitive Challenge. In this case, the project proposal may be re-bid or procured under any lawful modality.

SECTION 11. RATIFICATION OF PPP CONTRACT. The original signed PPP Contract shall be promptly submitted to the City Council for ratification by simple majority. The PPP Contract shall be effective upon ratification, unless the contract stipulates another date.

SECTION 12. NOTICE TO PROCEED. Upon ratification of the PPP Contract, the City Mayor, upon recommendation of the Selection Committee, shall issue a Notice to Proceed to the Proponent. The Proponent shall then promptly implement and carry out the PPP Project.

SECTION 13. PROCEDURES. The City Mayor, upon recommendation of the Selection Committee, shall have the authority to adjust or supplement the foregoing procedures when necessary to comply with applicable law, or when advisable to enhance the efficiency, competition, transparency or accountability of the process.

CHAPTER 3 REGULATION AND CONTRACT MANAGEMENT

SECTION 14. REGULATORY COMMITTEE. There is hereby created a Regulatory Committee to performing contract management functions, such as partnership management (i.e., corporate governance, communication and information sharing, and dispute resolution), performance or service delivery management (i.e., risk management and performance management), and contract administration (i.e., variation management, contract maintenance and financial administration), for all PPP Projects.

The Regulatory Committee shall have the same membership as the Selection Committee under this Ordinance.

A quorum of the Regulatory Committee shall be composed of a simple majority of its members. If the Chairperson is absent, any of the Secretary or Members may act as Chairperson.

The Regulatory Committee may invite observers from relevant national government agencies or the private sector. The Selection Committee may also form a support staff composed of City employees. The Regulatory Committee may also engage consultants hired pursuant to law.

The Regulatory Committee may engage, pursuant to applicable laws on the hiring of consultants, a contract manager for a PPP Project depending on the PPP contract value, complexity and associated risks. The contract manager shall have the necessary management skills and technical knowledge of the goods, services or works to be provided under the PPP contract.

SECTION 15. POST-AWARD CONFERENCE. Immediately after the PPP contract is awarded, the Regulatory Committee shall call a post-award conference to ensure that the City and the Proponent have a clear and mutual understanding of the terms and conditions of the PPP contract, and to determine the responsibilities of parties.

The post-award conference shall be attended by the members of the Regulatory Committee, such employees and contractors of the City involved in the management of the PPP contract, and key personnel of the Proponent.

SECTION 16. POST-CONTRACT REVIEW. A post-contract review shall be conducted at the end of a contract period, which shall include a post-contract analysis, evaluation and reporting of the PPP project. If the PPP contract is subject to renewal or extension, the post-contract review shall be conducted within a reasonable time before the deadline for such renewal or extension.

SECTION 17. **DOCUMENT CONTROL.** The Regulatory Committee shall act as the administrator of documents and correspondence relating to the PPP project and PPP contract. The Regulatory Committee shall identify the documents and correspondences that must be retained; require that all such documents be kept in both electronic and paper format during contract life or such longer period as may be required under applicable law; and lay down the protocol for document storage, logging, accountability, disclosure and access by the parties and the public.

CHAPTER 4
FINAL PROVISIONS

SECTION 18. **APPLICATION OF OTHER LAWS AND REGULATIONS.** - Any other relevant and applicable laws, rules or regulations shall apply in a suppletory manner.

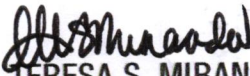
SECTION 19. **SEPARABILITY CLAUSE.** - If, for any reason, any section or provision of this Code or any part thereof, or the application of such section, provision or portion is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

SECTION 20. **REPEALING CLAUSE.** - All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

SECTION 21. **EFFECTIVITY.** - This Ordinance shall take effect fifteen (15) days after its posting in two conspicuous places within the City.

ENACTED on this 19th day of June 2023, in the City of Mandaluyong.

I HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS ENACTED BY
THE SANGGUNIANG PANLUNGSOD OF MANDALUYONG IN A REGULAR
SESSION HELD ON THE DATE AND PLACE FIRST ABOVE GIVEN.


MA. TERESA S. MIRANDA
Sanggunian Secretary

ATTESTED BY:

APPROVED BY:


CARMELITA A. ABALOS
City Vice Mayor &
Presiding Officer


BENJAMIN S. ABALOS
City Mayor

Date: JUN 23 2023

DISTRICT I


ANTONIO DLS. SUVA, JR.
Councilor


ANJELO ELTON P. YAP
Councilor


DANILO L. DE GUZMAN
Councilor

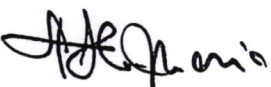

RODOLFO M. POSADAS
Councilor

ON VACATION LEAVE
CARISSA MARIZ S. MANALO
Councilor


ESTANISLAO V. ALIM III
Councilor

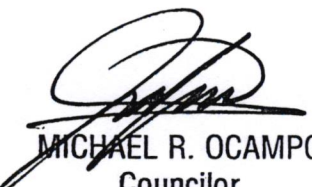
DISTRICT II


BENJAMIN A. ABALOS III
Councilor


ALEXANDER C. STA. MARIA
Councilor

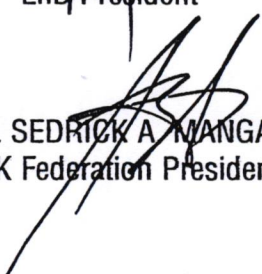

REGINALD S. ANTIOJO
Councilor


LESLIE F. CRUZ
Councilor


MICHAEL R. OCAMPO
Councilor


MICHAEL ERIC G. CUEJILO
Councilor


DARWIN A. FERNANDEZ
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