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Technical Assistance Report

PUBLIC

Project Number: 57039-001
Transaction Technical Assistance Facility (F-TRTA)
April 2023

Republic of the Philippines: Transaction Advisory Services for the Preparation of Public-Private Partnership Projects

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ABBREVIATIONS

ADB	–	Asian Development Bank
CPS	–	Country Partnership Strategy
DOE	–	Department of Energy
DOTr	–	Department of Transportation
DPWH	–	Department of Public Works and Highways
FPV	–	Floating Photovoltaics
NAIA	–	Ninoy Aquino International Airport
NPC	–	National Power Company
OPPP	–	Office of Public-Private Partnership
O&M	–	Operation and Maintenance
PPP	–	Public-Private Partnership
PDP	–	Philippine Development Plan
PSALM	–	Power Sector Assets and Liabilities Management Corporation
RE	–	Renewable Energy
SCP	–	Service Contracting Program
TA	–	technical assistance
TAS	–	transaction advisory services
TRTA	–	transaction technical assistance

NOTE

In this report, “\$” refers to United States dollars.

Vice-President	Ashok Lavasa, Private Sector Operations and Public-Private Partnerships
Head Director	F. Cleo Kawawaki, Office of Public-Private Partnership (OPPP) Siddhartha Shah, Advisory Division 2, OPPP
Team leader	Dionisio Camangon II, Senior PPP Specialist, OPPP
Team members	Analyn Grace Geramo-Pedida, Associate Operations Coordination Analyst, OPPP Jill Victoria M. Hanopol, Associate Operations Coordination Analyst, OPPP Nigel Rillon, Senior PPP Officer, OPPP Ruchika Saluja, PPP Specialist, OPPP Rachel Yew, Senior Operations Coordination Specialist, OPPP

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TRANSACTION TECHNICAL ASSISTANCE AT A GLANCE

1. Basic Data		Project Number: 57039-001	
Project Name	Transaction Advisory Services for the Preparation of Public-Private Partnership Projects in the Republic of the Philippines	Department/Division	OPPP/OPOH
Nature of Activity	Project Preparation	Executing Agency	Department of Energy, Department of Transportation, Dept. of Public Works & Highways, National Power Corporation, Philippine National Railways, Power Sector Assets & Liabilities Mgt Corp (PSALM)
Modality	Facility		
Country	Philippines		
2. Sector		ADB Financing (\$ million)	
✓ Transport	Urban public transport		1.500
Energy	Renewable energy generation - solar		1.000
		Total	2.500
3. Operational Priorities		Climate Change Information	
✓ OP1: Addressing remaining poverty and reducing inequalities		GHG Reductions (tons per annum)	2,000,000
✓ OP3: Tackling climate change, building climate and disaster resilience, and enhancing environmental sustainability		Climate Change impact on the Project	High
✓ OP4: Making cities more livable		ADB Financing	
		Adaptation (\$ million)	1.250
		Mitigation (\$ million)	1.250
		Cofinancing	
		Adaptation (\$ million)	0.000
		Mitigation (\$ million)	0.000
Sustainable Development Goals		Gender	
SDG 1.4		Some gender elements (SGE)	✓
SDG 7.1, 7.2			
SDG 11.2		Poverty Targeting	
SDG 13.1, 13.a		Geographic Targeting	✓
4. Risk Categorization	Low		
5. Safeguard Categorization	Safeguard Policy Statement does not apply		
6. Financing			
Modality and Sources		Amount (\$ million)	
ADB		2.500	
Transaction technical assistance: Technical Assistance Special Fund		2.500	
Cofinancing		0.000	
None		0.000	
Counterpart		0.000	
None		0.000	
Total		2.500	
Currency of ADB Financing: US Dollar			

I. THE TECHNICAL ASSISTANCE FACILITY

A. Justification

1. The transaction TA facility will support the development of bankable projects in the Republic of the Philippines, that will be implemented through Public-Private Partnerships (PPP). The TA facility will enable OPMP to provide transaction advisory services (TAS) to these projects and to engage technical, legal, and subject matter experts in support of TAS. The scope of OPMP's work will cover the conduct of due diligence, project preparation and structuring, developing financial models, assessing project financial viability, preparing project documentation (including concession agreements and tender documents), assisting in contract negotiations, regulatory support, project monitoring and performing other activities as may be required by the client Philippine government agencies leading to commercial and financial closure. The TA facility is aligned with and supportive of the priorities of the Philippines and the pipeline projects listed below are included in the 2023-2025 Indicative Pipeline and Monitoring Report (ICPM) for the country.

KEY PIPELINE PROJECTS	
PHI MRT 3 Operations and Maintenance Project Executing Agency: Department of Transportation (DOTr)	The MRT3 is a 17-kilometer (km) railway with 13 stations operating along EDSA, crossing the cities of Pasay, Makati, Mandaluyong and Quezon, in the National Capital Region. DOTr is in the process of engaging ADB OPMP to provide TAS for the procurement of the O&M operator for the MRT3.
PHI MRT 4 Operations and Maintenance Project Executing Agency: Department of Transportation (DOTr)	The MRT4 project will be a 16-km long fully elevated railway system with 11 stations serving the eastern side of Metro Manila including the highly populated areas of the province of Rizal. An ADB sovereign loan is expected to fund the construction of the project. DOTr is in the process of engaging ADB OPMP to provide TAS for the procurement of the O&M operator for the MRT4.
PHI DOE Floating Solar Park Executing Agency: Department of Energy (DOE)	The Laguna Lake Floating Solar Park Project aims to accelerate the realization of floating photovoltaic (FPV) solar power generation projects in Laguna Lake by setting up designated areas in the Lake within which multiple FPV projects can congregate and share common infrastructure. DOE has requested ADB OPMP to undertake a feasibility study and assist in project preparation.
PHI NPC Renewable Energy for Offgrid Segment Executing Agency: National Power Company (NPC)	The project will involve the development of distributed renewable energy capacity which can supplement or replace part of NPC's existing supply to offgrid areas currently powered by diesel / oil-based generating units. NPC and OPMP are in discussions for a TAS engagement for project preparation and structuring and procurement of the private sector partner for the project.
Other Pipeline Projects / Executing Agency	
PHI Rail Solar Project / Philippine National Railways (PNR) PHI DOE Omnibus Guidelines Review and Updating / DOE PHI Power Sector Assets and Liabilities Management (PSALM) Corporation Asset Monetization / PSALM PHI NAIA Modernization and Capacity Expansion PPP / DOTr PHI Bataan-Cavite Interlink Project Operation & Maintenance / Department of Public Works & Highways (DPWH) PHI Laguna Lakeshore Road Network Project Phase 1 Operation & Maintenance / DPWH	

2. Philippine President Ferdinand Marcos Jr., in his inaugural State of the Nation Address (SONA) in July 2022, declared the development of railways systems and the expansion of renewable energy supply as priorities under his administration.¹ Moreover, Pres. Marcos emphasized that PPPs will be pivotal in the infrastructure development program and that the participation of the private sector will continue to be encouraged. The 2023-2028 Philippine Development Plan (PDP) solidifies this direction for railway and renewable energy development, and it identifies PPPs as a major strategy in furthering the infrastructure agenda.² The Marcos administration has recently taken steps to foster an enabling environment for PPPs by amending and improving the implementing rules of Republic Act 7718 or the Build-Operate-Transfer (BOT) Law.³

3. **Inadequate Supply of Public Transport and Energy.** Filipinos suffer from constrained mobility on a daily basis, especially in urban areas, as a result of inadequate public transportation. In remote areas and in island communities of the country, Filipinos rely on power from diesel or oil-based generating units, a scheme with steadily increasing costs that the Philippine government subsidizes. The Key Pipeline Projects aim to (i) improve public transport availability in the National Capital Region, (ii) accelerate the development of renewable energy, and (iii) augment the power supply in remote off-grid areas and enable a transition to less costly renewable sources in these areas. The TA facility will enable OPPP to provide TAS and ensure that PPP projects are implemented with the appropriate risk allocation, incentives, commercial structure, and best practice performance standards thereby increasing the likelihood that these projects are properly sustained during operations and that the intended benefits to Filipinos are realized. These efforts are consistent with the 2018-2023 Country Partnership Strategy (CPS)⁴ for the Philippines, particularly Pillar 1 (Accelerating Infrastructure and Long-term Investments) and Pillar 2 (Promoting local economic development) in supporting physical connectivity, in building livable cities, and climate change and disaster resilience.

4. **Tight Fiscal Space.** To incentivize road-based public transport to resume operations and meet the commuting demand at and after the height of the COVID-19 pandemic, the Philippine government introduced a service contracting program (SCP) wherein it paid transport operators based on trips and suspended the charging of fares to riders. Similarly, the Philippine government subsidizes the generation of power in remote areas of the country. The Philippine government acknowledges that it is now working within a narrow fiscal space as it guides the country in its economic recovery from the effects of the pandemic and that maintaining financial support for certain projects may become unsustainable. The 2023-2028 PDP recognizes the innovation, expertise, and efficiencies that will result from allowing the private sector to actively participate in infrastructure development. Entering into PPPs is a main strategy to implementing infrastructure projects while easing the burden on government resources.⁵

5. **Gender elements.** The Philippines has ratified key international treaties and instruments in support of gender equality and these commitments are mirrored in a strong national policy and

¹ SONA transcript accessible at: <https://www.officialgazette.gov.ph/2021/07/26/ferdinand-r-marcos-jr-first-state-of-the-nation-address-july-25-2022/>

² Chapter 12. Expand and Upgrade Infrastructure, 2023-2028 Philippine Development Plan (PDP).

³ Accessible at: https://ppp.gov.ph/press_releases/the-revised-2022-irr-of-the-bot-law-is-out-now/#:~:text=The%20Revised%202022%20IRR%20of%20the%20BOT%20Law%20sought%20to,rigid%20processes%2C%20or%20ambiguous%20provisions.

⁴ Accessible at: <https://www.adb.org/documents/philippines-country-partnership-strategy-2018-2023>

⁵ Chapter 12. Expand and Upgrade Infrastructure, 2023-2028 Philippine Development Plan (PDP), p. 281.

legal framework. The Magna Carta of Women or Republic Act 9710 provides the legal mandate on gender equality and women’s empowerment, and the Philippines has adopted a whole of government approach on gender mainstreaming. The Harmonized Gender and Development (GAD) Guidelines provide further direction on how to integrate gender considerations in project design, implementation and monitoring and evaluation across all sectors. The infrastructure and transport sectors are also governed by these policies, with the Philippine Plan for Gender-Responsive Development (PPGD), 1995-2025 outlining the need to consider women’s specific needs in infrastructure development and to increase their participation across project decision-making, design, and implementation. This TA facility seeks to promote gender elements by encouraging gender-sensitive practices and policies in the project development process as well as in the PPP contracts with the private sector, consistent with Philippine statutory requirements.

B. Outputs and Activities

6. The major outputs and activities are summarized in Table 1.

Table 1: Summary of Major Outputs and Activities

Major Outputs	Delivery Dates	Key Activities with Milestones
1. Output 1: Financial viability assessment of PPP and transaction structure prepared.	By Q4 2023 for the Key Pipeline Projects	1.1. Conduct of due diligence 1.2. Assess financial viability 1.3. Develop financial model 1.4. Conduct of market sounding to gather initial feedback from the private sector on the project’s bankability 1.5. Develop the transaction structure
2. Output 2: Project marketing support provided.	By Q2 2024 for the Key Pipeline Projects	2.1. Develop marketing documents such as Project Brief 2.2. Organize bidder conference / market consultation and other events 2.3. Retain providers of transaction support services, as may be required
3. Output 3: Bidding documents prepared	By Q3 2024 for the Key Pipeline Projects	3.1. Prepare Pre-qualification documents and recommendations on criteria 3.2. Develop Request for Proposal (RFP) and recommendations on criteria 3.3. Draft concession agreement, including Key Performance Indicators 3.4. Support the Client in negotiations with preferred bidder leading to commercial closure.

ADB = Asian Development Bank, RFP = request for proposal, Q= quarter, TA = technical assistance.

C. Cost and Financing

7. The TA financing amount is \$2.50 million, which will be financed on a grant basis from TASF-Others (income transfer).⁶ The key expenditure items are listed in Appendix 1. Cost

⁶ All DMCs are eligible for TASF (income transfer/others). Only group A and group B DMCs with access to concessional resources are eligible for TASF (donor contribution). Group C DMCs and India, which are regular OCR-only countries, only have access to TASF (income transfer/others). Country groupings are based on ADB. [Public Sector \(Sovereign\) Financing: Lending Policies and Rates](#).

recovery will be negotiated where possible with each client and will be sought as per ADB's Staff Instruction on Business Processes for Transaction Technical Assistance.⁷ Specific terms of reimbursement, if applicable, will be negotiated for each project separately.

8. The government may provide counterpart support in the form of counterpart staff, office space, and other support, as articulated in the TAS agreement or other relevant agreements between ADB and the relevant government agency. The government will be informed that approval of the TA does not commit ADB to finance any ensuing project.

D. Implementation Arrangements

9. ADB will be the implementing agency of the TA. ADB will select, administer, and evaluate consultants, as well as supervise the consultants' output to be delivered. The TA will finance consulting services, workshop and training events, including study visits and resource persons, preparation of reports as well as communication, miscellaneous administration, and support costs. ADB will engage the consultants and procure non-consulting services following the ADB Procurement Policy (2017, as amended from time to time) and its associated project administration instructions and/or staff instructions. The expected implementation arrangements for the projects are summarized in Table 2, which may change depending on the requirements of the executing agencies and market conditions.

10. DOTr, DOE, NPC, and other counterpart government entities as applicable will be the executing agencies for their respective projects as indicated in paragraph 1. The executing agencies will oversee day-to-day TA implementation and help the consultants liaise with business units within the executing agencies, other government agencies, local authorities, and other stakeholders, and obtain data and documentation from them.

Table 2: Implementation Arrangements

Aspects	Arrangements		
Indicative implementation period	April 2023 – April 2028		
Executing agencies	DOTr, DOE, NPC, and other applicable counterpart government entities for their respective pipeline projects		
Implementing agency	ADB		
Consultants	Firms and/or individuals will be selected and engaged by ADB as needed by the Project.		
	Selection method	Selection title	Amount
	QCBS/FBS	Technical advisory support (72 person-months)	\$ 1,370,000
	OGC process ^a	Legal advisory support (42 person-months)	\$ 1,050,000
Non-consulting services	Training and workshop events, study visits, translation, printing	\$ 80,000	
Disbursement	The TA resources will be disbursed following ADB's <i>Technical Assistance Disbursement Handbook</i> (2020, as amended from time to time).		

⁷ Manila. 2022. *Staff Instruction on Business Processes for Transaction Technical Assistance*. In terms of project preparation, full cost recovery is strongly encouraged if commercial close is achieved for group C2, C3 and C4 DMCs during 2022-2024. Full cost recovery will be mandatory for group C2, C3, and C4 DMCs beginning 2025, whether commercial close is achieved or not. ADB also seeks cost recovery if it is mutually agreed by ADB and the government or if the TA is provided to a graduated DMC.

Aspects	Arrangements
Asset turnover or disposal arrangement upon TA completion	Not applicable.

ADB = Asian Development Bank, FBS = fixed budget selection, OGC = Office of the General Counsel, QCBS = quality- and cost-based selection.

^a Legal counsel will be procured by OGC. "OGC process" refers to "Customized procurement arrangements for the engagement of legal consultants for transaction advisory services and related capacity building initiatives" as approved by PPF on 31 July 2017.

II. THE PRESIDENT'S DECISION

10. The President acting under the authority delegated by the Board, has approved the provision of technical assistance not exceeding the equivalent of \$2.50 million on a grant basis for the Transaction Advisory Services for the Preparation of Public–Private Partnership Projects in the Philippines, and hereby reports this action to the Board.

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	Total Cost
Asian Development Bank^a	
1. Consultants	
a. Remuneration and per diem	2,195
b. Out-of-pocket expenditures ^b	100
2. Non-consulting services	
a. Training, seminars, and conferences ^c	50
b. Miscellaneous administration and support costs ^d	30
c. Contingencies	125
Total	2,500

^a Financed by the Asian Development Bank's Technical Assistance Special Fund (TASF-Others).

^b This category includes international and local travel costs for consultants and resource persons. This may also include O365 licenses for individual consultants, if applicable.

^c Includes study visits not to exceed \$15,000, including related costs of ADB Staff acting as resource persons.

^d The budget includes expenses for printing, translation, and communication.

Source: Asian Development Bank estimates.

PROJECTS UNDER TECHNICAL ASSISTANCE FACILITY

Indicative Consultants' Input Allocation (person-months)

Item	Total	MRT3 O&M	MRT 4 O&M	Floating Solar Park	RE for Offgrid
Technical Advisor(s)	72	16	16	24	16
Legal Advisor(s)	42	10	10	12	10

Other Pipeline Projects ^a

Developing Member Country (DMC)	Sector(s)	Project Name
Philippines	Energy	PHI Rail Solar Project ^b
Philippines	Energy	PHI DOE Omnibus Guidelines Review and Updating ^c
Philippines	Energy	PSALM Asset Privatization ^d
Philippines	Transport	NAIA Modernization and Capacity Expansion PPP ^e
Philippines	Transport	PHI Bataan-Cavite Interlink Project Operation & Maintenance ^f
Philippines	Transport	PHI Laguna Lakeshore Road Network Project Phase 1 Operation & Maintenance ^f

^a The Projects may change depending on the priorities of the Philippine Government.

^b OPPP has been mandated by the Philippine National Railways (PNR) to provide TAS for the procurement of a private partner for the development of a solar power plant to supply electricity to the North-South Commuter Railway.

^c DOE has requested support for the review and updating of its *Omnibus Guidelines Governing the Award and Administration of Renewable Energy Contracts and the Registration of Renewable Energy Developers*.

^d OPPP is in discussions with the Power Sector Assets and Liabilities Management Corporation (PSALM) for the privatization of certain power generation assets.

^e OPPP is in discussions with the Department of Transportation (DOTr) for the procurement of a private partner who will take on the operations and maintenance (O&M) and capacity expansion of the Ninoy Aquino International Airport (NAIA).

^f OPPP is in discussions with the Department of Public Works and Highways (DPWH) for possible PPPs for operations and maintenance (O&M).

OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

1. A range of consultancy inputs could be obtained to support this technical assistance (TA) and the Asian Development Bank (ADB) Office of Public–Private Partnership’s (OPPP) transaction advisory services (TAS) mandates. The following types of consultants are most likely to be hired, although others could be hired as well on a project-specific basis.⁸ These terms of reference are indicative and will be updated and modified as required for each project for which the OPPP receives a TAS mandate. Estimates of person-months are indicated for the following experts, to be funded by this TA. The selection of consultants is contemplated to be on Fixed Based Selection or Quality and Cost Based Selection, subject to further deliberation by the project team.

2. **Technical advisor (approx. 72 person-months).** The technical advisor will be a firm or individual(s) and will have specific technical and subject matter expertise relevant to the project and country needs. The technical advisor will include the following personnel and required minimum qualifications:

- (a) Lead international technical and subject matter advisor – will have demonstrated knowledge and extensive experience, at least 15 years professional experience, of which at least 8 years’ experience in the relevant sector across international markets.
- (b) National technical resource – will have at least 10 years professional experience, of which at least 5 years in the relevant sector in the Philippines.
- (c) Financial modeler – will have at least 3 years of professional experience in a financial modeling capacity on PPP projects.

3. Working under the overall guidance of ADB, the responsibilities of the technical advisor will include:

- (a) conduct technical and operational due diligence on the project prior to tendering;
- (b) develop feasibility studies and other relevant technical reports;
- (c) identify key technical issues and provide recommendations for resolution;
- (d) assist ADB in progressing the transaction structure;
- (e) provide technical and commercial advice for the project;
- (f) assist in drafting the technical specifications development and calibration of KPIs;
- (g) consider safeguard requirements in relation to project layout, design, or projected operational characteristics;
- (h) advise on all technical questions received from bidders and provide responses to be issued by the client Philippine government agency or ADB, as appropriate;
- (i) assist the client Philippine government agency as instructed (subject to confirmation by ADB) in conducting discussions and coordinate with the bidder;
- (j) assist ADB and coordinate with the legal advisor in preparing required modifications to project agreements and bid documents;
- (k) provide support, as necessary, during the procurement process and assist during bidder negotiation;

⁸ This TA will support identified projects in the Philippines to which OPPP is providing TAS, which require extensive experience and relevant expertise. It is important for OPPP to maintain flexibility and discretion to consider suitably qualified consultants for every project. As such, the consulting contracts will be separate as it would not be appropriate nor practical to use a framework agreement/framework contract.

- (l) attend to any other matter of a technical nature relating to the project, as instructed by ADB;
- (m) provide advice on similar technologies or business models used in other DMCs;
- (n) participate and support ADB during missions and meetings with the client, including;
- (o) liaise and coordinate with the legal advisor and domestic PPP expert, to support ADB and ensure seamless delivery of transaction advisory services; and
- (p) assist the team coordinator in submitting TA reports; and attend to all other matters of a technical nature relating to the transaction for which ADB is the mandated advisor.

4. **Legal advisor (approx. 42 person-months).** The legal advisor will be a firm or individual(s) and will have specific legal expertise relevant to the project and country needs, having previous experience in the drafting of sector-specific concession agreements and other related project agreements, including in markets where no precedent for such documentation exists. The legal advisor will include the following personnel and required minimum qualifications:

- (a) International PPP legal expert – demonstrated expertise and extensive experience, at least 20 years professional experience, including 10 years advising on PPP transactions internationally, specifically government procurement agencies and having a track record of successfully closed deals, experience in the Philippines will be an advantage.
- (b) National Legal expert – at least 3 years professional experience in being a team member advising on PPP transactions in the Philippines.

5. Working under the overall guidance of ADB, the responsibilities of the legal advisor will include:

- (a) conduct legal and fiscal due diligence on the project for benefit of the government and/or mandated advisor;
- (b) identify key legal issues and provide recommendations for resolution;
- (c) assist ADB in developing the transaction structure;
- (d) advise and assist the government and ADB in addressing all legal matters that arise during the bid process including negotiations with the bidder(s);
- (e) assist the government and ADB in proposing contractual drafts of the project agreements to reflect the final negotiated and agreed position;
- (f) provide support, as necessary, for the negotiation process;
- (g) provide the necessary assistance for TA reports;
- (h) participate and support ADB during missions and meetings with the client, including; and attend to all other matters of a legal nature relating to the transaction for which ADB is the mandated advisor; and
- (i) liaise and coordinate with the technical advisor to support ADB and ensure seamless delivery of transaction advisory services.