

VOLUME 2

# Manual of Procedures for the Procurement of Goods



## MANUAL OF PROCEDURES FOR THE PROCUREMENT OF GOODS

<b>ABBREVIATIONS AND ACRONYMS</b> .....	<b>VII</b>
<b>INTRODUCTION</b> .....	<b>1</b>
<b>SCOPE OF VOLUME 2</b> .....	<b>3</b>
<b>PREPARING FOR THE PROCUREMENT OF GOODS</b> .....	<b>5</b>
<b>PREPARING FOR THE PROCUREMENT OF GOODS</b> .....	<b>7</b>
<b>PROCUREMENT PLANNING</b> .....	<b>8</b>
<i>What are the factors to be considered in planning for the procurement of Goods?</i> .....	8
<i>What are “Technical Specifications”?</i> .....	10
<i>What are the considerations in setting the technical specifications of the goods to be procured?</i> .....	10
<i>What is the “Approved Budget for the Contract” or the ABC?</i> .....	11
<i>What are the factors that should be considered in determining the ABC?</i> .....	11
<i>Approved Budget for the Contract as Basis for Award</i> .....	12
<b>PREPARING THE BIDDING DOCUMENTS</b> .....	<b>13</b>
<i>What are Bidding Documents?</i> .....	13
<i>What are the contents of Bidding Documents?</i> .....	13
<i>In addition to properly crafted Bidding Documents, what other practices may a Procuring Entity observe to ensure a successful procurement?</i> .....	14
<i>Who shall participate in the preparation of the Bidding Documents?</i> .....	14
<i>When should you prepare the Bidding Documents?</i> .....	14
<i>What various types and sizes of contracts may be provided in the Bidding Documents?</i> ....	14
<i>Methodology: How are the Bidding Documents prepared?</i> .....	15
<i>What is a Bid Security?</i> .....	15
<i>What are the forms of Bid Security and the corresponding amounts required?</i> .....	16
<i>Who determines the form of the Bid Security to be submitted by bidders?</i> .....	16
<i>What is a Bid Securing Declaration</i> .....	16
<i>What is the period of validity of Bids and the corresponding Bid Security?</i> .....	17
<i>In what currency shall the Bid Security be denominated?</i> .....	17
<i>What happens if a bidder does not submit a Bid Security?</i> .....	17
<i>When should Bid Securities be returned to the bidders?</i> .....	17
<i>What is a Performance Security?</i> .....	17
<i>When shall the Performance Security be posted by the Bidder with the LCRB?</i> .....	18
<i>What are the forms of Performance Security and the corresponding amounts required?</i> ....	18
<i>Who determines the form of the Performance Security to be submitted by winning bidder?</i>	18
<i>In case of amendments in the contract price, will there be a corresponding change in the amount of the Performance Security?</i> .....	18
<i>When may the Performance Security be released?</i> .....	19
<i>Who are the parties involved in the posting of the Performance Security?</i> .....	19
<i>Methodology: How is the Performance Security posted?</i> .....	19
<b>CONDUCT OF THE PRE-PROCUREMENT CONFERENCE</b> .....	<b>20</b>
<i>What is a Pre-procurement Conference?</i> .....	20
<i>Why is a Pre-procurement Conference necessary?</i> .....	20
<i>When do you conduct a Pre-procurement Conference?</i> .....	20
<i>Who calls for a Pre-procurement Conference?</i> .....	20
<i>Who are the participants of a Pre-procurement Conference?</i> .....	20
<i>What should a Pre-procurement Conference achieve?</i> .....	21
<b>THE DEPARTMENT OF BUDGET AND MANAGEMENT - PROCUREMENT SERVICE AND THE PHILIPPINE GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM</b> .....	<b>23</b>
<b>THE DBM-PS AND THE PHILGEPS</b> .....	<b>25</b>
<i>What is the mandate of the DBM-PS?</i> .....	25
<i>What is the policy of the Government with respect to the use of the PhilGEPS for the procurement of goods?</i> .....	25
<i>What present features of the PhilGEPS and the DBM-PS website are of special relevance to the procurement of goods?</i> .....	25

<i>Methodology: How does a Procuring Entity procure through the DBM-PS?</i> .....	26
<b>INSTRUCTIONS ON THE PROCEDURAL STEPS FOR THE PROCUREMENT OF GOODS</b> .....	<b>29</b>
<b>COMPETITIVE BIDDING</b> .....	<b>31</b>
<i>What is Competitive Bidding?</i> .....	31
<b>SINGLE-STAGE COMPETITIVE BIDDING</b> .....	<b>32</b>
<b>STEP 1 ADVERTISE AND POST AN INVITATION TO BID</b> .....	<b>32</b>
<i>What is the Invitation to Bid (IB)?</i> .....	32
<i>Why do you post an Invitation to Bid?</i> .....	32
<i>What does an Invitation to Bid contain?</i> .....	32
<i>When, where, and for how long do you post an Invitation to Bid?</i> .....	33
<i>Which unit shall ensure that the advertising/posting requirements of the IB are complied with?</i> .....	34
<i>Methodology: How are IBs advertised and posted?</i> .....	34
<b>STEP 2 ISSUE THE BIDDING DOCUMENTS</b> .....	<b>35</b>
<i>When should the bidding documents be made available to prospective bidders?</i> .....	35
<i>How much must prospective bidders pay for the Bidding Documents?</i> .....	35
<i>Methodology: How are the Bidding Documents issued?</i> .....	35
<i>What are the responsibilities of a prospective bidder with regard to the Bidding Documents?</i> .....	36
<b>STEP 3 CALL A PRE-BID CONFERENCE AND, IF NECESSARY, ISSUE SUPPLEMENTAL/BID BULLETINS</b> .....	<b>38</b>
<i>What is a Pre-bid Conference?</i> .....	38
<i>When do you hold a Pre-bid Conference?</i> .....	38
<i>Who must attend the Pre-bid Conference?</i> .....	38
<i>How should the participants conduct themselves during the Pre-bid Conference and other stages of the procurement process?</i> .....	39
<i>Methodology: How is the Pre-bid Conference conducted?</i> .....	39
<i>What happens if there is a need for clarification or interpretation on the Bidding Documents after the Pre-bid Conference had been held?</i> .....	39
<i>Who are involved in the Issuance of the Supplemental/Bid Bulletin?</i> .....	40
<i>Methodology: How is a Supplemental/Bid Bulletin issued?</i> .....	40
<b>STEP 4 RECEIVE AND OPEN THE BID ENVELOPES</b> .....	<b>42</b>
<i>What is a Bid?</i> .....	42
<i>How should the bids be packaged and submitted?</i> .....	42
<i>What are the contents of the two bid envelopes?</i> .....	42
<i>Computation of Discounts</i> .....	43
<b>ELIGIBILITY REQUIREMENTS</b> .....	<b>44</b>
<i>What is eligibility check?</i> .....	44
<i>Who may be eligible to participate in a public bidding for goods?</i> .....	44
<i>Are foreign suppliers allowed to bid?</i> .....	46
<i>When is a prospective bidder eligible to bid?</i> .....	47
<i>What are the eligibility requirements?</i> .....	47
<i>What is the purpose of requiring an NFCC or a committed Line of Credit?</i> .....	49
<i>What are the eligibility requirements of a prospective foreign bidder?</i> .....	49
<b>METHODOLOGY: When and How Are Bids Received and Opened?</b> .....	<b>50</b>
<i>Who are the parties involved in the receipt and opening of eligibility envelopes and bids?</i> .	50
<i>Methodology: How should the bids be received and opened?</i> .....	50
<i>What happens if only one bidder submits its eligibility and bid envelopes?</i> .....	52
<i>What can a bidder do if it is found ineligible or declared non-compliant with the technical or financial requirements?</i> .....	52
<i>What happens if questions/doubts have been raised about the eligibility of a prospective bidder after it had been declared as eligible?</i> .....	52
<i>What happens if only one bidder is declared eligible?</i> .....	53
<i>What is the difference between ineligibility and disqualification?</i> .....	53
<i>Other than a declaration of ineligibility, is there another way by which a manufacturer, supplier or distributor may be disqualified from bidding?</i> .....	53

<i>What happens if all bidders are declared ineligible, or all bids fail to comply with the technical and financial bid requirements?</i> .....	54
<i>What happens if only one bidder passes the Preliminary Examination of Bids?</i> .....	54
<i>What happens if a bidder fails to comply with the Technical and Financial requirements of the Bid?</i> .....	54
<i>Can a bidder withdraw its bid?</i> .....	55
<b>STEP 5 EVALUATE THE BIDS .....</b>	<b>56</b>
<i>What is the purpose of Bid Evaluation?</i> .....	56
<i>When should the bids be evaluated?</i> .....	56
<i>Who are the participants in the Bid Evaluation Process?</i> .....	56
<i>Methodology: How are bids evaluated?</i> .....	56
<i>Are there special privileges for cooperatives in the supply of goods to government entities?</i> .....	58
<i>What happens if a bidder does not accept the arithmetical corrections done by the BAC on its bid?</i> .....	58
<i>What is the domestic preference being applied during bid evaluation?</i> .....	58
<i>How shall Domestic Preference be applied during bid evaluation?</i> .....	58
<i>What rules govern the lease of Computers, Communications, Information and Other Equipment?</i> .....	60
<b>STEP 6 POST-QUALIFY .....</b>	<b>61</b>
<i>What is Post-qualification?</i> .....	61
<i>What does Post-qualification entail?</i> .....	61
<i>What is the Timeline for the conduct of Post-qualification?</i> .....	62
<i>Who are involved in the conduct of Post-qualification?</i> .....	62
<i>Methodology: How is Post-qualification conducted?</i> .....	62
<i>What happens if the bidder with the LCB fails Post-qualification?</i> .....	63
<i>What happens if all bidders fail Post-qualification?</i> .....	64
<i>Is there a limit in the increase of the BAC?</i> .....	64
<i>May a procuring entity adopt the result of the post - qualification on the same company previously conducted [within six (6) months]?</i> .....	64
<i>When may the Procuring Entity exercise its right to reject bids, declare a failure of bidding, or not award the contract?</i> .....	64
<b>STEP 7 AWARD THE CONTRACT .....</b>	<b>66</b>
<i>What is the rule on Contract Award?</i> .....	66
<i>What is the Timeline for Contract Award?</i> .....	66
<i>Who are involved in the Award of the Contract?</i> .....	66
<i>Methodology: How is a contract awarded?</i> .....	66
<i>What happens if the bidder being considered for award does not accept the award?</i> .....	68
<i>May the HoPe still exercise the cat provided for under section 41 of the IRR after issuance of the NOA?</i> .....	68
<b>STEP 8 SIGN AND APPROVE THE CONTRACT AND ISSUE THE NOTICE TO PROCEED.....</b>	<b>69</b>
<i>When must the winning bidder and the Procuring Entity enter into a contract?</i> .....	69
<i>What are the Timelines to be considered with respect to contract approval?</i> .....	69
<i>When should the Procuring Entity issue the NTP?</i> .....	69
<i>When is a contract “effective”?</i> .....	69
<i>Who are the Parties involved in Contract Signing and Approval and Issuance of the NTP?..</i>	69
<i>What documents form part of the contract?</i> .....	70
<i>Methodology: .....</i>	70
<i>What are the rules governing the review and approval of government contracts?</i> .....	71
<i>What happens if the bidder with the LCRB or SCRB refuses or is unable, through its own fault, to post the performance security and sign the contract within the prescribed period?</i>	72
<i>What happens if the failure of the bidder with the LCRB or SCRB to sign the contract within the prescribed period is not its own doing?</i> .....	72
<b>TWO-STAGE COMPETITIVE BIDDING .....</b>	<b>73</b>
<i>What is Two-Stage Competitive Bidding?</i> .....	73
<i>What are the instances when a Procuring Entity may employ the Two-Stage Competitive Bidding Procedure?</i> .....	73
<i>What is the timeline for the conduct of a Two-Stage Competitive Bidding?</i> .....	73
<i>Who are involved in the Two-Stage Competitive Bidding process?</i> .....	74
<i>Methodology: How is the Two-Stage Competitive Bidding process conducted?</i> .....	74

<i>What happens if no prospective bidder submits its eligibility requirements and initial technical proposal, at the first stage?.....</i>	<i>76</i>
<b>PROTEST MECHANISM.....</b>	<b>77</b>
<i>What is the remedy of an affected bidder who receives an unfavorable decision from the BAC?.....</i>	<i>77</i>
<i>What is the remedy of an affected bidder in the event the request for reconsideration is denied by the BAC?.....</i>	<i>77</i>
<i>How are requests for reconsideration and protests filed and resolved?.....</i>	<i>77</i>
<i>May the affected bidders directly resort to court actions?.....</i>	<i>78</i>
<b>INSTRUCTIONS ON THE PROCEDURAL STEPS FOR THE PROCUREMENT OF GOODS .....</b>	<b>79</b>
<b>THE ALTERNATIVE METHODS FOR THE PROCUREMENT OF GOODS AND SERVICES .....</b>	<b>80</b>
<i>What is the rule on the use of alternative methods of procurement?.....</i>	<i>80</i>
<b>LIMITED SOURCE BIDDING .....</b>	<b>82</b>
<i>What is Limited Source Bidding?.....</i>	<i>82</i>
<i>When shall Limited Source Bidding be allowed?.....</i>	<i>82</i>
<i>Who will be invited to bid? .....</i>	<i>82</i>
<i>Who are involved in conducting the Limited Source Bidding?.....</i>	<i>82</i>
<i>Methodology: How is procurement through the Limited Source Bidding method conducted?.....</i>	<i>83</i>
<i>Are bid, performance and warranty securities required for Limited Source Bidding?.....</i>	<i>83</i>
<b>DIRECT CONTRACTING .....</b>	<b>84</b>
<i>What is Direct Contracting?.....</i>	<i>84</i>
<i>When shall Direct Contracting be allowed? .....</i>	<i>84</i>
<i>How can Direct Contracting be justified? .....</i>	<i>84</i>
<i>Who are involved in procurement through Direct Contracting?.....</i>	<i>85</i>
<i>Methodology: How is Direct Contracting conducted? .....</i>	<i>85</i>
<i>What are the documentary requirements for Direct Contracting?.....</i>	<i>86</i>
<i>Are bid, performance and warranty securities required for Direct Contracting?.....</i>	<i>86</i>
<b>REPEAT ORDER .....</b>	<b>87</b>
<i>What is Repeat Order? .....</i>	<i>87</i>
<i>When is Repeat Order Allowed? .....</i>	<i>87</i>
<i>Who are involved in procurement through Repeat Order? .....</i>	<i>88</i>
<i>Methodology: How is procurement through Repeat Order done? .....</i>	<i>88</i>
<i>Are bid, performance and warranty securities required for Repeat Order? .....</i>	<i>89</i>
<b>SHOPPING .....</b>	<b>90</b>
<i>What is Shopping?.....</i>	<i>90</i>
<i>When is Shopping allowed?.....</i>	<i>90</i>
<i>Is Shopping under unforeseen contingency limited to readily available of the shelf goods?.....</i>	<i>91</i>
<i>Who are involved in the conduct of procurement through Shopping?.....</i>	<i>91</i>
<i>Methodology: How is procurement through the Shopping method done?.....</i>	<i>91</i>
<i>What are the documentary requirements for Shopping?.....</i>	<i>93</i>
<i>Are bid, performance and warranty securities required for Shopping?.....</i>	<i>93</i>
<b>NEGOTIATED PROCUREMENT .....</b>	<b>94</b>
<i>What is Negotiated Procurement? .....</i>	<i>94</i>
<i>When is Negotiated Procurement allowed for the procurement of goods? .....</i>	<i>94</i>
<i>Who are the parties involved in Negotiated Procurement?.....</i>	<i>96</i>
<i>Methodology: How is Negotiated Procurement undertaken? .....</i>	<i>96</i>
<i>What are the documentary requirements from Suppliers for Negotiated Procurement?.....</i>	<i>107</i>
<i>Are bid, warranty and performance securities required for Negotiated Procurement? .....</i>	<i>108</i>
<b>GUIDELINES ON CONTRACT IMPLEMENTATION FOR THE PROCUREMENT OF GOODS.....</b>	<b>109</b>
<b>CONTRACT IMPLEMENTATION FOR THE PROCUREMENT OF GOODS .....</b>	<b>111</b>
<i>Legal Reference.....</i>	<i>111</i>
<i>What is covered by Contract Implementation? .....</i>	<i>111</i>

<i>When shall a contract be deemed effective?</i> .....	111
<b>WARRANTY</b> .....	<b>112</b>
<i>Legal Reference</i> .....	112
<i>What is the purpose of a Warranty?</i> .....	112
<i>What is the Warranty requirement for Goods?</i> .....	112
<i>When shall Goods be considered defective?</i> .....	112
<i>Are there instances where partial release or reduction of the required warranty may be done by the Procuring Entity?</i> .....	113
<b>AMENDMENT TO ORDER</b> .....	<b>114</b>
<i>What is an Amendment to Order?</i> .....	114
<i>When can the Procuring Entity issue an Amendment to Order?</i> .....	114
<i>Are corresponding adjustments in contract price and/or delivery schedules allowed?</i> .....	115
<i>What rules shall govern price adjustments due to Amendment to Order?</i> .....	115
<i>Who are involved in the issuance of an Amendment to Order?</i> .....	115
<i>Methodology: How is an Amendment to Order issued?</i> .....	116
<i>Can a supplier proceed with the work under an Amendment to Order even if such Amendment to Order has not yet been approved?</i> .....	116
<b>SUSPENSION OF DELIVERY</b> .....	<b>117</b>
<i>Legal Reference</i> .....	117
<i>What are the grounds for suspension of delivery or contract implementation?</i> .....	117
<i>Are corresponding adjustments in contract price and/or delivery schedule allowed?</i> .....	117
<i>When shall the Supplier/ Manufacturer/ Distributor resume delivery and/or contract implementation?</i> .....	117
<i>Who are the parties involved in the issuance of a Suspension Order?</i> .....	117
<i>Methodology: How is a Suspension Order issued?</i> .....	118
<b>DELAYS IN DELIVERY AND LIQUIDATED DAMAGES</b> .....	<b>119</b>
<i>Legal Reference</i> .....	119
<i>What is the rule on the applicable period for the delivery of goods or performance of services?</i> .....	119
<i>What are Liquidated Damages?</i> .....	119
<i>What are the grounds for the imposition of Liquidated Damages?</i> .....	119
<i>What is the amount of Liquidated Damages that may be imposed upon the supplier?</i> .....	119
<i>Methodology: How are Liquidated Damages imposed?</i> .....	120
<b>OTHER RULES AND GUIDELINES</b> .....	<b>121</b>
<i>Legal Reference</i> .....	121
<i>Incidental Services</i> .....	121
<i>Spare Parts</i> .....	121
<i>Purchaser's Responsibilities</i> .....	122
<i>Prices</i> .....	122
<i>Payment</i> .....	125
<i>Taxes and Duties</i> .....	127
<i>Subcontracts</i> .....	127
<i>Standards</i> .....	128
<i>Packaging</i> .....	128
<i>Insurance</i> .....	128
<i>Transportation</i> .....	128
<i>Inspection and Tests</i> .....	129
<i>Intellectual Property Rights</i> .....	130
<i>Limitations of Liability</i> .....	130
<i>Termination for Default</i> .....	130
<i>Termination for Insolvency</i> .....	131
<i>Termination for Convenience</i> .....	131
<i>Assignment</i> .....	132
<i>Blacklisting</i> .....	132
<b>GENERAL PROCUREMENT ACTIVITIES AND TIMELINES</b> .....	<b>133</b>
<b>EARLIEST AND MAXIMUM TIMELINE FOR GOODS</b> .....	<b>135</b>
<b>CASE STUDY FOR PROCUREMENT OF GOODS</b> .....	<b>135</b>



## ABBREVIATIONS AND ACRONYMS

<b>ABC</b>	Approved Budget for the Contract
<b>ADB</b>	Asian Development Bank
<b>AFP</b>	Armed Forces of the Philippines
<b>APP</b>	Annual Procurement Plan
<b>APR</b>	Agency Procurement Request
<b>BAC</b>	Bids and Awards Committee
<b>BDA</b>	Battle Dress Attire
<b>BDS</b>	Bid Data Sheet
<b>BIR</b>	Bureau of Internal Revenue
<b>BOC</b>	Bureau of Customs
<b>BSP</b>	Bangko Sentral ng Pilipinas
<b>CDA</b>	Cooperatives Development Authority
<b>CAF</b>	Certificate of Availability of Funds
<b>CFR</b>	Cost and Freight
<b>CIF</b>	Cost, Insurance and Freight
<b>CIP</b>	Carriage and Insurance Paid To (named place of destination)
<b>COA</b>	Commission on Audit
<b>CPT</b>	Carriage Paid To (named place of destination)
<b>DBM</b>	Department of Budget and Management
<b>DBM-PS/ PS-DBM</b>	Department of Budget and Management-Procurement Service
<b>DDP</b>	Delivered Duty Paid (named place of destination)
<b>DFA</b>	Department of Foreign Affairs
<b>DOH</b>	Department of Health
<b>DOJ</b>	Department of Justice
<b>DTI</b>	Department of Trade and Industry
<b>DV</b>	Disbursement Voucher
<b>EFPS</b>	Electronic Filing and Payment System
<b>E.O.</b>	Executive Order

<b>EXW</b>	Ex Works, Ex Factory or Off-the-shelf
<b>FAP</b>	Foreign Assisted Project
<b>FCA</b>	Free Carrier (named place)
<b>FDA</b>	Food and Drug Administration
<b>FED</b>	Firearms and Explosives Division
<b>FOB</b>	Free on Board
<b>GAA</b>	General Appropriations Act
<b>GCC</b>	General Conditions of Contract
<b>GFI</b>	Government Financial Institution
<b>GOCC</b>	Government-owned and/or –controlled corporation
<b>GOP</b>	Government of the Philippines
<b>GPPB</b>	Government Procurement Policy Board
<b>GPPB-TSO</b>	GPPB – Technical Support Office
<b>GPRA</b>	Government Procurement Reform Act (R.A. 9184)
<b>IB</b>	Invitation to Bid
<b>ICB</b>	International Competitive Bidding
<b>IFI</b>	International Financing Institution
<b>IPR</b>	Intellectual Property Rights
<b>IRR</b>	Implementing Rules and Regulations of R.A. 9184
<b>ITB</b>	Instructions to Bidders
<b>JICA</b>	Japan International Cooperation Agency
<b>JVA</b>	Joint Venture Agreement
<b>LBP</b>	Land Bank of the Philippines
<b>LC</b>	Letter of Credit
<b>LCB</b>	Lowest Calculated Bid
<b>LCRB</b>	Lowest Calculated Responsive Bid (this shall have the same meaning as Lowest Evaluated and Responsive Bid [LERB] for IFIs)
<b>LGU</b>	Local Government Unit
<b>LOI</b>	Letter of Instructions
<b>MDS</b>	Modified Disbursement Scheme
<b>NCA</b>	Notice of Cash Allocation
<b>NEDA</b>	National Economic and Development Authority

<b>NFCC</b>	Net Financial Contracting Capacity
<b>NGA</b>	National Government Agency
<b>NGO</b>	Non-Government Organization
<b>NTC</b>	National Telecommunications Commission
<b>NTP</b>	Notice to Proceed
<b>OS</b>	Obligation Slip
<b>PA</b>	Philippine Army
<b>PBDs</b>	Philippine Bidding Documents
<b>P.D.</b>	Presidential Decree
<b>PMO</b>	Project Management Office
<b>PNP</b>	Philippine National Police
<b>PPMP</b>	Project Procurement Management Plan
<b>PhilGEPs/ G-EPS</b>	Philippine Government Electronic Procurement System
<b>PWI</b>	Procurement Watch Inc.
<b>R.A.</b>	Republic Act
<b>R.A. 9184</b>	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"
<b>SARO</b>	Special Allotment Release Order
<b>SCC</b>	Special Conditions of Contract
<b>SCRB</b>	Single Calculated and Responsive Bid
<b>SEC</b>	Securities and Exchange Commission
<b>SMEs</b>	Small and Medium Enterprises
<b>SOW</b>	Scope of Work
<b>SPA</b>	Special Power of Attorney
<b>SUCs</b>	State Universities and Colleges
<b>TWG</b>	Technical Working Group
<b>UNDB</b>	United Nations Development Business
<b>WB</b>	The World Bank



SECTION 1  
**Introduction**



## Scope of Volume 2

This Manual seeks to provide its users with clear, concise, and accurate information on the **public procurement of goods and services**, by discussing the steps that need to be taken to effect such procurement in the manner prescribed by R.A. 9184, otherwise known as the "Government Procurement Reform Act," and its 2016 IRR. It also discusses important issues that may confront government officials in all stages of goods and services procurement, from the preparation of bid documents, to the actual bidding activity, monitoring of contract implementation and the final payment to the supplier.

This Manual focuses on public procurement of goods. The procedures are harmonized to a large extent with the IFIs and bilateral agencies lending to the Philippines. There are however policies which are specific to a particular lending agency or grantor and the document highlights the main differences. It should however be noted that the loan, credit or grant agreement with the relevant IFIs and/or bilateral and their respective Guidelines will be the overriding factors governing the foreign assisted projects.

**GOODS** refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services (*e.g.* rental of venues and facilities, catering services, conduct of trainings and seminars, short term services not considered as consulting services), as well as procurement of materials and supplies provided by the Procuring Entity for such services. The term "related" or "analogous services" shall include, but not be limited to, lease of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity. **(2016 IRR, Section 5[r])**



SECTION 2

# Preparing for the Procurement of Goods



## Preparing for the Procurement of Goods

Volume I of this Manual contains an extensive discussion of Procurement Planning as a general concern for all kinds of government procurement, while this Section mainly focuses on concerns that are particular to the procurement of goods. As such, it is advisable for the reader to refer to the pertinent discussions in Volume I before and during the reading of this Section.

Preparing makes for higher efficiency and efficacy. It enables the procurement officials concerned to anticipate the onset of events and, as a consequence, better calibrate their response to them. Having a better appreciation of forthcoming events gives these officials the opportunity to test a range of possible courses of action, choose the best and most feasible of these, and identify measures to put them into action. Ultimately, it would enable them to determine the best manner by which such measures are to be implemented, ensuring that their individual and collective impacts are optimized at the least cost.

Preparing for procurement basically involves three (3) activities: procurement planning, preparation of the bidding documents, and the conduct of the pre-procurement conference. Procurement planning entails ensuring that plans for procurement are linked to budgets, preparing the PPMP and consolidating all PPMPs into the APP. Formulating the PPMP involves identifying the procurement project requirements, writing the technical specifications, determining the ABC, identifying the schedule of milestone activities, and determining the method of procurement.

The PPMP is then transformed into the bidding documents, which ought to contain all the information a prospective bidder needs to prepare its bid. Therefore, in preparing the bidding documents, one has to ensure that these accurately and comprehensively reflect the main elements of the PPMP. One also has to make sure that the documents are of the kind and form prescribed by the 2016 IRR and this Manual.

The pre-procurement conference is the forum where all officials of the Procuring Entity involved in the project meet to discuss all aspects of the said project to determine the readiness of the Procuring Entity to undertake the procurement. The conference focuses on the technical specifications, the ABC, the appropriateness and applicability of the recommended method of procurement, and the availability of appropriations and programmed budget for the contract, the procurement schedule, among others.

## Procurement Planning

Planning of the procurement of goods shall be in accordance with the principles of government procurement as provided for under Section 3 Volume I of this Manual.

### What are the factors to be considered in planning for the procurement of Goods?

The PMO or the end-user or implementing unit should consider the following factors which have an impact on contract packaging, the procurement method to be used, and other components of Procurement Planning as discussed in Volume 1 of these Manuals:

1. **Nature of the Goods to be Procured.** Goods may be classified into different categories, such as:
  - a. Common-Use Supplies and Equipment;
  - b. Inventory Items;
  - c. Non-Common Use Supplies (which may include equipment or supplies that are project-specific); or
  - d. Services.

“Common-Use Supplies and Equipment (CSE)” as defined in the 2016 IRR are those goods, materials, and equipment that are used in the day-to-day operations of procuring entities in the performance of their functions. For the purpose of the 2016 IRR, CSE shall be those included in the Electronic Catalogue of the PhilGEPS (**2016 IRR, Section 5 [g]**). CSE should be procured from the PS-DBM on a quarterly basis.

“Inventory Items” include CSE, goods, and materials that are not available in the PS-DBM but are regularly used and kept on stock by the Procuring Entity. Inventory items that are not CSE may be procured from commercial sources, or suppliers other than the DBM-PS. The bulk purchase of these goods may be a good strategy to lower costs and achieve administrative efficiency. Likewise, it is a good practice to monitor the consumption of these items and identify when re-orders are necessary to ensure “round-the-clock” availability and to avoid over-the-counter purchases or purchases using petty cash funds.

#### Let’s make doing things easier

##### On using the DBM-PS for procurement

The Procuring Entity must consider the services of the DBM-PS in the procurement of all kinds of CSE. This will free it from the tediousness of attending to recurring transactions, and provide greater time for the procurement of high value, highly specialized requirements for its more significant projects.

“Non-Common Use Supplies” are those goods, materials, and equipment that are neither “CSE” nor “Inventory Items”, and may include those goods, materials and equipment that are required by the Procuring Entity for a specific project only. Since these are not used regularly, and may even be highly specialized, these may be procured individually. There may be cases, however, when the APP will reveal that

similar items are required for different projects, and in order to minimize costs, these may be procured under a single contract. For goods that are available off-the-shelf and are of relatively low value, shopping may be resorted to, provided the conditions for the use of this alternative mode of procurement are present.

"Services" refer to general support services, except consulting services and infrastructure projects, which may be needed in support of the transaction of public businesses or in the pursuit of any government undertaking, project or activity. These include non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security and related or analogous services (e.g. rental of venues and facilities, catering services, attendance to trainings and seminars, short term services not considered as consulting services). The terms "related services" or "analogous services" shall include, but not be limited to, lease of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity.

2. **Availability of the Goods or Services in the Market.** The identification of the mode of procurement is sometimes dependent on the supply market. The procurement unit or office should, therefore, study the supply market to determine the availability of the goods. Goods that are universally available should be procured through public bidding. However, there are instances wherein alternative modes of procurement may be applicable.

Goods that are available seasonally, or those that are to be manufactured specially for the Procuring Entity only upon its order, would require more intensive planning in terms of timelines for procurement, taking into consideration manufacturing lead-time.

3. **Obsolescence, operation, and maintenance of equipment/non-consumable Goods.** In buying equipment, the Procuring Entity has to consider the operation and maintenance requirements of the goods to be procured. These refer to the availability and cost of spare parts in the local market, the skills required in operating and maintaining the equipment, and similar considerations. For example, if spare parts and maintenance services are not available locally, or, if available, are very expensive, the Procuring Entity may consider buying, instead, the substitute or equivalent product. It should be noted, however, that spare parts must be available locally. On the other hand, if the items being procured are high-technology items, or are highly specialized (e.g., fighter jets) and cannot be satisfactorily substituted by other products, the Procuring Entity may consider including the supply of spare parts, consumables and/or maintenance services for a specified period of time, as part of the contract package.

### Let's make doing things easier

#### On Ordering Agreements

Under the Revised Guidelines on the Use of Ordering Agreement, issued through GPPB Resolution No. 01-2012, ordering agreements may be used for expendable or non-expendable goods, and services for hotel accommodation, air travel, and repair and maintenance. Goods that can be included in the Order Agreement List are those: (a) identified to be necessary and desirable, but by its nature, use, or characteristic, the quantity or exact time of need cannot be accurately pre-determined; and (b) using an Ordering Agreement is most practical, economical and advantageous for the Procuring Entity. On 10 April 2017, the GPPB issued Resolution No. 12-2017 approving the Guidelines on the Use of Framework Agreement, subject to pilot testing.

Obsolescence could also be a factor in deciding whether to lease or to buy equipment. It may be more economical for the Procuring Entity to consider the leases of equipment that are easily rendered obsolete, like IT equipment. (Please refer to the last paragraph on bid evaluation on this Manual)

The Procuring Entity shall also take into consideration the warranty requirements for goods under Section 62.1 of the 2016 IRR.

### **What are “Technical Specifications”?**

The term “technical specifications” refers to the physical description of the goods or services, as well as the Procuring Entity’s requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. The technical specifications must include the testing parameters for goods, when such testing is required in the contract.

“Functional description” is the description of the functions for which the Goods are to be utilized. For example, a ballpen is expected to write 1.5 km of straight, continuous lines.

“Performance description” refers to the manner that the Goods are required to perform the functions expected of them. For example, a ballpen that writes at 1.5km should do so continuously and smoothly, without skipping, and with the color of the ink being consistent.

“Environmental interface” refers to the environment in which the required functions are performed at the desired level. For example, a ballpen should write continuously for 1.5km on pad paper or bond paper, but not necessarily on wood or on a white board.

“Design” refers to the technical design or drawing of the goods being procured. A design standard is particularly useful in cases where the goods procured are specially manufactured for the Procuring Entity. For example, in procuring BDA for the PA, there is a specific pattern of color and shade that the BDA should follow.

### **What are the considerations in setting the technical specifications of the goods to be procured?**

In determining the technical specifications of the goods it will procure, the PMO or end-user or implementing unit must consider the objectives of the project or the procurement at hand, and identify the standards that should be met by the goods in terms of function, performance, environmental interface and/or design. It must also conduct a market survey that will include a study of the available products or services, industry developments or standards, product or service standards specified by the authorized government entity like the Bureau of Product Standards, ISO9000 or similar local or international bodies. As a rule, Philippine standards, as specified by the Bureau of Product Standards, must be followed. For products where there are no specified Philippine standards, the standards of the country of origin or other international body may be considered. Product brochures, technical publications, industry newsletters, the industry itself, as well as the Internet, are good sources of product information. The conduct of a comparative study of the options available in the market and their relevance to the requirements of the Project is highly recommended.

In-house experts who are part of the TWG or the PMO must likewise be tapped to provide technical advice. If there are no in-house experts available to provide advice on highly technical Goods, the Procuring Entity may hire consultants to assist it in developing the technical specifications for the procurement at hand.

It is important to note that the use of brand names is prohibited by the 2016 IRR, except for items or parts that are compatible with the existing fleet or equipment of the same make or brand, and will maintain the performance functionality and useful life of the equipment. Specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. Hence, a generic description of the product or service must be used.<sup>1</sup>

---

<sup>1</sup>ADB and WB Guidelines generally require the procuring entity to specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship should comply, except that where such international standards are unavailable or are inappropriate, national standards may be specified. Although specifications should be based on relevant characteristics and/or performance requirements, and references to brand names, catalog numbers, or similar classifications should be avoided, in certain instances, it may be necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or its equivalent” should be added after such reference. The specifications shall then permit the

### What is the “Approved Budget for the Contract” or the ABC?

The ABC is the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in:

1. The GAA, continuing and automatic appropriations, in the case of NGAs;
2. The corporate budget for the contract approved by the governing board, pursuant to E.O. No. 518, series of 1979, in the case of GOCCs and GFIs; and R.A. No. 8292, in the case of SUCs; or
3. The budget approved by the Sanggunian through an appropriations ordinance, in the case of LGUs.

Thus, the ABC referred to in R.A. 9184 and its 2016 IRR basically refers to the proposed budget for the project approved by the Head of the Procuring Entity based on the APP as consolidated from various PMPs.

For multi-year contracts, for which a Multi-Year Obligational Authority (MYOA) or an equivalent document is required, the ABC shall be the amount reflected in the MYOA or equivalent document issued by the governing board of corporations, and the local Sanggunian of LGUs. Thus, in computing the SLCC, NFCC, CLC, Bid Security and other requirements, the basis shall be the ABC provided in the MYOA or equivalent document.

*For **foreign-funded procurement**, the ABC refers to the cost estimate prepared by the Procuring Entity and approved by the foreign government/foreign or international financing institution as specified in the Treaty or International or Executive Agreement.*

### What are the factors that should be considered in determining the ABC?

In determining the ABC, the PMO or end-user unit, with the assistance of the TWG (when necessary), must consider the different cost components, namely:

1. The cost or market price of the product or service itself;
2. Incidental expenses like freight, insurance, taxes, installation costs, training costs, if necessary, and cost of inspection;
3. The cost of money, to account for government agencies usually buying on credit terms;
4. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date;
5. Quantities, considering that buying in bulk usually means lower unit prices; and
6. The supply of spare parts and/or maintenance services, if these are part of the contract package.

If the project or contract has a foreign component, it is also best to include a currency valuation adjustment factor, in order to address foreign exchange rate fluctuations between the planning phase and the actual procurement date. To determine the factor to be used, the PMO or end-user unit may request for guidance from the BSP, or refer to BSP forecasts, if available.

---

acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

If the sum of the different cost components is lower than the appropriation for the procurement, then the ABC should be equal to the sum of the cost components. If the resulting sum is higher than the appropriation, it is advisable to review the technical specifications and the computation of the ABC. In any case, the ABC should not exceed the appropriation.

In case of failure of bidding under Section 35, in order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions and specification in the Bidding Documents, including its cost estimates. As the BAC deems it fit, and based on the findings in its mandatory review, it may revise and agree on a new set of technical specifications; and, if necessary, may adjust the amount of the ABC, subject to the required approvals under the IRR, and conduct a re-bidding with re-advertisement and/or posting.

**Note!** The Bureau of Internal Revenue – Revenue Memorandum Circular No. 85-2017, provides that: “Sales to the government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs), of goods and/or services are generally subject to the **twelve percent (12%)** VAT under Sections 106 and 108 of the NIRC, unless the sale transaction is specifically VAT-exempt or VAT zero-rated under the provisions of the NIRC or other special laws.

#### **Approved Budget for the Contract as Basis for Award**

The ABC shall be the upper limit or ceiling for bid prices, such that bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. The total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, which exceed the ABC shall be disqualified. It must be noted that the rules referred to “total calculated bid prices that exceed the ABC” as ground for disqualifying a bid. Thus, as long as the total calculated bid prices does not exceed the ABC, all items grouped together to form one complete Lot that will be awarded to one Bidder shall be considered responsive, regardless whether some of the cost of the items of the bid exceed the estimated cost for an identified component.

In case of similar items grouped together to form several lots that shall be evaluated and awarded as separate contracts, the total calculated bid prices per lot should not exceed the ABC for each lot. Similarly, as long as the total calculated bid prices does not exceed the ABC per lot, the bid shall be considered responsive, regardless whether some of the cost of the items of each lot of the bid exceed the estimated cost for an identified component. (NPM 43-2014)

## Preparing the Bidding Documents

### What are Bidding Documents?

Bidding documents are documents issued by the Procuring Entity to provide prospective bidders all the necessary information that they need to prepare their bids. **(2016 IRR, Section 5 [e])** These clearly and adequately define, among others:

1. The objectives, scope and expected outputs and/or results of the proposed contract;
2. The technical specifications of Goods to be procured;
3. Expected contract duration, the estimated quantity in the case of procurement of goods, delivery schedule and/or time frame;
4. The obligations, duties and/or functions of the winning bidder; and
5. The eligibility requirements of bidders, such as track record to be determined by the Head of the Procuring Entity.

### What are the contents of Bidding Documents?

The Philippine Bidding Documents (PBDs) for Procurement of Goods contain the following:

1. ABC<sup>2</sup>;
2. Invitation to Bid (IB);
3. Eligibility Requirements;
4. Instructions to Bidders (ITB) and Bid Data Sheet (BDS);
5. Scope of Work (SoW), where applicable;
6. Technical Specifications;
7. Form of Bid, Price Form and List of Goods or Bill of Quantities;
8. Delivery Time or Completion Schedule;
9. General Conditions of Contract (GCC) and Special Conditions of Contract (SCC);
10. Sample Forms as annexed in the PBDs.

The specifications and other terms in the bidding documents shall reflect minimum requirements. A bidder may, therefore, be allowed to submit a superior offer. However, in the evaluation of the bids, no premium or bonus must be given as a result of this superior offer. This rule is based on the nature of the procedure used to evaluate the technical proposals – a “pass/fail” method – such that the presence or absence of the technical requirements is the sole basis for determining technical compliance. After having established compliance with the technical specifications, the next factor to consider would then be the price or financial bid.

For procurement of goods involving national security, the technical specifications need not be indicated in the bidding documents and posted for wide information, if these are confidential.

---

<sup>2</sup> For ADB-funded contracts, the ABC must not be disclosed in the bidding documents.

**In addition to properly crafted Bidding Documents, what other practices may a Procuring Entity observe to ensure a successful procurement?**

1. All prospective bidders should be provided the same information, and should be assured of equal opportunities to obtain additional information on a timely basis.
2. Procuring entities should provide reasonable access to project sites for visits by prospective bidders.
3. For complex supply contracts, particularly for those requiring refurbishing existing equipment, a pre-bid conference may be arranged whereby potential bidders may meet with the Procuring Entity's representatives to seek clarifications (in person or online). Minutes of the conference should be made available to prospective bidders (in hard copy or sent electronically) not later than five (5) days upon written request.
4. Any additional information, clarification, correction of errors, or modifications of bidding documents should be posted at the PhilGEPS website, the website of the Procuring Entity and at any conspicuous place within the latter's premises, within at least seven (7) calendar days before the deadline for the submission and receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline should be extended.

**Who shall participate in the preparation of the Bidding Documents?**

The following must participate in the preparation of the bidding documents:

1. The BAC;
2. The TWG;
3. The end-user unit/PMO or implementing unit;
4. Consultants, if any; and
5. The BAC Secretariat / Procurement Unit.

**When should you prepare the Bidding Documents?**

The bidding documents must be prepared in time for presentation at the pre-procurement conference. After the conference, and before the advertisement and/or posting of the IB, it should be ascertained that these documents will be ready and available for issuance to prospective bidders on the day the IB is first advertised.

**What various types and sizes of contracts may be provided in the Bidding Documents?**

The bidding documents should clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate therefore. The most common types of contracts provide for payments on the basis of a lump sum, unit price, or combinations thereof.

The size and scope of individual contracts will depend on the magnitude, nature, and location of the project, for example:

1. For projects requiring a variety of goods and works, separate contracts may be awarded for the supply and/or installation of different items of equipment and plant ("plant" refers to installed equipment, as in a production facility) and for the works.

2. For a project requiring similar but separate items of equipment or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms, which could be allowed, at their option, to bid for individual contracts (slices/items) or for a group of similar contracts (package). All bids and combinations of bids should be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest calculated cost to the Procuring Entity.

### **Methodology: How are the Bidding Documents prepared?**

The BAC Secretariat/TWG, with the assistance of consultants (if any) and the end-user unit/PMO or implementing unit, prepares the bidding documents following the standard forms and manuals prescribed by the GPPB. The bidding documents must contain the following information:

1. ABC and source of funds;
2. Date, time and place of the pre-bid conference (where applicable);
3. Eligibility requirements;
4. ITB, including scope of bid, documents comprising the bid, criteria for eligibility, bid evaluation methodology/criteria and post-qualification, submission of bids, and opening of bids;
5. SOW for services (where applicable);
6. Technical Specifications, which must not contain any reference to brand names;
7. Form of Bid, Price Form, and List of Goods or Bill of Quantities;
8. Delivery Time or Completion Schedule;
9. Form, amount and validity period of Bid Security;
10. Form and amount of Performance Security and Warranty; and
11. Form of Contract, GCC and SCC.

The BAC shall make the Bidding Documents available from the time the IB is first advertised/posted until the deadline for submission and receipt of bids, to give enough time to prospective bidders to examine the contents of the Bidding Documents.

However, in procurements involving and affecting national security, the disclosure of the specific components of the procurement documents, such as, the technical specifications, requirements and components, shall be dependent upon the HoPE having due regard to the nature, classification, sensitivity and confidentiality of the relevant documents vis-à-vis the purpose and reason for the request.

Based on the National Intelligence Coordinating Agency (NICA), national security refers to the state or condition wherein the country's national interests, the well-being of its people and institutions, and its sovereignty and territorial integrity are protected and enhanced.

### **What is a Bid Security?**

A bid security is a guarantee that the successful bidder will:

1. Not default on its offer, and

2. Enter into contract with the Procuring Entity within ten (10) calendar days, or less as indicated in the ITB, from receipt of the Notice of Award, and furnish the performance security provided for in Section 39 of the Act and its 2016 IRR.IRR-A. **(2016 IRR, Section 27.1)**

A bid security must be submitted with every bid. It must be operative on the date of bid opening, and payable to the Procuring Entity

### **What are the forms of Bid Security and the corresponding amounts required?**

The bid security shall be in the form of a Bid Securing Declaration, or any of the forms with corresponding amount in accordance with the following schedule:<sup>3</sup> **(2016 IRR, Section 27.2)**

<b>FORM OF BID SECURITY</b>	<b>MINIMUM AMOUNT (Not Less Than the Percentage of the ABC)</b>
a. Cash, cashier's check/manager's check issued by a Universal or Commercial Bank. For biddings conducted by LGUs, the cashier's/manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	2%
b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank, provided that it shall be confirmed or authenticated by a local Universal or Commercial Bank, if issued by a foreign bank. For bidding conducted by LGUs, bank draft/guarantee, or irrevocable letter of credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	
c. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	5%

For purposes of determining the amount of the bid security in biddings with lots or items, whereby a bidder submits a bid for more than one lot or item, the bid security shall be based upon the sum of the ABC for each of the lots or items for which bids are submitted.

### **Who determines the form of the Bid Security to be submitted by bidders?**

The bidding documents indicate the allowable forms of bid security and the respective amounts thereof, in accordance with Section 27.2 of the 2016 IRR. The bidder may choose which among the allowable forms it shall submit.

To enhance competition and bidder's participation, and reduce transactional costs in procurement activities of the Government, the use of a Bid Securing Declaration is also allowed as an alternative to the previous forms of bid security. **(See Guidelines on the Use of Bid Securing Declaration)**

### **What is a Bid Securing Declaration?**

A Bid Securing Declaration is an undertaking which states, among others, that the bidder shall enter into contract with the Procuring Entity and furnish the required performance security

<sup>3</sup> For ADB and WB-funded contracts, reference should be made to Section IX of the bidding documents issued for the project, in order to determine the applicable amount and form of the bid security.

within ten (10) calendar days, or less, as indicated in the Bidding Documents, from receipt of the Notice of Award, and commits to pay the corresponding amount as fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as required in the guidelines issued by the GPPB. **(2016 IRR, Section 27.5)**

The Bid Securing Declaration follows a standard form **(See Guidelines on the Use of Bid Securing Declaration)**. Changes or alterations in the standard form may invalidate the Bid Securing Declaration.

### **What is the period of validity of Bids and the corresponding Bid Security?**

Bids and bid securities must be valid for a reasonable period of time as determined by the Head of the Procuring Entity. This time period must be indicated in the bidding documents, but in no case should it exceed one hundred twenty (120) calendar days from the date of the opening of bids. **(2016 IRR, Section 28.1)** The recommended norm for bid validity is ninety (90) calendar days with the corresponding bid security valid for one hundred twenty (120) calendar days to provide reasonable time (thirty (30) calendar days) for the Procuring Entity to act if the security is to be called.

Should it become necessary to extend the validity of the bids and the bid securities, the Procuring Entity should request in writing all those who submitted bids for such extension before the expiry date thereof. Bidders shall have the right to refuse to grant such extension without forfeiting their bid securities.

### **In what currency shall the Bid Security be denominated?**

The bid security must be denominated in Philippine currency **(2016 IRR, Section 27.3)**, except that foreign bidders which are allowed to submit foreign currency denominated bids may also submit bid securities that are denominated in a freely convertible currency allowed or specified in the bidding documents.

### **What happens if a bidder does not submit a Bid Security?**

Its bid will be rejected.

### **When should Bid Securities be returned to the bidders?**

Without prejudice to the provisions of the law allowing forfeiture of bid securities, bid securities shall be returned only after the bidder with the LCRB has signed the contract and furnished the performance security, except to those declared by the BAC as failed or post-disqualified in accordance with the 2016 IRR, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest. **(2016 IRR, Section 27.4)**

In no case shall the bid security or Bid Securing Declaration be returned later than the expiration of the bid validity period indicated in the Bidding Documents, unless it has been extended in accordance with Section 28.2 of the 2016 IRR.

### **What is a Performance Security?**

A performance security is a guarantee that the winning bidder will faithfully perform its obligations under the contract prepared in accordance with the Bidding Documents. **(2016 IRR, Section 39.1)** It must be posted in favor of the Procuring Entity, and will be forfeited in the latter's favor in the event it is established that the winning bidder is in default in any of its obligations under the contract. **(2016 IRR, Section 39.3)**

**When shall the Performance Security be posted by the Bidder with the LCRB?**

Within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity, and in all cases prior to the signing of the contract, the successful bidder should furnish the Procuring Entity with the performance security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents. **(2016 IRR, Sections 37.1 and 39.1)** The performance security forms part of the contract. **(2016 IRR, Section 37.2.3)** *(Please refer to Step 6, Post-Qualify for further discussions on the LCRB.)*

**What are the forms of Performance Security and the corresponding amounts required?**

The performance security shall be in an amount not less than a percentage of the total contract price in accordance with the following schedule:

FORM OF PERFORMANCE SECURITY	MINIMUM AMOUNT (Not Less Than the Percentage of the Total Contract Price)
a. Cash or cashier's/manager's check issued by a Universal or Commercial Bank. For biddings conducted by LGUs, the cashier's/manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	5% of contract price
b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank, provided that it shall be confirmed or authenticated by a local Universal or Commercial Bank, if issued by a foreign bank; or	5% of contract price
c. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	30% of contract price

**Who determines the form of the Performance Security to be submitted by winning bidder?**

The bidding documents indicate the allowable forms of performance security and the respective amounts thereof. The winning bidder may choose which among the allowable forms it shall submit.

**In case of amendments in the contract price, will there be a corresponding change in the amount of the Performance Security?**

If the contract value is reduced because part of the goods or services under the contract had already been delivered or completed, and accepted by the government, the Procuring Entity shall allow a proportional reduction in the original performance security. However, this proportional reduction in the value of the performance security is allowed only when the contract allows for partial deliveries or performance. Moreover, the reductions must be more than ten percent (10%), and the aggregate of such reductions must not be more than fifty percent (50%) of the original performance security. **(2016 IRR, Section 39.7)**

### **When may the Performance Security be released?**

The Procuring Entity may release the performance security to the winning bidder after the issuance of the Certificate of Final Acceptance of the Goods, subject to the following conditions:

- a. Procuring Entity has no claims filed against the contract awardee or the surety company; and
- b. Other terms of the contract.

### **Who are the parties involved in the posting of the Performance Security?**

The bidder with the LCRB, the Procuring Entity and the issuer of the security, *e.g.*, the banking/financial institution or the insurance company, are all involved in the posting of the performance security.

### **Methodology: How is the Performance Security posted?**

The following steps are followed in the posting of the performance security:

1. The bidder with the LCRB posts a performance security. In so doing, it must comply with the following conditions:
  - a. The performance security must be executed in any of the allowable forms indicated in the ITB; and
  - b. The performance security must at least be co-terminus with the period of completion of the contract.
2. The procurement unit/office accepts the performance security and indicates such posting and acceptance by attaching the appropriate form to the contract.

## Conduct of the Pre-Procurement Conference

### What is a Pre-procurement Conference?

The pre-procurement conference is the forum where all officials involved in the procurement meet and discuss all aspects of a specific procurement activity, which includes the technical specifications, the ABC, the applicability and appropriateness of the recommended method of procurement and the related milestones, the bidding documents, and availability of the pertinent budget release for the project.

### Why is a Pre-procurement Conference necessary?

For projects involving an ABC amounting to more than Two Million Pesos (₱ 2 Million), a pre-procurement conference is conducted to determine the readiness of the Procuring Entity to procure goods and services in terms of the legal, technical and financial requirements of the project. More specifically, it ensures that the procurement will proceed in accordance with the PPMP and APP, confirms the availability of appropriations and programmed budget for the contract, and reviews all relevant documents in relation to their adherence to the law. **(2016 IRR, Section 20)**

Even when the ABC amounts to ₱ 2 Million and below, the BAC is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the technical specifications, warrant the holding of such conference before the Procuring Entity proceeds with the procurement.

### When do you conduct a Pre-procurement Conference?

The pre-procurement conference must be conducted prior to the advertisement or issuance of the IB. **(2016 IRR, Section 20.1)** At least seven (7) calendar days prior to publication or issuance of the IB would be an advisable timeframe for the pre-procurement conference, to give the technical staff sufficient time to incorporate the necessary changes, amendments or revisions thereto.

### Who calls for a Pre-procurement Conference?

The BAC, through its Secretariat, calls for a pre-procurement conference.

### Who are the participants of a Pre-procurement Conference?

The participants of the pre-procurement conference are:

1. The BAC;
2. The BAC Secretariat/ Procuring Unit;
3. Representatives of the PMO or end-user unit/s, or implementing unit/s;
4. The members of the TWG/s and consultants hired by the Procuring Entity who prepared the technical specifications, TORs, bidding documents and the draft advertisement, as the case may be, for the procurement at hand;
5. Officials who reviewed the above-enumerated documents prior to final approval, if any; and
6. Other officials concerned, as may be required.

## What should a Pre-procurement Conference achieve?

A pre-procurement conference should: (2016 IRR, Section 20.1)

1. Confirm the description and scope of the contract, the ABC, and contract duration.
2. Ensure that the procurement is in accordance with the PPMP and APP.
3. Determine the readiness of the procurement at hand, including among other aspects, the following: i) availability of appropriations and programmed budget for the contract; and ii) completeness of the Bidding Documents and their adherence to relevant general procurement guidelines.
4. Review, modify and agree on the criteria for eligibility screening, evaluation and post-qualification;
5. Review, modify and agree on the acceptable minimum specifications and other terms in the bidding documents;
6. Review the PPMP, the procurement schedule, including deadlines and timeframes for the different activities, and the method of procurement for the procurement at hand;
7. Reiterate and emphasize the importance of confidentiality, in accordance with Section 19 of the 2016 IRR, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the confidentiality rule.

### How's that again?

A "fair" evaluation criteria means such as are applicable to all similar goods offered in the market, and are not tailor-fit or customized for a particular product/service or brand.

### Let's make doing things easier

If a Procuring Entity has to procure similar goods or services, although through different public bidding activities, it may opt to hold just one pre-procurement conference to simplify or shorten the process.



SECTION 3

The Department of Budget and  
Management-Procurement  
Service and the Philippine  
Government Electronic  
Procurement System



## The PS-DBM and the PhilGEPS

### What is the mandate of the PS-DBM?

The PS-DBM was created under LOI No. 755 (Relative to the Establishment of an Integrated Procurement System for the National Government and its Instrumentalities) with the following functions, among others:

1. Identify those supplies, materials, and such other items, including equipment and construction materials, which can be economically purchased through central procurement and which it shall cover within its scope of activity;
2. Determine the technical specifications of items that it will procure for agencies of the Government;
3. Identify the sources of supply which are able to offer the best prices, terms and other conditions for the items procured by government; and
4. Purchase, warehouse and distribute items for resale to agencies of government, including GOCCs.

Moreover, it is mandated under the GPRA to administer the Government Electronic Procurement System or the G-EPS.

All procuring entities are directed to purchase common-use supplies from the PS-DBM.

### What is the policy of the Government with respect to the use of the PhilGEPS for the procurement of goods?

To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be a single portal that shall serve as the primary source of information on government procurement. The PhilGEPS shall serve as the primary and definitive source of information on government procurement. For this purpose, the Electronic Procurement System established in accordance with Executive Order No. 322, s. 2000 and Executive Order NO. 40, s. 2001 shall be continued to be managed by the PS-DBM under the supervision of the GPPB, as the PhilGEPS in accordance with the 2016 IRR.

All procuring entities are required to use the PhilGEPS in all its procurement of common-use supplies. For the procurement of non-common use items, procuring entities may hire service providers through competitive bidding to undertake their electronic procurement.

To fully comply with the requirement under Section 8.2.1 (a) of the 2016 IRR, and to promote transparency and efficiency in government procurement, all notices of awards of contract, and other related information must be posted in the bulletin board of the PhilGEPS website, being the single portal of information on all government procurement activities, in addition to the posting in the website of the Procuring Entity concerned, if available.

### What present features of the PhilGEPS and the PS-DBM website are of special relevance to the procurement of goods?

As discussed in Volume 1 Section 6, the existing PhilGEPS has two features that are of special relevance to the procurement of goods, namely: (i) notification feature which includes the posting of IBs and other notices, as well as the matching of procurement opportunities with the appropriate supplier; and (ii) the registry of suppliers.

Additionally, the DBM-PS website ([www.procurementservice.org](http://www.procurementservice.org)) contains an electronic catalogue of common-use supplies that can be bought from the PS-DBM. This catalogue includes the descriptions of the items, current prices, stock positions, and other relevant information. Although this information is available online, purchasing is currently still done manually.

### **Methodology: How does a Procuring Entity procure through the PS-DBM?**

The following steps are undertaken in the procurement, by a Procuring Entity, of goods through the PS-DBM:

1. The Procuring Entity transacts with the PS-DBM through its duly authorized personnel, designated in accordance with the following guidelines:

#### **TIPS: Let's make doing things easier**

The Procuring Entity should institute the appropriate systems and procedures between the Procurement Officer and the Supply Officer in order that coordination between them with regard to their transaction with the PS-DBM would be optimal. This essentially means that documents and information are passed on from the Procurement Officer to the Supply Officer, who takes over the procurement function upon delivery, inspection, and acceptance of the procured goods.

- a. For purposes of coordinating with the PS-DBM and the PhilGEPS regarding the procurement of common-use supplies, a Procurement Officer who is also a member of the BAC Secretariat shall serve as the liaison officer;

- b. For purposes of coordinating with the PS-DBM regarding the delivery of goods and technical inspection thereof, the Supply Officer shall liaise with the former;

2. The Procurement Officer registers with the PhilGEPS and he/she is

issued a Certification, a user-name and a system-generated password. (*Note: Procedures covering the various activities that require coordination with the PhilGEPS are indicated in the appropriate Sections of this Manual. Reference may also be made to Volume 1*)

3. For the procurement of common-use supplies, the procurement unit or office obtains from the PS-DBM its latest Price List of Common-Use Supplies. It then prepares the APR where it will indicate the description, quantity and price of the goods it will procure.

4. The APR is submitted to the appropriate official of the Procuring Entity for approval, and to the Chief Accountant for certification of availability of funds.

5. Upon its approval and the certification of funds for it, the APR is forwarded to the Finance Office for the preparation of the corresponding DV and MDS check payable to PS-DBM. The same shall go through the regular approval process for similar documents.

6. The approved APR, together with the MDS check, is submitted to PS-DBM for appropriate action. (*Note: The internal procedures of the PS-DBM are embodied in their Operations Manual. Reference thereto may be made.*)

#### **Let's make doing things easier**

The Procuring Entity may wish to consider authorizing the DBM to withhold a certain amount of its budget for the procurement of common-use supplies from the PS-DBM. In doing so, it is spared of preparing the DV and MDS check. Its Procurement Officer, instead, shall indicate in the APR that appropriate funds have been deposited with the PS-DBM to cover the cost of the supplies being procured.

7. Once the PS-DBM indicates to the procurement unit or office the schedule of delivery and inspection, the latter immediately informs the appropriate Supply Officer and turn over the necessary documents to him (APR and technical descriptions of the goods procured, if any).
8. The Supply Officer coordinates with the Technical Inspection and Acceptance Committee for the technical inspection of the goods procured and the subsequent acceptance by the said Committee.



SECTION 4

# Instructions on the Procedural Steps for the Procurement of Goods

PART ONE – COMPETITIVE BIDDING



## Competitive Bidding

### What is Competitive Bidding?

Competitive or Public Bidding is a method of procurement that is open to any interested and qualified party. All procurement should be done through Competitive Bidding except as provided in Rule XVI of the IRR-A. **(2016 IRR, Section 10)**

Competitive Bidding consists of the following processes: advertisement, pre-bid conference, receipt of eligibility documents and bids, eligibility check, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract. **(2016 IRR, Section 5 [h])**. A Procuring Entity should, therefore, see to it that its procurement program allows enough time to conduct such Competitive Bidding.

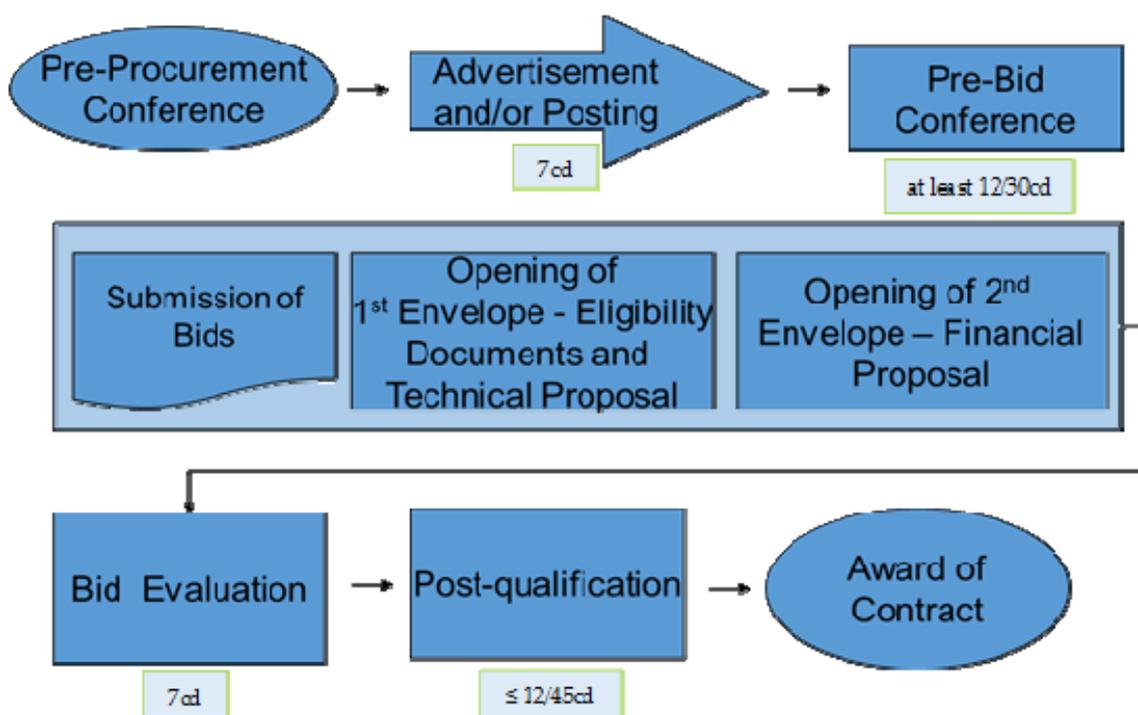
The procurement process from the opening of bids up to the award of contract should not exceed three (3) months, or a shorter period to be determined by the Procuring Entity concerned. **(2016 IRR Section 38.1)** In case the deadline for each activity falls on a non-working day (*i.e.* Saturday and Sunday), legal holiday, special non-working holiday, or other non-working days duly declared by the President, Governor, Mayor or other Government Official authorized to make such declaration, the deadline shall be the next working day.

However, for purposes of expediency, economy, and efficiency, as determined by the BAC, specific procurement activities may be held on a Saturday, Sunday, non-working day or holiday: provided, that the BAC, Secretariat and TWG members shall be available on such date, and the appropriate supplemental/bid bulletin is issued and posted pursuant to the posting requirements embodied in section 22.5.3 of this IRR.

There are two (2) types of Competitive Bidding procedures: the Single-Stage and Two-Stage. The Single-Stage bidding is the regular procedure used for competitive or public bidding while the two stage bidding is employed when the required technical specifications/ requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically unequal bids is likely to occur.

The steps of the Single-Stage Bidding procedure will first be discussed in this section, to be followed by those of the Two-Stage Bidding procedure.

Below is a graphical representation of the standardized Competitive Bidding procedures for the procurement of Goods.



## **Single-Stage Competitive Bidding**

### **Step 1 Advertise and Post an Invitation to Bid**

#### **What is the Invitation to Bid (IB)?**

The IB serves as the notice to the public and all interested parties of the procurement and bidding opportunities of the Procuring Entity.

#### **Why do you post an Invitation to Bid?**

It ensures transparency of the procurement process, widest possible dissemination to increase the number of prospective bidders, and intensify competition for the procurement activity or project. Intensified competition, in turn, will ensure that the government, in general, and the Procuring Entity, in particular, will get the best possible quality and cost for the goods and services sought to be procured.

#### **What does an Invitation to Bid contain?**

The IB must contain the following: **(2016 IRR Section 21.1)**

1. The name of the contract to be bid, and a brief description of the goods to be procured;
2. The name of the project, identification and number of lots or items specific to the bidding, as well as the basis of evaluation of the project, lots, or items, where applicable;
3. A general statement on the criteria to be used by the Procuring Entity for:
  - a. The eligibility check;
  - b. The examination and evaluation of bids;
  - c. Post-qualification; and
  - d. Award.
4. The date, time and place of the deadline for:
  - a. The submission and receipt of the eligibility requirements;
  - b. The pre-bid conference if any;
  - c. The submission and receipt of bids; and
  - d. The opening of bids;
5. The ABC for the project, lot or item to be bid;
6. The source of funding;
7. The period of availability of the bidding documents; the place, time and website where the bidding documents may be secured or downloaded; and, where required, the price of the bidding documents in accordance with Section 17.4 of the 2016 IRR;

8. The contract duration or delivery schedule;
9. The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned Procuring Entity, as well as its designated contact person;
10. The Reservation Clause, which is normally located at the bottom of the notice; and
11. Such other necessary information deemed relevant by the Procuring Entity.

The invitation should provide information that enables potential bidders to decide whether to participate. As such, apart from the above essential items, the IB should also indicate any important bid evaluation criteria (for example, the application of a margin of preference in bid evaluation) or qualification requirement (for example, a requirement for a minimum level of experience in manufacturing a similar type of product for which the invitation is issued).

The deadline for the submission of bids indicated in the IB should be no later than forty five (45) calendar days from the last day of posting.

### **When, where, and for how long do you post an Invitation to Bid?**

The IB for procurements or projects with ABCs of more than Ten Million Pesos (₱ 10 Million) must be advertised and posted as follows: **(2016 IRR, Section 21.2.1)**

1. Advertised at least once in one (1) newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement (advisably from the 7th calendar day after the pre-procurement conference, but if during the pre-procurement conference the BAC finds that it is not prepared to undertake the bidding procedure, it should not hesitate to consider moving back the advertisement/posting thereof to allow more time to perfect the same);
2. Continuously on the website of the Procuring Entity concerned, if available, the website of the Procuring Entity's service provider, if any, as provided in the 2016 IRR Section 8, the PhilGEPS, and the website prescribed by the foreign government/foreign or international financing institution, if applicable,<sup>4</sup> for seven (7) calendar days starting on date of advertisement, if applicable; and
3. At any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned, as certified by the head of the BAC Secretariat of the Procuring Entity concerned, for seven (7) calendar days.

The requirement for advertisement in a newspaper of general nationwide circulation will no longer be required two years after the effectivity of the 2016 IRR. However, a Procuring Entity that cannot post its opportunities in the PhilGEPS for justifiable reasons shall continue to publish its advertisements in a newspaper of general nationwide circulation.

For projects with ABCs of ₱ 10 Million and below, the IB should be posted: **(2016 IRR Section 21.2.1.c)**

1. Continuously on the website of the Procuring Entity concerned, if available, the website of the Procuring Entity's service provider, if any, as provided in the 2016 IRR Section 8, the PhilGEPS, and the website prescribed by the foreign government/foreign or international financing institution, for seven (7) calendar days starting on date of advertisement, if applicable; and
2. At any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned, as certified by the head of the BAC Secretariat of the Procuring Entity concerned, for seven (7) calendar days.

---

<sup>4</sup> For NCB contracts funded by ADB, estimated at \$500,000 or more, the IB shall be advertised concurrently at the general procurement notices section on ADB's website.

For provincial projects, as described in Section 44 of the 2016 IRR, or programs funded out of the GAA for implementation within the province, in addition to the above advertisement and posting requirements, the IB may be advertised in a local newspaper with the widest circulation for the same prescribed period.

**Which unit shall ensure that the advertising/posting requirements of the IB are complied with?**

The BAC is responsible for ensuring that the IB is advertised and posted in accordance with law.

**Methodology: How are IBs advertised and posted?**

The following steps are followed in the advertising and posting of IBs:<sup>5</sup>

1. For public bidding of contracts with an ABC costing more than Ten Million Pesos (₱ 10 Million)
  - a. The BAC Secretariat prepares the draft IB for review/approval of the BAC.
  - b. The BAC approves the contents of the IB during the pre-procurement conference.
  - c. The BAC Secretariat posts the IB in any conspicuous place reserved for this purpose in the premises of the Procuring Entity for the duration required; and this fact will be certified to by the head of the Secretariat.
  - d. The BAC Secretariat advertises the IB in a newspaper for the duration required, as prescribed above. For priority programs and projects funded out of the annual GAA, which are intended for implementation within the province, the IB may also be advertised in a local newspaper for the same duration as above.
  - e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IB in the following websites: the PhilGEPS, that of the Procuring Entity or the Procuring Entity's e-procurement service provider, if any, and the website prescribed by the foreign government/foreign or international financing institution for the duration required.
2. For public bidding of contracts with an ABC costing Ten Million Pesos (₱10 Million) and below, and for alternative methods of procurement (*Please refer to Section 4, Part 2, for the discussion on Alternative Methods of Procurement*):
  - a. The BAC Secretariat prepares the draft IB for review/approval of the BAC.
  - b. The BAC approves the contents of the IB.
  - c. The BAC Secretariat performs steps (c) and (e) in Item No. 1 above.

---

<sup>5</sup> ADB and WB may have additional publication requirements. For this reason, reference should be made to Section IX of the bidding documents issued for the project.

## Step 2 Issue the Bidding Documents

### When should the bidding documents be made available to prospective bidders?

The bidding documents must be made available to the prospective bidders from the time the IB is advertised until immediately before the deadline for submission of bids. **(2016 IRR, Section 17.3)** Similarly, the complete set of bidding documents must be posted in the PhilGEPS website, the website of the Procuring Entity or its electronic procurement system service provider, if any, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, from the time the Invitation to Bid is advertised.

The Procuring Entity must ensure that prospective bidders are given ample time to examine the bidding documents and to prepare their respective bids. A maximum period of forty five (45) calendar days from the last day of posting of the IB up to opening of bids, for preparing the bids, is provided by Section 25.5(a) of the 2016 IRR, which means that the bidding documents can be made available for a maximum period of fifty two (52) calendar days.

### How much must prospective bidders pay for the Bidding Documents?

The Procuring Entity may or may not opt to charge a fee for the bidding documents. Procuring Entities, are nonetheless, allowed to charge a fee to recover the cost for the preparation and development of the bidding documents in accordance with the *Guidelines on the Sale of Bidding Documents*, issued by the GPPB.<sup>6</sup> Under the said *Guidelines*, the cost of bidding documents shall correspond to the ABC range as indicated in the table below. This shall be the maximum amount of fee that procuring entities can set for the acquisition of bidding documents.

Approved Budget for the Contract	Maximum Cost of Bidding Documents (in Philippine Peso)
500,000 and below	500.00
More than 500,000 up to 1 Million	1,000.00
More than 1 Million up to 5 Million	5,000.00
More than 5 Million up to 10 Million	10,000.00
More than 10 Million up to 50 Million	25,000.00
More than 50 Million up to 500 Million	50,000.00
More than 500 Million	75,000.00

In case of lot procurement, the maximum fee for the bidding documents for each lot shall be based on its ABC, in accordance with the Guidelines issued by the GPPB. However, the total fees for the bidding documents of all lots shall not exceed the maximum fee prescribed in the Guidelines for the sum of the ABC of all lots.

For alternative methods of procurement which uses Requests for Quotation (RFQs), the same are not for sale, since RFQs are not considered as Bidding Documents under the Guidelines on the Sale of Bidding Documents.

### Methodology: How are the Bidding Documents issued?

As discussed, the BAC Secretariat posts the complete set of the bidding documents in the PhilGEPS website, the website of the Procuring Entity or electronic procurement service provider, if any, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, from the time the ITB is advertised. Bidding

<sup>6</sup> For ADB-funded contracts, the price of bidding documents should be nominal which should cover only reproduction and mailing/courier costs.

documents may be downloaded from any of the said websites, provided that upon submission of their bids, the bidder shall pay the applicable fee, if required. In such case, the bidders submitting their bids may be required to show the official receipt as proof of payment.

The bidding documents may also be secured from the BAC Secretariat upon payment of the corresponding fee, if required, during the period of availability of the bidding documents.

The BAC must issue copies of the bidding documents to the Observers free of charge.

**What are the responsibilities of a prospective bidder with regard to the Bidding Documents?**

A prospective bidder must be responsible for having: **(PBDs for Procurement of Goods, Instruction to Bidders Clause 6)**

1. Taken steps to carefully examine all of the bidding documents;
2. Acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
3. Made an estimate of the facilities available and needed for the contract to be bid, if any;
4. Complied with its responsibility to inquire or secure Supplemental/Bid Bulletin(s) as provided for under Section 22.5.3 of the 2016 IRR;
5. Ensured that it is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
6. Ensured that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
7. Authorized the Head of the Procuring Entity or its duly authorized representative/s to verify all the documents submitted;
8. Ensured that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the Bidder is a corporation, partnership, cooperative, or joint venture;
9. Complied with the disclosure provision under Section 47 of RA 9184 in relation to other provisions of RA 3019;

**What does acknowledging the conditions affecting the project mean to a prospective bidder?**

It means determining and satisfying itself with the following:

1. The location and nature of the project;
2. Climatic conditions;
3. Transportation facilities;
4. Nature and condition of the terrain, geological conditions of the site; communication facilities; requirements, location and availability of construction aggregates and other materials, labor, water, electric power, and access roads; and
5. Other factors that may affect the cost, duration and execution or implementation of the project. **(ITB Clause 6.4 of the 5<sup>th</sup> Edition of the Philippine Bidding Documents**

10. Complied with existing labor laws and standards, in the case of procurement of services;
11. Ensured that it did not give or pay, directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity;
12. Examined all instructions, forms, terms, and specifications in the Bidding Documents;
13. Determined and satisfied itself by such means as it considers necessary or desirable as to all matters pertaining to the contract to be bid, including: (a) the location and the nature of this Project; (b) climatic conditions; (c) transportation facilities; and (d) other factors that may affect the cost, duration, and execution or implementation of this Project;
14. Bore all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process; and
15. Before submitting their bids, the Bidder is deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect this Project, in any way.

Failure to observe any of the above responsibilities shall be at the risk of the prospective or eligible bidder concerned. For this purpose, one of the contents of the Technical proposal would have to be a sworn statement executed by the bidder attesting to these responsibilities.

The Procuring Entity shall not be responsible for any erroneous interpretation or conclusions by the prospective or eligible bidders of the data it furnished.

### **Step 3 Call A Pre-Bid Conference and, if necessary, Issue Supplemental/Bid Bulletins**

#### **What is a Pre-bid Conference?**

The pre-bid conference is the initial forum where the Procuring Entity's representatives and the prospective bidders discuss the different aspects of the procurement at hand.

The ground rules that will govern the procurement are discussed during the conference. In particular, the participants discuss the technical and financial components of the contract to be bid. This is also an opportunity for the prospective bidders to request for clarifications about the bidding documents. However, it should be noted that any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin. **(2016 IRR, Section 22.4)**

It is important that responsible and knowledgeable officials attend the conference. The persons who actually formulated the scope of work, plans and technical specifications for the project should be present and among those representing the Procuring Entity. Prospective bidders, on the other hand, should be encouraged to send representatives who are legally and technically knowledgeable about the requirements of the procurement at hand. It is also important that the prospective bidders are given ample time to review the bidding documents prior to the pre-bid conference.

#### **When do you hold a Pre-bid Conference?**

A pre-bid conference must be held for contracts with ABCs of at least One Million Pesos (₱ 1 Million). For contracts with ABCs of less than P 1 million, pre-bid conferences may or may not be held at the discretion of the BAC. The BAC may also decide to hold a pre-bid conference upon the written request of a prospective bidder. **(2016 IRR, Section 22.1)**

A pre-bid conference must be conducted at least twelve (12) calendar days before the deadline for the submission and receipt of bids, but not earlier than seven (7) calendar days from the PhilGEPS posting of the ITB. **(2016 IRR, Section 22.2)** A supplemental/bid bulletin shall be issued for this reason.

If the Procuring Entity determines that, by reason of the method, nature or complexity of the contract to be bid or when international participation will be more advantageous to the GoP, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for submission and receipt of bids.

#### **Who must attend the Pre-bid Conference?**

The following shall attend the Pre-Bid Conference:

1. The BAC;
2. The BAC Secretariat/Procurement Unit;
3. The TWG members and consultants, if any;
4. The procuring unit/end-user or implementing unit;
5. The prospective bidders; and
6. The Observers.

The attendance of the prospective bidders shall not be mandatory.

## How should the participants conduct themselves during the Pre-bid Conference and other stages of the procurement process?

The BAC, BAC Secretariat, TWG, and other officials involved in procurement are expected to act in an impartial, courteous and professional manner in all their dealings and interactions with the bidders during all stages of the procurement. The bidders' representatives are likewise enjoined to adopt the same professional manner in their dealings with the Procuring Entity's officials. Communications between the parties must, as much as possible, be made in writing, except during the pre-bid conference when verbal clarifications may be allowed – keeping in mind, however, that any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin.

### Methodology: How is the Pre-bid Conference conducted?

The manner by which the pre-bid conference is conducted depends on the discretion of the BAC. It may be conducted in person or face-to-face through videoconferencing, webcasting or similar technology, or a combination of the said methods. However, several events need to take place in the conference, namely:

1. The presentation by the BAC of the eligibility requirements as well as the technical and financial components of the contract to be bid, the evaluation procedure, evaluation criteria, and possible causes of failure of the bidding.
2. The BAC chairperson shall also discuss the requirements in the ITB, the replies to the bidders' queries about the requirements, specifications and other conditions of the project, the bid evaluation of all bidders and post-qualification evaluation of the lowest calculated bidder. Emphasis should also be given to the warranty requirement of the project and the different offenses and penalties provided for in the 2016 IRR of R.A. 9184.
3. The recording and preparation by the BAC Secretariat of the minutes of the pre-bid conference not later than five (5) calendar days after the pre-bid conference, and its availability to prospective bidders not later than five (5) calendar days upon written request. **(2016 IRR, Section 22.4)**

### TIPS: Let's make doing things easier

The BAC must initiate discussions on contentious issues, most especially if the participating prospective bidders have no ready questions. It is probable that there are issues that may not be apparent in the bidding documents but are known to the representatives of the Procuring Entity. If these issues are brought out and openly discussed, prospective bidders will be able to prepare responsive bids, thus avoiding situations that may give rise to a failure of bidding due to lack of bids received or failure of bids to comply with all the bid requirements. This would also help prevent the birth contentious issues during the bidding itself.

### What happens if there is a need for clarification or interpretation on the Bidding Documents after the Pre-bid Conference had been held?

Requests for clarification(s) on any part of the bidding documents or for an interpretation may be made by prospective bidders provided that these are in writing and are submitted to the BAC at least ten (10) calendar days before the deadline for the submission and receipt of bids. In this case, the BAC shall issue its response by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairperson, to be made available to all those who have properly secured the bidding documents at least seven (7) calendar days before the deadline for the submission and receipt of bids. **(2016 IRR, Section 22.5.1)**

In case of requests for clarification submitted within ten (10) calendar days from the deadline for the submission and receipt of bids, the BAC may still respond to said requests, considering their relevance or complexity, through the issuance of a Supplemental/Bid Bulletin. The BAC may move the deadline for the submission and receipt of bids, if necessary, to comply with the seven (7) calendar-day requirement under Section 22.5.1 of the 2016 IRR. In case the BAC will not issue a supplemental/bid bulletin, it shall still issue the necessary reply in accordance with applicable laws.

The Procuring Entity may, at its own initiative, also issue Supplemental/Bid Bulletins for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the bidding documents must be identified as an "AMENDMENT." **(2016 IRR, Section 22.5.2)**

The BAC should also post the Supplemental/Bid Bulletin on the website of the Procuring Entity concerned, if available, the website of its electronic procurement system provider, if any, the PhilGEPS, and at any conspicuous place within the premises of the Procuring Entity, within the same timetable. It will be the prospective bidders' responsibility to ask for, and secure, these bulletins.

A supplemental/bid bulletin must contain a brief but comprehensive and accurate summary of the issue or issues that it wishes to address. If it was a prospective bidder that raised the issue addressed by the bulletin, then it ought to contain a summary of that bidder's request for clarification and/or interpretation, without identifying the bidder.

Bidders who have submitted bids before a supplemental/bid bulletin is issued have to be informed in writing and allowed to modify or withdraw their respective bids. **(2016 IRR, Section 22.5.3)**

### **Who are involved in the Issuance of the Supplemental/Bid Bulletin?**

The following are involved in the issuance of the Supplemental/Bid Bulletin:

1. The BAC;
2. The BAC Secretariat / Procurement Unit;
3. The TWG members; and
4. The prospective bidders.

### **Methodology: How is a Supplemental/Bid Bulletin issued?**

If the supplemental/bid bulletin is being issued upon the initiative of the BAC, the following steps are followed:

1. The BAC Secretariat and/or the TWG draft the Supplemental/Bid Bulletin for approval by the BAC.
2. The BAC approves the Supplemental/Bid Bulletin and the BAC chairperson signs it.
3. The BAC Secretariat sends copies of the Supplemental/Bid Bulletin to all prospective bidders who have properly secured or purchased the bidding documents, within the period prescribed above.
4. The BAC Secretariat posts the Supplemental/Bid Bulletin in the PhilGEPS, the website of the Procuring Entity and that of the latter's electronic procurement system provider, if any, and at any conspicuous place within the premises of the Procuring Entity, within the same period prescribed in number (3) above.

If the Supplemental/Bid Bulletin is being issued in response to a request for clarification submitted by a prospective bidder, on the other hand, the process goes as follows:

1. The prospective bidder submits to the BAC, through the BAC Secretariat, a written request for clarification, within the period prescribed above.
2. The BAC directs the BAC Secretariat and/or TWG to study the request for clarification.
3. The TWG, BAC and BAC Secretariat perform the steps undertaken in the issuance of the supplemental/bid bulletin issued at the initiative of the BAC.

## Step 4 Receive and Open the Bid Envelopes

### What is a Bid?

A Bid refers to a signed offer or proposal to undertake a contract submitted by a bidder in response to, and in consonance with, the requirements stated in the bidding documents. "Bid" is also equivalent to and may be used interchangeably with "Proposal" and "Tender". (2016 IRR, Section 5[c]) A Bid has two components, the Technical Bid, and the Financial Bid.

### How should the bids be packaged and submitted?

Bidders must submit their bids through their duly authorized representatives using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, to be submitted simultaneously. **(2016 IRR, Section 25.1)**

### What are the contents of the two bid envelopes?

The first envelope consists of the TECHNICAL COMPONENT of the bid under Section 25.2 of the 2016 IRR. The first envelope contains the following minimum technical information/documents:<sup>7</sup>

1. PhilGEPS Certificate of Registration and membership in accordance with Section 8.5.2 of the 2016 IRR. For procurement to be performed overseas, it shall be subject to the Guidelines to be issued by the GPPB;
2. Statement of all Ongoing Government and Private Contracts;
3. Statement of Single Largest Completed Contract (SLCC);
4. Net Financing Contracting Capacity (NFCC) Computation or committed Line of Credit;
5. Joint Venture Agreement or the Duly Notarized Statement in accordance with Section 23.1(b) of the 2016 IRR, if applicable;
6. Bid security in the prescribed form, amount and validity period;
7. Technical Specifications, which may include production/delivery schedule, manpower requirements, and/or after-sales service/parts, if applicable;
8. Omnibus Sworn Statement in accordance with Section 25.3 of the 2016 IRR; and
9. For foreign bidders claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos, a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item or product.

The second envelope, on the other hand, consists of the FINANCIAL COMPONENT of the bid. It contains the following financial information/documents, at the least:

1. Duly accomplished Bid Form, including the Price Schedules, using the forms prescribed in the PBDs for Procurement of Goods;
2. If the bidder claims preference as a domestic bidder, a certification from the DTI that it is offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines substantially from articles,

<sup>7</sup> For ADB and WB-funded contracts, reference should be made to Section IX of the bidding documents issued for the project to determine the required contents for the first envelope.

materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines; and

3. The recurring and the maintenance costs, if applicable. *(Please refer to Section 2 on Procurement Planning, for guidelines in the preparation of the Technical Specifications and other requirements.)*

### **Computation of Discounts**

Discounts may be offered and reflected on the Bid Form. In which case, discounts can be considered when computing for the total calculated bid price, as can be gleaned from ITB Clause 28.4 of the PBDs for Goods and Section 32.2.4 of the IRR of RA 9184.

Discounts and its corresponding percentage and computation are recognized to support a lower bid price proposal that is beneficial and advantageous to government, provided that the legal and technical components of the bid are fully compliant with the requirements of the project.

The discounts offered, through the Bid Form should be included and considered in the computation and ranking of bid prices during the detailed bid evaluation. Discounts stated in the Bid Form allow bidders to itemize the application of discounts that are not yet reflected in the amounts specified in its bill of quantities and detailed estimates, *vis-a-vis* the program of works, as there could be a situation that the decision to offer a discount came long after these amounts have been prepared, finalized and reflected in the bid documents, and changing the entries may be too cumbersome and time consuming for the bidder.

## Eligibility Requirements

### What is an eligibility check?

It is a procedure to determine if a prospective bidder is eligible to participate in the bidding at hand. In determining a prospective bidder's eligibility, the BAC shall use non-discretionary "pass/fail" criterion, as stated in the IB and the ITB. Essentially, this means that the absence, incompleteness or insufficiency of a document shall make a prospective bidder ineligible to bid for the particular procurement.<sup>8</sup> **(2016 IRR, Section 30.1)**

### Who may be eligible to participate in a public bidding for goods?<sup>9</sup>

The following manufacturers, suppliers and/or distributors, service providers shall be eligible to participate in the bidding for the supply of goods: **(2016 IRR, Section 23.4.1.1)**

1. Duly licensed Filipino citizens/sole proprietorships;
2. Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
3. Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;

**Note:** The 60% Filipino ownership in partnerships and corporations may be verified by checking the General Information Sheet and/or other relevant documents submitted by such partnership or corporation to the Securities and Exchange Commission.

4. Joint ventures of manufacturers, suppliers and/or distributors, *i.e.*, a group of two (2) or more manufacturers, suppliers and/or distributors that intend to be jointly and severally responsible or liable for a particular contract, provided that:<sup>10</sup>

- a. Filipino ownership or interest of the joint venture concerned must be at least sixty percent (60%); and

- b. In determining the eligibility of the joint venture, the principle of "collective compliance" will be applied to its members/principals in the sense that each of the entities of the joint venture must submit all of the documents that are required to establish eligibility, although the non-compliance of one member/principal may be compensated by the compliance of another member/principal;

#### Why is that?

**Why do we require that the bidder's largest single contract be at least 50% of the ABC of the contract to be bid?**

We do this because we want to be assured that the prospective bidder has the technical and financial capability to undertake the contract to be bid.

5. Cooperatives duly registered with the CDA.

<sup>8</sup> For ADB and WB-funded contracts, reference should be made to Section IX of the bidding documents issued for the project to determine the rules on eligibility check.

<sup>9</sup> For ADB and WB-funded contracts, reference should be made to Section IX of the bidding documents for the project to determine the appropriate qualification requirements of a bidder.

<sup>10</sup> For ADB and WB-funded contracts, any firm may bid independently or in joint venture confirming joint and several liability, either with domestic firms and/or with foreign firms, but conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms are generally not acceptable.

All of these entities must have:

1. The experience of having completed within the period specified in the IB concerned, a single largest completed contract (SLCC) that is similar to the contract to be bid, and whose value, adjusted to current prices using the Philippine Statistics Authority (PSA) consumer price indices, must be at least fifty percent (50%) of the ABC. In the case of Expendable Supplies, said SLCC must be at least equal to twenty five percent (25%) of the ABC.

If, at the outset and after conducting market research, the Procuring Entity can already determine that imposing the same will likely result to: (a) failure of bidding, or (b) monopoly that will defeat the purpose of competitive bidding, the Procuring Entity, in lieu of the above, may require the following:

- a) The prospective bidder should have completed at least two (2) similar contracts and the aggregate contract amounts should be equivalent to at least the percentage of the ABC as required above; and
- b) The largest of these similar contracts must be equivalent to at least half of the percentage of the ABC as required above.

For this purpose, the similar contracts mentioned under (a) and (b) above must have been completed within the period specified in the IB. **(2016 IRR, Section 23.4.1.3)**

2. Any of the following:

An NFCC that is at least equal to the approved budget for the contract to be bid, calculated as follows:

NFCC = [(Current assets minus current liabilities) (15)] minus the value of all outstanding or uncompleted portions of the projects under ongoing contracts, including awarded contracts yet to be started, coinciding with the contract to be bid; or

What data shall be used in computing the bidder's NFCC?

For *domestic bidders*, the value of its current assets and liabilities shall be based on the latest Audited Financial Statements submitted to the BIR.

A  
For *foreign bidders*, the value of the current assets and current liabilities shall be based on their Audited Financial Statements prepared in accordance with international financial reporting standards.

A committed Line of Credit, which must be at least equal to ten percent (10%) of the ABC to be bid, provided that if the same is issued by a foreign universal or commercial bank, it shall be confirmed or authenticated by a local universal or commercial bank.

### What do we mean?

#### When is a contract "similar" to another?

The Procuring Entity may clarify in the Bidding Documents the definition or description of what it considers to be a similar project.

For example, a contract is similar to the contract to be bid if it involves goods or related services of the same nature and complexity as those which are the subject of the public bidding concerned; or, if it has the same major categories of the goods required.

**Note:**

Prior to the 2016 IRR, the requirement was a commitment from a Universal or Commercial Bank to extend a credit line in favor of the bidder, once awarded the contract. The present requirement however refers to a **committed line of credit, which is different from a mere commitment or undertaking to extend a credit line.**

**Are foreign suppliers allowed to bid?**

Foreign suppliers, manufacturers, and/or distributors may be eligible to participate in the bidding for the procurement of goods, when:

1. Provided for under any treaty or international or executive agreement.<sup>11</sup>
2. The foreign citizen/entity who/that wishes to participate in the procurement of goods is able to prove that the laws, rules and regulations of his/its country of origin grants reciprocal rights and privileges to Filipino citizens with respect to the procurement of goods by his/its own government. **(R.A. 5183)**

A bidder shall be deemed to have the nationality of a country if the bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country.

This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the contract, including related services.

For the purpose of claiming eligibility by reason of reciprocity rights, the foreign bidders must submit, in its first bid envelope (technical component) a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item or product.

3. The goods sought to be procured are not available from local suppliers; **(2016 IRR, Section 23.4.1.2)**

Under GPPB Resolution 18-2005, goods are not available from Local Suppliers when, at any time before advertisement for their procurement, it is determined that no Local Supplier is capable to supply the required goods to the Government, in which case, foreign suppliers, manufacturers and/or distributors may be invited to participate in the bidding. Therefore, the Head of the Procuring Entity or his duly authorized representative shall certify that, after diligent market research conducted by the Procuring Entity, the goods sought to be procured are not available from Local mfrom the appropriate Government regulatory body, such as, but not limited to, the Bureau of Product Standards of the DTI for electrical products, mechanical/building & construction materials, chemicals, foods and other consumer products, and the BFAD of the DOH for drugs, medicine, and other related medical devices, that based on its available records, the goods sought to be procured are not available from Local Suppliers.

If despite the availability of the goods sought to be procured, no local supplier is interested to participate in the procurement process, the Head of the Procuring Entity shall certify that it has advertised the same for public bidding and shall make a statement that no local supplier participated in the bidding and that the same is due to reasons not attributable to the Procuring Entity. For purposes of inviting foreign suppliers, the bidding requirements and conditions, as advertised, shall not be

<sup>11</sup> For ADB and WB-funded contracts, to foster competition, firms and individuals from eligible countries are permitted to offer goods, works, and services. Any conditions for participation should be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. In connection with any contract to be financed in whole or in part from an IFI loan, the IFI generally does not permit a procuring entity to disqualify a firm for reasons unrelated to its capability and resources to successfully perform the contract; nor does it permit a procuring entity to disqualify any bidder for such reasons. Consequently, procuring entities should carry out due diligence on the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

modified or changed. Otherwise, modifications and/or changes in the requirements and conditions of the bidding shall disallow the Procuring Entity to resort to invitation of foreign bidders.

The procurement of unavailable goods must be through competitive or public bidding unless conditions prescribed under R.A. 9184 and its 2016 IRR warrant resort to alternative methods of procurement.

4. **There is a need to prevent situations that defeat competition or restrain trade. (2016 IRR, Section 23.4.1.2[d])**

Under Section 6.1 of GPPB Resolution 18-2005, in cases where the Procuring Entity intends to procure goods from an exclusive local manufacturer, supplier, distributor, or dealer through direct contracting, when said method is recommended by the BAC and approved by the Head of the Procuring Entity, and reflected in the approved Annual Procurement Plan, it shall, before commencing any negotiations with a local supplier, post through the website of the Procuring Entity, if any, and in the PhilGEPs, an invitation to foreign manufacturers to submit a manifestation of its intention to participate. Should any foreign manufacturer submit such manifestation within the period prescribed in the invitation, the Procuring Entity shall commence the conduct of public bidding. If no foreign manufacturer submits such manifestation within the said period, the Procuring Entity may proceed with the intended procurement through direct contracting with the said exclusive local manufacturer, supplier, distributor, or dealer.

### **When is a prospective bidder eligible to bid?**

A prospective bidder is eligible to bid for the procurement of goods if it complies with the eligibility requirements prescribed for the competitive bidding, within the period stated in the IB. The eligibility requirements shall provide for fair and equal access to all prospective bidders.

As procuring entities and the bidders, manufacturers, suppliers or distributors are required to observe the highest standard of ethics during the procurement and execution of contract, bidders should not be under a declaration of ineligibility for corrupt, fraudulent, collusive and coercive practices by the government.

### **What are the eligibility requirements?**

Section 23.1 of the 2016 IRR requires bidders to submit the following eligibility requirements, which shall be included in the technical bid envelope, to wit:

**1. Class "A" Documents**

**a. Legal Documents**

- i. DTI business name registration in the case of Single Proprietorships; or SEC Registration Certificate, in the case of Partnerships or Corporations; or CDA Registration, in the case of cooperatives;
- ii. Mayor's/Business Permit issued by the city or municipality where the principal place of business of the prospective bidder is located, or the equivalent document for Exclusive Economic Zones or Areas.

In cases of recently expired Mayor's/Business permits, it shall be accepted together with the official receipt as proof that the bidder has applied for renewal within the period prescribed by the concerned local government unit, provided that the renewed permit shall be submitted as a post-qualification requirement in accordance with Section 34.2 of this IRR.

- iii. Tax clearance per E.O. 398, s. 2005, as finally reviewed and approved by the BIR.

**b. Technical Documents**

- iv. A statement of the prospective bidder of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid.
- v. Statement of the bidder's SLCC similar to the contract to be bid, except under conditions provided for in Sections 23.4.1.3 and 23.4.2.5 of the 2016 IRR, within the relevant period as provided in the Bidding Documents.

Both statements mentioned in Items (iv) and (v) should include the information required in the PBDs for Procurement of Goods.

**c. Financial Documents**

- vi. The prospective bidder's audited financial statements, showing, among others, the prospective bidder's total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of bid submission; and
- vii. The prospective bidder's computation of its NFCC which shall be computed using the formula prescribed in Sec. 23.4.1.4 of the 2016 IRR, or in lieu of this, a committed Line of Credit from a universal or commercial bank.

All bidders shall upload and maintain in PhilGEPS a current and updated file of the following Class "A" eligibility documents:

- a) Registration Certificate;
- b) Mayor's/Business Permit;
- c) Tax Clearance; and
- e) Audited Financial Statements.

For Foreign Bidders, the above-mentioned documents may be substituted by the appropriate equivalent documents in English, if any, issued by the country of the bidder concerned. Otherwise, it must be accompanied by a translation of the documents in English issued by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and should be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines.

These documents should be accompanied by a Sworn Statement in a form prescribed by the GPPB stating that the documents submitted are complete and authentic copies of the original, and all statements and information provided therein are true and correct. Upon receipt of the said documents, the PhilGEPS shall process the same in accordance with the guidelines on the Government of the Philippines – Official Merchants Registry (GoP-OMR).

**(2016 IRR, Section 8.5.2)**

Bidders who are maintaining current and updated Class "A" Eligibility Documents, as above-enumerated, will be issued their PhilGEPS Certificate of Registration and Membership. This PhilGEPS Certificate will be required during bid submission, in lieu of the same Class "A" Eligibility Documents.

## 2. Class "B" Documents

- a. Valid JVA, if the prospective bidder is a JV that is already in existence. In the absence of a JVA, duly notarized statements from all of the potential JV partners should be included in the bid, stating that they will enter into and abide by the provisions of the JVA in the event that the bid is successful.

All members of the joint venture should submit their respective PhilGEPS Certificate of Registration and Membership in accordance with Section 8.5.2 of the 2016 IRR. The submission of technical and financial eligibility documents by any of the JV partners constitutes compliance, provided that, the partner responsible to submit the NFCC shall likewise submit the statement of all its ongoing contracts and audited financial statements.

### **What is the purpose of requiring an NFCC or a committed Line of Credit?**

The NFCC or committed Line of Credit establishes the bidder's liquidity, its capacity to absorb the additional obligations in connection with the contract to be bid and to finance its implementation/completion. Compliance with this eligibility requirement may be done on the alternative, such that submission of any of the two is acceptable for purposes of determining a bidder's eligibility.

### **What are the eligibility requirements of a prospective foreign bidder?**

Foreign manufacturers, suppliers and distributors, when allowed to bid under the circumstances mentioned in the 2016 IRR, Section 23.4.1.2 and R.A. 5183, must submit the same eligibility requirements as domestic entities. However, the legal documents and the audited financial statements under the Class "A" documents, as discussed above, may be substituted by the appropriate equivalent documents in English, if any, issued by the country of the bidder concerned. Otherwise, it must be accompanied by a translation of the documents in English issued by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and should be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines.

### **Are consignment agreements considered procurement contracts for purposes of submitting the statements of ongoing contracts and SLCC?**

No. Consignment in its common meaning is an arrangement whereby the goods are sent by one to another to be sold and disposed by the latter for and on account of the former. It refers to an arrangement where the following requisites are present: (a) delivery of goods by their owner (consignor), without sale, to a government agency (consignee); (b) consignee must try to sell the goods and remit the price of the sold goods to the consignor; (c) consignee accepts without any liability except for failure to reasonably protect them from damage; (d) no disbursement of government funds is involved; and (e) at terms not disadvantageous to the GoP.

The question of whether consignment projects can be considered as the SLCC requirement by the provisions of the IRR of RA 9184 necessitates the comparison of a Consignment Project and a Procurement Contract. Consignment arrangement or project cannot be considered as procurement because of the difference in the essential features of the two contracts. The former does not involve acquisition of goods and disbursement of public funds, which are vital features of a procurement contract.

## Methodology: When and How are Bids Received and Opened

### Who are the parties involved in the receipt and opening of eligibility envelopes and bids?

The following parties are involved in this process:

1. The BAC;
2. The TWG;
3. The BAC Secretariat /Procurement Unit;
4. The bidders; and
5. The Observers.

### How should the Bids be received and opened?<sup>12</sup>

1. The BAC shall receive the bids on the date, time and place specified in the IB. The BAC may prescribe a maximum period of forty-five (45) calendar days from the last day of posting of the IB up to the submission and receipt of bids, as the bid preparation time for prospective bidders. Bids received after the deadline shall not be accepted by the BAC.
2. Upon receipt of the bid envelopes, the BAC Secretariat must stamp the face of the outer envelope as "RECEIVED," indicating thereon the date and time of receipt, and have the stamp countersigned by an authorized representative.
3. Unsealed or unmarked bid envelopes shall be rejected. However, bid envelopes that are not properly sealed and marked, as required in the bidding documents, shall be accepted, provided that the bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The BAC shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid, or for its premature opening. **(2016 IRR, Section 25.9)**
4. The BAC shall open the bids immediately after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the Bidding Documents. In case the bids cannot be opened as scheduled due to justifiable reasons, the BAC shall take custody of the bids submitted and reschedule the opening of bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the PhilGEPS website and the website of the Procuring Entity concerned. **(2016 IRR, Section 29)** The BAC may consider unavoidable or unforeseen events as justifiable reasons for rescheduling the opening of bids.

**Note:** The minimum seven day-posting requirement for Supplemental/Bid Bulletins does not apply to Notices of Postponement.

5. The BAC shall open the first bid envelopes in public to determine each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements. The BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. Bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed". **(2016 IRR,**

<sup>12</sup> The bid opening methodology may vary for FAPs. Reference should be made to the FAPs BDS in Section IX of the bidding documents issued for the project.

**Section 30.1)** The BAC Secretariat shall record the presence or absence of the required eligibility and technical requirements in a Checklist.

6. Immediately after determining compliance with the requirements in the first envelope, the BAC shall open the second bid envelope (Financial Proposals) of each remaining eligible and technically complying bidder whose submitted technical bid including eligibility requirements were rated "passed." The second envelope of each eligible and technically complying bidder shall be opened on the same day, except under circumstances mentioned in Section 33 of the 2016 IRR.

**How's that again?**

**When is a document deemed "complete" and "sufficient"?**

For a document, to be deemed "complete" and "sufficient", it must be complete on its face, that is, it contains all the information required, and must comply with the requirements set out in the bidding documents. For example, a Mayor's Permit should be current, and submission of an expired Mayor's Permit is deemed a "non-submission". Another example of an insufficient submission is a Bid Security in an amount below the requirement.

In case any of the requirements in the second envelope is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid as "failed." Only bids that are determined to contain all the bid requirements for both Technical and Financial components shall be rated "passed" and shall be immediately considered for evaluation and comparison. **(2016 IRR, Section 30.2)**

7. The BAC shall ensure the integrity, security and confidentiality of all submitted bids. As such it may adopt controls to preserve the integrity of bids submitted, i.e., affixing the initials of the BAC members or their representatives in each and every page of the original copies of all bids received and opened.
8. The BAC Secretariat shall record the proceedings using a tape recorder, or a video recorder or any device that may facilitate the recording.
9. The BAC Secretariat shall prepare the Abstract of Bids as Read, which shall be signed by the bidders or their representatives, and provide copies of the same to the bidders present during the bid opening. Also, the BAC Secretariat shall prepare the minutes of the bid opening within three (3) calendar days after the bid opening date, so that copies thereof could immediately be sent to the BAC members, Observers, bidders and other interested parties. Copies of the minutes and Abstract of Bids shall also be made available to the public upon written request and payment of a specified fee to recover cost of materials.
10. To ensure transparency and accurate representation of the bid submission, the BAC Secretariat shall notify in writing all bidders whose bids it has received through its PhilGEPS-registered physical address or official e-mail address. The notice shall be issued within seven (7) calendar days from the date of the bid opening to the bidders themselves, i.e. the principal or registered owners or licensees as shown in the PhilGEPS Certificate of Registration submitted in the bids.



**TEMPLATE FOR NOTICE  
required under Section 25.7 of the 2016 IRR**

*Letterhead of the Agency/Procuring Entity*

[Date]

Mr./Ms. \_\_\_\_\_  
Proprietor/Managing Partner/President  
Company Name  
Company Address

Dear Mr./Ms. \_\_\_\_\_:

This is to inform you that we have received a bid submitted by [name of the authorized person who signed/submitted the bid] on [date of submission] for our procurement of the [name of contract/project].

This notification is issued to ensure accurate representation of the bid/s submitted, pursuant to Section 25.7 of the 2016 Implementing Rules and Regulations of R.A. 9184.

If you have not authorized the submission of this bid, please inform us immediately. For questions, you may contact [contact person/BAC Secretariat personnel] at [telephone numbers].

Thank you.

Sincerely yours,  
[Name of the Head of the BAC Secretariat]  
Head, BAC Secretariat

**What happens if only one bidder submits its eligibility and bid envelopes?**

Even if only one bidder submits its eligibility and bid envelopes, the bidding process continues. If the bidder is declared eligible and its bid is found to be responsive to the bidding requirements, its bid will be declared as a SCRB and considered for contract award. **(2016 IRR, Section 36)**

**What can a bidder do if it is found ineligible or declared non-compliant with the technical or financial requirements?**

A bidder that was absent during the opening of the bids and was found ineligible or was declared failed has three (3) calendar days from receipt of the Notice of Ineligibility/Failure, within which to file a written request for reconsideration before the BAC. If the bidder was present during bid opening and was duly notified (a verbal notification will suffice in this case) of its ineligibility/failure, it also has three (3) calendar days upon such notice within which to file a written request for reconsideration. Seven (7) calendar days after it receives a letter requesting for reconsideration, the BAC should resolve such request. In the meantime, it will hold on to the Technical and Financial envelopes of the prospective bidder until the request for reconsideration is resolved. In so doing, the BAC, through its Secretariat, may ask in writing the bidder to clarify its bid. All responses to requests for clarification shall be in writing. The BAC may return the Technical and Financial envelopes if the bidder is declared "failed" and expressly waives his right to file a request for reconsideration. Such waiver shall be made in writing, to be executed by the authorized representative of the unsuccessful bidder.

If its request for reconsideration is denied, the ineligible bidder may protest the decision in writing with the Head of the Procuring Entity within seven (7) calendar days from receipt of the resolution. *(Please refer to the latter portion of Section 3 of this Manual for further discussion on Protest Mechanism).*

**What happens if questions/doubts have been raised about the eligibility of a bidder after it had been declared as eligible?**

Notwithstanding the eligibility of a bidder, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said bidder, or that there has been a change in the bidder's capability to undertake the project from the time it submitted its

eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the bidder which will affect the capability of the bidder to undertake the project so that it fails the preset eligibility criteria, the Procuring Entity shall consider the said bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract. **(2016 IRR, Section 23.6)** A prospective bidder found guilty of false information faces imprisonment of not less than six (6) years and one (1) day but not more than 15 years. **(2016 IRR, Section 65.3)**

### **What happens if only one bidder is declared eligible?**

The procurement process also proceeds with the Preliminary Examination of Bids. Again, if the eligible bidder submits a bid that is found to be responsive to the bidding requirements, its bid shall be declared as a SCRB and considered for contract award. **(2016 IRR, Section 36)**

### **What is the difference between ineligibility and disqualification?**

Disqualification is a distinct concept from ineligibility.

When a Bidder is disqualified, it is barred from further participating in the procurement at hand, even if, in some instances, it has initially been declared eligible and/or passed. Even if a Bidder is Post-qualified, if after such Post-qualification, the Procuring Entity has found grounds for disqualification, the latter may declare such Bidder disqualified, hence, the Procuring Entity shall not award the contract to the former.

### **Other than a declaration of ineligibility, is there another way by which a manufacturer, supplier or distributor may be disqualified from bidding?**

Aside from those who are not eligible to bid for the procurement of goods, a bidder that has a conflict of interest shall be disqualified to participate in the procurement at hand. A Bidder would be considered as having a conflict of interest with another bidder in any of the events described in paragraphs 1 through 3 below and a general conflict of interest in any of the circumstances set out in paragraphs 4 through 7 below:

1. If the bidder is a corporation or a partnership and it has officers, directors, controlling shareholders, partners or members in common with another bidder; or if the bidder is an individual or a sole proprietorship and he is the proprietor of another bidder, or an officer, director or a controlling shareholder of another bidder; or if the bidder is a joint venture and it or any of its members has officers, directors, controlling shareholders or members in common with another bidder, or any of its members is a bidder;
2. A bidder receives or has received any direct or indirect subsidy from another bidder;
3. A bidder has the same legal representative as any other bidder for purposes of the bidding at hand.
4. A bidder has a relationship directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder, or influence the decisions of the Procuring Entity regarding the bidding process;
5. A bidder submits more than one bid in the bidding process. However, this does not limit the participation of subcontractors in more than one bid;
6. A bidder who participated as a consultant in the preparation of the design or technical specifications of the goods and related services that are the subject of the bid; or
7. A bidder who lends, or temporary seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement

for or implementation of the project, if the personnel would be involved in any capacity on the same project.

In accordance with Section 47.1 of the 2016 IRR, the bidder should not be related to members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or end-user or implementing unit, and the project consultants, by consanguinity or affinity up to the third civil degree. Failure to comply with this provision shall be a ground for the automatic disqualification of the bid. For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the Procuring Entity, notwithstanding the act of such persons inhibiting themselves from the procurement process.

On the part of the bidder, this provision shall apply to the following persons:

1. If the bidder is an individual or a sole proprietorship, to the bidder himself;
2. If the bidder is a partnership, to all its officers and members;
3. If the bidder is a corporation, to all its officers, directors and controlling stockholders;
4. If the bidder is a cooperative, to all its officers, directors, and controlling shareholders or members; and
5. If the bidder is a joint venture, items 1 through 4 above shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

#### **What happens if all bidders are declared ineligible, or all bids fail to comply with the technical and financial bid requirements?**

If all bidders are declared ineligible, and/or all bids fail to comply with the technical and financial bid requirements, the BAC should declare the bidding a failure. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. The BAC then conducts a mandatory review and evaluation of the terms, conditions and specifications in the bidding documents, including cost estimates. Based on its findings, the BAC will revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for under Section 21.2 of the 2016 IRR.

All bidders who have initially responded to the IB and have been declared eligible in the previous biddings will be allowed to submit new bids. The BAC must observe the same process and set the new periods according to the same rules followed during the previous bidding(s).

Should a second failure of bidding occur, the Procuring Entity may resort to Negotiated Procurement in accordance with Section 53.1 of the 2016 IRR.  
**(2016 IRR, Section 35)**

#### **What happens if only one bidder passes the Preliminary Examination of Bids?**

The procurement process also proceeds with the subsequent step of Bid Evaluation. Again, if the eligible bidder submits a bid that is found to be responsive to the bidding requirements, its bid shall be declared as a SCRB and considered for contract award. **(2016 IRR, Section 36)**

#### **What happens if a bidder fails to comply with the Technical and Financial requirements of the Bid?**

The bidder that fails to comply with any of the Technical or Financial requirements of the Bid will be disqualified by the BAC.

**Can a bidder withdraw its bid?**

Yes, a bidder may, through a Letter of Withdrawal, withdraw its bid, before the deadline for the receipt of bids. A bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped received by the BAC before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. It should be noted however that the act of habitually withdrawing from bidding or submitting letter of non-participation for at least three (3) times within a year is a ground for the imposition of administrative penalties, except when done for a valid reason.

The bidder that withdraws its bid beyond the deadline for the submission of bids will forfeit its bid security, as well as the imposition of any applicable administrative, civil and/or criminal sanction prescribed in R.A. 9184 and its 2016 IRR.

## Step 5 Evaluate the Bids

### What is the purpose of Bid Evaluation?

The purpose of bid evaluation is to determine the Lowest Calculated Bid (LCB). This is done by:

1. Establishing the correct calculated prices of the bids, through a detailed evaluation of the financial component of the bids; and
2. Ranking of the total bid prices as calculated from the lowest to the highest. The bid with the lowest price shall be identified as the LCB.

### When should the bids be evaluated?

The entire evaluation process for the bids for the procurement of goods must be completed in not more than **seven (7) calendar days** from the deadline for receipt of proposals. **(2016 IRR, Section 32.4)** However, the BAC should exert effort to complete the Bid Evaluation even before the lapse of the 7-day period, as this will expedite the procurement process.

### Who are the participants in the Bid Evaluation Process?

The following must participate in the bid evaluation process:

1. The BAC;
2. The TWG;
3. The BAC Secretariat/ Procurement Unit; and
4. The Observers.

### Methodology: How are bids evaluated?<sup>13</sup>

1. After the preliminary examination of bids, the BAC, or through the TWG, shall immediately conduct a detailed evaluation of all bids rated "passed," using a non-discretionary criteria, as stated in the IB and the ITB, which shall include a consideration of the following: **(2016 IRR, Section 32.2.1)**
  - a. The bid must be complete. Unless the ITB specifically allow partial bids, bids not addressing or providing all of the required items in the bidding documents including, where applicable, those requirements pertaining to the civil works components of Goods procured, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a zero(0) or a dash (-) for the said item would mean that it is being offered for free to the Government, except those required by law or regulations to be provided for.
  - b. Minor arithmetical corrections to consider computational errors and omissions to enable proper comparison of all eligible bids. Any adjustment shall be calculated in monetary terms to determine the calculated prices.

<sup>13</sup> For FAPs, the rules on evaluation can be found in their respective BDS in Section IX of the bidding documents issued for the project.

- c. In the evaluation of bids, all bids shall be evaluated on an equal footing to ensure fair and competitive bid comparison. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison. **(2016 IRR, Section 32.2.2)** Moreover, applicable custom

duties, as well as other costs of acquisition such as freight, insurance, and bank charges, must be incorporated in the bid.

**Tip: Let's make doing things easier**

**On clarifications during bid evaluation (the "no-contact" rule)**

During the bid evaluation stage, the BAC, BAC Secretariat and the TWG shall not entertain clarifications from Bidders, neither shall they initiate communication with the Bidders, regarding the evaluation of the bids, except:

1. Bidders who waived their right to utilize the protest mechanism or those whose request for reconsideration and/or protest were subsequently denied may convey to the BAC any valid, reasonable and lawful information or observation they have pertaining to the bids submitted by qualified bidders;
2. Inquiry or follow-up on the status of a procurement activity or proceedings; and
3. Verification process during post-qualification to ensure that the bidder complies with all the legal, technical and financial requirements and specifications indicated in the bidding documents, such as the conduct of inspection of the premises or the testing of goods offered by the bidder.

- d. In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; (b) total price per item and unit price for the item as extended or multiplied by the quantity of that item, the latter shall prevail; (c) stated total price and the actual sum of prices of component items, the latter shall prevail; (d) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail. **(2016 IRR, Section 32.2.3)**

2. Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, to identify the LCB. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the ABC shall be disqualified. **(2016 IRR, Section 32.2.4)**
3. After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids as Calculated. All members of the BAC

shall sign the Abstract of Bids and attach thereto all the bids with their corresponding Bid Securities and the minutes or proceedings of the bidding. **(2016 IRR, Section 32.5)** The Observers shall also sign the Abstract of Bids if, in their independent observation, the bidding activity conducted by the BAC followed the correct procedure indicated under R.A. 9184 and its 2016 IRR. The Abstract of Bids shall contain the following:

- a. Name of the contract and its location, if applicable;
- b. Time, date and place of bid opening; and

- c. Names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.
4. The TWG, with the assistance of the BAC Secretariat, when directed by the BAC, should prepare the Evaluation Report, containing the details of the evaluation conducted, preferably within three (3) calendar days from the date the evaluation was concluded.

**Are there special privileges for cooperatives in the supply of goods to government entities?**

Yes. Under the Cooperative Code of the Philippines, or Republic Act No. 6938, cooperatives have preferential right to supply government institutions and agencies with rice, corn and other grains, fish and other marine products, meats, eggs, milk, vegetables, tobacco and other agricultural commodities produced by their own members.

Moreover, there is a recurring provision in the GAA which mandates the Government to procure at least ten percent (10%) of its total purchases from duly registered cooperatives and another ten percent (10%) from SMEs.

**What happens if a bidder does not accept the arithmetical corrections done by the BAC on its bid?**

The BAC must disqualify the bid and forfeit the bid security of the bidder.

**What is the Domestic Preference being applied during bid evaluation?**

Under Section 43.1.2 of the 2016 Revised IRR of RA 9184, and in line with the provisions of Commonwealth Act (CA) No. 138 and the pronouncement of the Supreme Court in the case of *Asbestos Integrated Manufacturing, Inc. v. Hon. Elviro L. Peralta, et.a.l.*, (G.R. No. L-45515, 29 October 1987), domestic preference is granted in favor of any person or entity offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines, referred to as Domestic Bidder.

According to the above-mentioned case, CA 138 also granted preference to domestic entities, that is, citizens of the Philippines or corporate bodies or commercial companies, duly organized and registered under the laws of the Philippines, 75% of whose capital is owned by citizens of the Philippines, and who are habitually established in business engaged in the manufacture or sale of the merchandise covered by their bid. However, this preference granted to a Domestic Entity has been expressly repealed by RA 10667 or the *Philippine Competition Act of 2015*.

Hence, under existing laws and rules, domestic preference may only be granted to Domestic Bidders.

**How shall Domestic Preference be applied during bid evaluation?**

A Procuring Entity shall apply domestic preference in the procurement of goods as long as it complies with the provisions of the 2016 IRR and R.A. 5183, and this shall be expressly mentioned in the bidding documents.

In applying domestic preference, the Procuring Entity shall be guided by the following:

1. A Domestic Bidder can only claim preference after it has secured from the Competitiveness Bureau of the Department of Trade and Industry, a certification that the articles forming part of its bid are substantially composed of articles, materials or supplies grown, produced or manufactured in the Philippines. The Certification shall form part of the Financial Envelope of the bidder claiming preference.

2. When the LCB including taxes and customs duties, is a "foreign bid" as defined in C.A. No. 138 (see definition below), the award shall be made to the bidder who submitted the lowest "domestic bid", provided that:
- a. the domestic bid is not more than **fifteen per centum (15%)** in excess of the LCB. **(Section 3 [e] C.A. No. 138)**;
  - b. the bidder who submitted the lowest domestic bid must pass the post-qualification; and
  - c. the award to domestic bidder shall be at the amount of the lowest "foreign bid".

An illustrative case is as follows: Foreign Bidder A submitted a bid of P15M which was declared as the LCB. Domestic preference was specified in the bidding documents. The lowest Domestic Bidder B submitted a bid of P16.5M, which is 10% in excess of the LCB. If Bidder B is post-qualified, and the items offered pass the necessary quality assurance tests, it shall be awarded the contract. However, if it is post-disqualified, or if the goods it offered do not meet the standard of quality specified in the Bidding Documents, the award shall be made to Bidder A.

An illustrative case is as follows: Foreign Bidder A submitted a bid of P15M which was declared as the LCB. Domestic preference was specified in the bidding documents. The lowest Domestic Bidder B submitted a bid of P17.4M, which is 16% in excess of the LCB. If Bidder A is post-qualified, and the items offered pass the necessary quality assurance tests, it shall be awarded the contract, despite the domestic preference.

A "foreign bid" means *any offer of articles, materials or supplies not manufactured or to be manufactured in the Philippines, substantially from articles, materials or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.* (Section 2[d], C.A. No. 138) Conversely, a "domestic bid" means *any offer of unmanufactured articles, materials, or supplies of the growth or production of the Philippines, or manufactured articles, materials or supplies manufactured or to be manufactured in the Philippines, substantially from articles, materials or supplies of the growth, production or manufacture, as the case may be, of the Philippines.* (Section 2[c] C.A. No. 138) In US jurisprudence, the term "substantially" was construed to mean "more than 75%." Thus, even if a product is manufactured in the Philippines, it may not be considered within the ambit of the preference if its raw materials are not substantially sourced from the Philippines.

3. In the case of FAPs or procurement undertaken by virtue of international treaties or agreements, when there is no provision disallowing the application of domestic preference, in compliance with R.A. 9184 Section 43, the preference in item (1) above for domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality may further be allowed in the interest of:
- a. **Availability**, that is, the domestically-produced goods are more readily available in the market, like off-the-shelf items;
  - b. **Efficiency**; and
  - c. **Timely delivery of goods.**
4. In the case of FAPs undertaken through IFI funding, at the request of the Procuring Entity, and under conditions to be agreed under the loan agreement and set forth in the bidding documents, a margin of preference may be provided in the evaluation of bids for:

- a. Goods manufactured in the country of the Procuring Entity when comparing bids offering such goods with those offering goods manufactured abroad; and
  - b. Works in member countries below a specified threshold of Gross National Product per capita, when comparing bids from eligible domestic contractors with those from foreign firms.
5. Where preference for domestically manufactured goods or for domestic contractors is allowed, the methods and stages set forth in the loan agreement should be followed.

### **What rules govern the lease of Computers, Communications, Information and Other Equipment?**

Contracts for lease of construction and office equipment, including computers, communication and information technology equipment, are subject to the same public bidding and procurement procedures as prescribed in R.A. 9184, its 2016 IRR and this Volume 2.

Lease may also cover lease purchases or lease-to-own and similar variations.

(Please refer also to Joint Memorandum Circular No. 2002-01 issued by the National Computer Center and the DBM, which provides the policies, rules and regulations on lease of IT equipment. Also, reference may be made to Department Order No. 188 (dated September 28, 1999) and Department Order No. 219 (dated August 14, 2003), issued by the Department of Public Works and Highways, governing the lease of construction equipment.)

## Step 6 Post-qualify

### What is Post-qualification?

Post-qualification is the process of verifying, validating and ascertaining all the statements made and documents submitted by the bidder with the LCB, which includes ascertaining the said bidder's compliance with the legal, financial and technical requirements of the bid, using a non-discretionary criteria as stated in the bidding documents.

If the LCB passes all the criteria for post-qualification, the BAC must declare the LCB as the Lowest Calculated and Responsive Bid (LCRB), and recommend to the HoPE the award of the contract to the said bidder at its submitted bid price, or calculated bid price, whichever is lower. **(2016 IRR, Section 34.4)**

### What does Post-qualification entail?

Post-qualification involves the BAC verifying, validating and ascertaining that the bidder satisfies the following criteria: **(2016 IRR, Section 34.3)**

1. **Legal Requirements.** The post-qualification process under this criterion involves the verification, validation and ascertaining of the supplier's claim that it is not included in any government "blacklist," as well as all the licenses, permits and other documents it submitted in securing the PhilGEPs Certificate of Registration and Membership. The bidder's status with regard to "blacklisting" may be verified by checking the Consolidated Blacklisting Report issued by the GPPB, or the "blacklist" of any government agency.
2. **Technical Requirements.** Post-qualification under this criterion means that the BAC would have to validate, verify, and ascertain the veracity of the documents submitted by a supplier to prove compliance of the goods and services offered with the requirements of the contract and bidding documents. This involves the following processes:
  - i) Verification and validation of the bidder's stated competence and experience;
  - ii) Verification and/or inspection and testing of the goods/product, after-sales and/or maintenance capabilities, in applicable cases, as well as checking the following:
    - a. Delay in the partial delivery of goods amounting to ten percent (10%) of the contract price in its ongoing government and private contracts;
    - b. If any of these contracts shows the bidder's failure to deliver or perform any or all of the goods or services within the period(s) specified in the contract or within any extension thereof granted by the Procuring Entity pursuant to a request made by the supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price; or
    - c. Unsatisfactory performance of the supplier's obligations as per contract terms and conditions at the time of inspection.

### How's that again?

The eligibility check does not ascertain the validity and genuineness of the eligibility documents submitted by the bidders. Neither does it determine the veracity of the claims made by the bidders in their financial and technical proposals.

The post-qualification process, on the other hand, does.

If the BAC verifies any of these deficiencies to be due to the bidder's fault or negligence, the BAC shall disqualify the bidder from the award, for the procurement of Goods.

- iii) Ascertainment of the authenticity of the bid security and its correctness as to type, amount, form and wording, and validity period, as required in the bidding documents.
3. Financial Requirements. Under this criterion, the BAC ought to verify, validate and ascertain the bid price proposal of the bidder and, the required committed Line of Credit in the amount specified and over the period stated in the bidding documents, or the bidder's NFCC to ensure that the bidder can sustain the operating cash flow of the transaction.

### **What is the Timeline for the conduct of Post-qualification?**

The post-qualification process must be conducted and completed **in not more than twelve (12) calendar days** from the determination of the LCB. However, in exceptional cases, such as in the procurement of goods requiring elaborate testing (such as equipment sourced from abroad), the HoPE may extend the post-qualification period, but in no case should the aggregate period exceed forty five (45) calendar days. **(2016 IRR, Section 34.8)**

### **Who are involved in the conduct of Post-qualification?**

The following Parties are involved in the conduct of post-qualification:

1. The BAC;
2. The TWG;
3. The BAC Secretariat / Procurement Unit; and
4. The eligible supplier/manufacturer, ranked starting from bidder with the LCB.

### **Methodology: How is Post-qualification conducted?**

The following steps are followed in the conduct of post-qualification:

1. Within five (5) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Bid, the bidder shall submit to the BAC its latest income and business tax returns and other appropriate licenses and permits required by law and stated in the Bidding Documents. **(2016 IRR, Section 34.2)**

**Note:**

Failure to submit any of the post-qualification requirements on time, or a finding against its veracity, shall disqualify the bidder for award. *Provided*, that in the event that a finding against the veracity of any of the documents submitted is made, it shall cause the forfeiture of the Bid Security in accordance with Section 69 of the 2016 IRR.

2. The BAC/TWG verifies, validates, and ascertains the genuineness, validity and accuracy of the legal, technical and financial documents submitted by the bidder with the LCB, using the non-discretionary criteria described above.

In verifying the information contained in such documents, the BAC/TWG may make inquiries with appropriate government agencies and examine the original documents kept in the bidder's place of business. The use of other means for verification and validation of such documents may be resorted to by the BAC/TWG, such as the Internet and other research methods that yield the same results.

3. The BAC/TWG conducts a site inspection of the bidder's place of business and/or plant/factory, where applicable.
4. The BAC/TWG tests samples for compliance with specifications and performance levels, where applicable.
5. The BAC/TWG inquires about the bidder's performance in relation with other contracts/transactions as indicated in its eligibility statement (statement of on-going, completed or awarded contracts).
6. If the TWG conducts the post-qualification, it prepares a Post-qualification Report to be submitted to the BAC. The Report shall contain, among others, the activities undertaken with regard to the post-qualification process, feedback from inquiries conducted, and the results of any tests conducted by the TWG or an accredited government testing center, where applicable.
7. The BAC reviews the Post-qualification Report submitted by the TWG.
8. The BAC determines whether the bidder with the LCB passes all the criteria for post-qualification.
9. If the LCB passes the post-qualification, the BAC declares it as the LCRB.
10. After the BAC has determined the LCRB, the Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the LCRB and the corresponding Notice to the said bidder informing it of its post-qualification.

### **What happens if the bidder with the LCB fails Post-qualification?**

If the bidder with the LCB fails to pass post qualification, the BAC shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it. The post-disqualified bidder shall have three (3) calendar days from receipt of the said notification to request from the BAC, if it so wishes, a reconsideration of its decision. The BAC shall evaluate the request for reconsideration, if any, using the same non-discretionary criteria, and shall issue its final determination of the said request within seven (7) calendar days from receipt thereof. Similar to the cases of bidders deemed to be ineligible and whose bids are rated "failed," the bidder with the LCB who fails to pass post-qualification may likewise file a protest with the payment of the corresponding fee in case the BAC denies its request for reconsideration. *(Please refer to the latter portion of Section 3 of this Manual for further discussions on filing a protest.)*

Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second LCB. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the BAC shall declare the second bidder as the bidder with the LCRB. **(2016 IRR, Section 34.6)**

If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next LCB, and so on until the LCRB, is determined for award. **(2016 IRR, Section 34.7)**

### **What happens if all bidders fail Post-qualification?**

If no bidder passes post-qualification, the BAC shall declare failure of bidding. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. The BAC then conducts a mandatory review and evaluation of the terms, conditions and specifications in the bidding documents, including cost estimates. Based on its findings, the BAC will revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for under Section 21.2 of the 2016 IRR.

All bidders who have initially responded to the IB and have been declared eligible in the previous biddings will be allowed to submit new bids. The BAC must observe the same process and set the new periods according to the same rules followed during the previous bidding(s).

If the original estimate is found to be inadequate on reassessment to meet the objectives of the project, it may be necessary to reduce the scope of the project.

Should a second failure of bidding occur, the Procuring Entity may resort to Negotiated Procurement in accordance with Section 53.1 of the 2016 IRR.

### **Is there a limit in the increase of the ABC?**

Sections 35.2 and 35.3 provide that whenever a failure of bidding has occurred, the procuring entity is required to conduct a mandatory review of the terms, conditions, specifications in the bidding documents, including its cost estimates. As the BAC deems it fit, and based on the findings in its mandatory review, it may revise and agree on a new set of technical specifications; and, if necessary, may adjust the amount of the ABC, subject to the required approvals under the IRR.

If, after two-failed biddings under Section 35 of the IRR, the procuring entity decides to resort to Negotiated Procurement (Two-Failed Biddings), Annex "H", the Guidelines for the Alternative Methods of Procurement requires the BAC to conduct a mandatory review of the terms, conditions, specifications, and cost estimates; and, when necessary, increase the ABC provided that it is not more than twenty percent (20%) of the ABC for the last failed bidding.

### **May a procuring entity adopt the result of the post-qualification on the same company previously conducted [within the last six (6) months]?**

No. This may be tantamount to pre-qualification which has already been abandoned by RA 9184. Further, each bidding activity is considered as a separate activity. Thus, for each procurement project, the BAC is required to conduct post-qualification to verify, validate and ascertain the statements and documents submitted by the bidder. While procuring entities are not precluded from using the information from a previous post-qualification report as reference, it is still but necessary on the part of the BAC to re-validate and confirm the report based on the requirements of the new project, as the legal, financial and technical capability of the bidder may have already changed within the six-month period. Likewise, the happening of the grounds for post-disqualification that are hinged on the bidder's performance on any of its ongoing products may vary within the said 6-month period.

### **When may the Procuring Entity exercise its right to reject bids, declare a failure of bidding, or not award the contract?**

The Head of the Procuring Entity may exercise the right to reject any and all bids, to declare a failure of bidding, or not to award the contract in any of the following situations (**2016 IRR, Section 41.**):

1. If there is prima facie evidence of **collusion** between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
2. If the **BAC is found to have failed** in following the prescribed bidding procedures, for which the applicable sanctions shall be applied to the erring officers, as provided in the 2016 IRR, Section 65; or
3. For any justifiable and reasonable ground where the award of the contract **will not redound to the benefit of the government** as follows:
  - a. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the HoPE;
  - b. If the project is no longer necessary as determined by the HoPE; and
  - c. If the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

### How's that again?

#### What are the instances where the BAC is considered to have failed in following the prescribed procedures?

The following are some instances where the BAC is deemed to have failed to follow prescribed procedures:

1. Prescribing an insufficient number of days in the advertisement and/or posting of the IB;
2. Exceeding the required periods for bid evaluation, post-qualification for each lowest calculated bidder or for awarding the contract without justifiable cause;
3. Conducting the pre-bid conference or issuing the bidding documents less than the minimum required number of days before deadline for the submission and opening of bids;
4. Requiring or allowing the bidder to submit additional documents which is tantamount to improving his bidding documents; and
5. Allowing a bidder to become eligible or pass the post-qualification with incomplete documents.

This right of the Head of the Procuring Entity to reject any and all bids, declare a failure of bidding, or not award the contract is called the **Reservation Clause**.

In the case of Mata v. San Diego, G.R. No. L-30447 (March 21, 1975), the Supreme Court of the Philippines declared that a bidder is bound by the reservation clause, and the said clause vests in the authority concerned the discretion to ascertain who among the bidders is the lowest responsive bidder or the lowest and best bidder or most advantageous to the best interest of the Government. As such, a bidder has no right or cause of action to compel the BAC or agency to award the contract to it. The Court further stated that this requires inquiry, investigation, comparison, deliberation and decision – a quasi-judicial function which, when honestly exercised, may not be reviewed by the courts. It should be noted, however, that R.A. 9184 Section 41, has placed some limiting qualifiers on the possible contents of the Reservation Clause.

The Head of the Procuring Entity should be prudent in the use of the reservation clause, because if the Head of the Procuring Entity abuses his power to reject any and all bids, as provided therein, with manifest preference to any bidder who is closely related to him in accordance with the 2016 IRR, Section 47, or if it is proven that he exerted undue influence or undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take such action, and the same favors or tends to favor a particular bidder, he shall be meted with the penalties provided in the 2016 IRR, Section 65. **(2016 IRR, Sections 65.1. [e] and [c])**

## Step 7 Award the Contract

### What is the rule on Contract Award?

The contract shall be awarded to the bidder with the LCRB or SCRB.

### What is the Timeline for Contract Award?

The HoPE or his duly authorized representative should approve or disapprove the recommendation of award **within fifteen (15) calendar days from the date of determination and declaration by the BAC of the LCRB or SCRB. (2016 IRR, Section 37.1.2)**

The **Notice of Award** shall be given to the bidder with the LCRB **immediately** after approval of the recommendation. Within three (3) calendar days from the issuance of the resolution recommending award of the contract, the BAC shall notify all other bidders, in writing, of its recommendation.

#### How's that again?

##### What is the maximum period of time within which a contract can be awarded?

Contract award must be made within three (3) months or a shorter period to be determined by the Procuring Entity concerned, from the date of bid opening, but not to exceed the bid validity period as specified in the bidding documents. If award cannot be made within the said period, the bid validity period should be extended. *(Please refer to Step on Preparing the Bidding Documents for the discussion on extension of the bid validity period.)*

#### Who are involved in the Award of the Contract?

The following must participate in the activities related to the awarding of the Contract:

1. The HoPE;
2. The BAC;
3. The Procurement Office;
4. The BAC Secretariat/ Procurement Unit;
5. The bidder who submitted the LCRB/SCRB; and
6. The Observers.

### Methodology: How is a contract awarded?

The following steps are followed in the awarding of a contract:

1. The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand, and attaches the same to the BAC Resolution.
2. The BAC Secretariat drafts the BAC Resolution recommending award.
3. The BAC approves and signs the Resolution Recommending Award, and transmits the same to the HoPE.
4. To facilitate the approval of the award, the BAC shall submit the following supporting documents to the HoPE:

- a) Resolution of the BAC recommending award;
  - b) Abstract of Bids;
  - c) Duly approved program of work or delivery schedule, and Cost Estimates;
  - d) Document issued by appropriate entity authorizing the Procuring Entity to incur obligations for a specified amount; and
  - e) Other pertinent documents required by existing laws, rules, and/or the Procuring Entity concerned.
3. Within three (3) calendar days from the issuance of the resolution recommending award of the contract, the BAC shall notify all other bidders, in writing, of its recommendation.
  4. The HoPE or his/her duly authorized representative, acts on the recommendation for award within fifteen (15) calendar days from the date of determination and declaration by the BAC of the LCRB/SCRB. In the case of GOCCs and GFIs, the governing Board shall have fifteen (15) calendar days within which to approve the recommendation for award.
  5. In case of approval of the recommendation:
    - a. The HoPE immediately issues the Notice of Award to the bidder with the LCRB/SCRB, while the BAC accordingly notifies the losing bidders.
    - b. The bidder with the LCRB/SCRB accepts the Notice of Award.
    - c. Notwithstanding the issuance of the Notice of Award, award of contract is subject to the following conditions:
      - (i) Submission of valid JVA, if applicable, within ten (10) calendar days from Notice of Award;
      - (ii) Posting of performance security in accordance with Section 39 of the 2016 IRR;
      - (iii) Signing of the contract as provided in Section 37.2 of the 2016 IRR; and
      - (iv) Approval by higher authority, if required, as provided in Section 37.3 of the 2016 IRR.
    - d. The BAC, through the Secretariat, posts within three (3) calendar days from its issuance, the Notice of Award in the PhilGEPS, the website of the Procuring Entity or its electronic procurement service provider, if any, and any conspicuous place in the premises of the Procuring Entity.
  6. In case of a disapproval of the recommendation of award:
    - a. The HoPE notifies the BAC and the bidder in writing of such disapproval, and the grounds for it, which should be based only on valid, reasonable and justifiable grounds, as provided under Section 41 of the 2016 IRR.
    - b. The BAC conducts a post-qualification of the bidder with the next LCB, as provided in Section 34.6 of the 2016 IRR, when applicable.
    - c. The affected bidder can file a request for reconsideration with the HoPE within three (3) calendar days from receipt of the notice of disapproval. The HoPE must resolve with finality the request for reconsideration within seven (7) calendar days from the filing of such request and furnish the bidder a copy of the resolution immediately from its promulgation.
    - d. The request for reconsideration must not stay or delay the bidding process. However, the request for reconsideration must first be resolved before any award is made.

**What happens if the bidder being considered for award does not accept the award?**

**If the bidder refuses to accept the award within the bid validity period**, the BAC shall forfeit the bid security of the bidder and shall initiate the blacklisting proceedings in accordance with the **Uniform Guidelines for Blacklisting (GPPB Resolution No. 09-2004)**. It then initiates and completes the post-qualification of the bidder with the second lowest calculated bid. If found qualified, the said bidder shall be awarded the contract. This procedure is repeated until the LCRB is determined. Should all eligible bidders fail post-qualification, the BAC must declare the bidding a failure.

Refusal to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder, if proven, is meted with a penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years. **(2016 IRR, Section 65.3[d])** Additional penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense shall also be imposed on the bidder. **(2016 IRR, Section 69.1)**

**May the HOPE still exercise the acts provided for under Section 41 of the IRR after issuance of the NOA?**

Yes, the PE may withdraw or cancel the NOA after its issuance in case the conditions under Section 41 of RA 9184 and its IRR are present. In the like manner, the HoPE may still reject any and all bids or declare a failure of bidding even after issuance of NOA based on the grounds under Section 41 of RA 9184 but not after the conditions under Section 37.1.4 of the 2016 IRR have already been complied with.

## Step 8 Sign and Approve the Contract and Issue the Notice to Proceed

### When must the winning bidder and the Procuring Entity enter into a contract?

The winning bidder and the Procuring Entity must enter into contract within the same 10-day period from receipt by the former of the Notice of Award, if all the documentary requirements as discussed above, have been complied with. **(2016 IRR, Section 37.2.2)**

The Procuring Entity signatory is encouraged to sign within the same day as the signing of the bidder as there are penalties against delaying, without justifiable cause, the award of the contract. **(2016 IRR, Section 65.1)** Moreover, it would be best for the winning bidder and the Head of the Procuring Entity, or its appropriate signing authority, to sign/execute the contract together – provided that all contract documents and requirements are complete – so that both may personally appear before a Notary Public.

### What are the Timelines to be considered with respect to contract approval?

When, after contract signing, further approval of a **higher authority** is required, the approving authority for the contract, or his duly authorized representative, shall be given a **maximum of twenty (20) calendar days** from receipt thereof, together with all documentary requirements to perfect the said contract, to approve or disapprove it. In the case of GOCCs and GFIs, when further approval of the governing Board is required, the said governing Board or its duly authorized representative has **thirty (30) calendar days**. **(2016 IRR, Section 37.3)**

### When should the Procuring Entity issue the NTP?

The NTP must be issued together with a copy or copies of the approved contract to the successful bidder within **seven (7) calendar days** from the date of approval of the contract by the appropriate government approving authority. **(2016 IRR, Section 37.4.1)**

### When is a contract “effective”?

Unless otherwise specified in the contract, a contract is effective on the date it is signed by both parties, i.e. the Procuring Entity and the winning bidder/Supplier. However, all notices called for by the terms of the contract are effective only upon receipt of those notices by the successful bidder. For example, the Supplier will commence its obligation to deliver the goods or render services only upon receipt of the Notice to Proceed, as this Notice advises the Supplier to commence deliveries or services under the contract.

### Who are the Parties involved in Contract Signing and Approval and Issuance of the NTP?

The following parties are involved in the signing and approval of the contract, and in the issuance of the NTP:

1. The BAC Secretariat/Procurement Unit/Office;
2. The HoPE;
3. The winning bidder; and
4. End-user unit or implementing unit;

## What documents form part of the contract?

The contract shall include the following:

1. The Contract Agreement;
2. Bidding documents;
3. Winning bidder's bid, including the Eligibility Requirements, Technical and Financial Proposals, and all other documents/statements submitted (e.g. bidder's response to clarifications on the bid), including corrections to the bid resulting from the Procuring Entity's bid evaluation;

### **TIPS: Let's make doing things easier**

In most procuring entities, particularly the bureaus or lower-level offices of national government agencies (NGAs) or centrally managed GOCCs or GFIs, the contract signatory is a different official from the approving authority. For example, a bureau director may only be authorized to approve contracts up to ₱50M. Contracts exceeding the said amount are brought up to the Secretary for approval. Different procuring entities have different levels of delegated authority, but the principle is essentially the same – the higher the contract amount, the higher is the level of the approving authority. In cases like this, the contract is considered approved upon the approval of such higher authority. The existence of this policy is the usual cause of delays in procurement transactions.

Section 38 of R.A. 9184 and Section 38.3 of its 2016 IRR are designed to remove this cause for delay. These provisions mandate that if the HoPE or the appropriate approving authority (in cases where further approval of a higher authority within or outside the Procuring Entity, other than the President of the Philippine, is required) does not take any action on the contract within the prescribed period, the contract concerned is deemed approved.

4. Performance Security;
5. Notice of Award of Contract;
6. Other contract documents that may be required by existing laws and/or the Procuring Entity concerned.

### **Methodology:**

1. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
2. The procurement unit/office transmits the contract and its attachments to the budget office (for issuance of the OS) and the Chief Accountant (for issuance of the CAF)

3. The procurement unit/office transmits the contract documents to the HoPE or appropriate signing authority for signature, together with the following documents:

- a. Duly approved delivery schedule and cost estimates or the PPMP;
- b. OS;
- c. CAF;
- d. Abstract of Bids;
- e. Resolution of the BAC recommending award;
- f. Approval of award by the appropriate approving authority; and

- g. Other pertinent documents that may be required by existing laws and/or the Procuring Entity concerned.
4. After signing, if the contract needs the approval of a higher authority – such as, for bureaus, the Department Secretary, when required – the procurement unit/office transmits the contract and related documents to the approving authority or his authorized representative for approval.
5. The approving authority or his authorized representative acts on the contract within twenty (20) calendar days, or thirty (30) calendar days for GOCCs and GFIs, from receipt thereof.
6. If further approval is required (*e.g.* approval of the Office of the President), or a review by another government body is necessary (*e.g.*, NEDA or DOJ review), the Head of the Procuring Entity transmits the contract documents to the appropriate approving authority or reviewing body. The periods indicated above for approval of contracts still apply, except if the approving authority is the Office of the President.
7. The HoPE or his/her duly authorized representative issues the NTP within seven (7) calendar days from the date of the approval of the contract.

The documents forming the Contract shall be interpreted in the following order of priority:

- a) Contract Agreement;
- b) Bid Data Sheet;
- c) Instructions to Bidders;
- d) Addenda to the Bidding Documents;
- e) Special Conditions of Contract;
- f) General Conditions of Contract;
- g) Technical Specifications; and
- h) Schedule of Requirements

### **What are the rules governing the review and approval of government contracts?**

Executive Order 423, s. 2005, as amended by E.O. 645, s. 2007 and E.O. 34, s. 2017, prescribes the rules and regulations on the review and approval of government contracts. Essentially, E.O. 423 provides that, except for government contracts required by law to be acted upon and/or approved by the President, the HoPE shall have full authority to give final approval and/or enter into all government contracts of his respective government agency, awarded through public bidding, regardless of amount. Provided, that the HoPE certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations. The HoPE may also delegate in writing this full authority to give final approval and/or enter into government contracts awarded through public bidding as circumstances may warrant (*i.e.* to decentralization of procurement in a government agency), subject to such limitations as he may impose.

All Government contracts required by law to be acted upon and/or approved by the President, and any subsequent amendments or supplements thereto, shall be submitted with complete documentation to NEDA, through its Director-General, within seven (7) days from approval by the Head of Procuring Entity concerned or his duly authorized representative, as the case may be, for NEDA's review and evaluation.

Government contracts submitted shall be accompanied by a complete execution copy of the contract, related agreements, annexes, other approvals and permits, including a detailed summary of the pertinent laws, rules and regulations governing the processing and award of the contract, and accompanied by the requirements under E.O. 423, as amended, where alternative methods of procurement were resorted to.

**What happens if the bidder with the LCRB or SCRB refuses or is unable, through its own fault, to post the performance security and sign the contract within the prescribed period?**

If the bidder with the LCRB or SCRB (*as defined in Step 4, Receive and Open Eligibility Envelopes and Bids*) refuses to, or is unable, through its own fault, to post the performance security and sign the contract within the prescribed period:

1. Its bid security is forfeited;
2. It is disqualified from further participating in the bidding at hand;
3. Upon conviction, the relevant officers or individuals will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years; and
4. Upon determination of administrative liability, it will suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. This is without prejudice to the blacklisting proceedings undertaken in accordance with the Uniform Guidelines for Blacklisting (GPPB Resolution 09-2004).

For its part, the BAC must initiate and complete the post-qualification of the bidder with the second LCB. This procedure must be repeated until the LCRB is determined for award. If no bidder passes post-qualification, the BAC declares the bidding a failure and conducts a re-bidding with re-posting and re-advertisement. Should there be another failure of bidding after the conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement. **(2016 IRR, Section 40.2)**

If the bidder that fails to post the performance security and sign the contract happens to be one with the SCRB, the BAC must declare the bidding a failure. It then conducts a re-bidding with re-posting and re-advertisement. Should there be another failure of bidding after the conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement. **(2016 IRR, Section 40.3)**

The BAC shall initiate the process of blacklisting. The Uniform Guidelines for Blacklisting of manufacturers, suppliers, distributors, and contractors shall be used.

**What happens if the failure of the bidder with the LCRB or SCRB to sign the contract within the prescribed period is not its own doing?**

If the failure of the bidder with the LCRB or SCRB to sign the contract within the prescribed period is not due to its fault, the sanctions mentioned above shall not be imposed. **(2016 IRR, Section 40.1)**

## Two-Stage Competitive Bidding

### What is Two-Stage Competitive Bidding?

The Two-Stage Competitive Bidding is one where the bidding process is divided in two (2) stages. The first stage involves the issuance by the Procuring Entity of bidding documents with technical specifications that are not yet well defined and merely in the form of performance criteria, and the submission by the bidders of their respective eligibility requirements, if needed, and initial Technical Proposals without price. This allows the Procuring Entity to receive inputs from the eligible bidders whose Technical Proposals meet the minimum performance standards (a meeting/discussion may be held with these bidders), for purposes of drawing up the final revised technical specifications/requirements of the contract. The second stage involves the release of the well-defined technical specifications by the Procuring Entity, followed by the conduct of the regular procedure for public bidding with all the bidders identified during the first stage, who shall then be required to submit their respective revised Technical Proposals including their Financial Proposals. **(2016 IRR, Section 30.3)**

### What are the instances when a Procuring Entity may employ the Two-Stage Competitive Bidding Procedure?

The Two-Stage Competitive Bidding Procedure may be employed for the procurement of goods when:

1. Due to the nature of the project requirements (*e.g.* complex information and communications technology), the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or it may be undesirable or impractical to prepare complete technical specifications in advance.

Procuring entities may consider it undesirable or impractical to compare complete technical specifications in advance under any of the following circumstances:

- a. In the case of turnkey contracts;
  - b. Contracts for large complex facilities;
  - c. Complex information and communication technology; or
  - d. Works of a special nature.
2. The problem of technically unequal bids is likely to occur.

The purpose of the bidding procedure is to come up with well-defined, standardized technical specifications, with inputs from all stakeholders, including the bidders themselves.

### What is the timeline for the conduct of a Two-Stage Competitive Bidding?

The timeline for the conduct of a Two-Stage Competitive Bidding will depend on several variables:

1. The Project Timelines as defined by the PMO or end-user unit;
2. The technical complexity of the Project; and
3. The time required for drawing up the final technical specifications.

These variables, however, affect only the first stage of the bidding, as well as the drawing up of the final technical specifications. Thus, while the timelines for the first stage may not be definite, the second stage shall follow the timelines prescribed for the regular competitive bidding procedure. In setting the timelines, the Procuring Entity should ensure that the time periods involved are reasonable and that there is no undue delay of the entire procurement procedure and project implementation.

### **Who are involved in the Two-Stage Competitive Bidding process?**

The following are involved in the Two-Stage Competitive Bidding process:

1. The PMO or end-user or implementing unit;
2. The TWG;
3. The BAC;
4. The BAC Secretariat; and
5. The Observers.

### **Methodology: How is the Two-Stage Competitive Bidding process conducted?**

The general process for a two-stage bidding is as follows:

1. In the first stage, bidders are first invited to submit technical offers (plus other bid requirements) without prices, on the basis of a conceptual design or performance specifications which lay down the minimum operating and performance requirements.
2. Each of the unpriced technical bids shall then be discussed between the bidder concerned and the Procuring Entity and its consultants, if any, for the purpose of providing for technical and commercial clarifications and adjustments, and in order to agree on an acceptable technical standard for all bids.
3. At the second stage, the bidding documents will then be amended, but in revising the said bidding documents, the Procuring Entity would have to respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights. After the discussions, the bidders shall be given an opportunity to revise or adjust their proposals to conform to the standards agreed upon. The bidders shall also be invited to submit price proposals and these shall be evaluated.

The following specific steps are followed in the conduct of the Two-Stage Bidding process:

1. The TWG, with the assistance of the PMO or end-user or implementing unit, prepares the bidding documents in accordance with the usual procedures. However, the technical specifications shall only be in the form of performance criteria, *i.e.* the technical specifications shall contain functional descriptions of the goods, or expected output for services, without specifying the details thereof.
2. If necessary, the BAC calls a Pre-Procurement Conference, following the procedures set forth in Step 1 of competitive Bidding.
3. The BAC issues the Bidding Documents which contain, in addition to the items prescribed for competitive bidding, a request for the prospective bidders to submit the following:
  - a. Eligibility requirements, if needed; and

- b. Initial Technical Proposals only (no price tenders).
4. The BAC, with the assistance of the TWG, conducts the Eligibility Check, as conducted in a Single-Stage Competitive Bidding procedure, and proceeds with the determination of the eligible and ineligible bidders.
5. The TWG evaluates the technical merits of the proposals received from eligible bidders vis-à-vis the required performance standards, and determines the proposals that meet the minimum standards.
6. The TWG and BAC meet/discuss with the eligible bidders whose Technical Proposals meet the minimum required standards stipulated in the bidding documents. The purpose of this meeting is to draw up the final revised technical specifications/requirements of the contract.
7. Once the final revised technical specifications are completed and duly approved by the BAC, copies of the same shall be provided to all eligible bidders that met the minimum technical standards. The latter are then required to submit their revised Technical Proposals, including their Financial Proposals in two (2) separate sealed envelopes, at a specified deadline, after which time no more bids shall be received.
8. The BAC proceeds with the bid evaluation, post-qualification, award of contract and contract signing in accordance with the procedure and timelines prescribed for competitive bidding.

### **Tip: Let's make doing things easier**

#### **On the drawing up of the final technical specifications under the Two-Stage Competitive Bidding procedure**

In drawing up the final technical specifications, the TWG and BAC should ensure that the PMO/end-user unit is properly consulted, and has agreed to the said specifications.

### **What happens if no prospective bidder submits its Eligibility Requirements and Initial Technical Proposals, at the first stage?**

If no prospective bidder submits its eligibility requirements and initial technical proposals at the first stage, the BAC shall issue a Resolution declaring the bidding a failure. The BAC then reviews the terms and conditions stated in the IB. The BAC then conducts a mandatory review and evaluation of the terms, conditions and specifications in the bidding documents, including

cost estimates. Based on its findings, the BAC will revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for under Section 21.2 of the 2016 IRR.

#### **How's that again?**

#### **How does the ABC affect a bidder under a Two-Stage Competitive Bidding procedure?**

The approved budget for the contract under bidding shall be the upper limit or ceiling for acceptable bid prices. If a bid price, as evaluated and calculated in accordance with the 2016 IRR, is higher than the approved budget for the contract under bidding, the bidder submitting the same shall be automatically disqualified. There shall be no lower limit or floor on the amount of the award.

If the original estimate is found to be inadequate on reassessment to meet the objectives of the project, it may be necessary to reduce the scope of the project, or adjust the ABC.

Should a second failure of bidding occur, the Procuring Entity may resort to Negotiated Procurement in accordance with Section 53.1 of the 2016 IRR.

## Protest Mechanism

### What is the remedy of an affected bidder who receives an unfavorable decision from the BAC?

The affected bidder may file a request for reconsideration of the BAC's decision issued at any stage of the procurement process, within three (3) calendar days upon receipt of the unfavorable decision by written notice or upon verbal notification.

### What is the remedy of the affected bidder in the event that the request for reconsideration is denied by the BAC?

In case the request for reconsideration is denied, the affected bidder may file a protest in writing to the HoPE, provided that a prior request for reconsideration should have been filed by the bidder concerned, and the same has been resolved.

The protest must be filed within seven (7) calendar days from receipt by the bidder concerned of the resolution of the BAC denying its request for reconsideration

### How are requests for reconsideration and protests filed and resolved?

1. The affected bidder files a request for reconsideration of the BAC's decision within three (3) calendar days upon receipt of written notice or upon verbal notification.
2. The BAC decides on the request for reconsideration within seven (7) calendar days from receipt. The bidder is not allowed to submit additional documents to correct any defects in the bid submitted.
3. If a failed bidder signifies his intent to file a request for reconsideration, the BAC keeps the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.
4. If the request for reconsideration is denied, the affected bidder may file a protest in writing to the HoPE, provided that a prior request for reconsideration should have been filed by the bidder concerned and the same has been resolved.
5. The protest must be filed within seven (7) calendar days from receipt by the bidder concerned of the resolution of the BAC denying its request for reconsideration. A protest is made by filing a verified position paper with the HoPE concerned, accompanied by the payment of a non-refundable protest fee, which must be paid in cash in accordance with the following schedule:

ABC RANGE	PROTEST FEE
₱50 million and below	0.75% of the ABC
More than ₱50 million to ₱100 million	₱500,000.00
More than ₱100 million to ₱500 million	0.5% of the ABC
More than ₱500 million to ₱1 billion	₱2,500,000.00
More than ₱1 billion to ₱2 billion	0.25% of the ABC
More than ₱2 billion to ₱5 billion	₱5,000,000.00
More than ₱5 billion	0.1 % of the ABC

6. The verified position paper must contain the following information:
  - i. The name of bidder;

- ii. The office address of the bidder;
- iii. The name of project/contract;
- iv. The implementing office/agency or Procuring Entity;
- v. A brief statement of facts;
- vi. The issue to be resolved; and
- vii. Such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper is considered unsigned, produces no legal effect, and results to the outright dismissal of the protest.

In addition, the bidder certifies under oath that:

- i. he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;
- ii. if there is such other pending action or claim, he is including a complete statement of the present status thereof; and
- iii. if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the HoPE wherein his protest is filed.

Failure to comply with the foregoing requirements are not curable by mere amendment of the verified position paper.

- 7. The protests are resolved strictly on the basis of records of the BAC. The HoPE resolves the protest within seven (7) calendar days from receipt. Subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches, constitutional commissions, or instrumentalities of the GoP to approve contracts, the decisions of the HoPE concerned are final up to the limit of his contract approving authority. With respect to LGUs, the decision of the local chief executive is final.
- 8. The protests should not stay or delay the bidding process, however protests must first be resolved before any award is made.

**Note:** Similar to resolving protests, requests for reconsideration must also be strictly resolved based on the BAC's records, the provisions of R.A. 9184, its IRR and the bidding documents issued for the procurement in question.

### **May the affected bidder directly resort to court actions?**

No. Court action may be resorted to only after the protests have been completed, *i.e.*, resolved by the HoPE with finality. The regional trial court has jurisdiction over final decisions of the HoPE. Court actions are governed by Rule 65 of the 1997 Rules of Civil Procedure.

SECTION 4

# Instructions on the Procedural Steps for the Procurement of Goods

PART TWO – ALTERNATIVE METHODS OF  
PROCUREMENT



## The Alternative Methods for the Procurement of Goods and Services

### What is the rule on the use of alternative methods of procurement?

Generally, procurement should be through competitive bidding. In preparing the APP, the Procuring Entity must ensure that there is sufficient time to undertake competitive bidding. However, the law allows the use of alternative methods of procurement in some exceptional instances, provided:

1. There is prior approval of the Head of the Procuring Entity on the use of alternative methods of procurement, as recommended by the BAC; and
2. The conditions required by law for the use of alternative methods are present.

In resorting to any of the alternative methods of procurement, the Procuring Entity must ensure that the method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.<sup>14</sup>

For procurement undertaken through any of the alternative methods allowed by law, where the government contract involves an amount less than P500 Million, except where action or approval of the President is required, the HoPE shall have full authority to give final approval and/or enter into such contract, provided that the Department Secretary concerned certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations. He may delegate in writing this authority, as circumstances may warrant (i.e. to decentralize procurement), subject to such limitations as he may impose.

Where the HoPE has made a determination that a Government contract, including Government contracts required by law to be acted upon and/or approved by the President, involving an amount of at least P500 Million falls under any of the exceptions from public bidding allowed by law, the HoPE shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, obtain the approval of the GPPB that said Government proposed procurement undertaking falls within the exceptions from public bidding and that the proposed specific alternative mode of procurement is appropriate. **(Executive Order (EO) 423 s. 2005, as amended by EO 645 s. 2007)**

This has been further amended by **E.O. 34 issued on 17 July 2017**, which now provides that:

Where the Head of the Procuring Entity has made a determination that a Government contract, including Government contracts required by law to be acted upon and/or approved by the President, regardless of amount, falls under any of the exceptions from public bidding described in Section 3 hereof, **the Head of the Procuring Entity may proceed with the alternative methods of procurement according to the law and applicable rules and regulations**; Provided, that for Government contracts involving an amount of at least P500 Million, the Head of the Procuring Entity issues a certification under oath that the contract falls within the exceptions from public bidding, is being entered into faithful compliance with all applicable laws, rules and regulations, and is advantageous to the government.

Except for Government contracts required by law to be acted upon and/or approved by the President, the Head of the Procuring Entity shall have full authority to give final approval and/or enter into said Government contracts through alternative methods of procurement allowed by law and applicable

<sup>14</sup> For ADB and WB-funded contracts, the use of alternative methods of procurement should be in accordance with the relevant Grant, Loan or Technical Assistance Agreement.

rules and regulations upon issuing the certificates mentioned in the immediately preceding paragraph, when applicable.

The Head of the Procuring Entity may delegate in writing this full authority to give final approval and/or to enter into Government contracts, through alternative methods of procurement allowed by law, involving such amount or threshold as he may deem appropriate, as circumstances may warrant, subject to existing laws and such limitations imposed by the Head of the Procuring Entity concerned (Section 5(j), Republic Act No. 9184). However, the Head of the Procuring Entity may not delegate the authority to certify under oath that the contract falls within the exceptions from public bidding, is being entered into faithful compliance with all applicable laws, rules and regulations, and is advantageous to the government.

For the procurement of goods, the following alternative methods of procurement may be resorted to:

1. Limited Source Bidding
2. Direct Contracting
3. Repeat Order
4. Shopping
5. Negotiated Procurement

## Limited Source Bidding

### What is Limited Source Bidding?

**LIMITED SOURCE BIDDING**, otherwise known as **SELECTIVE BIDDING**, is a method of procurement of goods and consulting services that involves direct invitation to bid by the concerned Procuring Entity from a list of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract. **(2016 IRR, Section 49.1)**

### When shall Limited Source Bidding be allowed?

Limited Source Bidding may be employed by a Procuring Entity under any of the following conditions:

1. If only a few suppliers of the goods to be procured are known to be available, such that resorting to public bidding method will not likely result in any additional suppliers participating in the bidding. An example is the procurement of highly specialized types of Goods like sophisticated defense equipment (*e.g.*, fighter planes, Battleships, complex air navigation systems, or coal); or
2. In the procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.

### Who will be invited to bid?

In choosing the Bidders, the Procuring Entity shall consider only those suppliers appearing in a list maintained by the relevant government authority that has expertise in the type of procurement concerned. This list should have been submitted to, maintained and updated with the GPPB and posted in the PhilGEPS. **(2016 IRR, Section 49.2)** In the absence of a relevant government authority, the Procuring Entity has to resort to open competitive bidding in its selection of a supplier. Examples of relevant government authorities are the NTC for telecommunications equipment, the FED of the PNP for firearms and ammunition, and the FDA for drugs.

### Who are involved in conducting the Limited Source Bidding?

The following are involved in the conduct of limited source bidding for the procurement of goods:

1. The HoPE;
2. The BAC;
3. The TWG;
4. The BAC Secretariat/ Procurement Unit;
5. The invited suppliers; and
6. The Observers.

### **Methodology: How is procurement through the Limited Source Bidding method conducted?**

The following steps are followed in conducting a limited source bidding:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution, shall justify and recommend the change in the mode of procurement to be approved by the HoPE.
2. The BAC, through the TWG and the BAC Secretariat, prepares the bidding documents, including the IB (indicating the method of procurement to be used) and the technical specifications, in accordance with the procedures laid down in the 2016 IRR, this Manual and the PBDs.
3. The BAC, through the Secretariat, gets the list of pre-selected suppliers from the government authority that has expertise in the type of procurement at hand. It may also access the PhilGEPS website as a secondary source of information.
4. If a pre-procurement conference is required or deemed necessary as previously discussed in this Manual, the BAC holds the said conference. If a pre-procurement conference is held, the participants should confirm the existence of the conditions required by law for procurement through Limited Source Bidding.
5. The BAC, through the Secretariat, posts for information purposes the IB in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity;for a period of at least three (3) calendar days.
6. The BAC Secretariat sends the IB to the pre-selected suppliers. The IB is sent to ALL suppliers in the list.
7. The BAC proceeds with the pre-bid conference (if deemed warranted under the circumstances), eligibility check, bid evaluation, post-qualification and succeeding activities up to contract award, signing and approval, following the procedures for Competitive Bidding.
8. Except for contracts with ABC of Fifty Thousand Pesos (Php 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract or purchase order, including the NTP, if necessary in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity.

### **Are bid, performance and warranty securities required for Limited Source Bidding?**

Bid and performance securities are required to be submitted. Warranty security is required only for highly specialized type of goods.

## Direct Contracting

### What is Direct Contracting?

**DIRECT CONTRACTING** or **SINGLE SOURCE PROCUREMENT** is a method of procurement of Goods that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. **(2016 IRR, Section 50)**

### When shall Direct Contracting be allowed?

Direct Contracting may be resorted to by a Procuring Entity under any of the following conditions:

1. Procurement of items of proprietary nature which can be obtained only from the proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same item.

This is applicable when the goods or services being procured are covered by a patent, trade secret or copyright duly acquired under the law. Under the Intellectual Property Code of the Philippines (R.A. No. 8293), the registered owner of a patent, a copyright or any other form of intellectual property has exclusive rights over the product, design or process covered by such patent, copyright or registration. Such exclusive right includes the right to use, manufacture, sell, or otherwise to derive economic benefit from the item, design or process.

2. When the procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance in accordance with the provisions of its contract.

For example, this maybe applicable when there is a contract for an infrastructure project consisting of the construction/repair/renovation of a plant, and critical components of such plant are prescribed by the contractor for it to guarantee its contract performance. In the construction of a power generation plant, the contractor may require the use of certain components manufactured by a specific manufacturer, whose products have been found to meet certain standards and are compatible with the technology used by the contractor. In this instance, Direct Contracting may be resorted to in the procurement of such critical plant components. However, the BAC must require technical proof that such critical plant components are the only products compatible with the plant.

3. Those sold by an exclusive dealer or manufacturer that does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government. Exclusive dealership does not per se give rise to the use of direct contracting as an alternative mode. The supplier/contractor/manufacturer must prove through proper documentation that it is the sole source of the said the goods, equipment, or services required.

This condition anticipates a situation where the goods are sold by an exclusive dealer or distributor, or directly sold by the manufacturer. In this instance, it is highly unlikely that sub-dealers can sell the same at lower prices. Further, the Procuring Entity has not identified a suitable substitute for the product that can be procured at terms more advantageous to the government.

### How can Direct Contracting be justified?

To justify the need to procure through the Direct Contracting method, the end-user unit or implementing unit should conduct a survey of the industry and determine the supply source.

This survey should confirm the exclusivity of the source of goods or services to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. Moreover, the end-user unit or implementing unit must justify the necessity for an item that may only be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms.

### **Who are involved in procurement through Direct Contracting?**

The following are involved in the conduct of direct contracting:

1. The HoPE;
2. The BAC;
3. The TWG;
4. The BAC Secretariat/ Procurement Unit;
5. The end-user or implementing unit; and
6. The supplier/manufacturer.

### **Methodology: How is Direct Contracting conducted?**

The following steps are undertaken in conducting Direct Contracting:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the HoPE.
2. The BAC, through the TWG and the BAC Secretariat, prepares the Request for Quotation (RFQ) or pro-forma invoice, technical specifications and draft contract containing the conditions of sale, in accordance with the procedures laid down in this Manual, in the 2016 IRR and in the PBDs.
3. The BAC, through the Secretariat, identifies the supplier from whom the goods will be procured.
4. If a pre-procurement conference is required or deemed necessary, as previously discussed in this Manual, the BAC holds such a conference. If a pre-procurement conference is held, the participants should confirm the existence of the conditions required by law for procurement through Direct Contracting.
5. The BAC sends the RFQ to the selected supplier. If necessary, simplified negotiations on the terms and conditions of contract are conducted by the BAC to ensure that the supplier is technically, legally and financially capable to deliver the goods at the most advantageous price and contract for the Government.
6. The BAC proceeds with recommending to the HoPE the award of contract in favor of the supplier.
7. Within a period not exceeding fifteen (15) calendar days from receipt, the HOPE approves or disapproves the BAC's recommendation. In case of approval, the HOPE immediately issues the NOA to the Supplier. In case of disapproval, such should be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.
8. The Supplier immediately enters into contract with the Procuring Entity upon receipt of the NOA. Upon transmission of the signed contract/PO, the HOPE or his duly

authorized representative immediately signs the contract/PO if all the relevant documentary requirements are submitted.

9. The HOPE or his duly authorized representative issues the NTP, if necessary, and a copy of the approved contract to the Supplier, within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority.
10. Unless the contract involves and affects national security as determined by the HOPE in accordance with the ***Consolidated Guidelines for the Alternative Methods of Procurement*** issued by the GPPB, and except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract or purchase order, including the NTP, if necessary in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity;within ten (10) days from issuance.

### **What are the documentary requirements for Direct Contracting?**

The BAC must require the following documents from Suppliers for Direct Contracting:

1. Mayor's/Business Permit
2. PhilGEPS Registration Number
3. Income/Business Tax Returns (for contracts with ABC above PhP500,000)

The BAC shall indicate in the RFQ or RFP at what stage of the procurement process these requirements must be submitted, i.e., submission of offer/s, evaluation of offer/s, before issuance of NOA. Procuring Entities already maintaining an updated file of any of the bidder's above-mentioned requirements, whether through the PhilGEPS Certificate of Registration and Membership or its own records, may no longer require its re-submission.

### **Are bid, performance and warranty securities required for Direct Contracting?**

Submission of bid and performance securities may be dispensed with. Submission of warranty security is required.

## Repeat Order

### What is Repeat Order?

**REPEAT ORDER** is a method of procurement of goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding. **(2016 IRR, Section 51)**

Repeat Orders from the previous winning bidder may be resorted to by the Procuring Entity only in cases where the procured item is clearly superior to the other bids. This superiority must exist, not only in the price quoted but also in equipment reliability, availability of spare parts, after-sales service and delivery period, among others. The bid should not have been so closely contested, such that if a bidding would be conducted again, the previous winning bidder would still have a high probability of winning.

### When is Repeat Order Allowed?

Repeat Order may be resorted to by a Procuring Entity if the following conditions are satisfied:

1. The original contract must have been procured through competitive bidding.
2. Unit prices must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the government after price verification;
3. The repeat order will not result in splitting of contracts, requisitions or purchase orders, as provided for in Section 54.1 of the 2016 IRR;
4. Except in cases duly approved by the GPPB, the repeat order shall be availed of only within six (6) months from the date of the NTP arising from the original contract; and

#### Tips: Let's make things easier

Especially if the procuring entity anticipates that it would have to procure through Repeat Order, it would be helpful for the BAC Secretariat or the procurement unit to maintain a price monitor of goods and services procured.

#### How's that again?

##### What is "splitting of contract"?

Splitting of contracts is the act of dividing or breaking up government contracts into smaller quantities and amounts. It also is the act of dividing contract implementation into artificial phases or sub-contracts. Both actions are for the purpose of **evading or circumventing the requirements of law** and the IRR of R.A. 9184, especially the necessity of public bidding and the requirements for the alternative methods of procurement. **(IRR-A Section 54.1)**

If the procuring entity is found to have resorted to this mechanism to subvert the law, those responsible for this act shall suffer the **penalty of imprisonment** of not less than **six (6) years and one (1) day, but not more than fifteen (15) years**. This penalty is without prejudice to the imposition of other sanctions provided for in RA 3019 and other penal laws. **(2016 IRR, Section 65.1.[d])**

5. The repeat order should not exceed twenty-five percent (25%) of the quantity of each item in the original contract. In order not to exceed the 25% threshold, the Goods under the original contract must be quantifiable, divisible and consisting of at least four (4) units per item.

**Note:** General Services cannot be the subject of Repeat Order.

### **Who are involved in procurement through Repeat Order?**

The following are involved in procuring through the Repeat Order method:

1. The HoPE;
2. The BAC;
3. The TWG;
4. The BAC Secretariat;
5. The PMO or end-user unit or implementing unit; and
6. The supplier who won in the previous public bidding.

### **Methodology: How is procurement through Repeat Order done?**

In order to procure through the Repeat order method, the following steps ought to be followed:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the HoPE.
2. The BAC, through the BAC Secretariat, conducts a canvass of the prevailing market price of the goods to be procured and compares this with the price of the goods in the original contract.
3. If a pre-procurement conference is required or deemed necessary as previously discussed in this Manual and in the 2016 IRR, the BAC holds the said conference. If such pre-procurement conference is held, the following must be done:
  - a. The TWG reviews the specifications;
  - b. The PMO or end-user unit or implementing unit confirms the additional requirement as to necessity and corresponding quantity;
  - c. The participants confirm if the price and terms in the original contract is most advantageous to the government; and
  - d. The BAC determines the existence of the conditions required for procurement through Repeat Order.
4. The PMO or end-user unit or implementing unit prepares the Purchase Request (PR) for the procurement of additional goods.
5. The BAC recommends to the HoPE the award of contract through Repeat Order.
6. Within a period not exceeding fifteen (15) calendar days from receipt, the HOPE approves or disapproves the BAC's recommendation. In case of approval, the HOPE

immediately issues the NOA to the Supplier. In case of disapproval, such should be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.

7. The Supplier immediately enters into contract with the Procuring Entity upon receipt of the NOA. Upon transmission of the signed contract/PO, the HOPE or his duly authorized representative immediately signs the contract/PO if all the relevant documentary requirements are submitted.
8. The HOPE or his duly authorized representative issues the NTP, if necessary, and a copy of the approved contract to the Supplier, within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority.
9. Unless the contract involves and affects national security as determined by the HOPE in accordance with the ***Consolidated Guidelines for the Alternative Methods of Procurement*** issued by the GPPB, and except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract or purchase order, including the NTP, if necessary in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity;within ten (10) days from issuance.

**Are bid, performance and warranty securities required for Repeat Order?**

Submission of bid and performance securities may be dispensed with. Submission of warranty security is required.

## Shopping

### What is Shopping?

**SHOPPING** is a method of procurement of goods whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications. **(2016 IRR, Section 52.1)**

### When is Shopping allowed?

Shopping shall be employed only in any of the following cases:

1. When there is an unforeseen contingency requiring the immediate purchase of Goods, the amount of which should not exceed the following: **(2016 IRR, Section 52.1[a])**
  - i. For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, Two Hundred Thousand Pesos (₱200,000)
  - ii. For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1 <sup>st</sup> Class	200,000	200,000	100,000
2 <sup>nd</sup> Class	200,000	200,000	100,000
3 <sup>rd</sup> Class	200,000	160,000	100,000
4 <sup>th</sup> Class	160,000	120,000	100,000
5 <sup>th</sup> Class	120,000	100,000	100,000
6 <sup>th</sup> Class	100,000	100,000	100,000

In the case of *barangays*, Fifty Thousand Pesos (₱50,000).

2. When ordinary or regular office supplies and equipment not available in the PS-DBM needs to be procured, involving an amount not to exceed the following: **(2016 IRR, Section 52.1[b])**
  - i. For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, One Million Pesos (₱1,000,000)
  - ii. For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1 <sup>st</sup> Class	1,000,000	1,000,000	200,000
2 <sup>nd</sup> Class	1,000,000	1,000,000	200,000
3 <sup>rd</sup> Class	1,000,000	800,000	200,000
4 <sup>th</sup> Class	800,000	600,000	100,000
5 <sup>th</sup> Class	600,000	400,000	100,000
6 <sup>th</sup> Class	400,000	200,000	100,000

The term "ordinary or regular office supplies" should be understood to include those supplies, commodities or materials which, depending on the procuring entity's mandate and nature of operations, are necessary in the transaction of its official businesses; and consumed in the day-to-day operations of said procuring entity. However, office supplies shall not include services such as repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services.

**Is Shopping under Unforeseen Contingency limited to readily available off-the-shelf goods?**

Yes. Thus, if the procurement under unforeseen contingency does not involve readily available off-the-shelf goods, Procuring Entities may avail of Negotiated Procurement under Emergency Cases as enunciated in Section 53.2.

**Who are involved in the conduct of procurement through Shopping?**

The following are involved in the conduct of procurement through the Shopping method:

1. The HoPE;
2. The BAC;
3. The BAC Secretariat/ Procurement Unit;
4. The end-user; and
5. The supplier(s).

**Tips: Let's make doing things easier**

**On planning properly for contingency purchases**

Section 7.1 of the 2016 IRR requires all procurement to be in accordance with the APP, and all procuring entities are not allowed to procure anything unless it is included in the APP. The requirement extends to those immediate purchases of readily available off-the-shelf goods and to contingencies. These purchases include those charged against cash advances, or the so-called "over-the-counter" purchases. Procuring entities are not allowed to procure anything unless it is included in the APP.

Contingencies or provisions for foreseeable emergencies must therefore be provided for in the APP based on historical data. (2016 IRR, Section 7.1) This can be done by allocating for such purchases a percentage of the total procurement budget as reflected in the procuring entity's APP. However, it would be advisable for this allocation not to be more than four percent (4%) of the total appropriations for Maintenance and Other Operating Expenses (MOOE) as provided for in the GAA.

To enable it to plan its purchases more efficiently, and consequently approximate realistic levels for the amount that it would need for its contingency purchases or its small purchases of ordinary/regular office supplies/equipment, the procuring entity must conduct a regular study of its "Over-the-Counter Purchases". Based on this study, the procuring entity would be able to identify recurring expenses that could more reasonably be included in the APP, and thus determine a more realistic allocation for contingencies.

**Methodology: How is procurement through the Shopping method done?**

The following steps need to be followed in procuring through the Shopping method:

1. The method of procurement to be used must always be as indicated in the approved APP. In other words, there has to be an allocation for items or contingencies wherein

procurement through Shopping has been identified. Otherwise, the APP would have to be amended or updated in accordance with Section 7 of the 2016 IRR. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the HoPE.

2. For Shopping under Section 52.1[a] of the 2016 IRR:

- i. The PMO/end-user unit/implementing unit or the duly authorized official or personnel submits a PR to the BAC indicating the urgency to address an identified need of the Procuring Entity and the unforeseen contingency that caused its necessity.
- ii. The BAC immediately prepares the RFQ, indicating the specifications, quantity, ABC, and other terms and conditions of the contract.
- iii. The RFQ may be sent directly to the supplier of known technical, legal and financial qualifications. Due to the attendant circumstances and the urgency of the procurement, the supplier immediately responds to the RFQ and signifies its technical, legal and financial capability to supply and deliver the goods to be procured. Posting of the RFQ may be dispensed with.
- iv. The BAC immediately validates the technical, legal and financial capability of the supplier to supply and deliver the goods by requiring the submission of relevant documents or through other verifiable means to prove the capability of the Supplier.
- v. Upon confirmation and ascertainment of such capability, the BAC recommends to the HOPE the award of contract in favor of the supplier with the Single or Lowest Calculated and Responsive Quotation. In case of approval, the HOPE immediately enters into a contract with the said supplier.
- vi. Except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the contract or purchase order in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity.

3. For Shopping under Section 54.1[b] of the 2016 IRR:

- i. The PMO/end-user unit/implementing unit or the duly authorized official or personnel submits a PR to the BAC relative to the goods to be procured through Shopping.
- ii. The BAC prepares the RFQ, indicating the specifications, quantity, ABC, and other terms and conditions of the contract.
- iii. Except for those with ABCs equal to Fifty Thousand Pesos (₱ 50,000.00) and below, RFQs are posted for a period of at least three (3) calendar days in the PhilGEPS website, website of the Procuring Entity, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity.
- iv. The BAC sends the RFQs to at least three (3) suppliers of known qualifications, and at least three (3) price quotations are obtained. This,

notwithstanding, those who responded through any of the required postings are allowed to participate.

- v. The deadline for submission may be extended thrice, if none or less than the required number of quotations are received. For ABCs more than Fifty Thousand Pesos (₱50,000.00), extensions of deadline are posted for a period of three (3) calendar days in the PhilGEPS, the website of the Procuring Entity, if any, and at any conspicuous place in the Procuring Entity's premises. In case no supplier responded after the third extension, the BAC shall conduct a mandatory review in accordance with the ***Consolidated Guidelines for the Alternative Methods of Procurement*** issued by the GPPB.
- vi. Upon receipt of at least three (3) quotations within the prescribed deadline, the BAC prepares an Abstract of Quotations setting forth the names of those who responded to the RFQ, their corresponding price quotations, and the lowest calculated quotation submitted.
- vii. The BAC validates the technical, legal and financial capability of the supplier to supply and deliver the Goods.
- viii. Upon confirmation and ascertainment of such capability, the BAC recommends to the HOPE the award of contract in favor of the supplier with the Lowest Calculated and Responsive Quotation. In case of approval, the HOPE immediately enters into a contract with the said Supplier.
- ix. Except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the contract or purchase order in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity.

### **What are the documentary requirements for Shopping?**

The BAC must require the following documents from Suppliers for Shopping under Section 52.1(b) of the 2016 IRR, only:

1. Mayor's/Business Permit
2. PhilGEPS Registration Number

The BAC shall indicate in the RFQ or RFP at what stage of the procurement process these requirements must be submitted, i.e., submission of offer/s, evaluation of offer/s, before issuance of NOA or prior to payment. Procuring Entities already maintaining an updated file of any of the bidder's above-mentioned requirements, whether through the PhilGEPS Certificate of Registration and Membership or its own records, may no longer require its re-submission.

### **Are bid, performance and warranty securities required for Shopping?**

Submission of bid, performance and warranty securities may be dispensed with.

## Negotiated Procurement

### What is Negotiated Procurement?

**NEGOTIATED PROCUREMENT** is a method of procurement of Goods whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier. **(2016 IRR, Section 53)**

The latter portion of the above definition indicates the advisability for the existence of a registry of suppliers maintained and updated by the Procuring Entity. Moreover, particularly in the cases of emergency procurement, the **suppliers** from whom goods are procured **should be in good standing**, and have not committed any breach of contract (e.g., short deliveries, unreasonable delays in delivery of goods, delivery of defective goods, or similar acts) in previous transactions with the Procuring Entity or other government entity. It is the responsibility of the Procuring Entity, through the procurement office, to monitor contract implementation as well as constantly coordinate with the GPPB-TSO for updates on blacklisted suppliers.

### When is Negotiated Procurement allowed for the procurement of goods?

For the procurement of goods, negotiated procurement is employed only in any of the following cases:

1. **Two Failed Biddings.** Where there has been failure of public bidding for the second time provided in Section 35 of R.A. 9184 and the 2016 IRR;
2. **Emergency Cases.** In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from actual or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
3. **Take-Over of Contracts.** Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
4. **Agency-to-Agency.** Procurement of Goods from another agency of the GoP, such as the DBM-PS, which is tasked with a centralized procurement of Common-Use Supplies for the GoP in accordance with Letters of Instruction No. 755 and E.O. 359, s. 1989;
5. **Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services.** Where Goods can be contracted to a particular Supplier, as determined by the HoPE, for any of the following:
  - i. The requirement is for:
    - a. Work of art; commissioned work or services of an artist for a specific artist skills (e.g., Singer, poet, writer, painter, sculptor, etc.);
    - b. Scientific, academic, scholarly work or research, or legal services;
    - c. Highly-specialized life-saving medical equipment, as certified by the Department of Health (DOH);

- d. Scientific, technical, economic, business, trade or legal journal, magazine, paper, subscription, or other exclusive statistical publications and references; or
- e. Media documentation, advertisement, or announcement through television, radio, newspaper, internet, and other communication media.

Due to the nature of the information to be disseminated, alongside principles of transparency, efficiency and economy, award to more than one (1) supplier may be made by the Procuring Entity.

- ii. The construction or installation of an infrastructure facility where the material, equipment, or technology under a proprietary right can only be obtained from the same contractor.
6. **Defense Cooperation Agreement.** Upon prior approval by the President of the Philippines, when the procurement involved major defense equipment for use by the AFP, and the Secretary of National Defense has determined that the interests of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations. It should be noted that the negotiation should be with a public agency or instrumentality of a foreign country, not directly with any foreign supplier or manufacturer. As such, for this type of procurement, it is necessary for the contract to be covered by a foreign government guarantee equivalent to 100% of the contract price;
7. **Small Value Procurement.** Procurement of Goods not covered by Shopping under Section 52 of the 2016 IRR of RA 9184, where the amount involved does not exceed the following threshold:
- i. For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, One Million Pesos (₱ 1,000,000).
  - ii. For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1 <sup>st</sup> Class	1,000,000	1,000,000	200,000
2 <sup>nd</sup> Class	1,000,000	1,000,000	200,000
3 <sup>rd</sup> Class	1,000,000	800,000	200,000
4 <sup>th</sup> Class	800,000	600,000	100,000
5 <sup>th</sup> Class	600,000	400,000	100,000
6 <sup>th</sup> Class	400,000	200,000	100,000

In the case of *barangays*, Fifty Thousand Pesos (₱ 50,000).

8. **Lease of Real Property and Venue.** Lease of real property and venue for official use, where:
- i. **Real Property** refers to land and buildings (office spaces or units) and constructions of all kinds adhered to the soil.
  - ii. **Venue** refers to training centers, convention halls, hotels, and similar establishments catering to trainings, seminars, conferences, conventions, symposia and similar gatherings requiring the official participation of government officials and employees. This may include meals and accommodation depending on the requirements of the Procuring Entity.
  - iii. **Lessee** refers to any government agency temporarily occupying a real property on the basis of a contract executed with the private individual,

partnership, cooperative, association, or corporation having absolute ownership over such real property.

- iv. **Lessor** refers to any government agency or private individual, partnership, cooperative, association, or corporation having absolute ownership over the real property or venue to be leased.
9. **NGO Participation.** When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the Procuring Entity may enter into a Memorandum of Agreement with an NGO, subject to the guidelines issued by the GPPB for the purpose.
10. **Community Participation.** Where, in the interest of project sustainability or to achieve certain specific social objectives, it is desirable in selected projects, or its components, to call for participation of local communities in the delivery of goods, including non-consulting services, and simple infrastructure projects, subject to the Community Participation Procurement Manual (CPPM) issued by the GPPB.
11. **United Nations Agencies, International Organizations or International Financing Institutions.** Procurement from specialized agencies of the United Nations, International Organizations or International Financing Institutions, of any of the following: (a) small quantities of off-the-shelf goods, primarily in the fields of education and health; (b) specialized products where the number of suppliers is limited, such as but not limited to vaccines or drugs; (c) Goods involving advanced technologies, techniques and innovations not locally available as certified by the HoPE, when it is most advantageous to the government.

### **Who are the parties involved in Negotiated Procurement?**

The following are involved in purchasing goods through negotiated procurement:

1. The HoPE;
2. The BAC;
3. The TWG;
4. The BAC Secretariat;
5. The PMO or end-user unit or implementing unit; and
6. The accredited or registered suppliers.

### **Methodology: How is Negotiated Procurement undertaken?**

The following steps are undertaken in purchasing goods through the negotiated procurement method:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the HoPE.
2. For **Two-Failed Biddings**:
  - i. After conduct of the mandatory review of the terms, conditions, specifications, and cost estimates, as prescribed in Section 35 of the 2016 IRR, the BAC, based on its findings, as assisted by its Secretariat, TWG and End-User unit may revise and agree on the technical, legal and financial eligibility requirements and technical specifications or terms of reference, and if

necessary, adjust the ABC, subject to the required approvals. However, the ABC cannot be increased by more than twenty percent (20%) of the ABC for the last failed bidding.

- ii. The BAC invites at least three (3) suppliers including those disqualified in previous biddings for the project, for negotiations to ensure effective competition. This, notwithstanding, those who responded through any of the required postings are allowed to participate. Even if only one (1) bidder responds to such invitation or posting, the BAC must proceed with the negotiation subject to the rules discussed below.
- iii. Any requirements, guidelines, documents, clarifications, or other information relative to the negotiations that are communicated by the BAC to a supplier are communicated on an equal basis to all other suppliers engaging in negotiations with the BAC relative to the procurement. The prospective bidders are given equal time and opportunity to negotiate and discuss the technical and financial requirements of the project to be able to submit a responsive quotation or proposal.
- iv. Following completion of the negotiations, the BAC requests all suppliers in the proceedings to submit, on a specified date, a best offer based on the final technical and financial requirements. The Procuring Entity shall require the submission of a Certificate of PhilGEPS Registration in accordance with Section 8.5.2 of the 2016 IRR of RA 9184.
- v. The BAC recommends award of contract to the HOPE in favor of the Supplier determined to have the Single or Lowest Calculated and Responsive Quotation
- vi. Within a period not exceeding fifteen (15) calendar days from receipt, the HOPE approves or disapproves the BAC's recommendation. In case of approval, the HOPE immediately issues the NOA to the Supplier. In case of disapproval, such should be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.
- vii. The Supplier immediately enters into contract with the Procuring Entity upon receipt of the NOA. Upon transmission of the signed contract/PO, the HOPE or his duly authorized representative immediately signs the contract/PO if all the relevant documentary requirements are submitted.
- viii. The HOPE or his duly authorized representative issues the NTP, if necessary, and a copy of the approved contract to the Supplier, within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority.
- ix. Unless the contract involves and affects national security as determined by the HOPE in accordance with the ***Consolidated Guidelines for the Alternative Methods of Procurement*** issued by the GPPB, and except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract or purchase order, including the NTP, if necessary in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity;

within ten (10) days from issuance.

Procuring Entities, in the interest of promoting economy and efficiency, are given the discretion to determine which requirements must be submitted by bidders when resorting to Negotiated Procurement (Two-Failed Bidding). This gives Procuring Entities the authority to

choose the eligibility documents necessary for the project, provided that a mandatory review has been conducted to determine the adjustments needed to address the previous failure of bidding.

However, the certificate of PhilGEPS registration, in accordance with Section 8.5.2 of this IRR, is still required to be submitted by the bidder.

3. For ***Emergency Cases***:

- i. In all instances, the HOPE must confirm in writing the existence and veracity of the ground or grounds relied upon before approving the ensuing contract.
- ii. The Procuring Entity, through the HOPE, BAC, its Secretariat and PMO/end-user unit/implementing unit, must consider appropriate timing or the proximity of time between the actual procurement activity to be conducted and the emergency sought to be addressed, such that when the reason or cause for the emergency has already been abated, adoption of competitive bidding as the primary mode of procurement is considered.
- iii. When the ground is based on imminent danger to life during a state of calamity, there must be a declaration by a competent authority of a state of calamity pursuant to existing laws, rules and regulations before any procurement activity may be undertaken.
- iv. The PMO/end-user unit/implementing unit or the duly authorized official or personnel submits a request to the BAC or the HOPE, as the case may be, accompanied by appropriate supporting documents identifying the emergency sought to be addressed, and the necessary Goods (*e.g.*, Technical Specifications, Scope of Work or Terms of Reference) that have to be procured to address the emergency.
- v. Upon preparation of the appropriate procurement documents, the BAC directly negotiates with a supplier with technical, legal and financial capability to deliver the goods, execute the works and perform the services to address the emergency. Upon confirmation and ascertainment of such capability to address the emergency, the HOPE, upon recommendation of the BAC, immediately awards the contract to the Supplier.
- vi. Except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract or purchase order, including the NTP, if necessary in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity.

4. For ***Take-Over Contracts***:

- i. The BAC post-qualifies and negotiates with the second lowest calculated bidder for the project under consideration at the said bidder's own original bid price, applicable to the remaining works to be done. Authority to negotiate contracts for projects under the foregoing exceptional cases is subject to prior approval by the HOPE concerned, within their respective limits of approving authority.
- ii. If negotiation fails, then the BAC post-qualifies and negotiates with the next lowest calculated bidder at the said bidder's own original bid price.
- iii. If the negotiation fails another time, the process is repeated until all the bidders from the previous bidding have been considered.

- iv. If the negotiation fails and there is no bidder left from the previous bidding or if the original awardee is a Single Calculated Responsive Bidder, the BAC may either invite at least three (3) suppliers to submit their bids, or resort to any other appropriate alternative method of procurement.
- v. In case of successful post-qualification and negotiation, the BAC shall recommend to the HOPE the award of contract with the said Supplier.
- vi. Within a period not exceeding fifteen (15) calendar days from receipt, the HOPE approves or disapproves the BAC's recommendation. In case of approval, the HOPE immediately issues the NOA to the Supplier. In case of disapproval, such should be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.
- vii. The Supplier immediately enters into contract with the Procuring Entity upon receipt of the NOA. Upon transmission of the signed contract/PO, the HOPE or his duly authorized representative immediately signs the contract/PO if all the relevant documentary requirements are submitted.
- viii. The HOPE or his duly authorized representative issues the NTP, if necessary, and a copy of the approved contract to the Supplier, within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority.
- ix. Unless the contract involves and affects national security as determined by the HOPE in accordance with the ***Consolidated Guidelines for the Alternative Methods of Procurement*** issued by the GPPB, and except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract or purchase order, including the NTP, if necessary in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity;
 within ten (10) days from issuance.

5. For ***Agency-to-Agency***:

**Note:**

This type of negotiated procurement is subject to the following conditions:

- a. The Procuring Entity shall justify that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical to the government;
- b. Servicing Agency has the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency;
- c. Servicing Agency has the absorptive capacity to undertake the project;
- d. Servicing Agency owns or has access to the necessary tools and equipment required for the project;
- e. Sub-contracting is not allowed. However, the servicing agency may

implement the infrastructure project in-house, by job-order, or through the *pakyaw* contracting system.

- i. The PMO/end-user unit/implementing unit justifies to the BAC that the resort to Agency-to-Agency is more efficient and economical to the government. It likewise secures a certificate from the relevant officer of the Servicing Agency that the latter complies with all the foregoing conditions.
  - ii. Based on the assessment and recommendation of the PMO/end-user unit/implementing unit, the BAC issues a Resolution recommending the use of Agency-to-Agency Agreement to the HOPE.
  - iii. In case of approval, the HOPE enters into a Memorandum of Agreement (MOA) with the Servicing Agency.
  - iv. Except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the MOA, including the NTP, if necessary in:
    - a. The PhilGEPS website;
    - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
    - c. Any conspicuous place in the premises of the Procuring Entity.
6. For ***Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services***:
- i. To justify the need to procure through this negotiated modality, the PMO/end-user unit/implementing unit conducts a market study and determines the probable sources. This study must confirm that the Supplier could undertake the project at more advantageous terms.
  - ii. The BAC undertakes the negotiation with a technically, legally and financially capable supplier based on the Technical Specifications, Scope of Work or Terms of Reference prepared by the PMO/end-user unit/implementing unit.
  - iii. Upon successful negotiation, the BAC recommends the award of contract to the HOPE.
  - iv. Within a period not exceeding fifteen (15) calendar days from receipt, the HOPE approves or disapproves the BAC's recommendation. In case of approval, the HOPE immediately issues the NOA to the Supplier. In case of disapproval, such should be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.
  - v. The Supplier immediately enters into contract with the Procuring Entity upon receipt of the NOA. Upon transmission of the signed contract/PO, the HOPE or his duly authorized representative immediately signs the contract/PO if all the relevant documentary requirements are submitted.
  - vi. The HOPE or his duly authorized representative issues the NTP, if necessary, and a copy of the approved contract to the Supplier, within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority.
  - vii. Unless the contract involves and affects national security as determined by the HOPE in accordance with the ***Consolidated Guidelines for the Alternative Methods of Procurement*** issued by the GPPB, and except for

contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract or purchase order, including the NTP, if necessary in:

- a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity;
- within ten (10) days from issuance.

7. For ***Small Value Procurement***:

- i. The PMO/end-user unit or implementing unit submits a request for SVP to the BAC, which indicates the technical specifications, scope of work, terms of reference, ABC and other terms and conditions.
- ii. The BAC prepares and sends the RFQs/RFPs to at least three (3) suppliers of known qualifications. This, notwithstanding, those who responded through any of the required postings are allowed to participate. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.
- iii. Except for those with ABCs equal to Fifty Thousand Pesos (₱ 50,000.00) and below, RFQs are be posted for a period of three (3) calendar days in the PhilGEPS website, website of the Procuring Entity or its electronic procurement service provider, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity.
- iv. After the deadline for submission of quotations/proposals, an Abstract of Quotations/Ratings is prepared setting forth the names of those who responded to the RFQ/RFP, their corresponding price quotations/ratings.
- v. The BAC recommends to the HOPE the award of contract in favor of the supplier or contractor with the Single or Lowest Calculated and Responsive Quotation In case of approval, the HOPE immediately enters into contract with the said Supplier.
- vi. Except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the MOA, including the NTP, if necessary in:
  - a. The PhilGEPS website;
  - b. The website of the Procuring Entity or its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity.

8. For ***Lease of Real Property and Venue***:

- i. Real Property
  - a. The BAC invites at least three (3) prospective Lessors to submit sealed price quotations.
  - b. On a specified date, submitted price quotations are opened to determine the Lowest Calculated Quotation. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.
  - c. The real property being offered by the Lessor with the Single or Lowest Calculated Quotation must be rated in accordance with the

technical specifications and the reasonableness of its price quotation shall be determined in accordance with the methodology prescribed below:

**A. TABLE OF RATING FACTORS FOR LEASE OF REAL PROPERTY**

	<b>RATING FACTORS</b>	<b>WEIGHT (%)</b>	<b>RATING</b>
<b>I.</b>	<b>Location and Site Condition</b>		
	1. Accessibility	(25)	
	2. Topography and Drainage	(20)	
	3. Sidewalk and waiting shed	(15)	
	4. Parking space	(15)	
	5. Economic potential	(10)	
	6. Land classification, utilization, and assessment	(10)	
	7. Other added amenities	(5)	
		<b>100</b>	
<b>II.</b>	<b>Neighborhood Data</b>		
	1. Prevailing rental rate	(20)	
	2. Sanitation and health condition	(20)	
	3. Adverse influence	(15)	
	4. Property utilization	(15)	
	5. Police and fire station	(15)	
	6. Cafeterias	(10)	
	7. Banking/postal/telecom	(5)	
		<b>100</b>	
<b>III.</b>	<b>Real Property</b>		
	1. Structural condition	(30)	
	2. Functionality		
	a. Module	(6)	
	b. Room arrangement	(6)	
	c. Circulation	(6)	
	d. Light and ventilation	(6)	
	e. Space requirements	(6)	
	3. Facilities		
	a. Water supply and toilet	(6)	
	b. Lighting system	(6)	
	c. Elevators	(6)	
	d. Fire escapes	(6)	
	e. Fire fighting equipment	(6)	
	4. Other requirements		
	a. Maintenance	(5)	
	b. Attractiveness	(5)	
		<b>100</b>	

<b>IV.</b>	<b>Free Services and Facilities</b>		
	1. Janitorial and security	(20)	
	2. Air conditioning	(20)	
	3. Repair and maintenance	(20)	
	4. Water and light consumption	(20)	
	5. Secured parking space	(20)	
		<b>100</b>	
<b>I. Location and Site Condition</b>			
		× (.20) =	
<b>II. Neighborhood Data</b>			
		× (.20) =	
<b>III. Real property</b>			
		× (.50) =	
<b>IV. Free Services and Facilities</b>			
		× (.10) =	
<b>FACTOR VALUE</b>			

**Note:** Weight of each rating factor may be changed as long as total weight per classification is equivalent to 100. Figures in parenthesis are samples. Procuring Entity must determine passing rate before inviting bids from Lessors. A bid is determined to be responsive if it is equal to or higher than the passing rate.

#### **B. DETERMINATION OF REASONABLENESS OF RENTAL RATES**

The reasonableness of rental rates may be determined using any of the following methods.

##### *Computation based on Observed Depreciation*

This method uses the following formula and a depreciation rate determined after meticulous ocular inspection of the actual condition of the real property:

Reproduction Cost	=	Estimated Unit Construction Cost × (1 - Depreciation Rate)
Formula Rate	=	Reproduction Cost × Monthly Capitalization Rate
Rental Rate	=	Formula Rate × Factor Value
Monthly Rental	=	Rentable Area × Rental Rate

The following weights may be used in arriving at the observed depreciation rate:

<b>Status</b>	<b>Depreciation (%)</b>
Good	20
Fair	40
Poor	60
Very poor	80

Reproduction Cost refers to the estimated total cost of replacing the real property with the same utility.

Capitalization Rate refers to the interest rate on the cost or value of the property.

Rentable Area refers to the total area of the real property in square meters being occupied or to be occupied by the Lessee less the common area like lobby, stairway, elevator hall, common comfort

room, machine room for air conditioner, and other areas of common use by the public or upper floor occupants.

Factor Value refers to the rating factor where locations and site conditions, neighborhood data and real property structural condition, functionality, facilities and other requirements, including free services and facilities offered by the Lessor are considered. The rating factors and its corresponding weights are provided in Appendix A of these Guidelines.

Computation based on Straight Line Depreciation

This method uses the following formula:

Age of Real Property	=	Current Year – Year of Construction
Depreciation Rate	=	Please See Table of Structural Depreciation
Reproduction Cost	=	Estimated Unit Construction Cost × (1 – Depreciation Rate)
Formula Rate	=	Reproduction Cost × Monthly Capitalization Rate
Rental Rate	=	Formula Rate × Factor Value
Monthly Rental	=	Rentable Area × Rental Rate

Depreciation rate shall be determined using the following Table of Structural Depreciation provided by the DPWH:

AGE	ESTIMATED LIFE OF REAL PROPERTY			
	WOODEN FRAME (40 years)	SEMI-CONCRETE (60 years)	REINFORCED CONCRETE (75 years)	STRUCTURAL REINFORCED (100 years)
	Percentage (%) of estimated life			
1	3	2.5	2	1.5
2	6	4.5	3.8	2.8
3	8.9	6.9	5.6	4.2
4	11.7	9	7.4	5.5
5	14.5	11.1	9.1	6.7
6	17.2	13.1	10.7	8.1
7	19.8	15.1	12.3	9.3
8	22.4	17	13.9	10.5
9	25	18	15.5	11.8
10	27.5	20.7	17.9	13
11	29.9	22.5	18.5	14.2
12	32.2	24.5	20	15.3
13	34.5	26.6	21.4	16.4
14	36.8	27.7	22.8	17.5
15	39	29.3	24.3	18.6
20	49.1	37	30.8	24.8
25	57.7	43.8	36.8	29
30	65	50	42.4	33.6
35	70	55.6	47.5	38
40	75	60.6	52.2	42.1
45		65	56.5	46
50		68.9	60.5	49.6

55		72.3	64.1	53.1
60		75	67.3	56.3
65			70.3	59.3
70			73	62
75			75	64.5
80				67
85				69.3
90				71.4
95				73.3
100				75

Estimated Unit Construction Cost refers to the estimated prevailing cost of construction per square meter of the real property being appraised. The respective Estimated Unit Construction Cost of types of real property for each region may be obtained from the Bureau of Maintenance of the DPWH.

Reproduction Cost, Capitalization Rate, Rentable Area and Factor Value shall have the same meaning as those referred Items 1.1.2 to 1.1.5.

Comparative Market Price Analysis

This method is based on the conduct of comparative market analysis on the prevailing lease rates for real properties within the vicinity of the selected location complying with the criteria and technical specifications of the Procuring Entity. In the lease of vacant lot or other land spaces, the Procuring Entity shall likewise consider the zonal valuation issued by the city or municipality having jurisdiction over the property.

If the price quotation of the prospective Lessor does not exceed the computed monthly rental or is within the prevailing market rates, the rental rate offered may be regarded as reasonable, and its quotation may then be considered for award.

- d. Upon determination of the responsiveness and reasonableness of the quotation, the BAC recommends to the HOPE the award of contract in favor of the Lessor with the Single or Lowest Calculated and Responsive Quotation.
- e. Within a period not exceeding fifteen (15) calendar days from receipt, the HOPE approves or disapproves the BAC's recommendation. In case of approval, the HOPE immediately issues the NOA to the Lessor. In case of disapproval, such should be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.
- f. The Lessor immediately enters into contract with the Procuring Entity upon receipt of the NOA. Upon transmission of the signed contract, the HOPE or his duly authorized representative immediately signs the contract if all the relevant documentary requirements are submitted.
- g. The HOPE or his duly authorized representative issues the NTP, if necessary, and a copy of the approved contract to the Lessor, within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority.
- h. Except for contracts with ABC of Fifty Thousand Pesos (PhP 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract, including the NTP, if necessary in the PhilGEPS website, the website of the Procuring Entity or its electronic

procurement service provider, if any, and any conspicuous place in the premises of the Procuring Entity within ten (10) days from issuance.

ii. Venue

- a. The BAC sends the RFQ to at least three (3) venues within the vicinity of the selected location. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.
- b. The venue being offered by the Lessor with the Lowest Calculated Quotation shall then be rated in accordance with the technical specifications prepared, pursuant to the following:

**TABLE OF RATING FACTORS FOR LEASE OF VENUE**

	<b>RATING FACTORS</b>	<b>WEIGHT (%)</b>	<b>RATING</b>
<b>I.</b>	<b>Availability</b>	<b>100</b>	
<b>II</b>	<b>Location and Site Condition</b>		
	1. Accessibility	(50)	
	2. Parking space	(50)	
		<b>100</b>	
<b>III.</b>	<b>Neighborhood Data</b>		
	1. Sanitation and health condition	(25)	
	2. Police and fire station	(25)	
	3. Restaurant	(25)	
	4. Banking and Postal	(25)	
		<b>100</b>	
<b>IV.</b>	<b>Venue</b>		
	a. Structural condition	(20)	
	b. Functionality		
	a. Conference Rooms	(10)	
	b. Room arrangement (e.g., single, double, etc.)	(5)	
	c. Light, ventilation, and air conditioning	(5)	
	d. Space requirements	(5)	
	c. Facilities		
	a. Water supply and toilet	(4)	
	b. Lighting system	(5)	
	c. Elevators	(4)	
	d. Fire escapes	(4)	
	e. Fire fighting equipment	(4)	
	f. Internet and Telecommunications	(4)	
	g. Audio visual equipment	(5)	
	d. Other requirements		

	a. Maintenance	(5)	
	b. Attractiveness	(5)	
	c. Security	(5)	
	e. Catering Services	(5)	
	f. Client's satisfactory rating	(5)	
		<b>100</b>	
<b>I. Availability</b>			
<b>I.</b>	<b>Availability</b>	X (.5) =	
<b>II.</b>	<b>Location and Site Condition</b>	X (.1) =	
<b>III.</b>	<b>Neighborhood Data</b>	X (.05) =	
<b>IV.</b>	<b>Venue</b>	X (.35) =	
<b>FACTOR VALUE</b>			

**Note:** Weight of each rating factor may be changed as long as total weight per classification is equivalent to 100. Figures in parenthesis are samples. Procuring Entity must determine passing rate before inviting bids from Lessors. A bid is determined to be responsive if it is equal to or higher than the passing rate.

- c. Compliance rating with technical specifications may be conducted through ocular inspection, interviews, or other forms of due diligence.
- d. Upon determination of the responsiveness of the quotation, the BAC recommends to the HOPE the award of contract in favor of the Lessor with the Single or Lowest Calculated and Responsive Quotation.
- e. Within a period not exceeding fifteen (15) calendar days from receipt, the HOPE approves or disapproves the BAC's recommendation. In case of approval, the HOPE immediately issues the NOA to the Lessor. In case of disapproval, such should be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.
- f. The Lessor immediately enters into contract with the Procuring Entity upon receipt of the NOA. Upon transmission of the signed contract, the HOPE or his duly authorized representative immediately signs the contract if all the relevant documentary requirements are submitted.
- g. The HOPE or his duly authorized representative issues the NTP, if necessary, and a copy of the approved contract to the Lessor, within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority.
- h. Except for contracts with ABC of Fifty Thousand Pesos (Php 50,000.00) and below, the BAC, through the Secretariat, posts for information purposes the NOA, contract, including the NTP, if necessary in the PhilGEPS website, the website of the Procuring Entity or its electronic procurement service provider, if any, and any conspicuous place in the premises of the Procuring Entity within ten (10) days from issuance.

### **What are the documentary requirements from Suppliers for Negotiated Procurement?**

The BAC must require the following documents from Suppliers for Negotiated Procurement, except for Negotiated Procurement under Sections 53.1 (Two-Failed Biddings), and 53.5 (Agency-to-Agency) of the 2016 IRR of RA 9184.

Types of Negotiated Procurement	Mayor's/ Business Permit	Professional License	PhilGEPS Reg. Number	Income/ Business Tax Return	Omnibus Sworn Statement
A. Emergency Cases (Section 53.2)]	✓			✓ For ABCs above P500K	✓
B. Take-Over of Contracts (Section 53.3.2; for new bidders)	✓	✓	✓		
C. Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services (Section 53.6)	✓	✓	✓	✓ For ABCs above P500K	
D. Small Value Procurement (Section 53.9)	✓	✓	✓	✓	✓
E. Lease of Real Property Or Venue (Section 53.10)	✓		✓	✓ Except for gov't agencies as lessors	

For individuals engaged under Sec. 53.6, 53.7 and 53.9 of the IRR of RA 9184, only the BIR Certificate of Registration shall be submitted in lieu of DTI Registration and Mayor's Permit.

The BAC shall indicate in the RFQ or RFP at what stage of the procurement process these requirements must be submitted, i.e., submission of offer/s, evaluation of offer/s, before issuance of NOA or prior to payment. Procuring Entities already maintaining an updated file of any of the bidder's above-mentioned requirements, whether through the PhilGEPS Certificate of Registration and Membership or its own records, may no longer require its re-submission.

### Are bid, performance and warranty securities required for Negotiated Procurement?

Submission of bid securities may be dispensed with.

Performance and/or warranty securities are required for the following types of negotiated procurement:

Types of Negotiated Procurement	Performance Security (PS)	Warranty Security (WS)
Two Failed Biddings	✓	✓
Emergency Cases	Procuring Entity may require PS depending on the nature of the procurement project.	Procuring Entity may require WS depending on the nature of the procurement project.
Take-over of Contracts	✓	✓
Small Value Procurement	Procuring Entity may require PS depending on the nature of the procurement project.	Procuring Entity may require WS depending on the nature of the procurement project.

SECTION 5

# Guidelines on Contract Implementation for the Procurement of Goods



## Contract Implementation for the Procurement of Goods

### Legal Reference

2016 IRR, Section 42 and Annex "D" provide the rules on contract implementation and termination.

### What is covered by Contract Implementation?

Contract implementation covers the following milestones:

1. Effectivity of the contract;
2. Supplier's performance of its contractual obligations;
3. Procuring Entity's performance of its contractual obligations, as specified in the contract;
4. Final acceptance or project sign-off;
5. All other related activities; and
6. Payment by the Procuring Entity.

#### **TIP: Let's make things easier**

The PMO or end-user unit or implementing unit should determine the period of contract implementation during the procurement planning stage, and include it in the PPMP. In determining the contract implementation period, it must ensure that the supplier is given ample time to undertake any preparatory activity/ies necessary for it to comply with the conditions of the contract.

### When shall a contract be deemed effective?

As discussed in *Step 8, Section 3 of this Manual*, unless otherwise specified in the contract, a contract is effective on the date it is signed by both parties, i.e. the Procuring Entity and the winning bidder/Supplier. However, all notices called for by the terms of the contract are effective only upon receipt of those notices by the successful bidder.

#### **TIP: Let's make things easier**

The PMO or end-user unit must ensure that the Chief Accountant of the procuring entity issues a CAF for the project. Only with a CAF can the contract be valid.

The Chief Accountant must also sign the contract as a witness.

## Warranty

### Legal Reference

2016 IRR, Section 62.1.

### What is the purpose of a Warranty?

A Warranty is required in the procurement of goods to ensure that the supplier, manufacturer or distributor, as the case may be, will correct any manufacturing defect.

### What is the Warranty requirement for Goods?

For the procurement of goods, a warranty shall be required from the contract awardee for a minimum period of three (3) months, in the case of Expendable Supplies, and one (1) year, in the case of Non-Expendable Supplies, after the acceptance by the Procuring Entity of the delivered supplies.

The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least one percent (1%) **but not to exceed five percent (5%)** of every progress payment, or a special bank guarantee equivalent to at least one percent (1%) **but not to exceed five percent (5%)** of the total contract price. The special bank guarantee must be contract specific, that is, it shall be executed for the special purpose of covering the warranty for the subject procurement contract. If the warranty period is longer than the minimum period of three (3) months for Expendable Supplies and one (1) year for Non-Expendable Supplies, the period beyond the minimum period need not be covered by retention money or special bank guarantee.

After the lapse of the minimum period, the Procuring Entity must release the retention money or special bank guarantee, provided that the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met.

### When shall Goods be considered defective?

Goods are considered defective when they are "unfit for the use for which it is intended," or "its fitness for such use is diminished to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it..." (**Civil Code of the Philippines Article 1561**). A defect can either be:

1. A patent defect, which is one that is apparent to the buyer on normal observation. It is an apparent or obvious defect. For example, a ballpen that does not write is patently defective.
2. A latent defect, which is one that is not apparent to the buyer by reasonable observation. A latent defect is "hidden" or one that is not immediately determinable. For example, a ballpen that writes .75 kilometers instead of the expected 1.5 kilometers, has a latent defect.

Both latent and patent defects are covered by the warranty expressly required in R.A. 9184 and its 2016 IRR. This means that the Procuring Entity may proceed against the warranty whenever any of these defects are determined to be present in the goods procured, and the same are determined within the period covered by the warranty. However, wear and tear due to normal usage of the goods is excluded from the coverage of the warranty.

The Procuring Entity should promptly notify the supplier in writing of any claims arising under the warranty. Upon receipt of such notice, the supplier should, within the period specified in

the contract and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the Procuring Entity. If the supplier, having been notified, fails to remedy the defects within the period specified in the contract, the Procuring Entity may then proceed to call upon the warranty security, without prejudice to any other rights which it may have against the supplier under the contract and under the applicable law.

**Are there instances where partial release or reduction of the required warranty may be done by the Procuring Entity?**

Yes, a partial release or reduction of the warranty may be allowed in the case of partial deliveries. In this case, the warranty periods will vary among the various lots. The warranty for goods delivered ahead will lapse earlier than the succeeding deliveries. The retention money or a portion of the special bank guarantee covering the warranty for goods received or delivered ahead may thus be released. The effect is that there will be partial releases of the retention money or special bank guarantee to coincide with the lapse of the warranty period for each delivered lot.

However, the warranty must be in the form of retention fee equivalent to one percent (1%) of every progress payment. For example, in the case of a procurement transaction allowing partial deliveries and progress payment for each delivery, the amount of the warranty for the first partial delivery may be released after the lapse of the warranty period for such first delivery. The remaining goods that are still under warranty will be covered by a warranty fee equivalent to one percent (1%) of each progress payment.

## Amendment to Order

### What is an Amendment to Order?

An Amendment to Order refers to any necessary adjustment within the general scope of the contract in any one or more of the following aspects in order to fully meet the requirements of the project:

1. Drawings, design or specifications of the goods, provided that:
  - a. The goods to be furnished are to be specifically manufactured for the government in accordance therewith;
  - b. The change is an improvement of the goods and advantageous to the government;
  - c. It is done at no extra cost; and
  - d. It is not prejudicial to the losing Bidders in the sense that such change/s could not have been foreseen during the conduct of the bidding and would have significantly affected the other bidders' bids;
2. The method of shipment or packing;
3. The place of delivery;
4. The place of performance of the services;
5. Additional items needed and necessary for the protection of the goods procured, which were not included in the original contract; or
6. Any other change affecting the specifications or scope of work of the goods and/or services to be procured.

Such amendment may or may not result to an increase or a decrease of the contract price, and/or an extension or reduction of the delivery period. However, the amendment should not have the result of changing the subject matter of the contract or the specifications of the goods or services, in any material aspect and to such an extent that, if introduced during the bidding stage, may have had a significant effect on other bidders' bids, because this situation would actually require another bidding activity, except if the original procurement was done through an alternative method that did not involve a bidding.

### When can the Procuring Entity issue an Amendment to Order?

Amendments to Order may be issued by the Procuring Entity at any time during contract implementation, provided that such adjustment is required to fully meet the requirements of the project. Any of the following circumstances may serve as basis for such amendment/s:

1. Emergency cases, fortuitous events or unforeseen contingencies arising during project/contract implementation, and such contingencies have an impact on the procurement at hand, such as:
  - a. Changes in the conditions affecting the project, *e.g.*, a change in the place of delivery;

- b. Time is of the essence in the implementation of the project, and any changes require immediate implementation; and
  - c. Additional requirements have been identified as necessary for the protection of the goods procured, such as changes in the packaging of the goods, or additional items have become necessary to ensure that the goods are sufficiently protected from the elements;
2. When the contract does not reflect the real intention of the parties due to mistake or accident, and the amendment is necessary to reflect the parties' intention; and
  3. Other analogous circumstances that could affect the conditions of the procurement at hand.

**Are corresponding adjustments in contract price and/or delivery schedules allowed?**

Yes. If an amendment to order increases or decreases the cost of, or the time required for executing any part of the work under the original contract, an equitable adjustment in contract price and/or delivery schedule should be mutually agreed upon between the parties concerned, and the contract should be modified in writing. It is required, however, that any increase in contract price must not exceed ten percent (10%) of the original contract price. Otherwise, the procurement should be subject to another bidding, unless the original procurement was done using any of the alternative methods that did not involve bidding.

Moreover, in the adjustment of the price, the supplier and the Procuring Entity must ensure that the principle of "no loss, no gain" is applied, such that neither party gains or loses anything from the resulting price adjustment.

**What rules shall govern price adjustments due to Amendment to Order?**

If the amendment to order consists of additional items, the price adjustment shall be based on the unit prices in the original contract for items of goods similar to those in the original contract. If the contract does not contain any rate applicable to the additional items, then suitable prices shall be mutually agreed upon between the parties, based on prevailing market prices.

Any request for payment by the supplier for additional items must be accompanied by a statement with the approved supporting forms, giving a detailed accounting and record of the amount for which it claims payment.

If the amendment to order consists of a change in drawings, design or specifications of the goods, method of shipment or packing, or place of delivery, the price adjustment shall be equivalent to the corresponding value of the change, based on prevailing market prices.

**Who are involved in the issuance of an Amendment to Order?**

The following parties are involved in the issuance of an Amendment to Order:

1. The PMO or end-user or implementing unit;
2. The supplier/manufacturer/distributor;
3. The procurement Unit/office; and
4. The HoPE or his duly authorized representative.

### **Methodology: How is an Amendment to Order issued?**

The following steps are undertaken in the issuance of an Amendment to Order:

1. The PMO or end-user or implementing unit determines the existence of condition/s that require an amendment to order.
2. The PMO or end-user or implementing unit discusses with the supplier/manufacturer/distributor regarding the adjustments in contract price and/or delivery schedule, if necessary.
3. The PMO or end-user or implementing unit drafts the contract amendment containing the agreements reached with the supplier/manufacturer/distributor.
4. The PMO or end-user unit secures a CAF for the procurement, to be attached to the contract amendment when this is submitted to the HoPE for approval.
5. The contract amendment is submitted to the HoPE or his duly authorized representative, for approval, with the approval process following the same timelines prescribed by the 2016 IRR and this Manual for contract approval.

Upon approval by the HoPE or his duly authorized representative, the PMO or end-user or implementing unit notifies the supplier/manufacturer/ distributor to proceed with the work/delivery of items in accordance with the amendment. It shall also notify the procurement unit/office of such approval, and furnish the latter with a copy of the amended contract.

6. The procurement unit/office posts the Amendment to Order in the PhilGEPS, the website of the Procuring Entity, and the latter's electronic procurement service provider, if any.
7. The supplier/manufacturer/distributor proceeds with the work/delivery of items in accordance with the amended contract.

### **Can a supplier proceed with the work under an Amendment to Order even if such Amendment to Order has not yet been approved?**

Under no circumstance shall a supplier proceed to commence work under any Amendment to Order unless the same has been approved by the Head of the Procuring Entity concerned or his duly authorized representative.

As an exception to the rule, the Regional Director/Head concerned may authorize the immediate start of work under any Amendment to Order in the event of emergencies to avoid detriment to public service, or damage to life and/or property, or when time is of the essence. His authorization, however, is valid only up to the point where the cumulative increase in the contract cost which has not yet been fully approved by the Head of the Procuring Entity or his duly authorized representative does not exceed five percent (5%) of the original contract cost. Moreover, the corresponding Amendment to Order must immediately be prepared and submitted for approval to the Head of the Procuring Entity or his duly authorized representative. For an Amendment to Order involving a cumulative amount exceeding five percent (5%) of the original contract price, no work thereon shall be commenced unless the same has been approved by the Head of the Procuring Entity concerned or his duly authorized representative. However, the said cumulative amount should not exceed ten percent (10%) of the original contract price. **(2016 IRR, Annex "D")**

Payment for any work or delivery done in accordance with an Amendment to Order shall not be made unless the approval of the Head of the Procuring Entity or his duly authorized representative has been secured.

## Suspension of Delivery

### Legal Reference

2016 IRR, Annex "D."

### What are the grounds for suspension of delivery or contract implementation?

The Procuring Entity may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period of time, as it deems necessary due to **force majeure or any fortuitous event** as defined in the contract.

### Are corresponding adjustments in contract price and/or delivery schedule allowed?

Yes, appropriate adjustments shall be made in the delivery or contract schedule, or contract price, or both, and the contract shall be modified accordingly. **(2016 IRR, Annex "D")**

When warranted, price adjustments may be made in accordance with the guidelines previously discussed in the immediately preceding section on "Amendment to Order."

### When shall the Supplier/Manufacturer/Distributor resume delivery and/or contract implementation?

Work must be resumed or delivery made either upon the lifting or the expiration of the suspension order. However, if the Procuring Entity terminates the contract covered by such order, resumption of work cannot be done.

### Who are the parties involved in the issuance of a Suspension Order?

The following parties are involved in the issuance of a Suspension Order:

1. The PMO or end-user or implementing unit;
2. The supplier/manufacturer/distributor; and
3. The HoPE or his duly authorized representative.

### Tip: Let's make doing things easier

#### On the resumption of suspended contracts

The procuring entity must either lift the suspension order or terminate the contract before the expiration of the suspension period. If the period of the order is allowed to expire, the supplier/manufacturer/ distributor shall automatically have the right to resume work, which may not be the intention of the PMO at that time.

### **Methodology: How is a Suspension Order issued?**

The following steps are necessary for the issuance of a suspension order:

1. The PMO or end-user unit or implementing unit determines the existence of a force majeure or fortuitous event that will be the basis for the issuance of a suspension order.
2. Based upon the findings and recommendation of the PMO or end-user, the HoPE issues a written order suspending the order or work, wholly or partly, for a certain period of time.
3. The supplier/manufacturer/distributor shall take all reasonable steps to minimize the costs allocable to the order or work covered by the order during the suspension.
4. The PMO or end-user unit or implementing unit discusses with the supplier/manufacturer/distributor any need for adjustments in the delivery or contract schedule and/or contract price, including any need to modify contract.
5. The PMO or end-user unit or implementing unit drafts the contract amendment containing the agreements reached with the supplier/manufacturer/distributor.
6. The contract amendment is submitted to the HoPE or his duly authorized representative, for approval.
7. Prior to the expiration of the suspension order, the PMO or end-user unit or implementing unit determines whether or not the grounds for suspension are still existent. If such grounds continue to exist, or if it is no longer practicable to complete the delivery or continue with the work, it shall cancel the delivery of the items subject of the suspension order, or terminate the work subject of the order, by written notice. If, however, the grounds for suspension no longer exist, and completion of delivery or continuation of the work may already be done, the PMO or end-user unit or implementing unit, with the approval of the HoPE or his duly authorized representative, shall lift the suspension order by written notice, thereby instructing the supplier/manufacturer/distributor to proceed with the delivery or work in accordance with the amended contract.

## Delays in Delivery and Liquidated Damages

### Legal Reference

2016 IRR Section 68, Annex "D," and the Civil Code of the Philippines Art. 2226.

### **What is the rule on the applicable period for the delivery of goods or performance of services?**

The supplier/manufacturer/distributor must deliver the goods or perform the services procured within the period prescribed by the Procuring Entity, as specified in the Contract.

If delays are likely to be incurred, the supplier/manufacturer/distributor must notify the Procuring Entity in writing. It must state therein the cause/s and duration of the expected delay. The Procuring Entity may grant time extensions, at its discretion, if based on meritorious grounds, with or without liquidated damages.

In all cases, the request for extension should be submitted before the lapse of the original delivery date. The maximum allowable extension shall not be longer than the initial delivery period as stated in the original contract.

### **What are Liquidated Damages?**

Liquidated damages are damages agreed upon by the parties to a contract, to be paid in case of breach thereof. **(Civil Code of the Philippines Art. 2226)**

### **What are the grounds for the imposition of Liquidated Damages?**

When the supplier fails to satisfactorily deliver the goods or services under the contract within the specified delivery schedule or project implementation schedule, inclusive of duly granted time extensions, if any, the supplier shall be liable for damages for the delay and shall pay the Procuring Entity liquidated damages, not by way of penalty, for every day of delay until such goods or services are finally delivered or performed and accepted by the Procuring Entity concerned. The Procuring Entity need not prove that it has incurred actual damages to be entitled to liquidated damages.

### **What is the amount of Liquidated Damages that may be imposed upon the supplier?**

The supplier must pay the Procuring Entity liquidated damages, not by way of penalty, an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods or services scheduled for delivery or performance for every day of delay. The liquidated damages will be imposed until such goods or services are finally delivered or performed and accepted by the Procuring Entity concerned.

In case the sum of liquidated damages reaches ten percent (10%) of the contract amount, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies open to it. The Procuring Entity may also take over the contract or award the same to a qualified supplier through negotiation. In addition to the liquidated damages, the erring supplier's performance security shall also be forfeited.

## **Methodology: How are Liquidated Damages imposed?**

The following steps need to be followed in the imposition of liquidated damages:

1. The supplier/manufacturer/distributor submits a written request to the PMO or end-user unit or implementing unit for an extension of the delivery or performance period, citing the reason/s for such delay.
2. The PMO or end-user unit or implementing unit either approves or disapproves the request for extension.
3. If the extension is granted, the liquidated damages may or may not be imposed and the supplier/manufacturer/distributor is informed of this in writing. The supplier/manufacturer/distributor is then asked to extend the validity of the performance bond, to conform to the extended period.
4. If, however, the request for extension is denied, the PMO or end-user unit or implementing unit informs in writing the supplier/manufacturer/distributor of such denial, and ensures that the said notice or communication is received by the latter within a reasonable time from receipt of the request for extension. In this case, the Procuring Entity imposes the liquidated damages in accordance with the provisions of the contract and the procedures outlined below.
5. If the supplier/manufacturer/distributor incurs delay and it does not request for an extension
  - a. The PMO or end-user unit or implementing unit informs, within a reasonable time from the first day of delay, the supplier/manufacturer/distributor that the Procuring Entity shall impose the liquidated damages agreed upon by the parties.
  - b. Upon delivery, the PMO or end-user unit or implementing unit and the Technical Inspection and Acceptance Committee records the delay in the inspection documents, noting therein the amount of the liquidated damages imposable on the supplier.
  - c. Upon payment, the amount of liquidated damages due is deducted from the total amount payable to the supplier, and the same shall be reflected in the DVs. Or, if the contract provides that the liquidated damages is to be collected from securities or warranties posted by the supplier, the PMO or end-user unit or implementing unit informs the official authorized to call on the securities or warranties about the delay and the corresponding liquidated damages imposable.

## Other Rules and Guidelines

### Legal Reference

2016 IRR Section 42.1 and Annex "D".

### Incidental Services

#### What are Incidental Services?

Incidental Services are those services ancillary to the supply of the goods, such as transportation and insurance, installation, commissioning, provision of technical assistance, training, and other such obligations of the supplier specified in the Contract and the bidding documents. In particular, these services may refer to any of the following:

1. Performance or supervision of on-site assembly and/or start-up of the supplied goods;
2. Furnishing of tools required for assembly and/or maintenance of the supplied goods;
3. Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
4. Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under the Contract;
5. Training of the Procuring Entity's personnel, at the supplier's plant and/or on-site, on assembly, start-up, operation, maintenance, and/or repair of the supplied goods; and
6. Any other related services necessary for completion of the project and indicated in the contract.

#### **Tips: Let's make doing things easier**

#### **On incidental services being in the contract**

The Incidental Services must be clearly specified in the contract, and identified as separate components from the goods to be supplied or services to be rendered, so that prices indicated on the price schedule shall be entered separately, in accordance with the ITB. The cost thereof should also be indicated in the contract.

### Spare Parts

#### What are Spare Parts?

Spare parts refer to extra components, equipment, tools, instruments or parts of machinery or apparatus that replace the ones that are damaged or worn out.

### **Tips: Let's make doing things easier**

#### **On spare parts**

The procuring entity may include the delivery of a limited supply of fast-moving and/or hard-to-find spare parts in the technical specifications when procuring heavy equipment or machinery. This is to ensure the continued use or operation of the equipment.

#### **What information is required from the Supplier with regard to spare parts of goods?**

The supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

1. Such spare parts as the Procuring Entity may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract;
2. Such spare parts that the Procuring Entity may be able to purchase from other suppliers/manufacturers but are compatible with the goods procured; and
3. In the event of termination of production of the spare parts:
  - a. Advance notification to the Procuring Entity of the pending termination, in sufficient time to permit the Procuring Entity to procure needed requirements; and
  - b. Following such termination, furnishing at no cost to the Procuring Entity the blueprints, drawings, and specifications of the spare parts, if requested.

The supplier may likewise be required to issue a Certification that spare parts, particularly those that are product-specific, shall continue to be manufactured by them within a period of time, *e.g.*, five (5) years, after the bidding date.

The above information shall be included in the Technical Bid.

### **Purchaser's Responsibilities**

#### **What are the Procuring Entity's responsibilities to the supplier/manufacturer/distributor if the latter requires coordination with other government entities for it to be able to perform its contractual obligations?**

Whenever the supply of goods and related services requires that the supplier/manufacturer/distributor obtain permits, approvals, and import and other licenses from local public authorities, the Procuring Entity may, upon request by the supplier/manufacturer/distributor, assist the latter in complying with such requirements in a timely and expeditious manner. However, the supplier/manufacturer/distributor shall bear the costs of such permits and/or licenses. On the other hand, the Procuring Entity shall pay all costs involved in the performance of its responsibilities, in accordance with the contract.

### **Prices**

#### **How much should the contract price be?**

The contract price must not vary from the price quoted by the supplier in its bid. This is based on the rule that the contract, as awarded, should not differ in any material aspect from the terms stipulated in the bidding documents, considering that these terms were the basis for the comparison of bids. Otherwise, the purpose bidding process would have been defeated.

### **In what denomination shall the contract price be stated?**

As a general rule, contracts must be denominated and paid in Philippine currency, except when the Procuring Entity agrees that obligations can be settled in any other currency. Allowing foreign currency is subject to the following conditions: **(Guidelines on Procurements Involving Foreign-Denominated Bids issued through GPPB Resolution No. 20-2005, Item 6)**

1. In case procurement is done through competitive bidding and offers are received in foreign currency, the foreign bid, in determining the contract price, must be converted to Philippine Peso based on the prevailing rate on the date of bid opening.
2. In case procurement is made through any of the alternative methods of procurement prescribed in the 2016 IRR that do not require competitive bidding, and offers are received in foreign currency, the Philippine Peso amount of the contract will be computed based on the exchange rate prevailing on the day of the signing of the contract.
3. In case of repeat order, the contract price, either in Philippine Peso or in foreign currency, must be the same as or lower than that in the original contract, and the price must still be the most advantageous to the Government after price comparison and verification.

### **Are contract prices fixed?**

Price escalation is generally not allowed. For the given scope of work in the contract as awarded, the price must be considered as a fixed price, except under extraordinary circumstances as determined by the NEDA in accordance with the Civil Code of the Philippines, upon recommendation of the Procuring Entity concerned, and upon prior approval of the GPPB. Any request for price escalation under extraordinary circumstances should be submitted by the concerned entity to the NEDA with the endorsement of the Procuring Entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

“Extraordinary circumstances” shall refer to events defined in the Civil Code of the Philippines, consistent with the guidelines issued by the GPPB. In particular, the Revised Guidelines for Contract Price Escalation issued by the GPPB provide that the term “extraordinary circumstances” shall refer to the following Articles of the Civil Code of the Philippines:

1. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which could be reasonably foreseen but are inevitable, such as, but not limited to the following: (a) typhoons; (b) thunderstorms; (c) flooding of lowly areas; and (d) vehicular accidents; provided that the following are present:
  - a. The cause of the extraordinary circumstances must be independent of the will of the parties;
  - b. The event must be either unforeseeable or unavoidable;
  - c. The event must be such as to render it difficult but not impossible for the supplier to fulfill his obligation in a normal manner or within the contemplation of the parties;
  - d. The supplier must be free from any participation in or aggravation of the injury to the Procuring Entity; and
  - e. The allowance for price escalation, should an ordinary fortuitous event occur, is stipulated by the parties or the nature of the obligation requires the assumption of risk.
2. Article 1250, as it pertains to Extraordinary Inflation or Deflation, which may refer to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed in accordance with the

Guidelines for Contract Price Escalation, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.

3. Article 1680, as it enumerated Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following: (a) fire; (b) war; (c) pestilence; (d) unusual flood; (e) locusts; and (f) earthquake; provided that the circumstances before, during and after the event shall be taken into consideration.

**What is the procedure to be followed when requesting for approval of price escalation?**

In the review and approval of a request for price escalation, the Procuring Entity should comply with the following conditions detailed in the Guidelines for Contract Price Escalation, before the same can be acted upon:

1. Endorsement. The HoPE concerned shall endorse the request for price escalation to the NEDA, through its Director-General, accompanied by the following documents:
  - a. Certification from the HoPE that the request for price escalation is justified in accordance with R.A. 9184, its IRR and the Guidelines for Contract Price Escalation;
  - b. A description of the nature of the requested price escalation as well as the identification of the specific legal and technical parameters stated in the Guidelines that have been complied with by the request;
  - c. Certified copy of the original contract including the scope of work and the original contract price as awarded;
  - d. Original cost estimates of the items, goods or components affected by the request for price escalation and the proposed escalated prices, as applicable to the type of the contract, including as summary computation of the requesting entity of the proposed escalated prices;
  - e. Original and, if applicable revised schedule of contract implementation;
  - f. Original request for price escalation submitted by the supplier to the Procuring Entity, including information on the quantity of materials/components and/or scope of work being proposed for price escalation;
  - g. Data on the price indices of the materials and goods, including the source of data used in the detailed computation of the proposed price escalation.
2. Two-Stage Review Process. The review process shall commence only after the NEDA has acknowledged the completeness of the request. A request for price escalation shall only be granted if it satisfies both the First Stage (Legal Parameters) and Second Stage (Technical Parameters) reviews of the NEDA.
3. Amount of Price Escalation to be Granted. The amount of escalation to be granted in the case of goods should only be the remaining amount over and above the thresholds as computed under the Second Stage review process.
4. Period and Frequency of Requests for Price Escalation. Requests for price escalation shall only be made for cost items already incurred by the supplier. No request for price escalation shall be made for prospective application. Further, price escalation shall only be granted to those items included in a specific request. Provided further, that requests for price escalation shall be made not shorter than six (6) months reckoned from the start of the contract implementation, and not shorter than six (6)-month period thereafter. For contracts wherein the duration is shorter than six (6) months, the request for contract price escalation shall be made after the completion of the contract.

5. **Misrepresentation.** Any misrepresentation made by the Procuring Entity or the supplier in any stage of the processing of a particular request for price escalation shall cause the automatic denial/disapproval of said claim.
6. **Recommendation/Approval.** The NEDA shall, upon completion of its review pursuant to the Guidelines for Contract Price Escalation, submit its recommendation to the GPPB for appropriate action. The GPPB shall then approve/act upon the request for price escalation during one of its meetings, to be attended by the Head of the Procuring Entity concerned or his duly authorized representative/s.

## Payment

### What is the method of payment for contracts for the procurement of Goods?

The method and conditions of payment must be specified in the contract. However, the following guidelines may be considered by the Procuring Entity in preparing the contract provisions regarding payment:

1. As a general rule, no advance payment, or any payment made prior to the delivery and acceptance of goods, shall be made to any supplier/manufacturer/distributor, subject to the following exceptions:
  - a. When there is prior approval by the President;
  - b. For procurement of services where requirement of down payment is a standard industry practice, such as: hotel and restaurant services, use of conference/seminar and exhibit areas, and lease of office space;
  - c. For procurement of goods required to address contingencies arising from natural or man-made calamities; and
  - d. Upon submission of an irrevocable letter of credit or bank guarantee issued by a Universal or Commercial Bank.

### How's that again?

#### On payments upon termination of a contract

Payment on a *quantum meruit* basis may be made in favor of the supplier/manufacturer/distributor in case of contract termination for any cause other than engaging in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the contract.

"Quantum meruit" means "as much as he deserves." It is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under these circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished. **(Black's Law Dictionary, Fifth Edition)**

2. Partial payment of the contract price will only be allowed if the contract provides/allows for partial or staggered delivery of goods procured, and such partial payment must correspond to the value of the goods delivered and accepted;
3. Payment must only be made after the appropriate inspection and acceptance procedures, as mandated by existing government rules and regulations, have been complied with by the Procuring Entity; and
4. Payment must be made in accordance with prevailing accounting and auditing rules and regulations.

**When may an advance payment be made to a private supplier/manufacturer/distributor?**

In accordance with P.D. No. 1445, advance payment may be made only after prior approval of the President, and it should not exceed fifteen percent (15%) of the contract amount, unless otherwise directed by the President. Prior approval by the President is not necessary in the following cases:

- a. In contracts entered into by the Procuring Entity for the following services where requirement of down payment is a standard industry practice: (i) hotel and restaurant services; (ii) use of conference/seminar and exhibit areas; and (iii) lease of office space;
- b. For procurement of goods required to address contingencies arising from natural or man-made calamities in areas where a "State of Calamity" has been declared by appropriate authorities; and
- c. When the supplier submits an irrevocable letter of credit or bank guarantee issued by a Universal or Commercial Bank.

In the case of item (a) above, a single advance payment not exceeding fifty percent (50%) of the contract amount is allowed. In the case of item (b) above, an advance payment not exceeding fifteen percent (15%) of the contract amount is allowed, unless otherwise directed by the President. For item (c) above, the amount of advance payment should not exceed fifteen percent (15%) of the contract amount; and the irrevocable letter of credit or bank guarantee must be equivalent to the amount of advance payment requested.

All progress payments should first be charged against the advance payment until the latter has been fully exhausted, unless otherwise approved by the President. **(Memorandum Order No. 172, dated 19 May 2005)**

**When must payment be made?**

Payments must be made promptly by the Procuring Entity, but in no case later than **sixty (60) days** after the supplier's request/s for payment shall be made in writing, accompanied by an invoice describing, as appropriate, the goods delivered and/or services performed, by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract, as well as upon inspection and acceptance of the goods by the appropriate Technical and Inspection Committee. In addition, the Procuring Entity shall ensure that all accounting and auditing requirements are met prior to payment.

**In what currency must payment be made?**

As discussed in relation to Prices above, as a general rule, contracts must be denominated and paid in Philippine currency, except when the Procuring Entity agrees that obligations can be settled in any other currency. Allowing foreign currency is subject to the following conditions: **(Guidelines on Procurements Involving Foreign-Denominated Bids issued through GPPB Resolution No. 20-2005, Item 6)**

1. In case procurement is done through competitive bidding and offers are received in foreign currency, the foreign bid, in determining the contract price, must be converted to Philippine Peso based on the prevailing rate on the date of bid opening.
2. In case procurement is made through any of the alternative methods of procurement prescribed in the 2016 IRR that do not require competitive bidding, and offers are received in foreign currency, the Philippine Peso amount of the contract will be computed based on the exchange rate prevailing on the day of the signing of the contract.
3. In case of repeat order, the contract price, either in Philippine Peso or in foreign currency, must be the same as or lower than that in the original contract, and the

price must still be the most advantageous to the Government after price comparison and verification.

If a foreign currency denominated contract is payable in Philippine currency, the contract may contain a provision allowing the BSP reference rate at the time of payment or on the date of opening of the Letter of Credit to be used to convert the foreign currency denominated amount to Philippine Pesos, but the same should in no case exceed the ABC. This will be the basis for the payment in pesos. Furthermore, if the amount payable in Philippine currency is greater than the Peso value of the contract price, such increase must not be more than the allowable variance mandated by GPPB Guidelines, reckoned as a percentage of the peso amount as of bid opening date. Projected exchange rate fluctuations based on BSP forecasts must be factored in by the Procuring Entity in determining the ABC, to ensure that the project cost reflects currency values at the time of project implementation.

#### **Are incentive bonuses allowed?**

No. No incentive bonus, in whatever form or for whatever purpose, must be allowed. **(2016 IRR, Section 42.5)**

### **Taxes and Duties**

#### **Who shall be responsible for the payment of taxes and other duties?**

A foreign supplier must be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed up to the delivery of the goods to the Project Site as specified in the contract.

A local supplier must also be entirely responsible for all taxes, duties, license fees, and other related expenses, incurred until delivery of the contracted goods to the Procuring Entity.

### **Subcontracts**

#### **Is subcontracting allowed for the procurement of goods and services?**

Generally, a supplier may be allowed to subcontract a portion of the contract or project. However, the supplier should not be allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed the maximum allowed by the Procuring Entity as indicated in the bidding documents. The bidding documents must specify what are considered as significant/material component(s) of the project.

All subcontracting arrangements must be disclosed at the time of bidding, and subcontractors must be identified in the bid submitted by the supplier. Subcontracting is limited to twenty percent (20%) of the project in accordance with the Bidding Documents.

Any subcontracting arrangements made during project implementation and not disclosed at the time of the bidding shall not be allowed. The subcontracting arrangement shall not relieve the supplier of any liability or obligation under the contract. Moreover, subcontractors are obliged to comply with the provisions of the contract and shall be jointly and severally liable with the principal supplier, in case of breach thereof, in so far as the portion of the contract subcontracted to it is concerned.

Subcontractors are also bound by the same nationality and disclosure of relations requirements that applies to the principal suppliers.

## **Standards**

### **What standards shall be applied in determining the quality of the goods supplied?**

The goods supplied under the contract must conform to the standards mentioned in the technical specifications, which must preferably be Philippine standards, or standards specified by the Bureau of Product Standards of the DTI. If there is no Philippine standard applicable, the goods must conform to the authoritative standards appropriate to the goods' country of origin. Such standards must be the latest issued by the concerned institution.

## **Packaging**

### **What manner of packaging shall be followed by the supplier?**

The supplier must provide such packaging of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract and in accordance with existing industry standards. The packaging must be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packaging case size and weights must take into consideration, where appropriate, the distance and remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

The packaging, marking, and documentation within and outside the packages must comply strictly with such special requirements as must be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the Procuring Entity. Moreover, the outer packaging must contain a "Packing List" which must reflect the actual contents of the package.

## **Insurance**

### **What is the extent of insurance coverage for Goods?**

The goods procured must be fully insured by the supplier in a freely convertible currency against loss or damage incidental to their manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Contract.

## **Transportation**

### **Who shall be responsible for the transportation, insurance and duties of Goods procured?**

The contract must contain provisions on who will bear the cost of transportation and insurance (as well as customs duties in case of importation). For this purpose, the specific Incoterm must be used and identified in the contract. The Incoterm also defines the point at which the risk of loss or damage to the goods passes from the seller to the buyer. The Procuring Entity shall identify which terms are most responsive to the requirements of the project.

If the Supplier is required under the Contract to deliver the goods cost, insurance and freight (CIF), carriage and insurance paid (CIP) or delivered duty paid (DDP), it shall arrange and pay for the transport of the goods to the port of destination or such other named place of destination in the Philippines, as shall be specified in the contract. It will also have to pay for the cost that will be incurred in the transport of these goods, the cost to be included in the contract price.

If the supplier is required under the contract to transport the Goods to a specified place of destination within the Philippines, defined as the Project Site, it will arrange and pay for the

transport of the goods to such place of destination. It must also pay for insurance and storage, and related costs. These costs must be included in the Contract Price.

The Procuring Entity is encouraged to enlist the assistance of an accredited customs broker or forwarder in all importation.

## Inspection and Tests

### What is the scope of the Procuring Entity's right to inspect and test the Goods procured?

The Procuring Entity or its representative has the right to inspect and/or to test the goods to confirm their conformity to the contract specifications at no extra cost to it. The bidding documents and the contract must specify what inspections and tests are required by the Procuring Entity, and where these are to be conducted. The Procuring Entity must notify the supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

The inspections and tests may be conducted on the premises of the supplier or its subcontractor(s), at point of delivery, and/or at the goods' final destination. If conducted on the premises of the supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, must be provided by the supplier to the inspectors at no charge to the Procuring Entity.

The Procuring Entity must bear its own costs and expenses incurred in connection with its attendance at inspections, including, but not limited to, all traveling and board and lodging expenses.

The Procuring Entity may require the supplier to carry out any test and/or inspection not required by the contract but deemed necessary to verify that the characteristics and performance of the goods comply with the technical specifications, codes and standards under the contract. However, the reasonable costs and expenses incurred by the supplier in the carrying out of such test and/or inspection will be added to the contract price. Furthermore, if such test and/or inspection impedes the progress of manufacturing and/or the supplier's performance of its other obligations under the contract, due allowance will be made in respect of the delivery dates and completion dates and the other obligations so affected. These tests shall be conducted by a government testing laboratory, or, where there is none for the particular item being procured, in any testing laboratory accredited by the DTI. The supplier must provide the Procuring Entity with a report of the results of any such test and/or inspection. These results will be conclusive of the quality of the items and not subject to further dispute between the parties.

The Procuring Entity may reject any goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The supplier should either rectify or replace such rejected goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to the contract.

The supplier should agree in the contract that neither the execution of a test and/or inspection of the goods or any part thereof, nor the attendance by the Procuring Entity or its

### **Tips: Let's make doing things easier**

#### **On the inspection of delivered goods**

The appropriate Technical Inspection and Acceptance Committee of the Procuring Entity must commence the inspection and acceptance process within twenty-four (24) hours from delivery of the goods, and shall complete the same as soon as practicable.

Pertinent COA regulations on technical inspection and acceptance procedures shall be considered in the conduct of such inspection and acceptance by the procuring entity's authorized inspectors.

representative, shall release the supplier from any warranties or other obligations under the contract.

## Intellectual Property Rights

### Shall the Procuring Entity be liable for infringement of intellectual property rights arising from the use of the goods procured?

The Procuring Entity should not be liable for any infringement of intellectual property rights arising from the use of the goods procured. In case there are third-party claims of such infringement of patent, trademark, or industrial design rights, the supplier must hold the Procuring Entity free and harmless against such claims. These terms should be expressed in the contract.

## Limitations of Liability

### What is the extent of the supplier's liability for damages?

Except in cases of criminal negligence or willful misconduct, and in the case of infringement of intellectual property rights, and unless otherwise specified in the contract, the supplier is generally not liable to the Procuring Entity, whether in contract, tort or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion does not apply to any obligation of the supplier to pay liquidated damages to the Procuring Entity. This is without prejudice to any other liability, penalty or appropriate sanction that may be imposed upon the supplier under R.A. 9184 and other applicable laws.

## Termination for Default

### What are the grounds for termination for default?

Any of the following conditions shall constitute as a ground for termination of the contract for default:

1. There being no force majeure, the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;
2. As a result of force majeure, the supplier is unable to deliver or perform any or all of the goods or services, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after the receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased;
3. The supplier fails to perform any other obligation(s) under the contract; or
4. The supplier, in the judgment of the Procuring Entity, has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the contract.

### How's that again?

#### On contract termination and damages

Termination of a contract for default is without prejudice to other remedies available to the procuring entity for breach of contract, such as payment of liquidated and other damages, if there are grounds for the latter.

If the contract is not wholly terminated, the supplier shall continue to deliver the remaining goods or to perform the remaining services contracted.

**How does the Procuring Entity proceed with the procurement in case of a contract termination due to default?**

If the Procuring Entity terminates the contract in whole or in part, due to default, it may procure from third parties, through the appropriate alternative method of procurement, goods or services similar to those undelivered. The supplier that defaulted will be liable to the Procuring Entity for any excess costs for such similar goods or services.

**Termination for Insolvency**

**What remedy does the Procuring Entity have when a supplier is unable to perform his obligations due to bankruptcy or insolvency?**

The Procuring Entity may at any time terminate the contract by giving written notice to the supplier, if the supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the supplier.

**Termination for Convenience**

**May termination be allowed for reasons other than those attributable to the supplier?**

The Procuring Entity, by written notice sent to the supplier, may terminate the contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the Procuring Entity's convenience, the extent to which performance of the supplier under the contract is terminated, and the date upon which such termination becomes effective.

**What circumstances may constitute sufficient grounds to terminate a contract for convenience?**

Any of the following circumstances may constitute sufficient grounds to terminate a contract for convenience:

1. If physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible, as determined by the Head of the Procuring Entity;
2. The Head of the Procuring Entity has determined the existence of conditions that make project implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies;
3. Funding for the project has been withheld or reduced by higher authorities through no fault of the Procuring Entity; or
4. Any circumstance analogous to the foregoing.

Also see the Guidelines on Termination of Contracts approved by the GPPB in Resolution No. 018-2004, dated December 22, 2004.

**What effect shall termination for convenience have on pending deliveries?**

The goods that are complete and ready for shipment within thirty (30) days after the supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the contract terms and prices. For the remaining goods, the Procuring Entity may elect:

### **How's that again?**

#### **On the assignment of contractual obligations and the entry of non-bidders into the procurement process**

Assignment of contractual obligations or the contract itself may generally not be done because this will enable a non-bidder to become a party to the contract. This arrangement will make a mockery of the public bidding process, so that one who was not declared eligible to bid and did not participate in the bidding process will end up as the contract awardee, although indirectly.

Moreover, assignors will only add to the number of parties that the procuring entity has to deal with, thereby complicating contract implementation. This could also be a problem if litigation becomes necessary to enforce the contract.

1. To have any portion completed and delivered at the contract terms and prices; and/or
2. To cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services and for materials and parts previously procured by the supplier.

If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for Goods specially manufactured for the Procuring Entity which cannot be sold in the open market, it shall be allowed to recover partially from the contract, on a quantum meruit basis. The fact of loss must be established before recovery may be made.

### **Assignment**

#### **May the Supplier assign a contract, or any of its rights or obligations arising from the contract, to a third party?**

As a general rule, the supplier may not assign the contract, or any of its rights or obligations arising from the contract, to a third party, except with the Procuring Entity's prior written consent.

### **Blacklisting**

The blacklisting of suppliers must conform to the GPPB Guidelines issued for this purpose. As such, reference should be made to the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants, approved by the GPPB in Resolution 09-2004, dated August 20, 2004.

# General Procurement Activities and Timelines



## Earliest and Maximum Timeline for Goods

Below is the recommended earliest possible time, and the maximum period allowed under the 2016 IRR for the procurement of Goods and Services. **(2016 IRR, Annex C)**

Procurement Activity	Minimum Calendar Days Recommended <sup>15</sup>	Operational Timeline	Maximum Calendar Days Allowed	Operational Timeline	Conditions / Remarks
Pre-Procurement Conference	1 CD	Day 0	<i>Whenever necessary</i>	0	Optional for ABC of ₱2,000,000.00 and below
Advertisement or Posting of Invitation to Bid	7 CDs	Days 1 to 7	7 CDs	Day 1 to 7	
Pre-Bid Conference	1 CD	Day 8	<i>Whenever necessary</i>	Day 8 to 40	<ul style="list-style-type: none"> <li>Optional for ABC below ₱1,000,000.00</li> <li>Not Earlier than 7 CDs from Advertisement / Posting</li> <li>12 CDs before Deadline of Submission and Receipt of Bids</li> </ul>
Deadline of Submission and Receipt of Bids / Bid Opening	1 CD	Day 20	45 CDs	Day 52	
Bid Evaluation	1 CD	Day 21	7 CDs	Day 53 to 59	
Post-Qualification	1 CD	Day 22	45 CDs	Day 60 to 104	
Approval of Resolution/Issuance of Notice of Award	1 CD	Day 23	15 CDs	Day 105 to 119	
Contract Preparation and Signing	1 CD	Day 24	10 CDs	Day 120 to 129	
<i>[Approval of contract by higher authority]</i>	<i>[1CD]</i>	<i>[Day 25]</i>	<i>[20 or 30 CDs]</i>	<i>[Day 130 to 149 or Day 130 to 159]</i>	<i>If necessary.</i>
Issuance of Notice to Proceed	1 CD	Day 25	7 CDs	Day 130 to 136	
	<b>25 CDs</b>		<b>136 CDs</b>		<i>Excluding Approval of Higher Authority</i>
	<b>26 CDs</b>		<b>156 or 166 CDs</b>		<i>Including Approval of Higher Authority</i>

<sup>15</sup> The minimum period of one-calendar day is recommended only for procurement activities without any prescribed Abmininum period under R.A. 9184 and its 2016 IRR.



# Case Study



## Case Study: Procurement of Goods

ABC Agency advertised an IB for procurement of one thousand (1,000) units of desktop computers, with an ABC of PhP 20,000,000.00. The deadline for submission of bids was scheduled on October 24, 2015 at 10:00 a.m., and the opening of bids at 10:15 a.m. on even date.

Around 9:00 a.m., strong rains started to pour within Quezon City where the ABC Agency is located. Around 9:45 a.m., water started flooding the area and a work suspension announcement was given by the Department Secretary to which ABC Agency is attached. Immediately, the BAC Chairperson, with the consent of the rest of the BAC members instructed the BAC Secretariat to take custody of the bids to be submitted at 10:00 a.m., and re-schedule the opening of bids on the following day - October 25, 2016, same time. Four bidders were able to personally submit their bids by 10:00 a.m., and these were received and secured by the BAC Secretariat. The BAC Secretariat, upon taking custody of the bids, announced that the bid opening is re-scheduled on October 25, 2016 at 10:15 a.m., and posted a Notice of Postponement at the PhilGEPs website.

At 9:00 a.m. on October 25, which was before the scheduled time of bid opening, another bid was submitted to the BAC Secretariat, which the latter accepted. At 10:15 a.m., all five bids were opened. The first four bids submitted on October 24 came from Bidders D, E, F, and G, respectively; while the fifth bid submitted on that day came from Bidder H. During the preliminary examination of bids, all bids were found compliant with the eligibility requirements. The BAC considered Bidder E's submission of a mere commitment to extend a Credit Line when awarded the contract, as substantial compliance to the "committed Line of Credit" requirement. All bidders were rated "passed" for all the requirements in the first (technical component) envelope. Consequently, all the second (financial component) envelopes were likewise rated "passed." After reading the financial bids, Bidder H appeared to have submitted the LCB at PhP 15,000,000.00. Bidder D followed at PhP 16,500,000; while Bidders E, F and G submitted bids at PhP 17,000,000, PhP 17,300,000, and PhP17,500,000 respectively. The Bid Form submitted by Bidder D indicated its bid at PhP 16,500,000 in figures, but "Seventeen Million Five Hundred Thousand Pesos" in words. The BAC considered the PhP 16,500,000 amount in figures as the correct bid, after confirming with Bidder D's representative who was present during the bid opening.

After examining the financial bids, the BAC found arithmetical corrections in the Price Schedule of Bidder D. The price per item at PhP 15,300.00, inclusive of VAT, when multiplied by 1,000 is equivalent to PhP 15,300,000. Thus, the PhP 16,500,000 bid was corrected to PhP 15,300,000 after evaluation. The Abstract of Bids as Calculated thus showed the following ranking:

Bidder H	PhP15,000,000.00	-	1 <sup>st</sup>
Bidder D	PhP15,300,000.00	-	2 <sup>nd</sup>
Bidder E	PhP17,000,000.00	-	3 <sup>rd</sup>
Bidder F	PhP17,300,000.00	-	4 <sup>th</sup>
Bidder G	PhP17,500,000.00	-	5 <sup>th</sup>

The BAC will proceed to postqualify Bidder H. What acts, if any, are not consistent with the provisions of the 2016 IRR of R.A. 9184?

### Analysis:

1. The BAC Secretariat should not have accepted the bid of Bidder H as it was submitted past the deadline of submission of bids on October 24, 2015. It must be noted that

there was no extension given for the submission of bids. Only the opening of bids was re-scheduled on October 25, 2016, and not the deadline for submission of bids.

2. Bidder E should have been declared ineligible. The 2016 IRR requires a "committed Line of Credit", not a mere commitment issued by a bank to extend a credit line when the bidder is awarded the contract later on. In view of this, the first envelope of Bidder E should have been rated "failed," and its second envelope must not have been opened.
3. When the Bid Form submitted by Bidder D was read, the BAC should have considered the amount in words (Seventeen Million Five Hundred Thousand Pesos) over the amount in figures (PhP 16,500,000) as the correct bid.
4. However, after bid evaluation and correction, the BAC found that the correct bid of Bidder D is PhP 15,300,000.00. Considering that Bidder H's bid must be rejected, Bidder D must be declared the bidder with the LCB. Consequently, the BAC must postqualify Bidder D, not Bidder H.