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**TO :** Heads of Departments, Bureaus, Offices and Agencies of the National Government, including State Universities and Colleges, Government-Owned or Controlled Corporations, Government Financial Institutions, and Local Government Units

**SUBJECT :** Guidelines on the Implementation of Early Procurement Activities (EPA)

## 1. SCOPE AND APPLICATION

- 1.1 The Guidelines on Early Procurement Activities shall apply to Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government-owned and/or Controlled Corporations (GOCCs), Government Financial Institutions, and Local Government Units (LGUs).
- 1.2 This Guidelines shall cover all types of procurement for goods, infrastructure projects and consulting services funded out of or by the General Appropriations Act (GAA), appropriations ordinance, corporate budget, or loan agreement in case of Foreign-Assisted Projects (FAPs).
- 1.3 A Procurement Project shall refer to a specific or identified procurement covering goods, infrastructure project or consulting services. A Procurement Project shall be described, detailed, and scheduled in the Project Procurement Management Plan prepared by the agency which shall be consolidated in the procuring entity's Annual Procurement Plan (APP).
- 1.4 EPA is applicable for Procurement Projects undertaken through Competitive Bidding and Alternative Methods of Procurement, **except** for the following:
  - 1.4.1 Repeat Order (Sec. 51);
  - 1.4.2 Shopping (Sec. 52);
  - 1.4.3 Negotiated Procurement- Emergency Cases (Sec. 53.2);
  - 1.4.4 Negotiated Procurement- Take-Over of Contracts (Section 53.3); and
  - 1.4.5 Negotiated Procurement - Small Value Procurement (Sec. 53.9).
- 1.5 Procurement Projects to be funded from lump-sum funds in the National Expenditure Program (NEP) wherein the recipients and the corresponding amounts have not been identified or approved, such as contingent funds, are **excluded** from the conduct of EPA, except those to be funded from:

- 1.5.1 the Local Government Support Fund administered by the Department of Interior and Local Government; and
- 1.5.2 the Budgetary Support to Government Corporations administered by the Department of Budget and Management (DBM).

## **2. PREPARATORY ACTIVITIES**

- 2.1 The procuring entity (PE) shall complete all the appropriate preparatory activities such as, but not limited to, cost-benefit analysis, feasibility studies, market research, and detailed engineering designs, regulatory clearances and right of way acquisitions for civil works projects prior to the approval of the indicative APP.
- 2.2 The indicative APP must be duly approved by the Head of the Procuring Entity (HoPE) and submitted to:
  - 2.2.1 the DBM in case of national government agencies and GOCCs;
  - 2.2.2 the respective governing boards for further approval in case of GOCCs under the Governance Commission for GOCCs(GCG) and submission to the latter; or
  - 2.2.3 the *Sanggunian* in case of LGUs.
- 2.3 The indicative APP shall be posted on the agency's Transparency Seal pursuant to DBM Circular Letter No. 2018- 8 dated 30 July 2018.
- 2.4 As clarified under Government Procurement Policy Board (GPPB) Circular 05-2018 dated 18 May 2018, the Certificate of Availability of Funds shall not be required prior to the commencement of EPA.
- 2.5 The PE shall expressly provide in the bidding documents and through PhilGEPS posting that the Procurement Project is undertaken through EPA. The PE shall likewise ensure that the prospective bidders are properly informed, through the bidding documents and during the pre-bid conference, of all the implications of a Procurement Project undertaken through EPA. This shall include, but not limited to the:
  - 2.5.1 rules and procedure of EPA;
  - 2.5.2 fixed price rule in procurement;
  - 2.5.3 extension of the bid validity and security;
  - 2.5.4 validity of the eligibility requirements prior to the award of contract;
  - 2.5.5 conditions of award; and
  - 2.5.6 date of earliest delivery.

## **3. IMPLEMENTING GUIDELINES**

- 3.1 EPA shall refer to the conduct of procurement activities, from posting of the procurement opportunity, if required, until recommendation of the Bids and Awards Committee (BAC) to the HoPE as to the award of the contract, for goods to be delivered, infrastructure projects to be implemented and consulting services to be rendered in the following fiscal year, pending approval of their respective funding sources.

- 3.2 The award of contract for Procurement Projects undertaken through EPA may be made only upon:
- 3.2.1 approval and effectivity of their respective funding sources, to wit: (i) GAA; (ii) Corporate Budget; (iii) Appropriations Ordinance; or (iv) loan agreement in the case of FAPs; or
  - 3.2.2 the reenactment of the previous year's budget which constitutes the current year's authorized budget, when authorized by the Constitution, law or rules.
- 3.3 PEs are encouraged to undertake EPA to ensure the timely delivery of goods, implementation of infrastructure projects and rendition of consultancy services.
- 3.3.1 The conduct of EPA for nationally-funded Procurement Projects may commence as early as the submission of the NEP to Congress, usually in July. No EPA may be conducted without an indicative APP duly approved by the HoPE and the Multi-Year Contracting Authority (MYCA) issued by the DBM, in the case of multi-year projects.
  - 3.3.2 For Procurement Projects funded by corporate and local funds, the EPA may be undertaken from the time the proposed corporate or local budget has been submitted to the approving authority.
  - 3.3.3 In the case of Foreign-Assisted Projects, the same may commence:
    - 3.3.3.1 from the approval of the National Economic and Development Authority (NEDA) Board as evidenced by the official notice of approval issued by the NEDA Secretariat to the implementing agency; or
    - 3.3.3.2 upon issuance of a document or instrument issued by the foreign donor or financing institution explicitly stating that a loan is to be made available to the Philippines, usually through the Department of Finance, or any of its agencies or instrumentalities with borrowing authority pending final approval of the loan.
- 3.4 Rules for Procurement Projects to be funded from a Source Agency and Implemented by a Recipient Agency.
- 3.4.1 For Procurement Projects that are included in the budget of an agency (source agency) but shall be released directly to another agency (recipient agency) pursuant to a special provision in the NEP, the special provision shall be the basis of the recipient agency to conduct EPA.

Such projects shall be included in the indicative APP of the recipient agency.

For example:

Funds for the Basic Educational Facilities project under the Department of Education (DepEd) but is directly released to the Department of Public Works and Highways (DPWH), which shall implement the project.  
 Funds for the Farm-to-Market Road Projects of the Department of Agriculture also directly released to the DPWH, which shall implement the project.

3.4.2 For Procurement Projects funded in the budget of an agency (source agency) but to be implemented by another agency (recipient agency), a Memorandum of Understanding (MOU) between them shall be the basis of the recipient agency for the conduct of EPA. The MOU shall state that the source agency:

3.4.2.1 has proposed funds in the NEP for a Procurement Project;

3.4.2.2 identifies the recipient agency as the implementing unit for the said Procurement Project; and

3.4.2.3 authorizes the recipient agency to undertake EPA for the said Procurement Project.

Such Procurement Projects shall be included in the indicative APP of the recipient agency.

The MOU required above is limited to the conduct of EPA and is different from the Memorandum of Agreement that may be required for the actual implementation of the Procurement Project under a special or general provision in the GAA, rules of the source or recipient agency, or budgeting, accounting and auditing rules and regulations.

3.4.3 For Procurement Projects funded by forthcoming sub-allotments from the Central Office (CO) or Centrally-Managed Items, the written approval, in whatever form, from the CO identifying the implementing unit therefor with the corresponding amount and authorizing the conduct EPA shall be the basis for the conduct of said activity.

3.5 The source and recipient agencies shall ensure that any and all conditions or documents required to be met or submitted as a prerequisite for the release of funds or sub-allotment thereof shall be timely prepared to enable the implementing agency to award the contract within the prescribed period.

#### **4. BID VALIDITY**

The PE may request the bidders to extend the validity of their bid securities beyond one hundred twenty (120) calendar days, prior to their expiration, if the funding source for the Procurement Project has yet to be approved and made effective.

A change in the form of the bid security is allowed if this is made prior to the expiration of the bid validity sought to be extended.

If the bidder refuses to extend the bid validity, the PE shall reject the bid submitted by said bidder.

#### **5. PROCUREMENT TIMELINES**

The conduct of EPA from posting to recommendation of the BAC to the HoPE as to the award of the contract shall observe the mandatory timelines set forth in the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) No. 9184, including the period for re-bidding which shall be within fifteen (15) days after each

declaration of failure of bidding, which may be extended up to thirty (30) days upon approval of the HoPE.

## **6. REVISION OF THE INDICATIVE APP BEFORE AWARD OF CONTRACT**

6.1. As soon as the funding source for the Procurement Project has been approved, regardless of the stage of the EPA, the indicative APP shall be revised and approved in accordance with Section 7.2 of the 2016 revised IRR of RA No. 9184.

6.2. Upon approval of the APP and the commencement of the running of the period to award the contract and complete the procurement process, the HoPE may approve or disapprove the recommendation of the BAC.

In case of approval, the HoPE shall issue the Notice of Award to the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, and thereafter sign the contract.

In case of disapproval, the HoPE shall notify the BAC and the bidder in writing of such decision and the grounds thereof which shall be any of the grounds provided for under Section 41 of the 2016 revised IRR of RA No. 9184.

6.3. The final approved APP shall be submitted to the GPPB on or before the end of January of the budget year, and shall be posted in accordance with Executive Order No. 662, series of 2007, as amended (refer to Appendix 1 for the revised APP form for the conduct of EPA).

## **7. AWARD OF CONTRACT**

7.1. Notwithstanding the mandatory procurement timelines provided in Section 37 of RA No. 9184, Procurement Projects undertaken through EPA may be awarded upon approval and effectivity of the GAA, reenacted budget, appropriations ordinance, corporate budget or loan agreement, as the case may be.

For example:

Agency A's Approved Budget for the Contract (ABC) for its procurement of heavy duty shredders is 1 Million Pesos as authorized in the NEP and after undertaking EPA the contract price to be awarded amounts to 1 Million Pesos, Agency A may award the contract upon approval and effectivity of the GAA.

However, in the case of a reenacted budget, the PE may only award the contract for Recurring Procurement Projects and not for new Procurement Projects. Recurring Procurement Projects shall refer to Procurement Projects included in the previous year's budget which has been reenacted in or for the current year.

7.2. If the amount authorized for a Procurement Project has been reduced, the PE may still make an award if the contract price to be awarded is within the amount

authorized in the GAA, reenacted budget, appropriations ordinance, corporate budget, or loan agreement regardless of the posted ABC.

For example:

Agency A's ABC for its procurement of printers is 1.2 Million Pesos as authorized in the NEP and after undertaking EPA the contract price to be awarded is 1 Million Pesos. If the budget is reduced to 1 Million Pesos, Agency A may award the contract because the contract price to be awarded is within the amount authorized.

- 7.3. The HoPE shall not award any Procurement Project if the amount therefor has been withdrawn or in the event the amount authorized in the GAA, reenacted budget, appropriations ordinance, corporate budget, or loan agreement is lower than the amount of contract to be awarded.

For example:

- a. Agency A's ABC for its procurement of LED lighting system for its auditorium is 1.5 Million Pesos as authorized in the NEP and after undertaking EPA the contract price to be awarded is 1.3 Million Pesos. If the budget is withdrawn, Agency A shall NOT award the contract pursuant to Sec. 41(c) (iii) of the 2016 revised IRR of RA No. 9184.
  - b. Agency A's ABC for its procurement of desktop computers is 1 Million Pesos as authorized in the NEP and after undertaking EPA the contract price to be awarded is PhP 900,000. If the budget is reduced to PhP 800,000, Agency A shall NOT award the contract pursuant to Sec. 41(c) (iii) of the 2016 revised IRR of RA No. 9184.
- 7.4. In all instances, the HoPE has the authority to exercise the reservation clause under Section 41 of RA No. 9184, which grants the HoPE the right not to award the contract if, for any justifiable and reasonable ground, the award of the contract will not redound to the benefit of the government.
- 7.5. Notwithstanding the approval and effectivity of the GAA, reenacted budget, appropriations ordinance, corporate budget or loan agreement, as the case may be, PEs shall not award contracts for Procurement Projects requiring Special Allotment Release Order or Sub-Allotment Release Order until the same has been issued, secured or released.

## **8. TOLLING OR SUSPENSION OF THE PERIOD**

- 8.1. Pursuant to Section 85 of Presidential Decree No. 1445 or the State Audit Code, no contract involving the expenditure of public funds shall be entered into unless there is an appropriation. Accordingly, pending approval and effectivity of the GAA, corporate budget or appropriations ordinance, or the loan agreement in the case of FAPs, the following periods shall be tolled or suspended:

- 8.1.1 the fifteen-day (15 day) period for the HoPE to approve the Resolution of the BAC and to issue the Notice of Award provided under Section 37; and
  - 8.1.2 the three-month (3-month) period within which to complete the procurement process, from the opening of bids up to the award of contract, under Section 38 of RA No. 9184.
- 8.2. The period of time for the award of contract and termination of the procurement process, as the case may be, shall begin to run again upon the approval and effectivity of the GAA, reenacted budget, appropriations ordinance, corporate budget or loan agreement, as the case may be.

It shall not commence anew but rather, grants the HoPE the balance of the remaining period to award the contract or terminate the procurement process.

For example:

The BAC conducted the Bid Opening on 30 July and the BAC issued a Resolution recommending award of the contract on **11 October**.

The 3-month period to complete the procurement process and the 15-day period for the HoPE to approve the contract are suspended beginning **12 October**.

The HoPE has **seventeen (17) days** to complete the procurement process from the approval and effectivity of the funding source. This is the period remaining from the 3-month period to complete the procurement process, i.e., 90 days less 73 days (or the period covering July 30 to October 11).

If the approval and effectivity of the GAA is 1 January, the 3-month period to complete the procurement process and the 15-day period for the HoPE to approve the contract shall run again and the HoPE has (i) **15 days or until 16 January** to award; and (ii) **17 days or until 18 January** to complete the procurement process.

## 9. MONITORING

### 9.1 Annual Procurement Plan.

Projects undertaken through EPA shall be reported in the APP under a column separate from the regular procurement activities (refer to Appendix 1 for the revised APP form for the conduct of EPA).

### 9.2 Procurement Monitoring Report.

Awards made under EPA shall be reported in the Procurement Monitoring Report (PMR) under a column separate from the regular procurement activities (refer to Appendix 2 for the revised PMR form for the conduct of EPA).

### 9.3 Agency Procurement Compliance and Performance Indicators (APCPI).

Under Indicator 9 on Compliance with Procurement Timeframes under Pillar III of the APCPI, the PE's compliance shall be adjusted considering the tolling of the periods as allowed.

## **10. EFFECTIVITY**

This Circular shall take effect immediately.

SGD  
**LAURA B. PASCUA**  
*GPPB Chairperson Alternate*