GUIDELINES ON PROCUREMENTS INVOLVING FOREIGN-DENOMINATED BIDS, CONTRACT PRICES AND PAYMENT USING LETTERS OF CREDIT

1. POLICY STATEMENT

Pursuant to Section 61 of Republic Act No. 9184 and its counterpart provision in the Implementing Rules and Regulations Part A, for the given scope of work in procurement contracts as awarded, all bid prices shall be considered as fixed prices and, therefore, not subject to price escalation during contract implementation, except under extraordinary circumstances. Thus, to ensure that this policy is carried out, it is required, as a matter of general rule and procedure, that all contracts be denominated and paid in Philippine currency; except when the procuring entity agrees that obligations shall be settled in any other currency at the time of payment, subject to conditions provided for under these guidelines.

2. SCOPE AND APPLICATION

These guidelines shall apply to procurement of goods involving foreign denominated bids, contract prices in foreign and local currencies, and payments for such contracts when done through Letters of Credit (LCs).

3. PURPOSE

3.1 These guidelines are formulated: (1) to implement the policy on fixed-pricing under Section 61 of Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act," (2) to provide procedural details in the submission and evaluation of bids when the bidders are all-foreign or mixed local and foreign; and finally, (3) to address situations where, by the use of letters of credit as mode of payment to manufacturers, suppliers and/or distributors, there is a resulting increase/decrease of the actual amount of expenditure of the procuring entity resulting from the appreciation/depreciation of the peso from the day of bid opening through the time of the opening of LC until the time of its negotiation, including the accrual of expenses by reason of the opening of letters of credit.

4. PREPARATION OF BIDDING DOCUMENTS

4.1 The procuring entity shall include in the Bidding Documents, as a separate item in the Schedule of Requirements and in the Special Conditions of Contract, a provisional sum to cover the possible increase of the actual amount of expenditure of the procuring entity resulting from the appreciation/depreciation of the peso from the day of bid opening through the time of the opening of LC until the time of its negotiation, including the accrual of expenses by reason of the opening of letters of credit.

4.1.1 The provisional sum shall be a fixed nominal amount as may be determined by the procuring entity depending on the type of goods to be procured. However, the provisional sum shall not exceed ten percent (10%) of the Approved Budget for the Contract (ABC). The provisional sum shall be included in the Annual Procurement Plan. The same shall revert to the fund of the procuring entity as savings in case of non-use.

4.1.2 In the preparation of the Annual Procurement Plan, the procuring entity shall disaggregate, when applicable, the funds allocated for the project and the provisional sum. The sum total of both funds shall be the ABC.

4.2 The face value of the LC shall be determined in accordance with the following procedures which shall be stated in the bidding documents:

4.2.1 The amount of the foreign-denominated portion of the bid stated in the contract shall be converted to Philippine peso based on the foreign exchange rate at the date of the LC opening.

4.2.2 If at the date of LC opening, the said peso equivalent is lower than the peso amount stated in the contract, the face value of the LC shall be the full amount of the foreign-denominated portion of the bid stated in the contract.

4.2.3 If at the date of LC opening, the said peso equivalent is higher than the peso amount stated in the contract, the face value of the LC shall be the full amount of the foreign-denominated portion of the bid stated in the contract, in which case, the provisional sum shall be used to cover the difference.

4.2.4 If the effect of the foreign exchange fluctuation exceeds the provisional sum, the excess thereof shall be borne by the bidder; and the face value of the LC shall be the foreign equivalent of the peso contract price plus the provisional sum.

4.3 All charges for the opening of the LC and/or incidental expenses thereto (i.e., bank commission, documentary stamp tax, cable, etc.) shall be for the account of the supplier and shall be so stated in the bidding documents.

5. SUBMISSION AND EVALUATION OF BIDS

5.1 All bids may be denominated wholly in local currency or wholly in foreign currency or a combination thereof; provided, however, that foreign component of bids shall cover only imported goods as supported by import documents.

5.2 For purposes of bid evaluation and comparison, bids denominated, in whole or in part, in foreign currency shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening.

6. CONTRACT PRICES

6.1 As a general rule, Contracts shall be denominated and paid in Philippine currency, except when the procuring entity agrees that obligations shall be settled in any other currency, subject to conditions provided for under these guidelines.

6.1.1 In case procurement is done through competitive bidding and offers are received in foreign currency, the foreign bid shall, in determining the contract price, be converted to Philippine Peso based on the prevailing rate on the date of bid opening.

6.1.2 In case procurement is made through any of the alternative methods prescribed in the IRR-A of R.A. 9184 that do not require the conduct of competitive bidding, and offers are received in foreign currency, the Philippine Peso amount of the contract shall be computed based on the exchange rate prevailing on the day of the signing of the contract.

6.1.3 In case of repeat order under Section 51 of the IRR-A of R.A. 9184, the contract price, either in Philippine Peso or in foreign currency, must be the same as or lower than that in the original contract; *Provided, however,* that the price is still the most advantageous to the Government, after price comparison and verification.

7. PAYMENTS USING LETTERS OF CREDIT (LCs)

7.1 For procurement projects fully utilizing domestic funds, where the goods will be supplied by a local or foreign supplier, the procuring entity, may open LCs or similar instruments in favor of such local or foreign supplier.

7.2 In cases where the procuring entity has to incur additional expenses resulting from the opening of LC where it assumes the risk of foreign currency fluctuation from time of LC opening with the issuing bank until it is eventually negotiated with the foreign negotiating bank in the place of the foreign supplier, said expenses shall be covered by the provisional sum.

8. EFFECTIVITY

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.