

# REVISED GUIDELINES ON THE USE OF ORDERING AGREEMENT

## 1. PURPOSE

The guidelines are formulated to prescribe the rules and procedures to govern situations where the procurement by the national government, its departments, bureaus, offices and agencies, including State Universities and Colleges (SUCs), Government-Owned and/or –Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Local Government Units (LGUs) necessitate entering into ordering agreements for necessary and desirable goods that by its nature, use, or characteristic, the quantity and/or exact time of need cannot be accurately pre-determined; and, in case of expendable or non-expendable goods, it is inadvisable for the procuring entity to carry the same in stock or commit to purchase a certain quantity within a given period.

## 2. SCOPE AND APPLICATION

- 2.1. These guidelines shall govern the use of Ordering Agreement by all departments, bureaus, offices, and agencies of the national government, GOCCs, GFIs, SUCs, and LGUs for goods determined to be necessary and desirable to address and satisfy the needs of the procuring entities, but by its nature, use, or characteristic, the quantity and/or exact time of need cannot be accurately pre-determined.
- 2.2. Ordering Agreement may be used for expendable or non-expendable goods, and services for hotel accommodation, air travel, and repair and maintenance.
- 2.3. Services allowed to be subject of an Ordering Agreement shall be limited to those mentioned in Section 2.2, and shall not cover procurement of consulting services, and infrastructure projects.

## 3. DEFINITION OF TERMS

- 3.1. **Delivery Order Contract.** Refers to a contract that authorizes and obligates a supplier/service provider to deliver certain quantity or render a particular service within an agreed period and at a fixed price per unit, item or identified service pursuant to the Ordering Agreement entered into between the procuring entity and the supplier. The Delivery Order Contract shall trigger the exercise by the procuring entity of the option to purchase in the amount, quantity, and extent not exceeding those projected in the Order Agreement List and shall constitute the actual purchase by the procuring entity.

- 3.2. **Ordering Agreement.** A written agreement in the nature of an option contract between the procuring entity and the Lowest Calculated and Responsive Bidder granting the procuring entity the option to either place an order for any of the goods identified in the Order Agreement List or not buy at all, within a given period of time.
- 3.3. **Order Agreement List.** Refers to the list of goods, and their corresponding technical specifications, scope of work, projected quantities, and fixed prices, subject of the Ordering Agreement. This shall be limited to goods that are (i) identified to be necessary and desirable, but, by its nature, use, or characteristic, the quantity and/or exact time of need cannot be accurately pre-determined; and (ii) using an Ordering Agreement is most practical, economical, and advantageous for the procuring entity.

#### 4. GENERAL CONDITIONS

- 4.1. Ordering Agreement may be used only upon compliance with the following requirements:
- a) The Head of the Procuring entity (HOPE) determines that adopting an Ordering Agreement will be more advantageous for the procuring entity having considered the following:
    - (i) End-User Unit's certification that the goods in the Order Agreement List are necessary and desirable for the operations of the procuring entity, supported by the following documents:
      - 1. Document, such as, but not limited to, feasibility study, needs analysis, or historical data, establishing the need for the acquisition of the goods in the Order Agreement List; and
      - 2. Market study establishing the ABC for each of the goods;
    - (ii) Result of cost-benefit analysis supports the appropriateness of using Ordering Agreement by establishing benefits, such as, but not limited to the following:
      - 1. Stockholding or warehousing of goods and the costs and risks accompanying it will be significantly reduced or avoided;
      - 2. Additional cost will be lessened as the possibility of delay in the acquisition of the goods is minimized;
      - 3. The commitment by the supplier to immediately deliver at a short notice will translate to a more efficient means of supplying goods;

4. Procuring entity will benefit from the fixed price for the duration of the Ordering Agreement;
  5. Ordering at the time of actual need will result in the optimum usage of the ABC; or
  6. The benefits and advantages of lean and just-in-time procurements are achieved.
- (iii) The Order Agreement List is prepared in the most practical, efficient, and economical manner that will encourage competition among interested bidders in the relevant industry.
- b) The procurement shall be conducted following the procedures for Competitive Bidding provided in Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).
- 4.2. Prices indicated in the Ordering Agreement corresponding to the subject goods in the Order Agreement List shall be fixed for the duration of the agreement, regardless of increase or decrease in the prevailing market price at the time of actual purchase through the issuance of the Delivery Order Contract.
- 4.3. The Ordering Agreement shall contain (a) the Order Agreement List; (b) the terms and clauses applying to Delivery Order Contracts between the parties for its duration; and (c) methods for issuing and delivering/performing future orders under the Ordering Agreement.

## **5. PROCUREMENT PLANNING**

- 5.1. No procurement shall be undertaken under these guidelines unless the same is in accordance with the Annual Procurement Plan (APP) and the Project Procurement Management Plan (PPMP) prepared by the procuring entity. The procuring entity, in preparing its APP, shall include, for purposes of entering into an Ordering Agreement, an Order Agreement List, which shall remain unchanged, neither to be increased or decreased after advertisement and during its life span.
- 5.2. The APP shall indicate the types of items considered for inclusion in the Order Agreement List. In determining the items to be listed, the procuring entity shall carefully examine and identify its needs and the probable time, period, event, or occasion the ordering may take place using, whenever applicable, assessment of Total Cost of Ownership, Life Cycle Costing, and Value for Money analysis.
- 5.3. The Order Agreement List shall indicate the following information:
- a) Type and nature of each item;
  - b) Technical specifications or Scope of Work;
  - c) Estimated quantity of items or services;
  - d) Estimated contract price per item or service;

- e) Total ABC including budgetary allotments per type of product or service; and
  - f) Other appropriate information as may be necessary.
- 5.4. The estimated contract price per item or service shall be determined and prepared after careful consideration of variables and factors that may affect future market prices using historical data, market study, feasibility study, and/or net present value of money.
- 5.5. The estimated quantity of items or services shall be determined based on the expected number to be required by the procuring entity should the need arise. The estimated quantity shall be considered as the maximum quantity allowed to be purchased by the procuring entity, which the supplier or service provider is bound to deliver or perform pursuant to the Delivery Order Contract.

## **6. COMPETITIVE BIDDING**

- 6.1. The procuring entity shall conduct the bidding using the single stage, two-envelope procedure as prescribed in Sections 23 and 25 of RA 9184 and its IRR, whereby upon option of the procuring entity, bidders may be allowed to bid on a per item/lot/package basis as provided in the Order Agreement List. For this purpose, the procuring entity, through its BAC, shall prepare, when necessary, separate Technical Specifications/Scope of Work for every line item to be bid out and indicate, among others, an approved budget for each item, the estimated quantity it may procure when needed, and the requested delivery/performance lead time from execution of Delivery Order Contract or from any date determined by the procuring entity.
- 6.2. The Invitation to Bid shall indicate that the procurement will be subject to Ordering Agreement arrangement pursuant to these Guidelines.
- 6.3. The procedures and requirements for Competitive Bidding provided in RA 9184 and its IRR shall apply.

## **7. ORDERING AGREEMENT**

- 7.1. Within ten (10) calendar days from receipt by the winning bidder of the Notice of Award, the winning bidder or its duly authorized representative shall formally enter into an Ordering Agreement with the procuring entity for an amount of One Peso to be paid by the procuring entity as a consideration for the option granted to the procuring entity to buy the items in the Order Agreement List when the need arises.
- 7.2. Ordering Agreements shall not state or imply any agreement by the procuring entity to place future contracts or make orders with the supplier/service provider.
- 7.3. Ordering Agreements shall include the following: (a) Order Agreement List; (b) a fixed contract price per item/service specified in the Order Agreement

List; (c) delivery/service terms and conditions; (d) terms of payment; (e) specify that the perfection of the actual procurement contract shall be reckoned from the execution and issuance of the Delivery Order Contract; and (f) statement that upon the execution and issuance of the Delivery Order Contract, all rules and guidelines governing implementation of procurement contracts under RA 9184 and its IRR shall be applicable.

- 7.4. No modification of the Ordering Agreement during its lifetime shall be allowed.
- 7.5. Ordering Agreements, including the Order Agreement List, shall be valid only for the period stated in the Bidding Documents which, in no case shall exceed one (1) year from the time the Ordering Agreement was entered into and executed by the parties, and shall not be extended beyond its lifetime.
- 7.6. To guarantee the faithful performance by the supplier/service provider of its obligations under the Ordering Agreement, it shall post a performance security prior to the signing of the agreement based on the total contract price of the awarded items under the Ordering Agreement. The form and amount of performance security shall be those indicated in RA 9184 and its IRR.

## **8. DELIVERY ORDER CONTRACTS**

- 8.1. When the procuring entity has determined the necessity for one or more of the items covered in the Ordering Agreement and the need to actually order these, it shall require the delivery of the item identified in the Order Agreement List in such quantity or scope and at the fixed price for which it was awarded by executing a Delivery Order Contract in favor of the supplier/service provider to obligate the latter to deliver or perform according to the terms and conditions stated in the Ordering Agreement.
- 8.2. The procuring entity may execute as many Delivery Order Contracts for the same line item as may be needed within the validity of the Ordering Agreement; provided that subsequent Delivery Order Contracts shall have the same unit price as originally stated in the Ordering Agreement and shall not exceed the estimated quantity in the Order Agreement List.
- 8.3. There is no limit on the number of Delivery Order Contracts that may be executed or issued. However, the aggregate amount of all executed or issued Delivery Order Contracts shall not exceed the total contract price specified in the Ordering Agreement. No other costs are authorized unless otherwise specified in the Ordering Agreement.
- 8.4. The procuring entity may execute or issue Delivery Order Contracts requiring delivery to multiple destinations or performance at multiple locations.
- 8.5. For purposes of participation in other public bidding activities, the aggregate of the Delivery Order Contracts for a particular item satisfactorily completed by the supplier/service provider shall be considered as one (1) contract with the cumulative amount thereof as the total contract amount. In such case, the

date appearing on the certificate of acceptance issued by the procuring entity for the last delivery will be considered as the date of completion of the contract.

## **9. IMPLEMENTATION AND TERMINATION OF ORDERING AGREEMENTS**

- 9.1. The Warranty provision for goods under Section 62 of RA 9184 and its IRR shall be observed under the Ordering Agreement, and shall be posted for each Delivery Order Contract.
- 9.2. After receipt by the supplier/service provider of the Delivery Order Contract from the procuring entity, it shall deliver/perform the items within the period specified in the Ordering Agreement, unless a different time is provided in the Delivery Order Contract; in which case, the period stated in the latter shall prevail.
- 9.3. Extension of delivery/performance time shall be upon written request of the supplier/service provider and upon approval by the procuring entity after consideration of reasonable and justifiable causes.
- 9.4. Failure to deliver/perform within the agreed period, including any time extension, will make the supplier/service provider liable to the procuring entity for liquidated damages at least equal to one-tenth of one percent (.001) of the cost of the unperformed portion of the total amount of the awarded items under the Ordering Agreement for every day of delay.
- 9.5. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the total amount of the awarded items under the Ordering Agreement, the procuring entity shall rescind the same, without prejudice to other courses of action and remedies open to it.
- 9.6. Without prejudice to the provisions of applicable laws, rules, and guidelines, the Ordering Agreement shall automatically terminate under the following conditions:
  - a) When the total estimated quantity specified in the Ordering Agreement has been exhausted; or
  - b) When the specified duration of the Ordering Agreement has expired.
- 9.7. All other rules governing contract implementation and termination under RA 9184, its IRR, and relevant procurement policies shall be applicable.

## **10. REPEAT ORDER**

- 10.1. No Repeat Order for an item in the Order Agreement List shall be allowed until after the procuring entity has exhausted the estimated quantity for the same item specified therein or after the Ordering Agreement has expired, whichever comes first; and subject to the conditions provided in Section 51 of

RA 9184 and its IRR. For this purpose, the Repeat Order shall be availed of only within six (6) months from the date of the last or final Delivery Order Contract for a specific item where the estimated quantity has been exhausted, or, the expiration of the Ordering Agreement.

- 10.2. In case Repeat Order is allowed and resorted to, the twenty five percent (25%) maximum allowable quantity shall be based on the aggregate quantity of actual items ordered and delivered.

## **11. 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 of three (3) certified copies with the University of the Philippines Law Center.