



## RESOLUTION NO. 011-2006

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### **APPROVING AND ADOPTING THE INTERNAL RULES FOR THE EXERCISE BY THE GPPB OF ITS APPROVAL POWER UNDER EXECUTIVE ORDER NO. 423**

**WHEREAS**, Executive Order No. 423, Repealing Executive Order No. 109-A dated September 18, 2003, Prescribing the Rules and Procedures on the Review and Approval of All Government Contracts to Conform with Republic Act No. 9184, otherwise known as the “Government Procurement Reform Act” was signed on April 30, 2005;

**WHEREAS**, Section 4 of the above-mentioned executive promulgation provides that the Government Procurement Policy Board (GPPB) shall render an opinion on whether Government Contracts involving an amount of at least Five Hundred Million Pesos (P500M) fall within the exceptions from public bidding, and that an approval from the Director-General of the National Economic and Development Authority (NEDA) is also required to proceed with a specific alternative method of procurement under the exceptional cases provided by law;

**WHEREAS**, during the 1<sup>st</sup> GPPB meeting held on January 20, 2006, the representatives of Department of Justice (DOJ) and NEDA signified their positions that the authority to approve contemplated procurement undertakings within the scope of EO 423 is best lodged with the GPPB in recognition of its expertise in the field of procurement;

**WHEREAS**, in the said meeting, the GPPB, through Resolution No. 06-2006, agreed to request the Office of the President for an amendment of Section 4 of EO 423 making the GPPB the sole body to render an approval on whether the proposed procurement undertaking involving an amount of at least Five Hundred Million Pesos (P500M) falls within the exceptions from public bidding and that the proposed specific alternative mode of procurement is appropriate;

**WHEREAS**, pursuant to the aforementioned amendment, the GPPB deems it necessary to provide the rules for the exercise of its approval power under EO 423;

**WHEREAS**, the GPPB-Technical Support Office (GPPB-TSO) formulated the internal rules which shall govern the exercise by the GPPB of its power to approve procurement undertakings under EO 423, and the same were reviewed by the Inter-



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Agency Technical Working Group (IATWG) of the GPPB in its meeting on March 2, 2006;

**WHEREAS**, the said draft internal rules were presented for the consideration and approval of the GPPB in its 3<sup>rd</sup> meeting on June 14, 2006, and the said internal rules were duly reviewed and considered.

**NOW, THEREFORE**, for and in consideration of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to approve and adopt the **INTERNAL RULES FOR THE EXERCISE BY THE GPPB OF ITS APPROVAL POWER UNDER EXECUTIVE ORDER NO. 423**, attached hereto as Annex “**A**” and made an integral part hereof.

This resolution shall take effect immediately.

**APPROVED** this 14<sup>th</sup> day of June, 2006 at Pasig City, Philippines

(Sgd.)

**ROLANDO G. ANDAYA JR.**

Secretary

Department of Budget and Management

(Sgd.)

**ROMULO L. NERI**

Secretary

National Economic and Development  
Authority

(Sgd.)

**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

**DEPARTMENT OF NATIONAL  
DEFENSE**

(Sgd.)

**DEPARTMENT OF EDUCATION**

(Sgd.)

**DEPARTMENT OF HEALTH**



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(Sgd.)

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**DEPARTMENT OF THE INTERIOR  
AND LOCAL GOVERNMENT**

(Sgd.)

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**DEPARTMENT OF ENERGY**

(Sgd.)

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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

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**DEPARTMENT OF FINANCE**

(Sgd.)

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

(Sgd.)

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**DEPARTMENT OF TRANSPORTATION  
AND COMMUNICATIONS**

(Sgd.)

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**PRIVATE SECTOR REPRESENTATIVE**

Attested by:

(Sgd.)

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**LAURA B. PASCUA**  
OIC Board Secretary, GPPB  
Officer-in-Charge, GPPB-TSO



## **INTERNAL RULES FOR THE EXERCISE BY THE GPPB OF ITS APPROVAL POWER UNDER EO 423**

Pursuant to the provisions of Executive Order No. 423, the Government Procurement Policy Board (GPPB) hereby adopts and promulgates the following Rules governing its internal procedures particularly in the exercise of its powers to approve, for projects governed by EO 423, the use of alternative methods of procurement in accordance with Republic Act 9184 (RA 9184), otherwise known as the Government Procurement Reform Act and its Implementing Rules and Regulations Part A (IRR-A). These rules shall be known and may be cited as the Internal Rules for the Exercise by the GPPB of its Approval Power under E.O. 423.

### **Rule I Jurisdiction and Manner of Exercise of the Power of GPPB under EO 423**

**Section 1. GPPB Authority.** By virtue of the powers granted to it by E.O. 423, the GPPB shall either approve or disapprove the request of the Head of the procuring entity that the Project shall be procured through any of the alternative methods of procurement. The approval shall specify the appropriate alternative method under the given circumstances.

**Section 2. Issues to be resolved.** The resolution of the GPPB shall address only the issue on whether the circumstances of the contemplated procurement undertaking warrant the use of any of the alternative methods of procurement, in accordance with the provisions of RA 9184 and its Implementing Rules and Regulations Part A. Unless necessary in the determination of the legality and/or propriety of the use of the proposed alternative method of procurement, the resolution shall not discuss the technical and/or financial feasibility of the prospective project.

### **Rule II The GPPB Review Committee**

**Section 3. Creation and Function.** A Review Committee shall be created by the Government Procurement Policy Board (GPPB) to be known as GPPB Review Committee (GRC, for brevity) which shall be tasked to assist the former in carrying out its functions as mandated under Executive Order 423 and, specifically, in making



recommendations to the GPPB whether the contemplated procurement undertaking falls within the exceptions from public bidding.

**Section 4. Composition.** The GRC shall be composed of representatives from all the member-Departments of the GPPB who shall be designated as permanent committee members by their respective Department Heads, unless sooner revoked by said Department Head, or his/her service is discontinued, temporarily or permanently, by reason of death, resignation, retirement, suspension or leave. The representative shall at least be a Director in his/her Department and preferably with knowledge, experience, and/or expertise in the field of government procurement.

**Section 5. Chairperson and Alternate Chairperson.** The Chairperson and the Alternate Chairperson of the GRC shall at least be an Assistant Secretary of any of the Departments comprising the GPPB, preferably with knowledge, experience, and/or expertise in the field of government procurement. The GPPB shall designate the Chairperson and the Alternate Chairperson of the GRC to serve a renewable term of one (1) year from the time of appointment, unless his/her designation as committee member is sooner revoked by his Department Head or his/her service is discontinued, temporarily or permanently, by reason of death, resignation, retirement, suspension or leave.

**Section 6. Meetings and Committee Hearings.** The GRC shall meet as often as may be required depending on the number of cases received by it for review from requesting agencies. Committee Members, including the Chairperson and the Alternate Chairperson, shall be notified by the Secretariat of the Committee Hearings at least one (1) week before the scheduled date thereof. The meetings and the hearings of the GRC shall be presided by the Chairperson, and in his/her absence, by the Alternate Chairperson.

**Section 7. Quorum.** At least ten (10) members of the GRC, including the Chairperson and the Alternate Chairperson, who are in attendance shall constitute quorum for purposes of the conduct of its official functions. However, no meeting or hearing shall be conducted unless the Chairperson or the Alternate Chairperson is in attendance. The vote of at least ten (10) members of the GRC actually present and participating shall be necessary to approve or disapprove any matter submitted to it for consideration.

**Section 8. Secretariat and Technical Support Committee.** The GPPB-TSO shall function as the Secretariat and the Technical Support Committee of the GRC. As Secretariat, it shall be responsible for providing administrative support to the GRC, organizing and making all necessary arrangements for the GRC meetings and hearings, preparing the minutes of the said meetings and hearings, and preparing and ensuring proper documentation of the approval process, among others. As Technical Support Committee, it shall provide technical assistance to the GRC and shall be responsible for the following:

(a) Conduct the preliminary examination of the documents submitted by the procuring

entity, including the letter requesting for approval for the use of alternative methods of procurement, to determine completeness and compliance with these rules and or other requirements that may have been prescribed; (b) Draft GRC resolution recommending to the GPPB either the approval or disapproval of the request for resort to alternative methods of procurement as raised by the concerned procuring entity; (c) Draft the GPPB Resolution finally disposing of the said request of a procuring entity; and (d) exercise all other functions that may be required of it by the GRC in the efficient discharge of the latter’s tasks.

### **Rule III Review/Approval Procedures**

**Section 9. Letter-Request.** The Head of the Procuring Entity shall, in writing, request the approval of the GPPB on the use of any of the alternative methods of procurement under RA 9184. The Letter-Request shall state the name and the nature of the procurement project including all relevant facts as would establish the conditions that warrant or allow the resort to the alternative method of procurement which the procuring entity intends to use. The letter-request shall be addressed to the GPPB and filed with the Secretariat.

**Section 10. BAC Recommendation.** The Letter-Request shall be accompanied by a copy of the resolution of the Bids and Awards Committee (BAC) of the procuring entity recommending the use of alternative method of procurement, stating in clear and unequivocal terms the factual circumstances and the justification relied upon in resorting to the method sought to be utilized.

**Section 11. Determination of the Head of the Procuring Entity.** The Letter-Request shall also be accompanied by a written memorandum/resolution of the Head of the Procuring Entity stating that it has determined that the contemplated project falls within the exceptions from public bidding and that he/she approves the use of the alternative method of procurement recommended in the BAC resolution.

**Section 12. Other Pertinent Documents.** Other than those mentioned above, the requesting entity shall submit the necessary supporting documents, the list of minimum documents to be issued by the GPPB, which are necessary in the study by the GRC of its request. To the fullest extent possible, the procuring entity shall make a statement of the factual antecedents leading to the request, including the events and conditions that may form sufficient justification for resort to the alternative method of procurement sought to be utilized.

**Section 13. Initial Action.** After the receipt by the Technical Support Committee of the Letter-Request and documentary submissions, it shall determine the sufficiency or

insufficiency of the documents submitted and the justifications adopted for the use of the alternative method of procurement. If the submissions and justifications patently and materially lack merit or are unsubstantial to require consideration, or contrary to the clear provisions of the law, it shall require the procuring entity, within ten (10) calendar days from the date of submission of the Letter-Request and the other pertinent documents, to submit the lacking documents; and further substantiate the justifications in accordance with applicable laws.

**Section 14. When Request Deemed Finally Submitted/Filed.** The request is deemed submitted/filed for the consideration of the GRC upon the submission of all the documents required under Annex “A”. However, where initial action was taken by the Technical Support Committee to require the submission of additional documents, or to substantiate the justifications adopted in the Letter-Request, and/or to justify the request in accordance with the provisions of applicable laws, the request is deemed finally submitted for the consideration of the GRC upon the satisfactory compliance of all of the requirements prescribed by the Technical Support Committee.

**Section 15. Issuance of Notices of Hearing.** Within seven (7) calendar days from the date of final submission, the Technical Support Committee shall issue written notices to the members of the GRC and to the Head of the Procuring Entity notifying them of the date, time and place of the scheduled hearing. However, meetings other than for the purpose of conducting hearings may be called when the same is necessary to discuss matters pertaining to the procedures of the GRC or decide requests for reconsideration or clarification.

**Section 16. GRC Hearing(s).** In the interest of a more efficient and circumspect exercise of the review and approving powers of the GPPB, the GRC shall conduct a hearing where the procuring entity shall show how the contemplated procurement project falls within the exceptions from public bidding and to explain the appropriateness and applicability of the proposed alternative method of procurement to be used.

The GRC may, at any time during the hearing or review/approval process, ask questions from the procuring entity’s authorized representative to clarify certain issues relevant to the request and/or ask additional documents to substantiate the procuring entity’s position.

**Section 17. When Request is Deemed Submitted for GRC Resolution.** The request is deemed submitted for GRC Resolution upon the submission of the required additional documents arising from the hearing, if any, or upon the completion of the last hearing, whichever is later, in which case, no new facts or issues shall be considered by the GRC, except through the remedy of a request for reconsideration, when based on the grounds provided herein.



**Section 18. GRC Recommendation.** Within thirty (30) calendar days from the time the request is deemed submitted for GRC Resolution, the GRC shall, by way of a written Memorandum, make its recommendation to the GPPB. It shall make a summary of the relevant factual antecedents of the request and state in details its findings, including the provisions of law upon which the recommendation is based.

**Section 19. GPPB Resolution.** The GPPB shall deliberate on the recommendation of the GRC and resolve to either affirm or deny the recommendation of the GRC or to direct that another hearing be conducted for further review of the request. If the GPPB so decides to affirm the recommendation of the GRC, it shall do so by way of a Resolution stating, by reference, the findings of the GRC or explaining any modification or correction thereto. If it denies the recommendation of the GRC, it shall, in a Resolution, state its reasons for denying the recommendation. On the other hand, if it directs the conduct of further hearing, it shall identify in a Resolution the issues that may need further review and consideration by the GRC.

**Section 20. Required Vote.** The approval required under E.O. 423 shall be embodied in a resolution which shall reflect the vote of ten (10) members of the GPPB who are actually present and participating in the meeting called for the purpose. Any member may participate or vote through their representatives specially designated as such.

**Section 21. Disposition of Request.** No request by any procuring entity for approval on the use of any of the alternative methods of procurement shall be deemed to have been granted unless the required vote mentioned above has been attained.

#### **Rule IV Request for Reconsideration and/or Clarification**

**Section 22. Request for Reconsideration.** The Head of the procuring entity may, in writing, request for a reconsideration of the GPPB Resolution based on any or all of the following causes: (a) The resolution is not supported by the facts on record; (b) Newly discovered facts, which the procuring entity could not, with reasonable diligence, have discovered or known and produced during the review process and which if considered would probably give more substance or merit to the request; or (c) The resolution is contrary to provisions of law.

**Section 23. Request for Clarification.** The Head of the procuring entity may, in writing, request that the GPPB clarify their Resolution or the conditions or instructions prescribed therein.





**Section 24. Periods for Requests for Reconsideration and/or Clarification.** Within fifteen (15) calendar days from receipt by the procuring entity of the resolution of the GPPB denying the use of the proposed alternative method of procurement, the Head of the procuring entity may, in writing, request that a reconsideration and/or clarification be made, on the grounds aforementioned. No Request for Reconsideration may be given due course for the same ground, or for a different ground but which could have already been raised at an earlier opportunity.

**Section 25. Procedures for Requests for Reconsideration and/or Clarification.** The GRC shall convene within seven (7) calendar days from the time of receipt of the Request for Reconsideration or the Request for Clarification to deliberate on the said requests. It shall determine whether the request(s) merit(s) further consideration by the GPPB. If the request is meritorious it shall act on the same and make recommendations to the GPPB. Otherwise, it shall resolve to deny the same outright if there appears to be lack of sufficient ground for reconsideration/clarification or if the request is merely pro-forma.

#### **Rule V Mandatory Inhibition**

**Section 26. Mandatory Inhibition.** The representative of the GPPB member-Department which is the requesting entity or which directly supervises the requesting entity shall inhibit himself/herself during the deliberation of the request and shall be disqualified to cast his/her vote on the matter of granting or denying the request.

#### **Rule VI Miscellaneous Provisions**

**Section 27. Prescriptive Periods.** The periods herein set are merely prescribed to give the GRC and the GPPB a reference within which to accomplish their functions under EO 423 and these rules, and may be waived by the GRC and/or the GPPB at anytime when required by circumstances. When the period ends on a non-working day, the last day shall be the next working day.

**Section 28. Effectivity.** This Internal Rules for the Exercise by the GPPB of its Approval Power under E.O. 423 shall be effective immediately upon the approval of the GPPB, without need of publication; provided, however, that three (3) certified copies of the same shall be filed with the University of the Philippines Law Center.