



RESOLUTION NO. 03-2022

APPROVING THE REQUEST OF THE DEPARTMENT OF TRANSPORTATION ON THE USE OF A CUSTOMIZED BIDDING DOCUMENTS ADOPTING THE 6TH EDITION OF THE PHILIPPINE BIDDING DOCUMENTS AND THE RELEVANT CLAUSES OF THE 1999 EDITION OF THE FIDIC¹ CONDITIONS OF CONTRACT FOR THE PLANT AND DESIGN-BUILD OF THE ELECTRIC POWER TRANSMISSION LINE STRUCTURES REPLACEMENT INFRASTRUCTURE WORKS FOR THE MINDANAO RAILWAY PROJECT TAGUM-DAVAO CITY-DIGOS SEGMENT

WHEREAS, Republic Act (RA) No. 9184 otherwise known as the “Government Procurement Reform Act” took effect on 26 January 2003, while its 2016 revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 63 of RA No. 9184 and its 2016 revised IRR authorize the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules, and regulations, and amend its IRR, whenever necessary;

WHEREAS, Section 6 of RA No. 9184 provides for the standardization of procurement process and forms, thus:

To systematize the procurement process, avoid confusion and ensure transparency, the procurement process, including the forms to be used, shall be standardized insofar as practicable. For this purpose, the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which once issued shall be mandatory upon all Procuring Entities (PEs);

WHEREAS, Section 6.2 of the 2016 revised IRR of RA No. 9184 mandates PEs to use the Philippine Bidding Documents (PBDs), thus:

PEs are mandated to use the Generic Procurement Manuals, PBDs, and other standard forms of the GPPB. However, whenever necessary to suit the particular needs of the PE, modifications may be made, particularly for major and specialized procurement, subject to the approval of the GPPB;

WHEREAS, the Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects² provides that:

In the implementation of these guidelines, the GPPB may issue additional guidelines or introduce modifications thereto through the amendment of its specific provisions as the need arises, as well as formulate, approve, and disseminate standard bidding documents, forms, and evaluation documents, whenever necessary;

WHEREAS, on 25 September 2019, the GPPB issued Resolution No. 22-2019 confirming the approval of the request of the Department of Transportation (DOTr) to use the FIDIC Conditions of Contract for the Plant and Design-Build in the Design and Build Bidding Documents and the adoption of the customized Technical Compliance Evaluation Process in finding the Lowest

¹ Fédération Internationale Des Ingénieurs-Conseils.

² Annex “G” of 2016 revised IRR of RA No. 9184.

Calculated Responsive Bid for the Mindanao Railway Project: Tagum-Davao-Digos (MRP: TDD) Segment;

WHEREAS, on 15 January 2021, the GPPB-Technical Support Office (TSO) received a letter from the DOTr dated 12 January 2021, requesting for the approval of the use of the GPPB-approved Customized Bidding Documents for the MRP: TDD Segment in preparation of the Design and Build Contract Document for the National Grid Corporation of the Philippines Cable Rising Works (CRW) Project. The MRP: TDD-CRW is a component infrastructure work of the MRP: TDD for the replacement of certain electric power transmission line structures.

WHEREAS, on 29 April 2021, during a meeting³ between representatives of the GPPB-TSO, and the DOTr, the GPPB-TSO advised DOTr that it cannot adopt *in toto* the approved Customized Bidding Documents of the MRP:TDD for the MRP: TDD-CRW considering that the MRP: TDD was based on the 5th Edition PBDs, and it is financed by an official development assistance from China; thus, the shortlist of bidders for the Design and Build Contractor will be provided by the Chinese government. The MRP:TDD-CRW, on the other hand, is a project to be undertaken after the adoption of the 6th Edition of the PBDs for the Procurement of Goods and Infrastructure Projects has already taken effect pursuant to GPPB Resolution No. 15-2020. Said project will also be funded by the General Appropriations Act (GAA) thus, the bidders will be local contractors with working experience in the provision or modification, or replacement of electric power transmission;

WHEREAS, on 26 May 2021, the GPPB-TSO sent an electronic mail to the DOTr requesting the submission of the customized bidding documents for the MRP: TDD-CRW Project and necessary documents to facilitate the review and approval of the customized bidding documents;

WHEREAS, on 23 June 2021,⁴ the GPPB-TSO received from the DOTr the initial draft of the customized bidding documents for the MRP: TDD- Electric Power Transmission Line Structures Replacement Works (TLR) previously called MRP: TDD- CRW. On 25 June 2021, the DOTr sent via email a copy of the Matrix of Comparison between the previously approved Customized Bidding Documents for the MRP: TDD Project and the draft customized bidding documents for the MRP: TDD-TLR Project to assist the GPPB-TSO and DOTr on their line-by-line review;

WHEREAS, representatives of the GPPB-TSO and the DOTr, conducted line-by-line review sessions to ensure that the customized bidding documents are aligned with the mandatory provisions of RA No. 9184 and its 2016 revised IRR, and PBDs 6th Edition for Infrastructure Projects on the following dates:

1. 30 July 2021;
2. 25 August 2021
3. 01 October 2021; and
4. 27 October 2021

WHEREAS, during the 2nd Inter-Agency Technical Working Group (IATWG) Regular Meeting,⁵ the GPPB-TSO presented the proposed MRP: TDD-TLR customized bidding documents, and the DOTr made the following representations:

1. The MRP: TDD-TLR Project is funded by the GAA Fiscal Years 2020 and 2021 which remain valid;
2. The MRP: TDD-TLR pre-land acquisition ground investigation/surveys are ongoing with a target date of completion in March 2022, and the Right of

³ Conducted via Google Meet.

⁴ Submission via electronic mail.

⁵ Held on 17 February 2022 via Zoom.

Way acquisitions are expected to be completed by the third quarter of the year 2022;

3. Aside from being an accepted construction industry practice, the inclusion of Professional Indemnity Insurance (PII) in the customized bidding documents will provide protection for the contractor's detailed design and the interest of the DOTr; and
4. PII should cover both the foreign and local technical experts and the maximum amount for the premium is Ten Million Pesos (Php 10,000,000.00).

WHEREAS, in the same meeting, the members of the IATWG resolved to recommend to the GPPB the request of the DOTr to use the customized bidding documents for the procurement of the MRP: TDD-TLR Infrastructure Works;

WHEREAS, during the 2nd GPPB Meeting,⁶ the Board, upon recommendation of the IATWG, provisionally approved the use of the MRP:TDD-TLR customized bidding documents adopting the 6th Edition PBDs and relevant clauses of the 1999 FIDIC Yellow Book subject to the issuance by the DOTr of certification to the GPPB, prior to the posting of the customized bidding documents, that all provisions of the customized bidding documents do not limit the competition and do not violate any existing procurement law, rules, regulation, and associated laws, and issuances;

WHEREAS, during the same meeting, the GPPB agreed to submit their comments within seven (7) calendar days and if no substantial comments were submitted until 17 March 2022, the customized bidding documents will be deemed approved subject to the abovementioned condition;

WHEREAS, on 11 March 2022, the GPPB-TSO Secretariat Division received a comment from the representative of the Department of Public Works and Highways (DPWH) on Sub-Clause 18.5 of the Particular Conditions of Contract (PCC) of the customized bidding documents. The DPWH is of the view that inclusion of the PII in the customized bidding documents has no basis considering that there is no law that requires it. It was also raised that its inclusion in the customized bidding documents will not directly benefit the DOTr and in fact, will result in an additional cost for the DOTr because there is an insurance premium to be paid;

WHEREAS, during the 3rd GPPB Meeting,⁷ the GPPB-TSO presented the issue raised by the DPWH representative, and the following were noted during the discussion of the Board:

1. As represented by the DOTr, the PII is an accepted industry practice and its inclusion in the customized bidding documents is beneficial to both the contractor and the DOTr;
2. In the event that the PII is included in the customized bidding documents, it cannot be considered as an eligibility or regulatory requirement;
3. The DOTr shall clearly indicate in its customized bidding documents that the bidder who will be awarded the contract shall shoulder the insurance premium to ensure that the Contractor, and not the DOTr would bear the cost of the PII;
4. The proposed wording of the DOTr on the PCC Part A Appendix to Tender for Sub-clause 18.5 of the customized bidding documents:

⁶ Held on 10 March 2022 via Zoom.

⁷ Held on 07 April 2022 via Zoom.

Minimum amount of professional indemnity insurance:

Ten Million Pesos (Php 10,000,000).

For the avoidance of doubt, the cost of the premium for professional indemnity insurance shall (i) be borne by the Contractor and (ii) not be charged to the Employer or be included in any Statement.

5. The recommendation of the GPPB-TSO to include the following paragraph on the PCC Part B Sub-clause 18.5 of the customized bidding documents:

“The cost of obtaining and maintaining the professional indemnity insurance, expense consequent thereon or incidental thereto, shall be borne by the Contractor and in no case shall be form part of the contract price as the same shall not be included in the computation of the Approved Budget for the Contract.”

WHEREAS, after careful review and due deliberation, the Board approved the following:

1. Inclusion of the PII in the customized bidding documents for the MRP: TDD-TLR Project provided that the same shall be without additional cost to the DOTR, hence shall not be part of the computation of the ABC;
2. Harmonization of the recommended wordings by the GPPB-TSO and the DOTr on the PCC Part B Sub-clause 18.5 of the customized bidding documents and reflect the afore-mentioned decision; and
3. Deletion of the minimum amount of the premium for the PII in Sub-clause 18.5 of the PCC Part A Appendix to Tender of the customized bidding documents considering that the same shall be determined based on its required coverage;

Now, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **Us**, by law and other executive issuances, hereby **RESOLVE**, to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the principle-based approval of the DOTr request, subject to conditions, as follows:

1. Approval of the use by the DOTr of the customized bidding documents adopting the 6th Edition of the PBDs for Infrastructure Projects and relevant clauses of the 1999 Edition of the FIDIC Yellow Book, for the Procurement of Electric Power Transmission Line Structures Replacement Infrastructure Works for Mindanao Railway Project: Tagum –Davao City-Digos Segment, a copy of the approved Customized Bidding Documents for the MRP:TDD-TLR is attached hereto as Annex “A”;
2. The issuance of a certification by the DOTr, prior to the posting of the customized bidding documents, that all the provisions in the customized bidding documents do not limit competition and do not violate any existing procurement law, rules, regulations, and associated laws and issuances.

This Resolution shall take effect immediately.

APPROVED this 7th day of April 2022 at Pasig City, Philippines.

Sgd.

TINA ROSE MARIE L. CANDA
GPPB, Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

Sgd.

ROLANDO U. TOLEDO
Alternate to the Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF EDUCATION

Sgd.

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

Sgd.

DEPARTMENT OF HEALTH

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

Sgd.

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

Sgd.

DEPARTMENT OF TRADE AND INDUSTRY

Sgd.

DEPARTMENT OF TRANSPORTATION

Sgd.

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

Sgd.

PHILIPPINE SPACE AGENCY

PRIVATE SECTOR REPRESENTATIVE