



APPROVING THE COURSES OF ACTION RELATIVE TO THE PROPOSAL OF THE ANTI-RED TAPE AUTHORITY IN FURTHER STREAMLINING THE GOVERNMENT PROCUREMENT PROCESS

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 3 of RA No. 9184 provides for the governing principles on government procurement: transparency, competitiveness, streamlined procurement process, system of accountability, and public monitoring of the procurement process and implemented contracts;

WHEREAS, Section 63 of RA No. 9184 provides that the Government Procurement Policy Board (GPPB) is established to: (a) protect national interest in all matters affecting public Procurement, having due regard to the country's regional and international obligations; (b) formulate and amend, whenever necessary, the IRR and the corresponding standard forms for Procurement; (c) ensure that Procuring Entities (PEs) regularly conduct procurement training programs and prepare a procurement operations manual for all offices and agencies of government; and (d) conduct an annual review of the effectiveness of RA No. 9184 and recommend any amendments thereto, as may be necessary;

WHEREAS, Section 7 of RA No. 11032¹ provides for the creation of the Anti-Red Tape Authority (ARTA) which is mandated to administer and implement RA No. 11032 and its IRR, and to monitor and ensure compliance with the national policy on anti-red tape and ease of doing business in the country;

WHEREAS, upon the request of the ARTA to discuss the procurement timelines and consider the streamlining of government procurement processes, the following issues were discussed in the 1st Coordination Meeting between the GPPB-Technical Support Office (GPPB-TSO) and the ARTA on 29 February 2020:

1. Addressing the challenges of migration to electronic procurement (use of Cloud Computing Service);
2. Streamlining the timeline for the payment by the government relative to its procured project; and
3. Streamlining the procurement process.

WHEREAS, to further discuss the streamlining of the procurement process, particularly the post-qualification stage, the following matters were discussed in the 2nd Coordination Meeting between the GPPB-TSO and the ARTA on 13 October 2020:

1. Recent GPPB issuances on streamlining the procurement processes using available technology:

¹ An Act Promoting Ease of Doing Business and Efficient Delivery of Government Services, Amending for the Purpose Republic Act No. 9485, otherwise known as the Anti-Red Tape Act of 2007, and for Other Purposes.

- a. GPPB Resolution No. 24-2018 - Approving the Use of Videoconferencing in the Conduct of Meetings and Determination of Quorum by the Bids and Awards Committee (BAC); and
 - b. GPPB Resolution No. 16-2019 - Approving the Use of Digital Signature in Procurement-related Documents.
2. Existing timelines for payment and extension thereof; and
 3. Concerns on agencies' discretion in the issuance of justification in extending the periods on the bidding process.

WHEREAS, in a letter dated 07 May 2021, the ARTA requested for a 3rd Coordination Meeting with the GPPB-TSO to be held on 10 May 2021, where representatives from the Commission on Audit (COA), Department of Budget and Management, Procurement Service, Department of Information and Communications Technology (DICT), and the Office of the Presidential Adviser on Streamlining of Government Process (OPASGP) were also invited;

WHEREAS, in the 3rd Coordination Meeting on 10 May 2021 between the GPPB-TSO and the ARTA, the following matters were discussed:

1. Information on the actual periods that agencies take during procurement *vis-à-vis* the periods given by the procurement law;
2. Recent streamlining reforms undertaken by GPPB, namely:
 - a. GPPB Resolution No. 17-2020 - Approving the Streamlining of Procurement Process by allowing PEs to procure Common-Use Supplies and Equipment (CSEs) without the need of securing a Certificate of Non-Availability of Stocks;
 - b. GPPB Resolution No. 04-2021 - Approving the Issuance of a Circular to Implement the Provisions of Administrative Order No. 34, s. of 2020; and
 - c. GPPB Resolution No. 06-2021 - Approving the Issuance of a Circular on the Guidelines for Emergency Procurement under RA No. 11525 or "The COVID-19 Vaccination Program Act of 2021"; and
3. Clarification on the previous suggestion of removing the five (5)-day period for submission of post-qualification documents in the post-qualification process by allowing their submission with the technical, financial, and eligibility documents in the opening of the bids.

WHEREAS, during the said meeting, the ARTA communicated its intention to collaborate with the GPPB through a Joint Memorandum Circular (JMC) that identifies the most streamlined procurement process featuring the least number of requirements and least number of days. The following were proposed by the ARTA as possible contents of the JMC:

1. Streamlining period - Reiterate the shortest period allowed for by law and other issuances. The source documents on these will come from the GPPB, and the ARTA shall conduct the study to determine the most streamlined documentary requirements and processing time;
2. Agency accountability for the Blacklisting Portal - Emphasize the accountability and responsibility of agencies in updating their blacklisting accounts pursuant to existing GPPB issuances (e.g., GPPB Resolution No. 14-2020);

3. Establishment of a central repository of data or documents for online verification - Create the centralized platform under the Philippine Government Electronic Procurement System (PhilGEPS) that PEs can access and update themselves so that needed information in all stages of procurement will be readily available;
4. Inclusion of simultaneous rather than sequential verification of the documents of qualified bidders during the post-qualification stage - Explore the possibility of agencies being able to already ask other agencies for the corresponding information of all eligible bidders; and
5. Application of Automatic Approval - Provide the application of the automatic approval in the procurement processes, especially when an agency does not respond within a given period to inquiries on blacklisting or performance in an ongoing contract during the post-qualification stage.

WHEREAS, during the 2nd Joint GPPB and IATWG Meeting dated 12 August 2021, the GPPB-TSO discussed the continuous streamlining of the procurement process which the GPPB and its TSO have been working to address the above concerns, including those proposed to be included in the proposed JMC, in this wise:

1. *On the issuance of a JMC*, as provided under Section 63 of RA No. 9184, the GPPB is already authorized to formulate and amend, whenever necessary, the IRR and the corresponding standard forms for procurement;
2. *As for the prescribed timelines on post-qualification*, the procurement timelines in the Philippines are even shorter than international standards. By international standards, there should be at least twenty-eight days given to bidders to prepare their bids which is already longer than the recommended earliest possible time for the whole procurement process under Annex "C" of the IRR of RA No. 9184 which is twenty-six days. Moreover, the existing procurement timelines allow for a maximum period depending on the nature or complexity of the contract to be bid and the number of participating bidders in the Procurement Project.

The GPPB has been looking into the causes of the delay instead of just shortening the timelines. Addressing the delay will ensure that PEs are able to undertake the post-qualification stage properly and efficiently without having to be constrained by a shorter period. One of the measures to make post-qualification more efficient is the implementation of the electronic bidding and the planned electronic validation of eligibility documents both under the modernized PhilGEPS;

3. *With respect to the proposed reinstatement of the pre-qualification stage or removing the five (5)-day period for submission of post-qualification documents in the post-qualification process*, the Congress, in crafting the procurement law, specifically provided for post-qualification instead of pre-qualification because the latter was used as a medium for collusion which defeats the purpose and essence of competitive bidding. It has been observed that pre-qualification has been used to facilitate collusive practices among bidders since the identifications of pre-qualified bidders are made public. The highly complex and subjective prequalification procedure enabled the pre-determination of a chosen or favored entity prior to the conduct of bidding.

4. *As for simultaneous post-qualification*, Section 34 of RA No. 9184 explicitly provides the procedure to be followed in the conduct of post-qualification. Hence, a simultaneous process of post-qualification would require amendment of Section 34 of RA No. 9184. It is also important to note that the rationale behind the procedure and period for post-qualification, under Section 34 of RA No. 9184, is to stop corrupt and collusive practices in the pre-qualification stage, where PEs are required to conduct simultaneous checking of the capabilities of prospective bidders. The earlier strategy of the Board to priorly address causes of delay is a more efficient way to streamline without sacrificing the integrity in the post-qualification stage and ensuring due diligence in the conduct of procurement by the PEs;

Moreover, the existing process is also more efficient in that once the Lowest Calculated Bidder has been post-qualified and is determined to be responsive, there is no longer a need to check other eligible bidders, which could be as many as there are interested bidders in the market. In the proposed simultaneous validation, the PE would have to check all eligible bidders, at the same time even if the second to the last ranked bidders have increasingly less probability of being awarded the contract.

5. *Regarding limiting the agency's discretion in the justification for the extension of periods in the bidding process*, the minimum and maximum periods for procurement under Annex "C" of the 2016 revised IRR of RA No. 9184 and the completion of the different stages of the procurement process within the different periods are not merely directory but mandatory, as provided in the case of *Reynaldo M. Jacomille v. Hon. Joseph Emilio A. Abaya, et al.*² As earlier explained, the maximum period is provided as the conduct of procurement depends on the expertise of PEs and the nature and complexity of the Procurement Project. The better way to address this is through the implementation of the electronic bidding and the planned electronic validation of eligibility documents both under the modernized PhilGEPS. This will improve the turnaround time of regulatory agencies. Another way is for regulatory agencies to continually streamline their process as required under Section 5 of RA No. 11032.³
6. *On the shortening of period for the payment process*, it is well to note first that payment is governed by relevant government auditing and budgeting rules and regulations. And with the implementation of RA No. 11032, as provided in its Section 9, agencies are now mandated to follow the prescribed period for processing all government services, business or non-business, specifically, no more than three (3) working days for simple transactions, seven (7) working days in case of complex transactions, and twenty (20) working days for applications or requests involving activities which pose danger to public health, public safety, public morals, public policy and highly technical application.

In view thereof, harmonizing RA No. 11032 with the relevant government auditing and budgeting rules and regulations will discipline agencies in timely processing the payment for suppliers. Also, the use of digital payment, which is subject to

² G.R. No. 212381, 22 April 2015.

³ Sec. 5. *Reengineering of Systems and Procedures*. – All offices and agencies which provide government services are hereby mandated to regularly undertake cost compliance analysis, time and motion studies, undergo evaluation and improvement of their transaction systems and procedures, and reengineer the same if deemed necessary to reduce bureaucratic red tape and processing time.

further issuance of the COA, will enable agencies to process its payment within a shorter period;

7. *On the classification of Cloud Computing Services as CSE*, several agencies have also expressed their concern on the security and accountability of the system in case of a breach. To address this, the GPPB-TSO has been working with the DICT for the appropriate Information and Communication Technology policy on this and the correlative procurement policy, if need be. The GPPB-TSO is also working with other stakeholders such as platform providers and service providers for their operational knowledge on Cloud Computing Service.
8. *With respect to the responsibility and accountability of the PEs in the posting of blacklisted entities*, GPPB Resolution No. 40-2017, as amended by GPPB Resolution No. 14-2020, mandates all PEs to observe the rules and procedures provided under the *Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants*. With the creation and mandatory use of Online Blacklisting Portal (OBP) pursuant to GPPB Resolution No. 14-2020, PEs shall be responsible in the generation and updating of the Consolidated Blacklisting Report to provide up-to-date information that is readily accessible to all interested parties such as the COA. Likewise, the real-time updating of the OBP will allow PEs conducting post-qualification to easily verify whether a bidder is blacklisted or not.
9. *On the establishment of a central repository of data or documents for online verification such as PhilGEPS Certificate of Platinum Registration and Membership*, the ongoing efforts for the modernization of PhilGEPS include the development of a database where PEs can do the validation online.
10. *Regarding the application of automatic approval in the conduct of post-qualification verification*, in view of the Supreme Court Rulings⁴⁻⁵ involving the application of automatic approval, the same cannot be imposed as a matter of right or privilege where the exercise of discretion is needed and will only apply to transactions which satisfy the requirements of existing law. Section 10 of RA No. 11032 only applied automatic approval to licenses, permits, certificates, and authorizations.

Moreover, automatic approval will only be feasible if measures are in place to ensure that it will not go against the objective of post-qualification, that is, to determine the legally, technically, and financially capable supplier, distributor, service provider, contractor, or consultant through proper verification or validation of bidders and their documentary requirements. Consequently, there cannot be any automatic approval in the award of contract as PEs should undertake due diligence in determining and verifying the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

⁴ In *Calawag vs UP Visayas* (G.R. No. 207412, August 7, 2013), the Court held that the dean has the **discretion** to approve or disapprove the composition of a thesis committee, and, hence, the petitioners had no right for an automatic approval and composition of their thesis committees.

⁵ In *DENR vs Diamond Drilling Corporation of the Philippines* (G.R. No. 207360, April 10, 2019), The Court held that the **automatic approval clause applies only to applications that satisfy all the requisites laid down in Section 46 of the Mining Act's IRR**. A contrary view would render inutile the DENR Secretary's power to approve assignments or transfers of rights in MPSAs, for it would mean that applications not acted upon by the Secretary within the prescribed period would be deemed approved regardless of compliance with the requisites set forth in Section 46 of the IRR.

Nevertheless, the period within which the regulatory agencies would respond to queries such as validation of post-qualification document would really depend on the internal protocols of the agencies concerned and the complexity of the request as this can be covered under Section 4(h) of the RA No. 11032 or those falling under non-business transactions. Further, Section 9(b)(1) of RA No. 11032 provides that requests submitted to agencies shall be acted upon within the prescribed processing time stated in their Citizen's Charter which shall not be longer than three (3) working days in the case of simple transactions and seven (7) working days in the case of complex transactions from the date the request and/or complete request was received.

Therefore, the non-compliance of the offices concerned to respond to the said request for validation is already subject to sanctions under applicable laws, rules and regulations, as will be monitored by the ARTA.

WHEREAS, during the 2nd Joint GPPB and IATWG Meeting dated 12 August 2021, the Board resolved, upon the recommendation of the GPPB-TSO, to approve the following:

1. Issue a Resolution approving the above GPPB responses to the proposals provided by the ARTA;
2. Inform the ARTA through a letter signed by the GPPB Chairperson of the above-discussed position of the Board; and
3. Report to the OPASGP through the GPPB Chairperson on the initiatives done and ongoing efforts by the GPPB in streamlining the procurement process.

ARTA Proposal	Relevant GPPB Guidelines	Description
Streamline the Existing Procurement Process	<u>GPPB Reso No. 03-2020</u>	Use of Negotiated Procurement Emergency Cases during a state of public health emergency
	<u>GPPB Reso No. 09-2020</u>	Measures for the Efficient Conduct of Procurement Activities during a State of Calamity
	<u>GPPB Reso No. 15-2020</u>	Simplified Philippine Bidding Documents (PBDs) for Goods and Infrastructure Projects
	<u>GPPB Reso No. 16-2020</u>	Guidelines in the preparation of Simplified PBDs
	<u>GPPB Reso No. 17-2020</u>	Streamlining of Procurement of the CSEs
Need for Agency Accountability for the Blacklisting Portal	<u>GPPB Reso No. 14-2020</u>	Implementation of the OBP
	<u>GPPB Reso No. 04-2021</u>	Compliance with AO No. 34 Provisions on Transparency, Accountability, and Good Governance Policies and Measures

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 following:

1. **ISSUE** a Resolution approving the above GPPB responses to the proposals provided by the ARTA;
2. **INFORM** the ARTA through a letter from the GPPB Chairperson of the above-discussed positions of the Board; and
3. **REPORT** to OPASGP, through a letter from the GPPB Chairperson, on the following initiatives done and ongoing efforts by the GPPB in streamlining the procurement process:

ARTA Proposal	Relevant GPPB Guidelines	Description
Streamline the Existing Procurement Process	<u>GPPB Reso No. 03-2020</u>	Use of Negotiated Procurement Emergency Cases during a state of public health emergency
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Need for Agency Accountability for the Blacklisting Portal	<u>GPPB Reso No. 14-2020</u>	Implementation of the OBP
	<u>GPPB Reso No. 04-2021</u>	Compliance with AO No. 34 Provisions on Transparency, Accountability, and Good Governance Policies and Measures

This Resolution shall take effect immediately.

APPROVED this 12th day of August 2021 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

Sgd.

DEPARTMENT OF FINANCE

DEPARTMENT OF HEALTH

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

Sgd.

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

Sgd.

Sgd.

**DEPARTMENT OF SCIENCE AND
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DEPARTMENT OF TRADE AND INDUSTRY

DEPARTMENT OF TRANSPORTATION

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