



APPROVING THE ISSUANCE OF A LETTER TO THE INTER-AGENCY TASK FORCE FOR THE MANAGEMENT OF EMERGING INFECTIOUS DISEASES AND TO THE COVID-19 VACCINE CLUSTER ASKING CLARIFICATIONS ON THE PROCUREMENT OF COVID-19 VACCINES

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 authorizes the Government Procurement Policy Board (GPPB) to protect national interest in all matters affecting public procurement, having due regard to the country’s regional and international obligations and to formulate public procurement policies, rules and regulations, and amend its IRR, whenever necessary;

WHEREAS, on 8 March 2020, the President signed Proclamation No. 922 declaring a State of Public Health Emergency throughout the Philippines upon the recommendation of the Department of Health (DOH) following the confirmed local transmission of the Coronavirus Disease 2019 (COVID-19);

WHEREAS, on 24 March 2020, the President signed RA No. 11469 or the *Bayanihan* to Heal as One Act (*Bayanihan* Act) which granted the President temporary emergency powers to address the national emergency brought about by the COVID-19 pandemic which was only effective for a period of three (3) months;

WHEREAS, on 11 September 2020, the President signed RA No. 11494, or the *Bayanihan* to Recover as One Act (*Bayanihan* 2) in view of the unabated spread of the COVID-19 virus and the ensuing economic disruption therefrom. The said law was only effective until 19 December 2020;

WHEREAS, Section 4(d) of the *Bayanihan* 2 authorizes the President to implement an uninterrupted immunization program against vaccine-preventable diseases especially on children amidst the COVID-19 pandemic, including the vaccine for COVID-19;

WHEREAS, on 5 November 2020, the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF-EID) issued Resolution No. 83 that restructured the National Task Force Against COVID-19 (NTF) to establish therein the COVID-19 Vaccine Cluster with the Vaccine Czar as Chair;

WHEREAS, Section 12 of the *Bayanihan* 2 provides that Phase IV trials for COVID-19 medication and vaccine stipulated in RA No. 11223 or the “Universal Health Care Act” is waived to expedite the procurement of said medication and vaccine, and the minimum standards for the distribution of the said medication and vaccine shall be determined by the Food and Drug Administration (FDA) and the Health Technology Assessment Council;

WHEREAS, on 1 December 2020, Executive Order No. 121 has granted FDA the authority to issue Emergency Use Authorization (EUA) for COVID-19 treatment drugs and vaccines that are still under development but will already be for distribution in the country;

WHEREAS, on 12 January 2021, the DOH issued Administrative Order No. 2021-0005 to provide strategic policy guidance and direction on the selection, access, and deployment of the COVID-19 vaccine and the COVID-19 immunization program, thereby establishing a Task Group on COVID-19 Vaccine Procurement and Financing, led by the Department of Finance with the DOH and the Department of Budget and Management as members, under the COVID-19 Vaccine Cluster, whose roles and responsibilities¹ are summarized in Section VII (D) thereof;

WHEREAS, Memorandum Order No. 172, s. 2005, allows the advance payment for mobilization cost not exceeding fifteen percent (15%) of the contract amount subject to any increase that may be approved by the President pursuant to Section 88 of Presidential Decree No. 1445 or the Government Accounting Code of the Philippines;

WHEREAS, the GPPB-Technical Support Office (GPPB-TSO) has been receiving queries on the process of procurement of COVID-19 vaccines adopted by the IATF-EID and the COVID-19 Vaccine Cluster, including clarifications from local government units (LGUs) that intend to procure the same. There is also a growing demand, particularly from LGUs, to be advised if they are allowed to give advance payment for the procurement of COVID-19 vaccines;

WHEREAS, in the Press Release² by the DOH dated 11 January 2021, it reiterated that as mentioned by the Vaccine Czar Secretary Carlito G. Galvez, Jr., LGUs cannot procure and roll out COVID-19 vaccines on their own unless coordinated with the National Government (NG), through the NTF and the DOH, in a tripartite agreement involving pharmaceutical companies. Director General Rolando Enrique D. Domingo of the FDA also clarified that the EUA issued by the Philippine FDA does not cover the commercial use of the vaccines and the manufacturers are authorized to sell only to the DOH;³

WHEREAS, previous coordination efforts⁴ with the NTF, DOH, and other agencies to gather information on the procurement of vaccines by the COVID-19 Vaccine Cluster only afforded limited second-hand information from press releases of relevant government agencies (e.g. DOH) and news articles. The said limitation may be partly due to the confidentiality of some of the information discussed in the negotiations between the NG, headed by the Vaccine Czar, and the pharmaceutical companies on the procurement of COVID-19 vaccines as these are covered by a non-disclosure agreement;

WHEREAS, in order to properly respond to queries relating to the procurement of COVID-19 vaccines, the GPPB-TSO recommended that, in as much as the GPPB nor its TSO is not privy to the discussions made by the IATF-EID and the COVID-19 Vaccine Cluster on the procurement of COVID-19 vaccines, a letter shall be issued to the IATF-EID and the COVID-19 Vaccine Cluster inquiring on the following matters:

¹ a. To facilitate procurement through various mechanisms allowed under existing laws, rules, and regulations through bilateral, multilateral and other financial modalities;
b. To facilitate advanced market commitment and/or framework contracting and/or procurement through international facilities such as the COVAX facility;
c. To activate price negotiation board subject to Health Technology Assessment's cost-effective price;
d. To coordinate with legislators, as may be necessary on budget and co-payment ceilings;
e. To explore the possibility of local vaccine production.

² Press release as published on the DOH's website: <https://doh.gov.ph/doh-press-release/DOH-NTF-FDA-STEMENT-ON-THE-VACCINE-PROCUREMENT-OF-LGUs>

³ In a coordination meeting of the GPPB-TSO with FDA on 14 January 2021.

⁴ As early as November 2020, the GPPB and its TSO have been actively coordinating with the DOH and the Office of the President for information or any draft issuance relative to the reports that the President has accepted the proposal of Vaccine Czar to enter Advance Market Commitments and to provide advance payments for the procurement of COVID-19 vaccines.

1. the procurement modality adopted by the NTF in the preparatory activities and negotiations in the procurement of vaccines;
2. related procurement activities necessary in the proper implementation of the National Vaccination Plan; and
3. guidance on the authority for the advance payment required in the tripartite agreement between LGUs with the NTF and AstraZeneca considering that Section 88(1) of Presidential Decree No. 1445⁵ or the Government Auditing Code of the Philippines has prohibited advance payments on government contracts except those with prior approval of the President;

WHEREAS, in consideration of the foregoing, the GPPB resolved to approve the issuance of a letter to the IATF-EID and the COVID-19 Vaccine Cluster inquiring on the details on the following matters:

1. the procurement modality adopted by the NTF in the preparatory activities and negotiations in the procurement of vaccines;
2. related procurement activities necessary in the proper implementation of the National Vaccination Plan; and
3. guidance on the authority for the advance payment required in the tripartite agreement between LGUs with the NTF and AstraZeneca considering that Section 88(1) of Presidential Decree No. 1445⁶ or the Government Auditing Code of the Philippines has prohibited advance payments on government contracts except those with prior approval of the President.

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 issuance of a letter, to be signed by the Chairperson of the GPPB, Secretary Wendel E. Avisado, addressed to the IATF-EID and the COVID-19 Vaccine Cluster inquiring on the rules and policies adopted in the procurement of COVID-19 vaccines.

This Resolution shall take effect immediately.

APPROVED this 20th day of January 2021 at Manila City, Philippines.

⁵ “**Section 88. Prohibition against advance payment on government contracts:**

1. **Except with the prior approval of the President (Prime Minister)** the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.” (emphasis ours)

⁶ “**Section 88. Prohibition against advance payment on government contracts:**

1. **Except with the prior approval of the President (Prime Minister)** the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.” (emphasis ours)

Sgd.

WENDEL E. AVISADO
GPPB, Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

Sgd.

LAURA B. PASCUA
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

Sgd.

DEPARTMENT OF HEALTH

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**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

Sgd.

**DEPARTMENT OF NATIONAL
DEFENSE**

Sgd.

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

Sgd.

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

Sgd.

DEPARTMENT OF TRADE AND INDUSTRY

Sgd.

DEPARTMENT OF TRANSPORTATION

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

Sgd.

PHILIPPINE SPACE AGENCY

Sgd.

PRIVATE SECTOR REPRESENTATIVE