



APPROVING THE ISSUANCE OF A RESOLUTION SEEKING CLARIFICATIONS ON THE INTENDED ROLE OF THE PROCUREMENT SERVICE-DEPARTMENT OF BUDGET AND MANAGEMENT IN THE IMPLEMENTATION OF THE PHILIPPINE NATIONAL DEPLOYMENT AND VACCINATION PLAN FOR COVID-19 VACCINES IN RELATION TO THE REQUEST OF THE DEPARTMENT OF HEALTH TO INCLUDE COVID-19 VACCINES IN THE LIST OF COMMON USE SUPPLIES AND EQUIPMENT AND INCORPORATE SUCH CLARIFICATIONS TO THE LETTER TO THE INTER-AGENCY TASK FORCE FOR THE MANAGEMENT OF EMERGING INFECTIOUS DISEASES AND THE COVID-19 VACCINE CLUSTER

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, in the Press Release¹ by the DOH dated 11 January 2021, it reiterated that as mentioned by the Vaccine Czar Secretary Carlito G. Galvez, Jr., local government units (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;²

WHEREAS, previous coordination efforts³ 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, on 20 January 2021, during the 1st Joint Meeting of the GPPB and Inter-Agency Technical Working Group, the GPPB resolved to approve the issuance of a letter to the IATF-EID and the COVID-19 Vaccine Cluster inquiring about the following matters: (i) the procurement modality adopted by the NTF in the preparatory activities and negotiations in the procurement of vaccines; (ii) related procurement activities necessary in the proper implementation of the National Vaccination Plan; and (iii) 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. 1445⁴ or the Government Auditing Code of the Philippines has prohibited advance payments on government contracts except those with prior approval of the President;

WHEREAS, the DOH sent a letter⁵ to the Department of Budget and Management (DBM) Secretary and Chairperson of the GPPB to request the inclusion of the COVID-19 vaccines in the list of Common-Use Supplies and Equipment (CSE) and to authorize the Procurement Service (PS-DBM) to utilize actual and potential savings from the procurement of personal protective equipment (PPEs) for the procurement of vaccines;

WHEREAS, on 28 January 2021, the GPPB-Technical Support Office (GPPB-TSO) conducted a coordination meeting⁶ with the representatives of the PS-DBM, DOH, and Department of Finance to clarify matters relative to the request of the DOH with respect to funding and implementation requirements for the inclusion of the vaccines to the list of CSE.

¹ 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>

² In a coordination meeting of the GPPB-TSO with FDA on 14 January 2021.

³ 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.

⁴ “**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)

⁵ Dated 25 January 2021.

⁶ via Google Meet.

In the same meeting, it was emphasized that there is a need to clarify the intended role of the PS-DBM in the procurement of COVID-19 vaccines under the Philippine National Deployment and Vaccination Plan for COVID-19 Vaccines (The National Vaccination Plan);

WHEREAS, in its Memorandum for the Secretary of the DBM dated 29 January 2021, the PS-DBM expressed its reservations on the request of the DOH to include the COVID-19 vaccines in the list of CSE considering the nature and definition of CSE items as well as its lack of appropriate expertise in the handling, storage, delivery and distribution of the vaccines. Of particular note is the existing restrictions of the EUA⁷ issued by the FDA, where pharmaceutical companies are allowed to sell COVID-19 vaccines only to DOH;

WHEREAS, during the Special GPPB Meeting⁸ held on 3 February 2021, the PS-DBM likewise relayed the concerns of the Office of the President as regards the increase in the allowable amount of advance payment and the access of LGUs to the vaccines given that they have the available funds to procure the same. The GPPB clarified that the decision on matters relating to advance payment, such as the authority to make said payment and the increase in the allowable amount, is within the authority of the President pursuant to Section 88(1) of Presidential Decree No. 1445.⁹ Moreover, the GPPB and its TSO, not being part of the negotiations with the pharmaceutical companies for the procurement of COVID-19 vaccines, could not make the appropriate recommendation on the possible increase in the allowable advance payment as the same would depend on the terms and conditions proposed by the pharmaceutical companies during the said negotiations;

WHEREAS, the LGUs can only access and procure the COVID-19 vaccines in coordination with the NG through tripartite agreements with the NTF and the DOH as stated by the Vaccine Czar Secretary Galvez, Jr., and reiterated by the DOH;

WHEREAS, the GPPB recommended to endorse to the DBM, for appropriate action, the request of the DOH to reallocate its savings from its procurement of PPEs lodged with the PS-DBM for the procurement of COVID-19 vaccines;

WHEREAS, the GPPB-TSO proposed to include in the previously drafted letter to the IATF-EID and the COVID-19 Vaccine Cluster pursuant to GPPB Resolution No. 01-2021 an additional clarification on the DOH request in order to clearly define the role of the PS-DBM in the implementation of the National Vaccination Plan;

WHEREAS, in order to clearly define the role of the PS-DBM in the implementation of The National Vaccination Plan, the GPPB resolved to APPROVE the above recommendation of the TSO;

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 Resolution seeking clarifications on the

⁷ Executive Order No. 121, s. of 2020 authorized the Director General of FDA to issue an EUA. FDA Circular No. 2020-036 or the *Guidelines on the Issuance of Emergency Use Authorization for Drugs and Vaccines for COVID-19* is applicable only to the pharmaceutical industry and government entities such as **the national procurer** or health program implementors – in our case the DOH and agencies that the DOH authorizes to procure.

⁸ via Zoom.

⁹ “**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)

intended role of the PS-DBM in the implementation of The National Vaccination Plan as this may determine whether COVID-19 vaccines should be included in the list of the CSE and incorporate such clarifications in the previously drafted letter to the IATF-EID and the COVID-19 Vaccine Cluster pursuant to GPPB Resolution No. 01-2021.

This Resolution shall take effect immediately.

APPROVED this 3rd day of February 2021 at Manila City, Philippines.

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

Sgd.

**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