



RESOLUTION NO. 28-2017

APPROVING THE GUIDELINES FOR THE PROCUREMENT OF GOODS AND SERVICES, INFRASTRUCTURE PROJECTS, AND CONSULTING SERVICES TO BE PROCURED AND PERFORMED OVERSEAS

WHEREAS, Republic Act (RA) No. 9184 entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes,” took effect on 26 January 2003, while its 2016 Revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 4 of RA 9184 provides that it shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government owned and/or-controlled corporations and local government units;

WHEREAS, Section 63 of RA 9184 mandates the Government Procurement Policy Board (GPPB) to protect national interest in all matters affecting public procurement;

WHEREAS, in a letter, dated 16 August 2016, then DFA Secretary Perfecto R. Yasay requested that the FSPs be exempted from the coverage of RA 9184 and its IRR in the conduct of its procurement activities, or in the alternative, the foreign suppliers of FSPs be exempted from registering in the Philippine Government Electronic Procurement System (PhilGEPS), and that FSPs be further exempted from posting its Notices of Award, Contracts, and Notices to Proceed in the PhilGEPS;

WHEREAS, in support of its request, DFA forwarded to the GPPB reports and queries submitted by different FSPs with regard to the difficulties encountered in their respective procurement activities which were undertaken in accordance with RA 9184 and its IRR;

WHEREAS, during the 12th GPPB and 10th Inter-Agency Technical Working Group (IATWG) Meeting held on 20 December 2016, the GPPB deliberated on the request of the DFA and directed the GPPB-TSO to resolve the request within two weeks;

WHEREAS, on 28 December 2016 and 5 January 2017, the GPPB-TSO conducted consultation meetings with DFA, together with other concerned government agencies, *i.e.*, PS-PhilGEPS, Department of Budget and Management (DBM) and Commission on Audit (COA), to discuss the issues raised by DFA and find a solution on these procurement concerns;

WHEREAS, during the 1st IATWG Meeting held on 13 January 2017, the IATWG adopted the findings of the GPPB-TSO that the GPPB does not have the authority under RA 9184 to exempt any government agency or office from its provisions and its IRR, and recommended that the DFA may propose a Customized Procurement Manual to address the concerns of the FSPs or seek exemption through a special provision of the General

Appropriation Act (GAA), and the GPPB-TSO to develop guidelines that will address concerns of all Procuring Entities with Foreign Posts, *e.g.* DFA, Department of Trade and Industry (DTI), Department of Labor and Employment, with regard to procurement activities performed abroad, for consideration and approval of the GPPB;

WHEREAS, during the 1st GPPB Meeting held on 9 February 2017, the GPPB, through Resolution No. 01-2017, adopted the recommendations of the IATWG that the DFA may propose a Customized Procurement Manual for FSPs and that the GPPB-TSO may also propose and formulate guidelines for procurement activities conducted and implemented outside of the Philippines;

WHEREAS, a consultation meeting with concerned agencies *i.e.*, DFA, DTI, Department of Tourism, Department of Finance, Department of National Defense, Bureau of Fisheries and Aquatic Resources, Center for International Trade Expositions and Missions and Commission on Audit, was held to solicit inputs and comments on proposed Guidelines on Projects to be Procured and Performed Outside of the Philippines, as initially drafted by the GPPB-TSO;

WHEREAS, the proposed *Guidelines on Projects to be Procured and Performed Outside of the Philippines*, incorporating the comments and suggestions made during the consultation meeting, was presented to the IATWG on 21 March 2017 and to the GPPB on 10 April 2017 to solicit further inputs;

WHEREAS, on 7 July 2017, the GPPB-TSO and DFA Representatives met to discuss the proposed Guidelines and the issues raised by the DFA and made the following agreements:

1. On the posting in the PhilGEPS website, DFA representatives are amenable to the recommendation that Foreign Service Posts will not be required to post their procurement activities in the PhilGEPS website until the corresponding facility has become available through the PhilGEPS Modernization Project, subject to the understanding that they will be consulted in the development of the PhilGEPS facility for procurements abroad;
2. DFA likewise requested the GPPB-TSO to recommend to the IATWG and GPPB the imposition of a moratorium on the use of PhilGEPS for Foreign Service Posts until the Modernized PhilGEPS has provided the necessary facility; and
3. On the inability to create BAC, the GPPB-TSO informed the DFA that in the next IATWG meeting, the GPPB-TSO will present the recommendation that will allow foreign posts to designate personnel or committee (not necessarily following the requirements for the creation of a BAC under RA 9184 and its IRR), who will undertake the procurement projects for them, applying one of the rules on statutory construction.

WHEREAS, during the 5th IATWG Meeting on 14 July 2017, the GPPB-TSO presented its proposed recommendations to address the issues raised by the DFA, including

the corresponding provisions of the proposed Guidelines, taking into consideration the directives of the GPPB and the result of the meeting with the DFA, and thereafter, the IATWG agreed on the following:

1. On the posting in the PhilGEPS website (lack of facility for Foreign Post and refusal of bidders to register in the PhilGEPS) - adopt the GPPB-TSO alternative recommendation that Foreign Service Posts will not be required to post their procurement activities in the PhilGEPS website until the corresponding facility has become available through the PhilGEPS Modernization, subject to the understanding that they will be consulted in the development of the PhilGEPS facility for projects procured and performed abroad;
2. On the inability to create BAC - adopt the GPPB-TSO initial recommendation that a personnel of the Foreign Service Posts, as the end-user, may be delegated by the Head of the Procuring Entity (HOPE) and Bids and Awards Committee (BAC) of the Home Office to conduct procurement; and
3. DFA likewise requested the GPPB-TSO to recommend to the IATWG and GPPB the imposition of moratorium on the use of PhilGEPS for Foreign Service Posts until the Modernized PhilGEPS has provided the necessary facility.

WHEREAS, the IATWG agreed to recommend to the GPPB the approval of the proposed *Guidelines for the Procurement of Goods and Services, Infrastructure Projects, and Consulting Services to be Procured and Performed Overseas* containing the IATWG recommendations addressing the issues raised by the DFA; and in the alternative, the imposition of a moratorium on the use of PhilGEPS for Foreign Service Posts until the Modernized PhilGEPS has provided the necessary facility;

WHEREAS, during its 4th Regular Meeting on 31 July 2017, the GPPB, after careful review and deliberation, approved the recommendations of the IATWG and the proposed *Guidelines for the Procurement of Goods and Services, Infrastructure Projects, and Consulting Services to be Procured and Performed Overseas*;

NOW, THEREFORE, for and in view of all 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 *Guidelines for the Procurement of Goods and Services, Infrastructure Projects, and Consulting Services to be Procured and Performed Overseas*, copy of which is attached as **Annex "A"**.

The Guidelines shall take effect after fifteen (15) days following the completion of its publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing of three (3) certified copies with the University of the Philippines Law Center.

APPROVED this 31st day of July 2017 at Pasig City, Philippines.

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(SGD)

DEPARTMENT OF EDUCATION

(SGD)

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

(SGD)

DEPARTMENT OF HEALTH

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

**DEPARTMENT OF NATIONAL
DEFENSE**

(SGD)

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

(SGD)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

(SGD)

**DEPARTMENT OF TRADE AND
INDUSTRY**

DEPARTMENT OF TRANSPORTATION

(SGD)

PRIVATE SECTOR REPRESENTATIVE

**GUIDELINES FOR THE PROCUREMENT OF GOODS AND SERVICES,
INFRASTRUCTURE PROJECTS, AND CONSULTING SERVICES TO BE
PROCURED AND PERFORMED OVERSEAS**

1. PURPOSE

The Guidelines is formulated to provide rules and procedures for the procurement of Goods and Services, Infrastructure Projects, and Consulting Services to be procured and performed overseas; and to ensure transparency, efficiency, competition, and accountability in the procurement process.

2. SCOPE AND APPLICATION

The Guidelines shall apply to the national government, its branches, constitutional offices, departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units, in the procurement of Goods and Services, Infrastructure Projects, and Consulting Services to be procured and performed overseas. Consequently, if the project will be performed within the Philippines, the relevant provisions of the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 on Competitive Bidding or Alternative Modes of Procurement shall apply.

3. GENERAL GUIDELINES

- a. **Annual Procurement Plan (APP).** In accordance with Section 7.2 of the IRR, no procurement shall be undertaken unless it is in accordance with the approved APP of the Procuring Entity.
- b. **Advertisement and Posting of Procurement Opportunity.** The Procuring Entity may dispense with the advertisement in the newspaper as prescribed in Section 21.2.1 of the IRR of R.A. 9184. Accordingly, the Procuring Entity shall post the Request for Quotation (RFQ) or Request for Proposal (RFP) in the 1.) PhilGEPS website, once the facility for the procurement of Goods and Services, Infrastructure Projects, and Consulting Services to be procured and performed overseas becomes available; 2.) The official website of the Procuring Entity; and 3.) In a conspicuous place reserved for this purpose in the premises of the Procuring Entity.
- c. **Documentary Requirements.** The Procuring Entity shall validate whether it is entering into a contract with a technically, legally and financially capable supplier, contractor or consultant by requiring the submission of relevant documents or through other means, taking into consideration the usual trade and business practices being observed in the host country. In all cases, the

Procuring Entity shall base its award on the quotations received in accordance with the corresponding RFQ/RFP and Abstract of Quotations.

- d. **Delegation of Authority.** For purposes of efficiency, expediency, and economy, the conduct of procurement and/or award of contract under the Guidelines may be delegated to a specific personnel or committee, other than the Bids and Awards Committee (BAC), duly authorized by the HOPE.

For record and monitoring purposes, all awards shall be immediately reported with all supporting documents to the HOPE, to ensure compliance with the guidelines.

- e. **Posting of Notice of Award, Contract and Notice to Proceed.** Unless the contract involves and affects national security as determined by the HOPE, the BAC, through its Secretariat, or the authorized personnel or committee shall post the relevant information of the contract in the PhilGEPS website once the facility becomes available, the website of the Procuring Entity, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity within ten (10) calendar days from their issuance.
- f. **Bid, Performance and Warranty Securities.** If deemed necessary, the Procuring Entity may require the submission of a Bid, Performance, or Warranty Securities or its equivalent.

4. SPECIFIC GUIDELINES

- a. The End-User shall submit to the BAC or to the authorized personnel or committee a purchase/job request, which indicates the technical specifications, scope of work, terms of reference, ABC and other terms and conditions relevant to the Goods and Services, Infrastructure Projects and Consulting Services to be procured.
- b. The BAC or the authorized personnel or committee shall determine the technical, legal, and financial eligibility requirements to be submitted by the prospective bidders or any other means to verify the technical, legal and financial capability of the supplier, contractor or consultant.
- c. The BAC or the authorized personnel or committee shall prepare and send the Request for Quotations (RFQ) or Request for Proposals (RFP) to at least three (3) suppliers, contractors or consultants of known qualifications. This, notwithstanding, those who responded through any of the required postings shall be allowed to participate. Receipt of at least one (1) quotation on the deadline for submission of quotations shall be sufficient to proceed with the evaluation thereof. In no instance shall Procuring Entities be required to pay any sum of money for the purpose of obtaining RFQs/RFPs.

For the procurement of requirements, *i.e.*, space, booth design, booth construction, in case of participation to international exhibits, duly approved by authorized officials under existing laws, rules and regulation, Procuring

Entities may not be required to send RFQs/RFPs to at least three (3) suppliers, contractors or consultants of known qualifications.

- d. The BAC or the authorized personnel or committee may meet with all prospective bidders, depending on the nature and complexity of the project, in order to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the RFQ/RFP.
- e. After the deadline for submission of quotations/proposals, an Abstract of Quotations/Ratings shall be prepared setting forth the names of those who responded to the RFQ/RFP, and their corresponding price quotations/ratings.
- f. The BAC or the authorized personnel or committee shall recommend to the HOPE the award of contract in favor of the supplier or contractor with the Single or Lowest Calculated and Responsive Quotation (for goods or infrastructure projects), or consultant with the Single or Highest Rated and Responsive Proposal (for consulting services). In case of approval, the HOPE shall immediately enter into contract with the winning supplier, contractor or consultant. If permitted by the HOPE, the authorized personnel or committee may award the contract in accordance with this paragraph.

5. EFFECTIVITY CLAUSE

This Guidelines shall take effect fifteen (15) calendar days after its publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center.