



RESOLUTION NO. 31-2016

APPROVING THE ISSUANCE OF A CIRCULAR REMINDING PROCURING ENTITIES THAT ALL EXPENSES INCURRED DURING THE CONDUCT OF POST-QUALIFICATION SHALL BE FOR THE ACCOUNT OF THE PROCURING ENTITY

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 63 of RA 9184 and its 2016 Revised IRR authorizes the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, its IRR;

WHEREAS, Section 34 of RA 9184 states that the post-qualification is the stage where the bidder with the Lowest Calculated Bid (LCB), in the case of Goods and Infrastructure Projects, or the Highest Rated Bid (HRB), in the case of Consulting Services, undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents;

WHEREAS, under Section 34.3 of the 2016 Revised IRR of RA 9184, the post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the bidder with the LCB/HRB, using non-discretionary criteria, as stated in the Bidding Documents;

WHEREAS, under the Generic Procurement Manuals, in verifying the information contained in the documents submitted by bidders, the Technical Working Group (TWG) may make inquiries with appropriate government agencies and examine the original documents kept in the bidder’s place of business, and the Bids and Awards Committee (BAC) or TWG may conduct a site inspection of the bidder’s place of business and/or plant or factory, where applicable;

WHEREAS, in the conduct of procurement activities, including the post-qualification, the BAC shall avoid circumstances that will create bias or an image of bias to any of the bidders pursuant to the principle of equity in the procurement process, as enunciated in Section 2 of the 2016 Revised IRR of RA 9184;

WHEREAS, Section 7(d) of RA 6713, otherwise known as the “*Code of Conduct and Ethical Standards for Public Officials and Employees*” prohibits public officials and employees from soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office;

WHEREAS, Presidential Decree (PD) No. 46, s. 1972 provides that it is punishable for any public official or employee, whether in the national or local governments, to receive, directly or indirectly, and for private persons to give, or offer to give, any gift, present or other valuable thing on any occasion, including Christmas, when such gift, present or other valuable thing is given by reason of his official position, regardless of whether or not the same is for past favor or favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions;

WHEREAS, under Section 3(b) of RA 3019 or the Anti-Graft and Corrupt Practices Act, it is prohibited to directly or indirectly request or receive any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law is considered as a corrupt practice;

WHEREAS, during the conduct of post-qualification, the ocular or on-site inspection would sometimes entail cost on the part of the procuring entity, which cost shall be borne by the procuring entity considering that this is to be performed in the course of official duties;

WHEREAS, shifting to the bidders the burden of shouldering the post-qualification expenses, which will, in effect, make the bid prices higher than the usual, is not in consonance with existing laws, rules and regulations, and may even create an impression of partiality, conflict of interest, and receiving undue favor from the bidders;

WHEREAS, to ensure impartiality, in keeping with the principle of fairness and equity in the procurement process, and in line with the mandate of PD 46, RA 6713, RA 3019 and other allied laws, rules and regulations, the GPPB-TSO proposed to the Inter-Agency Technical Working Group (IATWG), during its meeting on 29 November 2016, to recommend to the GPPB the issuance of a Circular reminding the procuring entities to shoulder all expenses to be incurred in connection with the performance of official functions of the BAC, TWG and Secretariat, including all officials and personnel involved in the procurement activities, especially during post-qualification;

WHEREAS, after due deliberation, the IATWG approved the proposal of the GPPB-TSO to recommend to the GPPB the issuance of a Circular informing all BACs that they shall not require, solicit or accept, directly or indirectly from the bidders, any fee, allowance, per diem, honorarium, gift, commission, benefit, favor or anything of monetary value;

WHEREAS, in connection with the conduct of post-qualification, the matter on the utilization of sources for the payment of honoraria and overtime pay based on DBM Budget Circular No. 2004-5A, as amended by DBM Budget Circular No. 2007-3, was also raised by some IATWG members during the said meeting;

WHEREAS, both DBM Budget Circulars provide for the funding source for the payment of honoraria and overtime pay, thus:

- a. Proceeds from sale of bid documents;
- b. Fees from contractor/supplier registry;
- c. Fees charged for copies of minutes of bid openings, BAC resolutions and other BAC documents;

- d. Protest fees; and
- e. Proceeds from bid security forfeiture.

WHEREAS, Department of Finance (DOF) - Department of Budget and Management (DBM) - Commission on Audit (COA) Permanent Committee Resolution No. 2005-2, dated June 2005, authorizes all agencies to treat the collections from the sources identified in Section 6.1 of DBM Budget Circular 2004-5A as trust receipts to be used exclusively for the payment of honoraria and authorized overtime pay; any excess in the amount collected shall be remitted by NGAs to the Bureau of the Treasury, or in the case of GOCCs and LGUs, the same shall form part of their corporate or local government funds, respectively;

WHEREAS, in undertaking BAC Activities (*e.g.*, meetings, post-qualification, ocular inspection and testing) and during the day-to-day operations of the BAC, its TWG and Secretariat, procuring entities would incur expenses that include, but not limited to, travel and meal expenses, which expenditures shall be included as part of the yearly budget of the procuring entities;

WHEREAS, considering that there are expenses of the BAC that may not be covered by the amount allocated in the yearly budget and considering further the possibility of having excess collections for the payment of honoraria and overtime pay, the IATWG proposed to recommend to the GPPB to request to the DOF-DBM-COA Permanent Committee the amendment of Resolution No. 2005-2 to allow procuring entities to use the excess of collections authorized under DBM Budget Circular No. 2004-5A, as amended by DBM Budget Circular No. 2007-3, for payment of expenses incurred by the BAC, including its TWG and Secretariat, in the performance of its functions;

WHEREAS, during the 12th GPPB and 10th IATWG Joint Meeting on 20 December 2016, the GPPB discussed and took into consideration the two (2) recommendations of the IATWG, and after careful review and due deliberation, approved the said recommendations;

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 following:

1. **ISSUE** a Circular, copy of which is attached as **Annex “A”**, reminding procuring entities that all expenses to be incurred during the conduct of post-qualification shall be borne by the procuring entity, and the Head of the Procuring Entity, BAC, TWG and Secretariat members, including other officials and personnel involved in the procurement process shall not require, solicit or accept, directly or indirectly from the bidders, any fee, allowance, per diem, honorarium, gift, commission, benefit, favor or anything of monetary value; and
2. **REQUEST** the DOF-DBM-COA Permanent Committee to allow procuring entities to use the excess of collections authorized under DBM Budget Circular No. 2004-5A, as amended by DBM Budget Circular No. 2007-3, for payment of expenses incurred by the BAC, including its TWG and Secretariat, in the performance of its functions.

This Resolution shall take effect immediately.

APPROVED this 20th day of December 2016 at Pasig City, Philippines.

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

(SGD)

DEPARTMENT OF EDUCATION

DEPARTMENT OF FINANCE

(SGD)

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

(SGD)

**DEPARTMENT OF NATIONAL
DEFENSE**

(SGD)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

DEPARTMENT OF TRANSPORTATION

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(SGD)

DEPARTMENT OF ENERGY

(SGD)

DEPARTMENT OF HEALTH

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

(SGD)

**DEPARTMENT OF TRADE AND
INDUSTRY**

(SGD)

PRIVATE SECTOR REPRESENTATIVE



CIRCULAR 06-2016

20 December 2016

TO : Heads of Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units

SUBJECT : Expenses Related to the Conduct of Post-Qualification

1.0 Purpose

This Circular is being issued to remind the HOPE, BAC, TWG and Secretariat, including all officials and personnel involved in the procurement activities that all expenses incurred during the conduct of post-qualification shall be for the account of the procuring entities.

2.0 Coverage

All Departments, Bureaus, Offices and Agencies of the National Government, including State Universities and Colleges, Government-Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units.

3.0 Post-Qualification

3.1 Section 34 of Republic Act (RA) No. 9184 states that the post-qualification is the stage where the bidder with the Lowest Calculated Bid (LCB), in the case of Goods and Infrastructure Projects, or the Highest Rated Bid (HRB), in the case of Consulting Services, undergoes verification, ascertainment and validation whether he has complied with all the requirements and conditions as specified in the Bidding Documents.

3.2 Section 34.3 of the 2016 Revised Implementing Rules and Regulations (IRR) of RA 9184 provides that the post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the bidder with the LCB/HRB, using non-discretionary criteria, as stated in the Bidding Documents

3.3 Pursuant to the Generic Procurement Manuals issued by the

Government Procurement Policy Board (GPPB), in verifying the information contained in the documents submitted by bidders, the Technical Working Group (TWG) may make inquiries with appropriate government agencies and examine the original documents kept in the bidder's place of business. In addition, the Bids and Awards Committee (BAC)/ TWG may conduct a site inspection of the bidder's place of business and/or plant/factory, where applicable.

4.0 Expenses Related to the Conduct of Post-Qualification

- 4.1 During the conduct of post-qualification, the ocular or on-site inspection would sometimes entail cost on the part of the procuring entity, which cost shall be borne by the procuring entity considering that this is to be performed in the course of official duties.
- 4.2 Shifting to the bidders the burden to shoulder the post-qualification expenses, which will, in effect, make the bid prices higher than the usual, is not in consonance with existing laws, rules and regulations, and may even create an impression of partiality, conflict of interest, and receiving undue favor from the bidders.
- 4.3 Section 7(d) of RA 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees prohibits public officials and employees from soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.
- 4.4 Presidential Decree (PD) No. 46, s. 1972 provides that it is punishable for any public official or employee, whether in the national or local governments, to receive, directly or indirectly, and for private persons to give, or offer to give, any gift, present or other valuable thing on any occasion, including Christmas, when such gift, present or other valuable thing is given by reason of his official position, regardless of whether or not the same is for past favor or favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions.
- 4.5 Under Section 3(b) of RA 3019 or the Anti-Graft and Corrupt Practices Act, it is prohibited to directly or indirectly request or receive any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law is considered as a corrupt practice
- 4.6 Thus, to ensure impartiality, in keeping with the principle of fairness and equity in the procurement process, and in line with the mandate of

PD 46, RA 6713, RA 3019 and other allied laws, rules and regulations, procuring entities are hereby reminded to shoulder all expenses to be incurred in connection with the performance of official functions of the BAC, especially during post-qualification, such that, the BAC, TWG and Secretariat, including all officials and personnel involved in the procurement activities, shall not require, solicit or accept, directly or indirectly from the bidders, any fee, allowance, per diem, honorarium, gift, commission, benefit, favor or anything of monetary value.

5.0 This Circular shall take effect immediately.

6.0 For guidance and compliance.

(SGD)

BENJAMIN E. DIOKNO

Chairperson