



RESOLUTION NO. 03 - 2021

APPROVAL OF THE REQUEST OF THE DEPARTMENT OF TRANSPORTATION AND PHILIPPINE NATIONAL RAILWAYS OF THEIR USE OF CUSTOMIZED BIDDING DOCUMENTS ADOPTING THE 5TH EDITION OF THE PHILIPPINE BIDDING DOCUMENTS AND THE RELEVANT CLAUSES OF THE 1999 EDITION OF THE FIDIC¹ CONDITIONS OF CONTRACT FOR PLANT AND DESIGN-BUILD AND ADOPTION OF THE CUSTOMIZED TECHNICAL EVALUATION PROCEDURE FOR THE LOWEST CALCULATED RESPONSIVE BID FOR THE DESIGN AND CONSTRUCTION OF THE SOUTH LONG HAUL PROJECT (PACKAGE 1, BANLIC TO DARAGA)

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 authorize the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend its IRR, whenever necessary;

WHEREAS, Section 6 of RA No. 9184 provides for the Standardization of Procurement Process and Forms, thus:

To systematize the procurement process, avoid confusion and ensure transparency, the procurement process, including the forms to be used, shall be standardized insofar as practicable. For this purpose the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which once issued shall be mandatory upon all Procuring Entities (PEs);

WHEREAS, Section 6.2 of the 2016 revised IRR of RA No. 9184 mandates PEs to use the Philippine Bidding Documents (PBDs), thus:

PEs are mandated to use the Generic Procurement Manuals, PBDs, and other standard forms of the GPPB. However, whenever necessary to suit the particular needs of the PE, modifications may be made, particularly for major and specialized procurement, subject to the approval of the GPPB;

WHEREAS, the Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects² provides that:

In the implementation of these guidelines, the GPPB may issue additional guidelines or introduce modifications thereto through the amendment of its specific provisions as the need arises, as well as, formulate, approve and disseminate standard Bidding Documents, forms and evaluation documents, whenever necessary;

¹ *Fédération Internationale Des Ingénieurs-Conseils.*

² Annex “G” of the 2016 revised IRR of RA No. 9184.

WHEREAS, in 2019, the GPPB-Technical Support Office (TSO) inferred from the details of the Mindanao Railway Project, of the intention of Department of Transportation (DOTr) to likewise submit a proposed customized bidding documents for the Philippine National Railways (PNR) South Long Haul Project.

WHEREAS, during the 5th Inter-Agency Technical Working Group (IATWG) held on 13 June 2019, the GPPB-TSO, after confirming the intention of the DOTr to use customized bidding documents for the said project, requested the latter to submit, as early as possible, the proposed customized bidding documents along with the required information³ for the aforementioned project to facilitate its review by the Board;

WHEREAS, on 8 October 2019, the GPPB-TSO sent a letter to the DOTr reiterating the request made during the aforementioned IATWG Meeting to submit the proposed customized bidding document for the PNR-South Long Haul Project;

WHEREAS, on 17 and 19 August 2020, the GPPB-TSO received letters from the DOTr requesting the approval of the GPPB for the use of the proposed customized bidding documents for the Design and Build Contract for the Design and Construction of the South Long Haul Project, Contract Package 1, Banlic to Daraga of the PNR based on the 5th Edition of the PBDs for Infrastructure Projects and the relevant clauses of the 1999 Edition of the *Fédération Internationale Des Ingénieurs-Conseils* Conditions of Contract for Plant and Design-Build (FIDIC Yellow Book) and the adoption of the customized Technical Evaluation procedure in finding the lowest calculated responsive bid for the PNR- South Long Haul Project;

WHEREAS, on 24 August 2020, the GPPB-TSO sent a letter to the DOTr requesting the submission of the necessary documents to facilitate the review and approval of the proposed customized bidding documents for the PNR-South Long Haul Project;

WHEREAS, on 22 September 2020,⁴ the GPPB-TSO received from the DOTr and PNR the following documents:

- a. *Note Verbale* No. 17-1049 dated 3 March 2017;
- b. *Note Verbale* dated 8 March 2017;
- c. Clarificatory Letter on the Procedures and Arrangements of the Utilization of Concessionary Loans by the Government of the People's Republic of China dated 29 June 2017;
- d. Matrix of Comparison;
- e. Matrix of New Provisions for the adoption of 1999 Edition of the FIDIC Yellow Book; and
- f. Shortlist of three (3) Qualified Contractors for the PNR-South Long Haul Project.

WHEREAS, during the 17 December 2020⁵ meeting of the GPPB-TSO with the DOTr and PNR, the latter confirmed the use of the 5th Edition of the PBDs for Infrastructure Projects and the 1999 Edition of the FIDIC Yellow Book for the proposed customized bidding documents for the PNR- South

³ (1) Background of the Project; (2) Funding source and procurement methodology; (3) Procurement arrangement in the *note verbale*, if any; (4) Matrix of Comparison between the existing bidding documents and the proposed bidding documents with provisions affecting the IRR and corresponding justifications; (5) Matrix of new provisions and affecting the IRR and corresponding justifications; and (6) such other relevant information for Board's information and consideration.

⁴ DOTr and PNR Letter dated 12 September 2020.

⁵ Conducted via Zoom.

Long Haul Project. The PNR explained the advantages of adopting the relevant clauses of the 1999 Edition *vis-a-vis* the 2017 Edition of the FIDIC Yellow Book, and highlighted that the use of the General Conditions of the Contract under the 1999 Edition of the FIDIC Yellow Book would be more favorable and advantageous to the PE;

WHEREAS, on 21, 22, 28 and 29 December 2020,⁶ the GPPB-TSO conducted line by line review sessions with the representatives from DOTr, PNR and the China Railway Design Corporation⁷ on the proposed customized bidding documents using as guide the comparative matrix previously prepared by the GPPB-TSO for the Mindanao Railway Project (MRP) Tagum-Davao-Digos (TDD) Section.⁸ Considering that the proposed customized bidding documents subject for review are similar to that of the MRP-TDD, the GPPB-TSO and PNR agreed that the latter shall adopt the previous comments on the MRP-TDD bidding documents in the proposed customized bidding documents for the PNR-South Long Haul Project as well as ensure that the noted additional comments during the review sessions are likewise incorporated therein;

WHEREAS, on 15 January 2021, the PNR submitted to the GPPB-TSO the revised version of its proposed customized bidding documents incorporating the comments and suggestions discussed during the line by line review sessions,;

WHEREAS, during the 1st Joint GPPB and Inter-Agency Technical Working Group Meeting⁹ on 20 January 2021, the GPPB-TSO apprised the Board of the status of the DOTr and PNR request as well as the target date of completion and publication of the corresponding issuance therefor;

WHEREAS, during the Special GPPB Meeting¹⁰ held on 3 February 2021, the GPPB-TSO presented to the Board the proposed customized bidding documents for the PNR- South Long Haul Project and recommended the principle-based approval of the DOTr and PNR request subject to conditions, as follows:

1. Approval of the use by the DOTr and PNR of Customized Bidding Documents, adopting the 5th Edition of the PBDs for infrastructure projects and relevant clauses of the 1999 Edition of the FIDIC Yellow Book, for the PNR-South Long Haul Project;
2. The said approval does not include Appendix A (Technical Score Evaluation Table) and Appendix B (Threshold Technical Requirements) under the Technical Proposal Forms of Section IX - C of the proposed Customized Bidding Documents because such evaluation criteria or requirement are subject to the determination of the DOTr and the PNR; and
3. The requirement for the DOTr and PNR to issue a certification prior to the posting of the proposed customized bidding documents, that the Technical Score Evaluation and Threshold Technical Requirements adopted for the PNR-South Long Haul Project and all the provisions in the proposed Customized Bidding Documents do not limit competition and do not violate any existing procurement law, rules, regulations, and associated laws and issuances.

⁶ Conducted via Zoom and Google Meet.

⁷ The PNR consultant for the SLH Project.

⁸ The GPPB approved the DOTr request for the use of the FIDIC Conditions of the Contract for the Plant and Design-Build Contract for the MRP-TDD bidding documents through Resolution No. 22-2019 dated 25 September 2019.

⁹ Conducted via Zoom.

¹⁰ Conducted via Zoom.

WHEREAS, the GPPB on the same occasion inquired on the compliance of the DOTr with the submission of the required certification for the previous projects with similar request and approval, *i.e.*, MRP-TDD and Subic-Clark Railway Project.¹¹ The DOTr provided the updates on said compliance¹² for the projects and emphasized the urgency to commence the procurement for the PNR-South Long Haul Project given that the validity period of the approval of the National Economic and Development Authority Board thereon is for a period of eighteen (18) months from November 2019. The DOTr likewise assured the Board that the DOTr and PNR will timely submit the required certification for the PNR-South Long Haul Project;

WHEREAS, the Board approved the use of the proposed customized bidding documents based on the 5th Edition of the PBDs for Infrastructure Projects and the 1999 Edition of the FIDIC Yellow Book and the adoption of the customized Technical Evaluation procedure for the PNR-South Long Haul Project subject to the above mentioned conditions;

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 principle-based approval of the DOTr and PNR request, subject to conditions, as follows:

1. Approval of the use by the DOTr and PNR of Customized Bidding Documents, adopting the 5th Edition of the PBDs for infrastructure projects and relevant clauses of the 1999 Edition of the FIDIC Yellow Book, for the PNR-South Long Haul Project;
2. The said approval does not include Appendix A (Technical Score Evaluation Table) and Appendix B (Threshold Technical Requirements) under the Technical Proposal Forms of Section IX - C of the Customized Bidding Documents, as the Board agreed that such evaluation criteria or requirement are subject to the determination of the DOTr and the PNR; and
3. The issuance of a certification by the DOTr and the PNR, prior to the posting of the customized bidding documents, that the (i) Technical Score Evaluation and Threshold Technical Requirements adopted for the PNR-South Long Haul Project and (ii) all the provisions in the Customized Bidding Documents do not limit competition and do not violate any existing procurement law, rules, regulations and associated laws and issuances.

This Resolution shall take effect immediately

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

¹¹ The GPPB approved the DOTr and Bases Conversion and Development Authority request to Use the FIDIC Conditions of Contract for Engineer, Procure and Construct/Turnkey Bidding Documents and Adoption of the Customized Technical Evaluation Procedure in Finding the Lowest Calculated Responsive Bid for the Subic-Clark Railway Project through Resolution No. 23-2019 dated 7 October 2019.

¹² For the Subic-Clark Railways Project, the certification was received by the GPPB-TSO on 10 November 2020, while the certification for the MRP-TDD is yet to be submitted once the shortlist of contractors for the same is finalized.

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

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

PRIVATE SECTOR REPRESENTATIVE