



CONFIRMING THE APPROVAL OF THE REQUEST OF THE DEPARTMENT OF TRANSPORTATION TO USE THE FIDIC¹ CONDITIONS OF CONTRACT FOR PLANT AND DESIGN BUILD IN THE DESIGN AND BUILD BIDDING DOCUMENTS AND ADOPTION OF THE CUSTOMIZED TECHNICAL COMPLIANCE EVALUATION PROCESS IN FINDING THE LOWEST CALCULATED RESPONSIVE BID FOR THE TAGUM-DAVAO-DIGOS SECTION OF THE MINDANAO RAILWAY PROJECT

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;

WHEREAS, Section 6.2 of the 2016 revised IRR of RA No. 9184 mandates procuring entities to use the Philippine Bidding Documents, thus:

Procuring Entities are mandated to use the Generic Procurement Manuals (GPMs), Philippine Bidding Documents (PBDs), and other standard forms of the GPPB. However, whenever necessary to suit the particular needs of the Procuring Entity, modifications may be made, particularly for major and specialized procurement, subject to the approval of the GPPB;

WHEREAS, Annex “G” on the Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects 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;

WHEREAS, on 29 January 2018, the Department of Transportation (DOTr) requested, through a letter from Undersecretary Timothy John R. Batan, a consultation meeting regarding the DOTr’s procurement strategy for the Mindanao Railway Project under the “Build Build Build” program;

¹ Fédération Internationale Des Ingénieurs-Conseils

WHEREAS, on 5 February 2018, the DOTr sent its draft notes for its proposed use of the 2-stage bidding process for infrastructure projects, and proposed use of the *Fédération Internationale Des Ingénieurs-Conseils* (FIDIC) Yellow Book for the design and build project;

WHEREAS, 23 February 2018, representatives from the GPPB – Technical Support Office (GPPB-TSO) and the DOTr met to discuss the said proposal where the latter explained that the request to use the FIDIC Yellow Book aims to address risks that may lead to failure in the procurement transaction and eventually during contract implementation;

WHEREAS, during the 1st Inter-Agency Working Group (IATWG) meeting, held last 27 February 2018, the request of the DOTr was presented and after deliberations, the IATWG instructed the DOTr to: (i) provide the draft bidding documents to the members; (ii) coordinate with the Department of Public Works and Highways for assistance and comments on the draft bidding documents; and (iii) review possible issue(s) on copyright in the adoption of the provisions of the FIDIC Yellow Book;

WHEREAS, on 08 March 2018, the DOTr provided the GPPB-TSO with a copy of the draft bidding documents which, after review, reflected the following changes in the standardized PBDs:

- a) Use of the General Conditions of the FIDIC Yellow Book by reference, as a replacement to the General Conditions of the Contract provided in the standardized PBDs;
- b) Replacement of the Special Conditions of the Contracts as provided in the standardized PBDs by “Particular Conditions of the Contract (PCC)”; and
- c) Inclusion of the “safeguards of the government” in the PCC.

WHEREAS, during the 2nd Special Meeting of the IATWG held on 23 March 2018, the request of the DOTr was again presented where the IATWG instructed the DOTr to identify the exact provisions in the proposed bidding documents that are not in conformity with the existing PBDs which would require GPPB approval for adoption;

WHEREAS, during the 2nd Regular Meeting of the IATWG held on 10 May 2018, the IATWG agreed on the following:

- a) For the DOTr to submit to the GPPB-TSO the final draft of the proposed bidding documents; and
- b) For DOTr and GPPB-TSO representatives to meet and discuss, line-by-line, the said proposal.

WHEREAS, on 11 May 2018, the Department of Transportation (DOTr) formally requested, through a letter from Undersecretary Timothy John R. Batan, the approval by the GPPB of the use of the FIDIC Conditions of Contract for its procurement of the Tagum-Davao-Digos section of the Mindanao Railway Project.

WHEREAS, based on the instructions of the IATWG, DOTr and GPPB-TSO representatives met and discussed the proposed bidding documents on the following dates:

- a) May 16, 17, 21-24, 2018;
- b) June 14 and 19, 2018;
- c) July 06, 09 and 10, 2018;
- d) August 14, 2018; and
- e) September 05, 2018;

WHEREAS, on 13 September 2018, the DOTr submitted the final draft of the proposed bidding documents to the GPPB-TSO where the original proposal on the application of 2-Stage Bidding Procedures for Infrastructure Projects had been abandoned;

WHEREAS, during the 4th Regular IATWG meeting held on 14 September 2018, the DOTr presented the final draft of the proposed design and build bidding documents and the proposed technical compliance evaluation process in finding the lowest calculated and responsive bid for Tagum-Davao-Digos section of the Mindanao Railway Project and the IATWG resolved to endorse the proposal of the DOTr to the Board, subject to additional comments of the IATWG members, if any, to be submitted to the GPPB-TSO by 21 September 2018;

WHEREAS, during the 4th GPPB Meeting on 27 September 2018, the proposal of DOTr was presented but the Board deferred the approval of the request until the next meeting subject to further comments by the members of the Board;

WHEREAS, on 02 October 2018, the GPPB-TSO received a letter from the National Economic Development Authority (NEDA), providing comments and suggestions on DOTr's proposed Bidding Documents and after careful review, the GPPB-TSO drafted additional recommendations to address the issues and concerns raised by the NEDA;

WHEREAS, during the 5th GPPB Meeting held on 18 October 2018, the GPPB-TSO presented the comments of the NEDA, with GPPB-TSO recommendations, and after due deliberation and careful review, the Board approved the recommendation of the IATWG to approve the DOTr's request to use its proposed design and build bidding documents and adopt the proposed technical compliance evaluation process in finding the lowest calculated and responsive bid for the Tagum-Davao-Digos section of the Mindanao Railway Project of the DOTr subject to inclusion of the recommendations as approved by the Board, thus:

- a) On Instruction to Bidders Item A.12.1(b)(ii) – indicate whether “owned, leased, and/or under purchase agreement;
- b) On Instruction to Bidders Item Clause 26.1 – Identify the terms “material deviation” or “reservation” in the proposed Bidding Documents;
- c) On Instruction to Bidders Clause 15.4 – revise the reference from GCC Clause 13.7 to GCC Clause 13.8;
- d) On Part B. Particular Conditions, Part B. Sub-Clause 1.1.2 – Include additional provision: “The words, ‘Engineer’ and ‘Project Consultant’ are use interchangeably”; and
- e) On Invitation to Bid - Remove and revise all references pertaining to twenty five percent (25%) requirement in the customized PBDs and maintain the requirements as provided in the 2016 Revised IRR of RA 9184 and the PBD;

WHEREAS, the Board during the same meeting further instructed the following:

- a) That in case there are provisions adopted in the proposed bidding documents that are inconsistent with RA No. 9184, the latter will prevail;
- b) This should be reflected in the notes tab provided in page 42 of the proposed bidding documents; and
- c) The proposed technical compliance check for design and build bid evaluation criteria is being approved only for the Mindanao Railway Project;

WHEREAS, despite repeated follow throughs, the GPPB-TSO did not receive the final revised version of the customized bidding documents based on the additional inputs raised during the 18 October 2018 meeting;

WHEREAS, during its 7th regular meeting on 25 September 2019, the GPPB-TSO apprised the Board of the foregoing and the GPPB resolved, as follows:

- a. To confirm the 18 October 2018 Board approval subject to the comments, recommendations and instructions relative to the proposed bidding documents and technical evaluation procedure for the Mindanao Railway Project, and subject to the condition that the DOTr shall ensure that the comments of the members of the Board shall have been incorporated and/or considered in the final version of the bidding documents to be used; and
- b. To require the DOTr to submit a certification, prior to the posting of the bidding documents for the Mindanao Railway Project, that the use of the proposed bidding documents does not limit competition and does not violate any existing procurement law, rules, regulations and associated laws and issuances;

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 comments, recommendations and instructions of the Board last 18 October 2018 on the proposed design and build bidding documents and the adoption of the proposed technical compliance evaluation process for the implementation of the Tagum-Davao-Digos section of the Mindanao Railway Project of the DOTr, subject to the issuance of the DOTr of a certification, prior to the posting of the bidding documents for the Mindanao Railway Project, that the use of the proposed bidding documents does not limit competition and does not violate any existing procurement law, rules, regulations and associated laws and issuances.

This resolution shall take effect immediately.

APPROVED this 25th day of September 2019 at City of Manila, Philippines.

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