

VOLUME 1

Guidelines on the Establishment of Procurement Systems and Organizations

GUIDELINES ON THE ESTABLISHMENT OF PROCUREMENT SYSTEMS AND ORGANIZATIONS

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ABBREVIATIONS AND ACRONYMS

ABC	Approved Budget for the Contract
ADB	Asian Development Bank
AFP	Armed Forces of the Philippines
AFS	Audited Financial Statement
APCPI	Agency Procurement Compliance and Performance Indicator
APP	Annual Procurement Plan
BAC	Bids and Awards Committee
BRS	Bureau of Research and Standards
BSP	Bangko Sentral ng Pilipinas
CAF	Certificate of Availability of Funds
CDA	Cooperatives Development Authority
CIAP	Construction Industry Authority of the Philippines
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid to (named place of destination)
COA	Commission on Audit
COFILCO	Confederation of Filipino Consulting Organizations
CSO	Civil Society Organization
CSC	Civil Service Commission
DBM	Department of Budget and Management
DBM-PS/ PS-DBM	Department of Budget and Management-Procurement Service
FAPs	Foreign Assisted Projects
FDA	Food and Drug Administration
FMIS	Financial Management Information System
GAA	General Appropriations Act
GCC	General Conditions of Contract
GFI	Government Financial Institution
GOCC	Government-Owned or –Controlled Corporation
GoP	Government of the Philippines
GPPB	Government Procurement Policy Board
GPPB-TSO	Government Procurement Policy Board – Technical Support Office
GPRA	Government Procurement Reform Act
HoPE	Head of the Procuring Entity
HRB	Highest Rated Bid
HRRB	Highest Rated and Responsive Bid
IB	Invitation to Bid
ICT	Information and Communications Technology
IFI	International Financing Institution
IPR	Intellectual Property Rights

ITB	Instruction to Bidders
ITR	Income Tax Return
JVA	Joint Venture Agreement
JICA	Japan International Cooperation Agency
LC	Letter of Credit
LCB	Lowest Calculated Bid
LCRB	Lowest Calculated and Responsive Bid
LGU	Local Government Unit
MOOE	Maintenance and Other Operating Expenses
NACAP	National Constructors Association of the Philippines
NCB	National Competitive Bidding
NFCC	Net Financial Contracting Capacity
NGA	National Government Agency
NGO	Non-Government Organization
NTP	Notice to Proceed
OPCCB	Organization, Position Classification and Compensation Bureau
PA	Professionals Association
PAGASA	Philippine Atmospheric, Geophysical and Astronomical Services Administration
PBDs	Philippine Bidding Documents
PCA	Philippine Constructors Association, Incorporated
PCAB	Philippine Contractors Accreditation Board
PhilGEPS/ G-EPS	Philippine Government Electronic Procurement System
PICE	Philippine Institute of Civil Engineers
PICPA	Philippine Institute of Certified Public Accountants
PMO	Project Management Office
PMR	Procurement Monitoring Report
PNP	Philippine National Police
PAPs	Programs, Activities and Projects
PPMP	Project Procurement Management Plan
PRC	Professional Regulation Commission
R.A.	Republic Act
R.A. 9184	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"
REI	Request for Expression of Interest
RFQ	Request for Quotation
ROW	Right-of-Way
SEC	Securities and Exchange Commission
SME	Small and Medium Enterprises
SOW	Scope of Work
SUC	State Universities and Colleges
SWA	Statement of Work Accomplished

TOR	Terms of Reference
TSO	Technical Support Office
TWG	Technical Working Group
UNDB	United Nations Development Business
VAT	Value-Added Tax
WB	The World Bank

SECTION 1
General Provisions

Legal Basis for the Procurement Manual

Legal Reference

2016 IRR, Section 6 provides for the legal basis for this Procurement Manual.

The Government Procurement Manual was developed pursuant to R.A. 9184, otherwise known as the "Government Procurement Reform Act" and its IRR. The section provides for the development of generic procurement manuals and standard bidding documents and forms that all Procuring Entities must use, once issued.

This Manual aims to standardize the procurement process, in effect preventing confusion, ensuring transparency, and enabling procuring entities to conform to the principles that govern all government procurement activities. However, whenever necessary to suit the particular needs of the Procuring Entity, particularly for major and specialized procurement, it may be modified subject to the approval of the GPPB.

The GPPB will review this Manual periodically, and whenever necessary, ensure its applicability to existing conditions. Procuring Entities may submit to the GPPB its recommendations for specific revisions to the Manual. Any such revisions must be approved by the GPPB and must be consistent with existing procurement laws, rules, regulations, and policies.

In case of an inconsistency or conflict between this Manual and R.A. 9184 and/or its IRR, the latter shall govern.

Coverage, Scope, and Application

Legal Reference

2016 IRR, Section 4 provides the legal reference for the coverage, scope and application of the Procurement Manual.

Coverage

This Manual must be used for all procurement activities by the Government of the Philippines and all its branches and instrumentalities, as follows:

1. the Legislative Branch and its instrumentalities; the Senate, the House of Representatives, and all the offices and committees under them;
2. the Judiciary and its instrumentalities; the Supreme Court, the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the lower courts and all other bodies that form part of the Judiciary;
3. the Office of the President proper as described by E.O. No. 292 or the 1987 Administrative Code of the Philippines; the Executive Office, the Common Staff Support System, and the Office of the Presidential Special Assistants/Advisers System;
4. departments, bureaus, offices that form part of the Executive Branch; its regional and/or local offices;
5. Constitutional Commissions or Offices, and all instrumentalities/offices under them;
6. department offices and bureaus in the autonomous regional government;
7. GOCCs and GFIs;
8. SUCs;
9. LGUs; and
10. all other instrumentalities/agencies/offices/units of the Government

Consistent with National Budgeting and Accounting practice, the above mentioned offices/instrumentalities of government may also be classified into the following and shall be referred to as such throughout this Manual:

1. NGAs, which refer to items 1-5 above;
2. Autonomous Regional Government, which refers to item 6 above;
3. GOCCs;
4. GFIs;
5. SUCs; and
6. LGUs

Scope

The provisions of R.A. 9184 shall apply to the procurement of goods, infrastructure projects, and consulting services, regardless of source of funds, whether local or foreign. However, any Treaty or International or Executive Agreement to which the GoP is a signatory, affecting government procurement transactions, shall be observed. Thus, procurements funded partly or fully by IFIs shall follow the procurement procedures and guidelines specified under the loan or grant, or technical assistance agreement; provided that in the event no such procurement guidelines are specified, R.A. 9184 and its 2016 IRR will apply.

How are Executive Agreements distinguished from Treaties?

"Executive Agreements" is a term commonly used to designate international agreements, entered into by the President without the concurrence of the Senate, and embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature. (*DOJ Opinion No. 46 series of 2007 citing USAFFE Veterans Association Inc. v The Treasurer of the Philippines 105 Phil 103, 1959*)

International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements. (*Ibid. citing Commissioner of Customs v Eastern Sea Trading, 3 SCRA 351, 1961*)

How are loans, or grant agreements classified?

In several instances, the DOJ had the occasion to rule that commercial agreements concerning loans, guarantees or other credit accommodations are in the nature of an executive agreement because they embody arrangements of a more or less temporary nature, that is they become *functus officio* upon settlement of the obligors' liabilities. (*Ibid. citing Op. No. 70 s 1987; Op. No. 147, s of 1994; Op. No. 102, s of 2004.*)

In view of the above, and in due regard to the harmonization efforts among GOP, WB, ADB, and JICA, this Manual will not only cover R.A. 9184 and its 2016 IRR, but the harmonized procedures found in the PBDs as well. Unless otherwise indicated herein, the manuals shall apply to foreign-assisted projects as well.

Application

The procurement procedures provided in this Manual shall apply to the following:

1. Goods and Services;
2. Infrastructure Projects; and
3. Consulting Services

This Manual shall be used together with the PBDs prescribed by the GPPB.

On the other hand, this Manual shall not apply to the following activities:

1. Procurement of Goods, Infrastructure Projects and Consulting Services funded from Foreign Grants covered by R.A. 8182, as amended by R.A. 8555, unless the GoP and the foreign grantor/foreign or international financing institution agree otherwise;
2. Acquisition of right-of-way site or location for infrastructure projects;

3. Private sector infrastructure or development projects, such as the build-operate-transfer scheme and its variants.
4. Direct financial or material assistance given to beneficiaries in accordance with existing laws, rules and regulations, and subject to the guidelines of the concerned agency;
5. Participation in local or foreign scholarships, trainings, conferences, seminars or similar activities governed by applicable COA, CSC and DBM rules;
6. Leasing out of government-owned property for private use;
7. Hiring of Job Order Workers;
8. Joint Venture under the revised NEDA Guidelines, and JV Agreements by LGU with private entities; and
9. Disposal of property and other assets of the government.

For application of procurement methods needed to address peculiar situations, agencies are advised to consult the GPPB.

Principles of Government Procurement

Legal Reference

2016 IRR, Section 3 provides the legal reference for the principles of government procurement.

Government procurement shall be governed by the following principles:

Transparency

The procurement process and the implementation of procurement contracts must be transparent. Procuring entities must ensure the widest dissemination of bid opportunities and the participation of pertinent non-government organizations. Towards this end, except for certain alternative methods of procurement where the posting requirement may be dispensed with, posting in the Procuring Entity's website, in the PhilGEPS website, in the website prescribed by the foreign government/foreign or IFI, if applicable, and in a conspicuous place within the premises of the Procuring Entity is required for all procurements. Moreover, in addition to the COA representative, the BAC of the Procuring Entity is required to invite observers coming from eligible and qualified PAs and NGOs to observe any or all stages of the procurement process. Finally, each procurement transaction must be properly documented and such records must be maintained and made available to proper parties.

Competitiveness

Public procurement must be competitive and, as a rule, be conducted through public bidding, except as otherwise provided for under the GPRA, its IRR and this Manual. A competitive bidding process treats bidders equitably and provides fair grounds for competition among themselves, thereby ensuring that no single bidder significantly influences the outcome of the bidding. Competition among proponents will urge them to offer more beneficial terms to the government. Hence, the alternative methods of procurement must only be resorted to when competitive bidding is not a feasible option, in accordance with the conditions laid down in R.A. 9184, its 2016 IRR and this Manual.

Streamlining and use of technology in procurement

A streamlined procurement process that will uniformly apply to all government procurement must be adopted. The procurement process must be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method. The GPPB conducts a periodic review of government procurement procedures, and whenever necessary, formulates and implements changes thereto.

Accountability

A system of accountability must be established. Thus, both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts, and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto. In relation to this, the heads of the procuring entities are responsible for establishing and maintaining a transparent, effective, and efficient procurement system in their respective agencies. Hence, the responsibilities of each official involved in the procurement process must be clear and legally identifiable.

Public Monitoring

Public monitoring of the procurement process and the implementation of awarded contracts are provided for in R.A. 9184, with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the R.A. 9184 and its 2016 IRR, and that all these

contracts are performed strictly according to specifications. A system of reporting to the GPPB is provided for, while eligible and qualified CSOs such as NGOs, PAs, academic institutions, and religious groups are allowed to observe and monitor the procurement process and contract implementation.

To fully abide by these principles, Procuring Entities shall consistently follow the procedures prescribed in this manual.

SECTION 2

Procurement Organizations

The Organizational Structure

Legal Reference

2016 IRR, Sections 5(f) and (bb) 11, 13, and 14 provide for the legal reference for the organizational structure.

1. The Procuring Entity and the Procurement Unit / Office

a. The Procuring Entity

A Procuring Entity shall be the central office, or, when duly authorized to procure independently, the regional office or any decentralized, local or lower level agency/bureau/office of an NGA, GOCC, GFI, SUC or LGU. However, the authority to procure independently of the central office must not be presumed, as the entire structure of the organization would have to be considered to determine whether or not such regional, decentralized, local or lower level agency/bureau/office is authorized to undertake procurement activities. Additionally, the existence of directives from the central office delegating such authority to procure to its regional, decentralized, and local or lower level agency / bureau / office would have to be determined.

b. The Head of the Procuring Entity (HOPE)

The HOPE refers to: (i) the head of the agency or body, or his duly authorized official, for NGAs and the constitutional commissions or offices, and other branches of government; (ii) the governing board or its duly authorized official, for GOCCs, GFIs and SUCs; or (iii) the local chief executive, for LGUs: *Provided, however,* That in an agency, department, or office where the procurement is decentralized, the head of each decentralized unit shall be considered as the HoPE, subject to the limitations and authority delegated by the head of the agency, department, or office.

The powers, duties, and responsibilities of the duly authorized official of the HOPE shall be confined within the limits of the delegation expressed through a department/office order, board resolution, or other equivalent documents.

c. The Procurement Unit / Office and the BAC Secretariat

The Head of the Procuring Entity should create a permanent BAC Secretariat to ensure continuity as well as professionalization of the procurement function,—subject to existing guidelines, *e.g.* DBM National Budget Circular No. 2015-558 dated 04 June 2015, explained below, or an *ad hoc* BAC Secretariat. With respect to the latter case, the Head of the Procuring Entity shall assign full-time support staff to the BAC Secretariat, or designate an organic office, or the existing Procurement Unit/Office as the BAC Secretariat, because this office is best equipped for the task.

The term “Procurement Unit” shall refer to the organic office of the Procuring Entity that carries out the procurement function.

The Head of the Procuring Entity should consider the following factors in selecting the personnel who will be assigned to the BAC Secretariat, among others:

- i. Integrity;
- ii. Procurement proficiency, as shown by experience and trainings attended;
- iii. The appropriate Civil Service qualification standards;
- iv. The appropriate rank of the head of the BAC Secretariat, which should be:

- At least a fifth ranking permanent employee, in Central/Head Offices of NGAs, GOCCs and GFIs, as well as SUCs and LGUs; or
 - At least a third ranking permanent employee, in bureaus/regional offices and sub-regional/district offices; or
 - A permanent official of a lower rank, if the fifth or third ranking permanent employee is not available.
- v. Full-time support staff for an existing *ad hoc* Secretariat.

In designating members of the Procurement Unit / Office and the BAC Secretariat, the Head of the Procuring Entity must ensure that check and balance is maintained, and procurement personnel are not given assignments that may conflict with their designation as such.

Under the *Guidelines in the Organization and Staffing of Procurement Units*, issued by DBM through National Budget Circular No. 2015-558 on 04 June 2015 (See Section 3), the organizational level of the procurement unit shall be determined by:

- (a) The organizational level of the procuring entity; and
- (b) The average procurement budget of the agency for the last three (3) years.

For this purpose, the procurement budget shall refer to the sum of the allocations of the central office, staff bureaus, and regional offices of the agency for repair and maintenance, supplies and materials, rents, professional services, buildings and structures outlay, office equipment, furniture and fixtures, transportation equipment, machineries and equipment, public infrastructures, and other expense items which are subject of procurement, as reflected in the approved APP, and its supplements, for the covered years.

The organizational level of procurement unit shall be as follows:

Annual Procurement Budget	Department-level Agency	Bureau-level Agency	GOCC/GFI
PhP 5 Billion and above	Service	Division	Department
Less Than PhP 5 Billion	Division	Section	Division

The HoPE shall ensure that the Procurement Unit/Office will have sufficient number of personnel who will provide secretariat support to the BAC and perform the other functions of the Procurement Unit/Office, as provided in this Manual. The said Unit shall be strengthened through continuing procurement training and education of the staff and deployment of additional personnel, if necessary.

2. The Bids and Awards Committee (BAC)

The HoPE must create a single BAC in the Head Office of the Procuring Entity. However, separate BACs may be created under any of the following conditions:

- a. The items to be procured are complex or specialized; or

- b. If, even after undergoing "jury duty", the single BAC cannot manage the procurement transactions as shown by delays beyond the allowable limits.

The separate BACs may be organized according to:

- a. geographical location of the PMO or end-user or implementing units of the Procuring Entity; or
- b. nature of procurement

Thus, a Procuring Entity may have separate BACs in its regional or decentralized offices (when warranted according to the above conditions) and/or separate BACs in the central office to handle procurements of ICT resources, infrastructure projects, textbooks, and other specialized procurements.

However, the HoPE must limit the creation of separate BACs in order to facilitate professionalization and harmonization of procedures and standards. If the reason for creating a separate BAC is due to complexity of the procurement, it may be unnecessary, considering that the rule that requires the designation of provisional members (technical and end-user unit representative) is already responsive to the requirement of having a separate BAC for procurements that are complex in nature.

3. BAC Members

I. REGULAR MEMBERS

The HoPE must designate the Members of the Bids and Awards Committee (BAC) in accordance with the following rules:

a. **Central/Head Offices of NGAs, GOCCs/GFIs, and SUCs:**

The BAC must consist of at least five (5) members and not exceed seven (7). Of the five (5) members, three (3) must be regular members, and two (2) must be provisional members. Should the HoPE desire to create a seven (7)-member BAC, he/she may designate two (2) additional regular members, or two (2) additional provisional members, or one (1) additional regular and provisional members.

The regular members are:

- An officer, who is at least a **third-ranking permanent** official of the Procuring Entity, who shall also be designated as the **Chairperson**;
- An officer, who holds at least a **fifth ranking permanent plantilla position, or if not available, an officer of the next lower rank**, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the legal or administrative area of the Procuring Entity;
- An officer, who holds at least a **fifth ranking permanent plantilla position, or if not available, an officer of the next lower rank**, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the finance area of the Procuring Entity.

b. **For Bureaus/Regional Offices/Decentralized Units of NGAs, GOCCs, GFIs:**

The BAC must consist of at least five (5) members and not exceed seven (7). Of the five (5) members, three (3) must be regular members, and the two (2) must be provisional members. Should the Head of the Procuring Entity desire to create a seven (7)-member BAC, he/she may designate two (2) additional

regular members, or two (2) additional provisional members, or one (1) additional regular and provisional members.

The regular members are:

- An officer, who is at least a **third-ranking permanent official** of the Procuring Entity, who shall be designated as the **Chairperson**;
- An officer, who holds at least a **third ranking permanent plantilla position, or if not available, an officer of the next lower rank**, with knowledge, experience and/or expertise in procurement who represents the legal or administrative area of the Procuring Entity;
- An officer, who holds at least a **third ranking permanent plantilla position, or if not available, an officer of the next lower rank**, with knowledge, experience and/or expertise in procurement who represents the finance area of the Procuring Entity.

For purposes of the IRR, the term "permanent" shall refer to a *plantilla* position within the Procuring Entity concerned. The term "permanent" does not refer to whether the person holding the *plantilla* position is contractual, regular, designated or appointed; rather, the concern specifically refers to whether said position is included in the list of authorized positions created by DBM as well as whether said position is existing within the approved organizational structure of the procuring entity.

Can a contractual-plantilla personnel be designated as BAC member?

The plantilla position contemplated by the rules may be occupied by a contractual, regular, designated or appointed official or personnel. The nature and tenure of employment is inconsequential. [GPPB-TSO NPM No. 120-2012]

Therefore, a contractual-plantilla personnel may be designated as a BAC member. Personnel engaged through Contract of Service and Job Order are not considered as permanent employees that can be designated as BAC member.

Sample Procurement Organization Structure

In the case of a big government agency such as the Department of Public Works and Highways (DPWH), its procuring entities include the Central Office (CO), the Regional Offices (ROs), and the District Engineering Offices (DEOs). The respective Heads of these Procuring Entities are the DPWH Secretary, the Regional Director, and the District Engineer.

The DPWH Secretary issues from time to time a Department Order on the omnibus levels of authorities of DPWH Officials in accordance with the pertinent provisions of Executive Order No. 124, series of 1987, Executive Order No. 292, otherwise known as the Administrative Code of 1987, RA 9184, and other similar circulars which shall serve as basis for delegating authorities on procurement related activities.

The delegated levels of authority does not in any way prevent the Secretary as Head of Procuring Entity (HOPE) from exercising directly such authorities. The delegated authorities may also be modified, expanded or withdrawn by the Secretary at any time as public interest so demands. It is understood that an authority delegated cannot be further delegated by other officials of the Department, unless done by the Secretary. The authorities being delegated herein to District Engineers shall also apply to Heads of Sub-District Engineering Offices and Officer-in-Charge of District and Sub-District Engineering Offices in this Department who have been duly designated as such by the Secretary, in so far as their respective areas of jurisdiction are concerned.

They have duly delegated levels of authority for every type of procurement. For instance, in infrastructure procurements, considering the large number of locally-funded projects procured by the DPWH, the DPWH Secretary has delegated the authority to conduct the procurement of these projects thru public bidding, including the approval of awards and contracts, to the three levels of Procuring Entities within the following ranges of project costs, in accordance with Department Order (DO) No. 54, series of 2011:

<u>Procuring Entity</u>	<u>Range of Costs of Projects Authorized for Procurement</u>
DEO	Up to Php 50 million, except for school buildings which the DEOs are authorized to procure without any limit on project costs in accordance with DO 115-A, series of 2015
RO	Above Php 50 million up to Php 150 million
CO	Above Php 150 million

In exceptional meritorious cases such as calamities, emergencies or where time is of the essence as provided for in the appropriate Department Orders, the DPWH Secretary may authorize ROs and DEOs to conduct the procurement of locally-funded infrastructure projects thru public bidding beyond the abovementioned limits.

In the case of foreign-assisted projects (FAPs), the CO BAC for Civil Works usually handles their procurement, regardless of costs, considering that FAPs are fewer and generally larger in scale.

c. **For LGUs**

For Provinces, Cities, Municipalities:

- The BAC shall consist of at least five (5) members and shall not exceed seven (7).
- The Local Chief Executive shall designate the members of the BAC, who should occupy plantilla positions of the Local Government concerned.
- All members designated by the Local Chief Executive are regular members except the end-user member who is considered as a provisional member.
- The officials from the regular offices under the Office of the Governor or Mayor, as the case may be, may be designated as members of the BAC. The offices that may be represented, are the following, among others:
 - ✓ the Office of the Administrator;
 - ✓ the Budget Office;
 - ✓ the Legal Office;
 - ✓ Engineering Office; and
 - ✓ the General Services Office.
- In case of municipalities which do not have an Office of the Administrator or a Legal Office, the Mayor shall designate a representative from the office/s performing the functions equivalent to that of the former.

It is a good practice to always have a legal officer or a lawyer, if available, in the BAC. He can provide the legal direction especially in procurements where contentious issues surface. Having a technical expert in the BAC is also helpful, and is thus recommended.

The IRR does not specify the rank of those who may be appointed as BAC

members, although it mentions that the Chairperson should be at least a third ranking permanent official. Considering the nature of BAC functions, the Local Chief Executive may choose to appoint officials of the local government who are holding positions of responsibility.

In GPPB Resolution No. 01-2004, dated March 10, 2004, for purposes of determining the rank in provinces, cities and municipalities, the first ranking permanent official shall be the governor or mayor, as the case may be; the second ranking permanent official shall be the vice-governor or vice-mayor, as the case may be; and the third ranking permanent official shall be the head of any of the regular offices under the Office of the Local Chief Executive: *Provided, however,* That the vice-mayor shall not be designated as member of the BAC as its office is not one of the regular offices under the Office of the Local Chief Executive.

d. **For Barangays:**

The Punong Barangay shall designate at least five (5) but not more than seven (7) members of the BAC, from among the members of the Sangguniang Barangay. The Punong Barangay, being the Local Chief Executive, shall designate the Chairperson, Vice-Chairperson and members of the BAC.

II. PROVISIONAL MEMBERS

The provisional members are:

- An officer who has technical expertise relevant to the procurement at hand, who has knowledge, experience and/or expertise in procurement; and
- A representative from the end user or implementing unit who has knowledge of procurement laws and procedures; or

In case procurement tasks are outsourced to another GoP agency as procurement agent, a representative from the requesting Procuring Entity may be designated as an end-user member.

In designating the provisional members, the HoPE shall consider the types of procurement normally undertaken by them, and identify the relevant technical experts. For example, in procuring janitorial services, the technical member should be an officer of the Building Maintenance Unit.

Provisional members will only participate in the deliberations of the BAC for procurements over which they have a direct interest. For example, in the procurement of computers, the technical member for ICT will participate in BAC deliberations together with the representative of the PMO/end-user unit.

The Procuring Entity shall recommend the provisional members to represent them, for procurement tasks outsourced to another GoP agency as procurement agent.

III. Important Considerations in Designating BAC Members:

- i. The Chairperson and Vice-Chairperson must be regular members of the BAC. The Chairperson must be at least a 3rd ranking permanent official of the procuring entity.
- ii. The HoPE is required to designate the BAC Chairperson. Likewise, he is required to designate the Vice-Chairperson from the remaining regular members.

- iii. The BAC members must be designated for a term of one (1) year only, reckoned from the date of designation. However, the HoPE may renew such designation at his discretion.
- iv. The HoPE may designate alternate BAC members, who shall have the same qualifications as that of the members originally designated. The alternate members shall have the same term as the original members. In attending meetings of the BAC, they shall receive proportionate honoraria, whenever the original members are absent.

Are the Chairperson and Vice-Chairperson the only regular members of the BAC?

Under Sec. 11.2.2 of the IRR, there are three (3) regular members: the chairperson, an officer from the legal or admin area, and an officer from the finance area, who could be designated as vice chair. There are two (2) provisional members, one (1) technical expert and the other is the end-user representative.

Should the Vice-Chairperson also be at least 3rd ranking permanent official?

No. Only the Chairperson must be at least a 3rd ranking permanent official of the procuring entity pursuant to Sec. 11.2.2 and 11.2.3 of the IRR.

Section 11.2.4 of the IRR of R.A. 9184 allows the HoPE to designate alternate members to the BAC, who shall have the same qualifications as their principals as set in the said law and IRR. This means that the qualifications in determining the principal should be the same qualifications in determining the alternate BAC member.

For example, for NGAs, a regular BAC member should be at least a 5th ranking permanent official of the procuring entity.

Q: In case a 4th ranking permanent official is designated as a regular BAC member, which the law and the IRR allow as it is within the "5th ranking" minimum qualification, can a 5th ranking permanent official be designated as his/her alternate?

A: Yes. The phrase "the same qualifications as their principals" under Section 11.2.4 should be understood together with the clause "as set in the Act and this IRR." This means that the qualifications that matter are the qualifications prescribed under R.A. 9184 and its IRR, and not the qualifications possessed by the principal BAC member. Thus, as long as the intended alternate BAC member is at least a 5th ranking permanent official then he/she can be designated.

(See GPPB-TSO NPM No. 160-2012)

It is noted that appointment to the BAC is in the nature of a designation, in addition to the regular duties of the subject official, and is not an appointment contemplated under the Civil Service rules.

In accordance with the thrust to professionalize the procurement organization, HoPEs are encouraged to re-appoint BAC members who have shown efficiency and probity in the performance of their duties.

- v. In case of resignation, retirement, separation, transfer, re-assignment, removal, or death of a BAC member, the HoPE may designate a replacement, who shall be similarly qualified as the official replaced, and shall have the required ranking as provided for in R.A. 9184 and its IRR. The replacement shall serve for the unexpired term. In case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension.
- vi. The HoPE may suspend or remove a member of the BAC for justifiable causes, including, but not limited to, violations of the provisions of the R.A. 9184 or its 2016 IRR.
- vii. The following officers of the Procuring Entity are disqualified from membership in the BAC:
- For NGAs, GOCCs, GFIs and SUCs:
 - (a) the HoPE;
 - (b) the official who approves procurement transactions;
 - (c) the Chief Accountant / Head of the Accounting Department and his/her staff, unless the Accounting Department is the end-user unit, in which case the Chief Accountant, Head of the Accounting Department or his/her staff may be designated as an end-user member.
 - For Provinces, Cities and Municipalities:
 - (a) the LCE and other elective officials of the province/city/municipality;
 - (b) the official who approves procurement transactions;
 - (c) the Chief Accountant or Head of the Provincial/City/Municipal Accounting Office and his/her staff, unless the Accounting Department is the end-user unit, in which case the Chief Accountant, Head of the Accounting Department or his/her staff may be designated as an end-user member.
 - For Barangays:
 - (a) the Punong Barangay;
 - (b) the Barangay Treasurer;
 - (c) other appointive barangay officials.

Does nepotism apply to designation of BAC members?

Book V, Title I(A), Chapter 8, Section 59 of Executive Order No. 292, also known as the Administrative Code of 1987, prohibits nepotism appointments or those made in favor of a relative of the appointing or recommending authority, or of the chief of bureau or office, or of the persons exercising immediate supervision over the appointee.

In *Laurel v. CSC*, G.R. No. 71562, October 28, 1991, the Supreme Court declared that the "rule admits of no distinction between appointment or designation." Thus, by legal contemplation, the prohibitive mantle on nepotism would include designation, because what cannot be done directly cannot be done indirectly.

Accordingly, nepotism can be said to apply in appointments and designations made by the HOPE of their relatives within the prohibited degree of relations, which includes the designation of BAC and Secretariat members.

4. The Technical Working Group (TWG)

- a. The BAC may create a TWG from a pool of technical, financial and/or legal experts to assist in the procurement process.
- b. In creating the TWG, the BAC shall consider the expertise required based on the nature of the procurement.

It is recommended that the TWG should have as members, a representative or representatives of the end-user or implementing unit, as may be appropriate, and experts in various disciplines who can handle the different aspects of the procurement at hand, namely, the technical, financial, legal and, in certain cases, the project management aspects. The presence of the end-user or implementing unit representative and the above-named experts will ensure that the bid documents properly reflect the requirements of the Procuring Entity, and the bids submitted will be rigorously evaluated.

- c. To be able to effectively study the requirements and evaluate the bids submitted, the BAC may create several TWGs to handle different procurements, for example:
 - TWG for Infrastructure Projects, whose membership shall include experts in civil works like civil engineers, an architect, an accountant or finance expert to handle the financial aspect of the procurement, etc.;
 - TWG for ICT Projects, whose membership shall include experts in ICT like a computer engineer, a systems analyst, a programmer, etc.; and
 - The BAC may also create a TWG for a specific procurement, particularly if the procurement at hand is highly technical or is a major or priority project of the government.
- d. In highly meritorious cases, the Procuring Entity may also engage the services of consultants in accordance with the IRR and Volume 4 of this Manual, subject to the availability of funds, who will assist the TWG and the BAC on the procurement at hand. For this purpose, the Head of the Procuring Entity shall certify that the in-house experts cannot provide adequate technical, financial, legal or project or contract management advice related to the procurement. These consultants, however, shall only have an advisory capacity, and may not vote during deliberations.
- e. The engagement of the services of consultants from the private sector and academe with proven expertise on the sourcing of the goods, works or consulting services to be procured is allowed as clarified under GPPB Circular 02-2012 issued on August 3, 2012.

5. Observers

- a. **Purpose of the Observers.** To enhance the transparency of the process, the BAC is required to invite Observers who may attend and observe the following stages of the procurement process:
 - i. eligibility checking;
 - ii. shortlisting;
 - iii. pre-bid conference;
 - iv. preliminary examination of bids;
 - v. bid evaluation; and
 - vi. post-qualification.

The Procuring Entity has the option to invite observers during the pre-procurement conference.

The required invitation to Observers in the stages mentioned above is true for procurement undertaken through competitive bidding, limited source bidding, and negotiated procurement for two-failed biddings. For other alternative methods of procurement, Observers may be invited by the Procuring Entity as it may deem necessary.

- b. Who the Observers are.** The BAC must invite three Observers, who shall be:
- i. a COA representative;
 - ii. at least one (1) observer who shall come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, for example:
 - for infrastructure projects
 - ✓ National Constructors Associations duly recognized by the CIAP, such as, but not limited to, the PCA; and the NACAP.
 - for goods
 - ✓ A specific relevant chamber-member of the PCCI.
 - for consulting services
 - ✓ a project-related professional organization accredited or duly recognized by the PRC or the Supreme Court, such as, but not limited to, the PICE; the PICPA; or the COFILCO.
 - iii. at least one (1) observer who shall come from an NGO.
- c. Criteria for Observers from the Private Sector.** In accordance with Section 13.2 of the IRR, the Observers coming from the private sector (*e.g.*, organization of experts and NGOs) should belong to an organization duly registered with the SEC or the CDA. Moreover, they should meet the following criteria:
- i. knowledge, experience or expertise in procurement or in the subject matter of the contract to be bid;
 - ii. absence of actual or potential conflict of interest in the contract to be bid; and
 - iii. any other criteria that may be determined by the BAC (for example, the BAC in decentralized units may require that the Observers should be based in the area to ensure their attendance during the meetings.)

When provided under the General Appropriations Act (GAA), transportation allowance may be given to NGO/CSO observers participating in government procurement activities.

Roles and Responsibilities

Legal Reference

2016 IRR, Sections 12, 13 and 14 provide the legal reference for the roles and responsibilities.

1. The Procuring Entity and the Procurement Unit/Office

- a. **Responsibilities of the HoPE.** The HoPE, or his duly authorized representative, shall have the following responsibilities in the procurement process:
- i. He/she must ensure that the APP is regularly prepared, reviewed and updated by the PMOs and end-user units, in accordance with the guidelines set forth herein. He/she must also approve the same, or delegate the approval authority to a second-ranking official designated by him/her, and ensure that the APP is in accordance with the duly approved yearly budget of the Procuring Entity. He/she must ensure that all procurements are in line with the APP.
 - ii. He/she must establish the BAC and the BAC Secretariat in accordance with the guidelines previously discussed.
 - iii. Upon submission by the BAC of the recommendation for award, the Head of the Procuring Entity or his/her representative must approve the same. He/she may, however, disapprove the recommendation but only on the basis of **valid, reasonable and justifiable grounds to be expressed in writing, and furnished to the BAC.** For consulting services, in addition to the BAC's recommendation for award, the HoPE also approves the following recommendations: (a) the short list of consultants; and the (b) results of evaluation and ranking of consultants.
 - iv. He/she must notify the BAC and the bidder in writing of his/her decision to disapprove the recommendation for award made by the BAC, and the grounds for it. In case the affected bidder, files a request for reconsideration in accordance with the provisions of the IRR, the HoPE must resolve such request for reconsideration with finality within seven (7) calendar days from its filing.
 - v. He/she must resolve the protests filed in accordance with the provisions of the IRR, within seven (7) calendar days upon its receipt.
 - vi. He/she must ensure that the BAC, BAC Secretariat and TWG, give utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the said assignments at hand are completed.
 - vii. He/she must ensure that the BAC, the BAC Secretariat and TWG members, including other relevant procurement personnel, shall attend the procurement training or capacity development program implemented by the GPPB.
 - viii. He/she is likewise encouraged to attend similar procurement training and capacity development activities implemented by the GPPB.
 - ix. He/she must impose the necessary administrative sanctions on errant members of the BAC Secretariat/BAC/TWG, in accordance with Section 70 of the 2016 IRR.

- x. He/she must ensure that the members of the BAC and the TWG shall receive their incentives.
- xi. He/she must approve the PMR and submit the same to the GPPB in printed and electronic format within fourteen (14) calendar days after the end of each semester.
- xii. He/she may approve extension of contracts for general support services, in accordance with the guidelines issued by the GPPB.
- xiii. He/she may grant extension of time for the delivery or performance by the supplier/contractor/consultant of its obligations, in accordance with the provisions of the 2016 IRR.
- xiv. He/she may approve variation orders or amendment to orders, in accordance with the provisions of the 2016 IRR.
- xv. He/she must impose the necessary administrative sanctions or blacklisting of erring manufacturers, suppliers, distributors, contractors and/or consultants and issue Blacklisting Orders.
- xvi. He/she must approve termination of contracts, when so warranted, and issue notice of termination, in accordance with the guidelines issued by the GPPB.

In cases where the HoPE or the appropriate approving authority is required to take action on the contract, he/she shall ensure that the action is taken within the periods indicated in the IRR. Otherwise, such contracts, if not acted upon within the reglementary period, shall be deemed approved. Under Sec. 65.1 of the IRR, public officials delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action shall be held criminally liable.

For contracts where further approval of higher authority is required, the approving authority or his duly authorized representative has twenty (20) calendar days from receipt to approve or disapprove it. For GOCCS, the concerned board or its duly authorized representative has thirty (30) calendar days.

In cases, however, further approval by the Office of the President is required, the contract shall not be deemed approved unless and until the Office of the President gives actual approval to the contract concerned.

In the case of *Jacomille v. Abaya, et al.*, the Supreme Court held that "[t]he different periods provided by RA 9184 within which certain stages of the procurement process must be completed is not merely directory but mandatory." (G.R. No. 212381, 22 April 2015)

- xvii. In his/her discretion, he/she may create an *ad hoc* Assessment Committee instead of tasking the BAC Secretariat to conduct the APCPI assessment.
 - xviii. He/she is responsible for the approval of the APCPI results and findings for the Procuring Entity, as reviewed by the BAC.
- b. **Responsibilities of the Procurement Unit/Office and the BAC Secretariat.** The Procurement Unit/Office of each Procuring Entity shall have the following responsibilities:
- i. It shall act as the BAC Secretariat. As such, it shall have the following responsibilities:

- Act as the main support unit of the BAC;
- Provide administrative support to the BAC and the TWG;
- Organize and make all necessary arrangements for the BAC and the TWG meetings and conferences;
- Prepare minutes of meetings and resolutions of the BAC;
- Take custody of procurement documents and other records and ensure that all procurements undertaken by the Procuring Entity are properly documented;

The BAC Secretariat shall ensure that all procurements undertaken by the Procuring Entity are properly documented, to provide an audit trail of the procurement process.

- Manage the sale and distribution of Bidding Documents to interested bidders.
- Advertise and/or post bidding opportunities, including Bidding Documents, and notices of awards.
- Assist in managing the procurement process.
- Monitor procurement activities and milestones for proper reporting to relevant agencies and/or end-users, when required.
- Be the central depository of all procurement related information and continually update itself with the most current GPPB resolutions issuances, circulars and events, and downstream the same to all relevant officer, employees, and parties requiring information. For this purpose, all information released by the GPPB can be secured electronically from www.gppb.gov.ph.
- Prepare the APP from the consolidated PPMPs submitted by the various PMOs and end-user units of the Procuring Entity;

The contents and form of the PPMP and APP are discussed in Section 3 of this Volume 1.

- Make arrangements for the pre-procurement and pre-bid conferences and bid openings.
- Act as the central channel of communications for the BAC with the end-users or implementing units, PMOs, other units of the line agency, other government agencies, providers of goods, infrastructure projects, and consulting services, and the general public.
- In the absence of an *ad hoc* Assessment Committee, it is responsible for the conduct of the APCPI assessment, submission of its results to the BAC for review, then to the Confirmation Team for verification, and to the HoPE for approval. In central offices, the BAC Secretariat is also responsible for consolidating the APCPI results of its attached agencies/offices, or regional and sub-regional units, and submitting the consolidated report to the GPPB-TSO.

The APCP User's Guide is issued by way of GPPB Resolution No. 10-2012 dated June 1, 2012. The APCPI Self-Assessment Form is downloadable from the GPPB website: www.gppb.gov.ph

- Provide utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand are completed (Jury Duty).
- ii. Based on inputs from the BAC and the TWG, it must prepare the procurement documents, i.e., purchase orders, job orders, contracts, and their attachments, for processing by the Budget, Accounting, Legal and Finance Offices, and routing to the signing and approving authorities. It must monitor the status of the procurements routed for approval, and cause the correction of any formal deficiencies in the said procurement documents to facilitate action on the part of the approving authorities.
- iii. It shall create, maintain and update the registry of suppliers, contractors, and consultants.
- iv. It shall create, maintain and update a price monitoring list, if one is maintained by the Procuring Entity.
- v. It shall administer the PhilGEPS, as the counterpart of the service provider, if the Procuring Entity has outsourced the PhilGEPS for non-common use items. Depending on the Service Level Agreement covering the contract, such administration may be limited to registration of suppliers and other users, assigning access levels, and updating of data.
- vi. It shall transact with the PhilGEPS and PS-DBM in behalf of the Procuring Entity.

2. The BAC

- a. **Responsibilities of the BAC.** The following shall be the responsibilities of the BAC:
- i. Creation of the TWG from a pool of technical, financial and/or legal experts to assist in the procurement process.
 - ii. Undertake the advertisement and/or posting of the invitation to bid/request for expression of interest.
 - iii. Conduct pre-procurement and pre-bid conferences.
 - iv. Determine the eligibility of prospective bidders.
 - v. Receive and open bids.
 - vi. Conduct the evaluation of bids with the assistance of the TWG.
 - vii. Undertake post-qualification proceedings, with the assistance of the TWG.
 - viii. Resolve motions for reconsideration filed by prospective bidders and other concerned parties with respect to the conduct of the bidding process.
 - ix. Recommend award of contracts to the HoPE or his duly authorized representative.
 - x. Recommend to the HoPE the method of procurement of the goods, services, and infrastructure projects included in the APP, *i.e.* whether to use public bidding or any of the alternative methods of procurement.
 - xi. Conduct any of the alternative methods of procurement.
 - xii. Recommend the imposition of sanctions in accordance with Rule XXIII of the IRR.
 - xiii. Conduct periodic assessment of the procurement processes and procedures to streamline procurement activities.

- xiv. Prepare a PMR that shall be approved and submitted by the HoPE to the GPPB on a semestral basis.

What should be reported in the PMR?

All procurement activities specified in the APP, whether ongoing and completed, from the holding of the pre-procurement conference to the issuance of notice of award and the approval of the contract, including the standard and actual time for each procurement activity.

What are the formal requirements in the submission and dissemination of the PMR?

The HoPE must submit the PMR to the GPPB in printed and electronic format within fourteen (14) calendar days after the end of each semester. The prescribed format/template for the PMR is downloadable from the GPPB website: www.gppb.gov.ph. The PMR should also be posted by the procuring entities in the appropriate government website in accordance with E.O. 662, s. 2007, as amended.

- xv. For each procurement transaction, accomplish a checklist showing its compliance with R.A. 9184, its IRR and this Manual. This will be submitted to the HoPE and made part of the transaction record.
- xvi. Invite the Observers required by law to be present during selected stages of the procurement process, in accordance with R.A. 9184, its 2016 IRR and this Manual.
- xvii. Furnish the Observers, upon the latter's request and free of charge, with the following documents:
- Minutes of the proceedings of BAC meetings;
 - Abstract of bids;
 - Post-qualification summary report;
 - APP and related PPMP; and
 - Copies of "opened" proposals.
- xviii. Conduct due diligence review or verification of the qualifications of Observers.

In performing this due diligence review or verification of the qualifications of Observers, the BAC shall require the organization nominating the Observer to submit their Curriculum Vitae and proof of their technical expertise and procurement proficiency. The certifications/documents showing technical expertise and procurement proficiency should be issued by appropriate bodies and authenticated by the latter. Verification may be done by the BAC by inquiring with the bodies that issued the same.

- xix. Review the APCPI results and findings, submitted to it by the BAC Secretariat or the *ad hoc* Assessment Committee
- xx. Give utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand are completed (Jury Duty).
- xxi. Perform such other related functions as may be necessary to the procurement process.

b. Quorum

The majority (one-half of membership plus one) of the BAC members shall constitute a quorum, provided that the Chairperson or the Vice-Chairperson should be present in all meetings and deliberations. The Chairperson or, in his absence, the Vice-Chairperson shall preside over the meetings. The Presiding Officer shall vote only in case of a tie.

In case of resignation, retirement, separation, transfer, re-assignment, removal, death, leave or suspension, and no replacement has been identified yet by the HoPE, a majority of the remaining BAC members shall constitute a quorum for the transaction of business, provided that the presence of the Chairman and Vice-Chairman shall be required; and provided further, that, in no case shall the quorum be less than three (3) members.

All BAC decisions should be embodied in resolutions signed by at least a majority of the members and the Chairperson or Vice-Chairperson thereof, as the case may be.

3. The TWG

Responsibilities of the TWG. The TWG shall provide assistance to the BAC in terms of the technical, financial, legal and other aspects of the procurement at hand. It shall have the following responsibilities:

- a. Assist the BAC in the review of Technical Specifications, Scope of Work, and Terms of Reference;
- b. Assist the BAC in the review of bidding documents, ensuring that the same properly reflects the requirements of the Procuring Entity and that these conform to the standards set forth by R.A. 9184, its 2016 IRR and the PBDs prescribed by the GPPB.
- c. Assist the BAC in the conduct of eligibility screening of prospective bidders, and in the short listing of consultants in case of biddings for consulting services.
- d. Assist the BAC in the evaluation of bids and prepare the accompanying reports for the BAC's consideration and approval.
- e. Assist the BAC in the conduct of post-qualification activities and prepare the post-qualification summary report for the BAC's approval.
- f. Assist the BAC and BAC Secretariat in preparing the resolution recommending award, with regard to the technical aspect, if necessary.
- g. Assist the BAC in the preparation of resolution of request for reconsideration.
- h. Provide utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand are completed (Jury Duty).

4. The Observers

Responsibilities of the Observers. The attendance of Observers ensures the transparency of the procurement process. They represent the public, the taxpayers who are interested in seeing to it that procurement laws are observed and irregularities are averted. The Observers shall have the following responsibilities:

- a. Preparation of the Procurement Observation Report either jointly or separately, indicating their observations made on the bidding activity conducted by the BAC.

In the said report, they shall indicate:

- i. An assessment of the extent of the BAC's compliance with the substantive and procedural requirements of R.A. 9184, its IRR and this Manual.
- ii. The areas of improvement in the BAC's proceedings.

The report shall be submitted to the HoPE, and a copy thereof will be furnished the BAC Chairperson, who shall forward it to the BAC Secretariat for inclusion in the procurement documents that will be submitted to the proper authorities for approval. This will be part of the official record of the bidding, and part of the audit trail. The Observer shall furnish a copy of the Report to the GPPB, and the Office of the Ombudsman or the Resident Ombudsman. If no report is submitted by the Observer within seven (7) calendar days after each procurement activity, it is presumed that the bidding activity conducted by the BAC followed the correct procedure.

- b. For the purpose of preparing the report, the Observer may request for copies of the following documents from the BAC, which shall be promptly provided to the observer:
 - i. Minutes of related proceedings of BAC meetings;
 - ii. Abstract of bids;
 - iii. Post-qualification summary report;
 - iv. Pertinent portions of the APP and related PPMP; and
 - v. Copies of "opened" proposals.

In all instances, Observers shall be required to enter into a Confidentiality Agreement with the concerned Procuring Entity in accordance with the form prescribed by the GPPB.

The requirement for signing the Confidentiality Agreement to maintain secrecy of the Disclosing Party's Confidential Information applies only during on-going evaluation or review of bids or proposals being undertaken by the BAC or from the opening of bids until the recommendation for award to the HoPE has been made. This is without prejudice to the authority of the COA to post-audit the documents, under existing government accounting and auditing rules.

- c. The Observer must sign as witness in the Abstract of Bids if, in their independent observation, the bidding process was conducted in accordance with the procedures described in the 2016 IRR of R.A. 9184 and this Manual. If the BAC failed to correctly observe the proper procedure, the Observer must sign the Abstract of Bids, and must indicate in the Procurement Observation Report the procedural and/or substantive lapses of the BAC. This will enable the approving authority to be apprised of any irregularities in the bidding process, for consideration.
- e. The Observers shall sign as witness in the post-qualification summary report if, in their independent observation, the BAC followed the procedure described in the 2016 IRR of R.A. 9184 and this Manual, and that the Observer is amenable to the results of the post-qualification. If the Observer finds the post-qualification procedures irregular or the report does not match the actual findings, he shall so state in writing addressed to the BAC Chairman, and the same shall be attached to the Post-qualification Summary Report submitted to the approving authority. The Observer's written dissent will be part of the official record of the procurement.

The above described irregularities observed during the bidding process shall not delay the bidding, but should be resolved before contract award.

- f. The Observers shall immediately inhibit and notify in writing the Procuring Entity concerned of any actual or potential interest in the contract to be bid.

REPORTS/PLANS REQUIRED FROM THE PROCURING ENTITY		
<u>REPORT/PLAN</u>	<u>LEGAL BASIS</u>	<u>RESPONSIBLE OFFICE</u> (<u>Responsible for the Preparation or Conduct</u>)
PPMP	Section 7.3, 2016 IRR	PMO/end-user unit/implementing unit
APP	Section 7.3, 2016 IRR Section 7, R.A. 9184	BAC Secretariat
PMR	Section 12.2, 2016 IRR	BAC
APCPI Assessment	GPPB Resolution No. 02-2012	BAC Secretariat or <i>ad hoc</i> Assessment Committee

Conditions for Granting Honoraria

Legal Reference

2016 IRR, Section 15 provides the legal reference for the conditions for granting honoraria.

The Procuring Entity is authorized to grant honoraria to the members of the BAC and the TWG, provided:

1. the amount so granted does not exceed twenty-five percent (25%) of their respective basic monthly salary;
2. funds are available for the purpose; and
3. the grant of honoraria conforms to the guidelines promulgated by the DBM.

Budget Circular No. 2004-5A, as amended by Budget Circular No. 2007-3, issued by the DBM provides the guidelines on the grant of honoraria to government personnel involved in government procurement. Among others, this Circular provides the following:

1. The chairs and members of the BAC and the TWG may be paid honoraria only for successfully completed procurement projects. A procurement project refers to the entire project identified, described, detailed, scheduled and budgeted for in the Project Procurement Management Plan prepared by the agency, even those procured by lots within the ABC, except for mixed procurement. Furthermore, a procurement project shall be considered successfully completed once the contract has been awarded to the winning bidder.
2. The payment of honoraria shall be limited to procurement that involves competitive bidding. Competitive bidding activities are present only in:
 - a. Open and competitive bidding;
 - b. Limited source bidding; and
 - c. Negotiated procurement where there has been failure of competitive bidding for the second time.

Conversely, honoraria will not be paid when procurement is thru:

- a. Direct contracting;
 - b. Repeat order;
 - c. Shopping;
 - d. Negotiated procurement whereby the Procuring Entity directly negotiates with previous supplier, contractor or consultant; or when the project is undertaken by administration or thru the AFP, in case of infrastructure projects.
3. The honoraria of each person shall not exceed the rates indicated below per completed procurement project:

	Maximum Honoraria Rate per Procurement Project
BAC Chair	PhP 3,000
BAC Members	2,500
TWG Chair and members	2,000

4. To be entitled to honoraria, personnel should be duly assigned as chair or member of the BAC or the TWG by the head of the department/agency concerned.
5. The members of the BAC Secretariat who are performing the attendant functions in addition to their regular duties in other non-procurement units of the agency may

likewise be paid honoraria at the same rate as the TWG chair and members, subject to the same regulations.

The members of the BAC Secretariat whose positions are in the Procurement Unit of the agency shall not be entitled to honoraria. The payment of overtime services may be allowed, subject to existing policy on the matter.

6. In lieu of honoraria, the payment of overtime services may be allowed for the administrative staff, such as clerks, messengers and drivers supporting the BAC, the TWG and the Secretariat, for procurement activities rendered in excess of official working hours. The payment of overtime services shall be in accordance with the existing policy on the matter.
7. Those who are receiving honoraria for their participation in procurement activities shall no longer be entitled to overtime pay for procurement-related services rendered in excess of official working hours.
8. The amount necessary for the payment of the honoraria and overtime pay authorized herein shall be sourced from the following:¹
 - a. Collections from successfully completed procurement projects limited, however to activities prior to awarding of contracts to winning bidders:
 - i. proceeds from sale of bid documents;
 - ii. fees from contractor/supplier registry;
 - iii. fees charged for copies of minutes of bid openings, BAC resolutions and other BAC documents;
 - iv. protest fees; and
 - v. proceeds from bid security forfeiture.
 - b. Savings realized from the current year specific budget of the agency under the General Appropriations Act (GAA).
 - c. In the case of GOCCs, savings from the DBM-approved corporate operating budgets.
 - d. In the case of LGUs, savings from the local budgets approved by their respective Sanggunian subject to the pertinent provisions of R.A. 7160 (Local Government Code of 1991).
9. Pursuant to the DOF-DBM-COA Permanent Committee Resolution No. 2005-2 dated June 2005, all agencies are authorized to treat the collections from the sources identified above as trust receipts to be used exclusively for the payment of honoraria and overtime pay duly authorized. Agencies may utilize up to one hundred percent (100%) of the said collections for the payment of honoraria and overtime pay subject to the guidelines in the Budget Circular. Any excess in the amount collected shall be remitted by NGAs to the Bureau of the Treasury. In the case of GOCCs and LGUs, the same shall form part of their corporate or local government funds, respectively.

Also see GPPB Resolution 21-2005 on the Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff, which provide the general conditions, procedures and funding source for free legal assistance, liability insurance and medical assistance.

Honoraria is a form of compensation granted to individuals for the performance of tasks or involvement in activities beyond their regular functions. Equity calls for equal compensation for performance of substantially similar duties, with substantially similar degrees of responsibility. Propriety dictates that only persons who have successfully completed their tasks or participated in accomplished activities ought to be accomplished. (Sec. 3 of DBM Circular No. 2004-5A, dated October 7, 2005)

If the Head of the BAC Secretariat is at the same time holding the position of OIC of the

¹ DBM Budget Circular No. 2007-3 issued on November 29, 2007

Procurement Division, can he/she be entitled to receive honorarium?

The second paragraph of Section 5.6 of DBM Circular No. 2004-5A issued on 7 October 2005, states that the members of the BAC Secretariat whose positions are in the Procurement Unit of the agency shall not be entitled to honoraria although the payment of overtime services may be allowed, subject to existing policy on the matter.

In an opinion issued by the OPCCB of the DBM, it is stated that the rationale for the grant of honoraria is to recompense personnel for the performance of tasks or involvement in activities beyond their regular functions, serving as member of the BAC Secretariat or the TWG is an inherent function of the Procurement Unit. Having been officially designated as OIC of the Procurement Division, primary functions and regular tasks of the OIC are those related to procurement activities, regardless if his/her plantilla position is outside this division. As such, part of the inherent function of the same is to serve as a member of the BAC Secretariat, where he/she has been duly designated as the Head. Thus, by holding the positions of both OIC of the Procurement Division and BAC Secretariat Head, said officer is no longer entitled to the payment of honorarium as provided under Section 5.6 of DBM Circular No. 2004-5A.

Is the cap on honoraria applicable on a monthly basis given many completed projects in a particular month? Or maybe on an average basis for the whole year?

According to Sec. 5.4 of the DBM Circular No. 2004-5A, the average amount of honoraria per month over one year shall not exceed twenty five (25%) of the basic monthly salary. The honoraria, however, shall be paid only upon the successful completion of each procurement.

There may be instances where multiple procurement projects are awarded within the same month. Honoraria may be paid only if the contract has been duly executed, and may exceed 25% of the recipient's monthly basic salary, provided that the average amount of honoraria per month over one year shall not exceed twenty five (25%) of the basic monthly salary.

Illustration:

Juan de la Cruz's basic monthly salary is PhP100,000.00, giving him an annual salary of PhP1,200,000.00. Is he allowed to collect all the honoraria as shown in the table below at the end of the year?

Months	Honoraria
January	0
February	PhP15,000.00
March	PhP30,000.00
April	PhP9,000.00
May	PhP36,000.00
June	PhP42,000.00
July	PhP3,000.00
August	PhP18,000.00
September	PhP15,000.00
October	0
November	PhP33,000.00
December	PhP21,000.00
Total	PhP222,000.00

From the facts given	PhP222,000.00/12 months	PhP18,500.00	above, 25% of Juan dela Cruz's basic
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PhP25,000.00 and 25% of his basic annual salary is PhP300,000.00. Thus, he is allowed to claim up to PhP300,000.00 of honoraria for the entire year.

Moreover, even if Juan dela Cruz received more than PhP 25,000.00 for each month of March, May, June, and November, he is still entitled to the amount in excess of PhP25,000.00, as long as the average of all the honoraria received for the entire year does not exceed 25% of his basic monthly salary. Thus, PhP18,500, being the average, does not exceed PhP 25,000.00, which is 25% of his basic monthly salary.

Can honorarium be claimed for every lot under one procurement activity?

Honorarium may be claimed for every lot if each lot is covered by a separate contract, provided that the average amount of honoraria per month over one year shall not exceed twenty five (25%) of the basic monthly salary.

Professionalization of Procurement Units, BAC, TWG

Legal Reference

2016 IRR, Section 16 provides the legal reference for the professionalization of the procurement units, the BAC, the BAC Secretariat and the TWG.

The GPPB, through its TSO, has established in cooperation with qualified organizations and institutions, a sustainable training program to develop the capability of the BACs, BAC Secretariats, TWGs and the Procurement Units/Offices of the Procuring Entities, and professionalize the same. The professionalization program of the GPPB will address the continuing education needed to enhance the capacity and career path of procurement officers in government, including the development of plantilla positions for procurement officers.

The BAC, its Secretariat and TWG members must satisfactorily complete procurement training and capacity development with the organizations and institutions recognized by the GPPB, within six (6) months after their designation. It is the responsibility of the HoPE to ensure that all officials and employees involved in the procurement process shall attend such procurement training or capacity development activities. The Head of the Procuring Entity is also encouraged to attend similar trainings and activities. (See www.gppb.gov.ph for details)

The Procuring Entities must also develop and implement their own in-house training programs in accordance with the guidelines and standards prescribed by the GPPB-TSO. For this purpose, they ought to include provisions for such training in their annual budget proposals submitted to the DBM and Congress.

Moreover, the HoPE must regularly monitor the work quality of the procurement organization, through a review of the procurement monitoring reports regularly submitted by the BAC as mentioned previously in this Manual. Management meetings may likewise be conducted for this purpose.

In line with the standardization of the procurement procedures and the thrust towards strengthening the procurement function to increase operational efficiency and effectiveness, HoPEs must aim to consolidate or unify all procurement activities of the organization, whether locally funded or foreign assisted, and whether pertaining to goods, infrastructure projects or consulting services, subject to the provision of Section 11.1 of the 2016 IRR, which allows for the creation of several BACs.

SECTION 3

Procurement Planning

PROCUREMENT PLANNING - Procurement Planning and Budget Linkage

Legal Reference

2016 IRR, Section 7 provides the legal reference for procurement planning and budget linkage.

Planning is the “act or process of making or carrying out plans; specifically: the establishment of goals, policies, and procedures for a social or economic unit.” (Merriam-Webster’s Collegiate Dictionary, 2001) Plans could cover short-term, medium-term, or long-term periods. They could be small-scale or large-scale. But in all cases, a plan involves resource allocation and scheduling. This is particularly true for procurement planning, which is a critical component of a Procuring Entity’s budget. Plans ensure that the overall goal of the particular project will be achieved effectively and efficiently. Through plans, a Procuring Entity is able to effectively manage and track procurement all the way to contract performance. As such, it allows managers to determine how to allocate limited cash and other appropriate resources under a given time line and identify choke-points, weaknesses, and delays in the entire activity that can be addressed or eliminated.

Every year, upon issuance of the Budget Call by the DBM in the case of NGAs, SUCs, Constitutional Commissions, or similar document for GOCCs and LGUs, and GFIs, the Procuring Entity prepares the Agency Budget Proposal and its indicative APP for the succeeding calendar year, taking into consideration the budget framework for that year. At this stage, the PMO, end-user units or implementing units of the Procuring Entity prepare their respective PPMPs for their different PAPs.

The Procuring Entity’s Budget Proposal embodies the agency thrusts and the resources needed to produce the key services it delivers to the public. Procurement planning should be done within this budgetary context, reflecting the Procuring Entity’s priorities and objectives for the budget period. Procurement Planning therefore involves two levels: the Agency’s overall strategic plan and the project and/or operational plans that contain the details of the manner in which the strategic plan will be carried out. In the context of budget preparation, the project and/or operational plans are reflected in the PPMP for each PAP. The PPMP contains the initial list of projects/requirements of each PMO/end-user unit and corresponding estimated budgetary requirement. The PPMPs are submitted by the PMOs or end-user or implementing units to the Procuring Entity’s Budget Office, to coincide with the submission of their respective budget proposals. These PPMPs will be evaluated and, if warranted, included in the Procuring Entity’s Budget Proposal. The Budget Office shall furnish a copy of the proposed PPMPs to the BAC Secretariat for consolidation into an indicative APP, and to the BAC for final recommendation of the appropriate procurement modality. The indicative APP and budget proposal shall be simultaneously submitted to the HoPE and/or other oversight agencies for approval.

As soon as the GAA, corporate budget, or appropriation ordinance, as the case may be, becomes final, the PMOs or end-user or implementing units must revise and adjust the PPMPs to reflect the budgetary allocation for their respective PAPs. Should adjustments in the approved budgetary allocation affect the project requirements as specified in the Technical Specifications (TS), Terms of Reference (TOR) or Scope of Works (SOW), previously prepared in support of the PPMP, the same shall also be revised and updated. The revised PPMPs shall be submitted to the BAC, for the final recommendation of the methods of procurement. The indicative APP shall then be revised and approved by the HoPE or his/her duly designated second ranking official, consistent with the duly approved budget of the Procuring Entity. Then, the APP shall be submitted to the GPPB on or before the end of January of the budget year, and shall be posted in accordance with E.O. 662, series of 2007, as amended.

To facilitate the immediate implementation of procurement of goods, infrastructure projects or consulting services, even pending approval of the GAA, corporate budget or appropriations ordinance, as the case may be, the Procuring Entity is now allowed to undertake the procurement activities short of award.

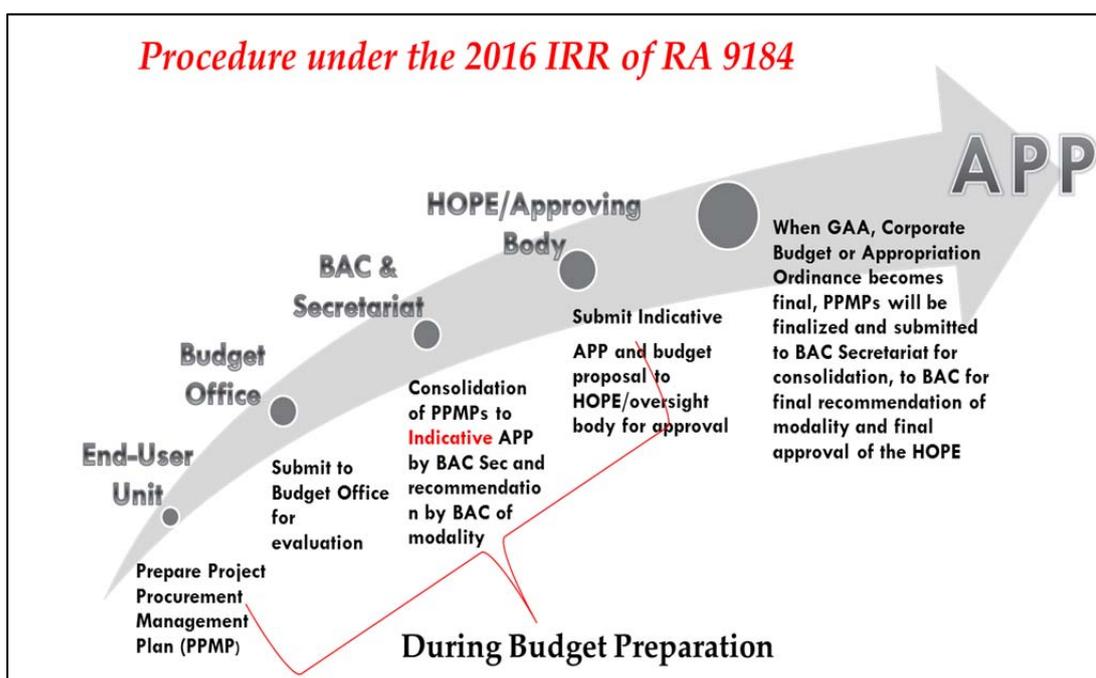
NGAs, SUCs, Constitutional Commissions or Offices are encouraged to start their procurement

activities immediately after the NEP has been submitted by the President to Congress, provided that the HoPE has approved the corresponding APP. This will facilitate the awarding of procurement contracts after the enactment of the GAA, enabling the timely implementation and completion of programs and projects.

For a contract with a period not exceeding one (1) year, the ABC must be based on the amount in the indicative APP as included in the proposed national budget submitted by the President to Congress; for GOCCs, on budget levels as proposed to the governing board; or for LGUs, on budget levels as proposed in the executive budget submitted to the Sanggunian. In the case of multi-year contracts, for which a MYOA or an equivalent document is required, the ABC must be the amount reflected in the MYOA.

It must however, be noted, that no award of contract can be made until the GAA, corporate budget or appropriations ordinance has been approved or enacted, as the case may be.

PREPARATION OF APP



PROCUREMENT PLANNING – Preparation of the Project Procurement Management Plan (PPMP)

Legal Reference

2016 IRR, Section 7 provides the legal reference for the preparation of the PPMP.

1. The PPMP

A Project Procurement Management Plan or PPMP, which is a component of the Project Management Plan, deals primarily with:

- a. planning for the procurement of project requirements;
- b. bidding or procurement strategy;
- c. source selection;
- d. delivery and payment schedules;
- e. contract administration;
- f. contract termination; and
- g. other major milestones;

in an effort to obtain goods, infrastructure projects and consulting services from suppliers, contractors and consultants.

The PPMP serves as a guide document in the procurement and contract implementation process, as well as a vital reference in procurement monitoring. Moreover, it serves as an important tool in resource and financial management, allowing the Procuring Entity the flexibility to optimize the utilization of scarce resources. Well-planned procurement will significantly minimize the practice of doing short-cuts to ensure that the Procuring Entity is able to purchase its requirements for the delivery of public services.

2. Developing the Project Requirements

The development of the project requirements should be done during the preparation of the proposed PPMP. At this stage of the procurement planning process, the PMO or end-user or implementing unit must:

- a. Identify the need of the PMO or end-user unit

What is the purpose of the procurement? What are the problem/s or needs that the project or procurement aims to address?
- b. Identify the alternative solutions/products/services

What alternative solutions to the problem/s or need/s are available in the market? What are the sources of these products and services? What is the profile of the supply market? Are they easily obtainable? How much is the cost of each alternative?

The PMO or end-user or implementing unit should conduct the market research at this point, and gather as much information about the goods, infrastructure projects or expertise required. At the end of this activity, it should know the market or the industry well enough to make an informed choice.

- c. Compare the alternatives (consider qualitative and quantitative factors)

Consider how the PMO or end-user or implementing unit would rate the various alternatives in terms of the following:

- i. Value for money

The concept of value for money is not restricted to price alone. In addition to costs, other considerations are non-cost factors like suitability or fitness to the purpose, quality, benefits, or environmental impact, among others. In comparing costs, all relevant costs should be considered, *e.g.*, acquisition costs, life-cycle costs (including maintenance and operating costs for goods and infrastructure, spare parts of goods, etc.).

What is Life-Cycle Costing (LCC)?

LCC is a tool which evaluates the costs of an asset throughout its life cycle starting from purchase to disposal.

Initial purchasing costs
 + Operating costs
 + Maintenance/service costs
 + Disposal costs

It is a tool to determine the most cost-effective option among different competing alternatives to purchase, own, operate, maintain and finally dispose of goods, when each is equally appropriate to be implemented on technical grounds (service function of the purchased item).

- ii. Risk assessment and management

Some risks that may be identified are the obsolescence of equipment, the availability of support services, the capacity of contractors to implement the project, among others. It is recommended, especially for high-technology, complex, or high value procurement, that the PMO or end-user or implementing unit identifies the risks involved and come up with its own risk management plan. The bidders could also be required to submit, as part of their technical document, a risk assessment and risk management plan.

- iii. Government policies that have an impact on the project or procurement

Are there any restrictions on the procurement contemplated? What relevant government policies should be considered in determining the goods or services that will be purchased?

- iv. Other relevant factors that may be identified by the PMO or end-user or implementing unit.

- d. Choose from among the alternatives the one that is most beneficial to the Procuring Entity, and make the necessary recommendation to the approving authority.

Also, considering unpredictable environmental changes, the Procuring Entity

must take into account those factors that will achieve a sustainable and green procurement.

The GPPB, in its Resolution No. 15-2013 issued on May 10, 2013, declared support in the implementation of Sustainable Public Procurement (SPP) and/or Green Public Procurement (GPP) in the government acquisition system. An SPP and/or GPP Committee was created to discuss matters concerning the adoption of policies, rules and regulations to implement SPP and/or GPP.

In developing the project requirements and TS/SOW/TOR, the Procuring Entity shall engage the services of technical experts, whether in-house or consultants, to ensure that the requirements and the TS/SOW/TOR are adequate to achieve the objectives of the particular procurement.

3. Writing the Technical Specifications, Scope of Work and Terms of Reference

The Technical Specifications (for Procurement of Goods), Scope of Work (for Services and Infrastructure Projects) or Terms of Reference (for Consulting Services) is the document that provides the detailed description of the deliverables of the Supplier, Contractor or Consultant.

The Technical Specifications, Scope of Work and Terms of Reference are discussed in detail in Volumes 2, 3 and 4, respectively. The following guidelines are, however, considered helpful in writing the TS/SOW/TOR:

- a. Quality Assurance actually starts at this stage of the procurement cycle, considering that the deliverables are decided at this time. It is therefore important that all stakeholders are consulted, and the actual requirements of the PMO or end-user or implementing unit are determined and put in writing.
- b. If the procurement is complex, highly technical, or high value, and the Procuring Entity does not have sufficient technical proficiency, it would be prudent to engage the services of technical experts who will serve as consultants in the preparation of the TS/SOW/TOR. In engaging these consultants, the Procuring Entity shall follow the procedures for procurement of consulting services as laid down in Volume 4 of these Manuals. Moreover, care should be taken that possible conflict of interest is avoided; that is, the consultant/s engaged should not be connected with the prospective bidders/contractors, and are barred from being engaged by the latter for any purpose related to the procurement at hand.
- c. The description should be generic and flexible, not product-specific or seemingly tailored for a particular brand, product, contractor or consultant, unless the procurement involves products or services that have intellectual property rights attached to it, or are exclusively offered by a single source, and there are no suitable substitute products or services. If the procurement involves products or services that have intellectual property rights attached, or are exclusively offered by a single source without any suitable substitute, then the PMO or end-user or implementing unit must be able to satisfactorily justify the need for such a product or service.
- d. The description should be clear and unambiguous, to avoid confusion and to facilitate the evaluation process. It is noted that the TS/SOW/TOR is also the basis of the evaluation or, when applicable, the testing parameters.
- e. Considering that planning is done as early as budget preparation, which is far from the date of actual delivery or project implementation, changes in technology or changes in the concerned industry or field of expertise should already be taken into account in writing the TS/SOW/TOR. This will allow the

Procuring Entity to procure the latest products and/or services available in the market.

4. Determining the Approved Budget for the Contract

The ABC refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the GAA and/or continuing and automatic appropriations, in the case of NGAs; the corporate budget for the contract approved by the governing board, pursuant to E.O. No. 518 series of 1979 in the case of GOCCs and GFIs, and R.A. 8292 in the case of SUCs; and the budget approved by the Sanggunian in the case of LGUs. For multi-year contracts, for which a MYOA or an equivalent document is required, the ABC shall be that incorporated in the project cost reflected in the MYOA. **(2016 IRR, Section 5[b])**

In determining the ABC, the PMO or end-user unit has to consider several factors, namely: the appropriation for the project or procurement (whether taken from the current year's appropriations or continuing and automatic appropriations) or the budget as proposed to the approving authorities, the market price of the goods and/or services being procured, inflation and cost of money which are directly related to the procurement time table.

The determination of the ABC for each type of procurement (Goods, Infrastructure Projects and Consulting Services) is discussed in Volumes 2, 3 and 4.

5. Procurement Milestones

The PPMP, like any plan, is not complete without including therein the schedule of significant activities. The procurement milestones referred to are the following: pre-procurement conference (if required or necessary), publication and/or posting of the IB/REI, pre-bid conference, submission of EOI and eligibility requirements (for procurement of consulting services), submission of bids (for procurement of goods and infrastructure projects, where submission of eligibility requirements and bids are done simultaneously), bid evaluation, determination of LCRB or HRRB, issuance of notice of award, contract execution and approval, issuance of notice to proceed, delivery dates or commencement of project implementation. For details on the specific activities for each type of procurement, please refer to Volumes 2 (for Goods), 3 (for Infrastructure Projects) and 4 (for Consulting Services). Each of these significant activities should be scheduled so as to provide the PMO or end-user or implementing unit with a guide in each procurement undertaken by the Procuring Entity. This will ensure that logistical support and other requirements of the Procuring Entity are promptly addressed, hence contributing to more efficient and effective delivery of public service.

The Procurement Milestones may be laid down in a Gantt chart similar to that shown in Section 4 (General Procurement Activities and Timelines) of this Volume.

6. Method of Procurement

As a general rule, all procurement should be through public bidding. This is the policy of the GOP, as laid down in R.A. 9184. However, the law recognizes that certain unique circumstances require the use of other methods of procurement. The selection of the method of procurement is dependent on the presence or absence of specific conditions that justify the use of a particular method (*e.g.*, if a product is patented, direct contracting is the preferred mode instead of public bidding). These are discussed in Section 5 (Various Methods of Procurement) of this Volume, and in Volumes 2, 3 and 4, when applicable to the type of procurement.

Under the 2016 IRR, procuring entities are also allowed to outsource their procurement tasks through the "procurement agent" modality. This is without resorting to alternative methods of procurement. This outsourcing may be undertaken by way of:

- a. Requesting other GoP agencies to undertake such procurement for them, through the execution of a Memorandum of Agreement; or

As long as the procurement process was conducted in accordance with RA 9184, its IRR and associated issuances, recommendations to award a contract made by the government procurement agent shall be accepted by the requesting agency, subject to Section 41 of this IRR.

- b. Engaging private procurement agents to directly undertake the procurement for them, subject to the guidelines to be issued by the GPPB; or
- c. Recruiting or engaging consultants to assist them directly and/or train their staff in the management of the procurement function.

Under the first option of procurement outsourcing or engaging a Procurement Agent, the Procuring Entity shall execute a Memorandum of Agreement (MOA) with another government entity to undertake the procurement for it. The MOA shall provide the necessary information on the rights, responsibilities, and obligations of the Procuring Entity and the Procurement Agent for the particular procurement project, which includes their agreement on transfer of funds, and payment of management or administrative fee. The stipulations in the MOA shall be binding between the two parties, as long as it is not contrary to any provisions of existing laws, rules and regulations.

7. Format of the PPMP (prepared by the PMO/end-user or implementing unit)

The PPMP shall contain the following information:

- a. Information on whether the PAPs will be contracted out, implemented by administration in accordance with the guidelines issued by the GPPB, or consigned;

Note: Consignment here refers to an arrangement where the following requisites are present: (a) delivery of goods by their owner (consignor), without sale, to a government agency (consignee); (b) consignee must try to sell the goods and remit the price of the sold goods to the consignor; (c) consignee accepts without any liability except for failure to reasonably protect them from damage; (d) no disbursement of government funds is involved; and (e) at terms not disadvantageous to the GoP.

- b. The type and objective of contract to be employed;
- c. The extent/size of contract scopes/packages;

Note: This refers to the general description of the lot to be included in a particular contract, i.e. the goods, infrastructure project or services, or a combination of any two or three of these types of procurement, including quantities where applicable.

- d. The procurement methods to be adopted, and indicating if the procurement tasks are to be outsourced as provided in Section 7.3.3 of this 2016 IRR;
- e. The time schedule for each procurement activity and for the contract implementation; and
- f. The estimated budget for the general components of the contract.

What are the two types of PPMP?

First, the **initial PPMP** or the one prepared by the PMO, end-users or implementing units for consolidation into an indicative APP, during the budget preparation stage of the Procuring Entity.

Second, the **revised PPMP** which is the result of revising the initial PPMP after the GAA, corporate budget, or appropriation ordinance, as the case may be, gets approved. The revision is likewise done by the PMO, end-user or implementing units, submitted to the BAC for final recommendation of the methods of procurement, and consolidated by the BAC Secretariat into the final APP for approval of the HoPE.

Note: The template for PPMP is downloadable from the GPPB website: www.gppb.gov.ph

PROCUREMENT PLANNING – Preparation of the Annual Procurement Plan (APP)

1. The Annual Procurement Plan

The APP is the document that consolidates the various PPMPs submitted by the various PMOs and end-user units within the Procuring Entity. It reflects the entirety of the procurement activities that will be undertaken by the Procuring Entity within the calendar year.

In preparing the APP, the BAC shall take into consideration the following factors:

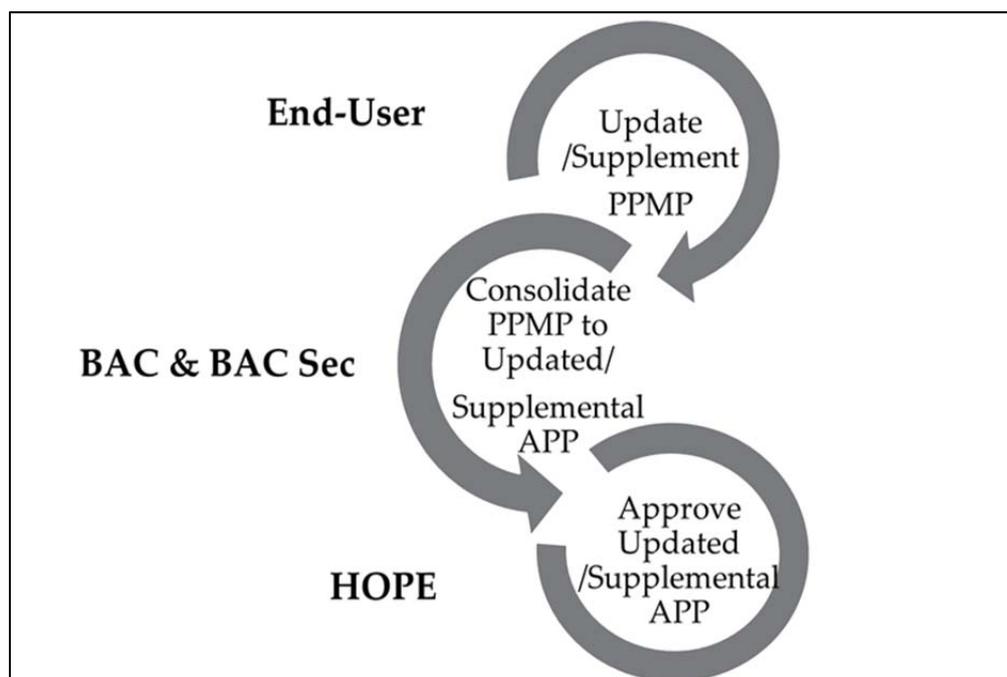
- a. The APP should include all procurement activities planned for the year. The approved APP shall be the basis for the Procuring Entity's procurement, and only those projects/procurement included therein shall be undertaken.
- b. The APP shall include only those procurements that are considered crucial to the efficient discharge of governmental functions. The 2016 IRR considers a procurement crucial to the efficient discharge of governmental functions if:
 - i. it is required for the day-to-day operations of the Procuring Entity; or
 - ii. it is in pursuit of the principal mandate of the Procuring Entity concerned.
- c. The APP shall include provisions for foreseeable emergencies based on historical records. The BAC, through the BAC Secretariat, shall include therein a lump sum to cover for these emergencies or contingencies, which amount shall not be more than four percent (4%) of the Procuring Entity's total appropriations for MOOE.
- d. Scheduling of procurement activities should be done in such a manner that the BAC and the other offices/units in the Procuring Entity that are involved in the procurement process are able to efficiently manage the conduct of procurement transactions. Moreover, it is paramount that project implementation timelines are met. In the case of infrastructure projects, the APP shall consider the appropriate timing/phasing of related project activities, such as, engineering design and acquisition of right-of-way sit or location, to reduce/lower project costs.

A review and updating of the individual PPMPs and the APP shall be done regularly, at least once every six months or as often as may be required by the HoPE. The review and updating of the PPMPs will be done by the respective PMO, end-user or implementing units of the procuring entities. These units may avail of the services of technical experts to review the individual PPMPs. The updated PPMPs will then be submitted to the BAC Secretariat for consolidation into an updated APP, which will be subject to the approval of the HoPE.

The APPs of decentralized procuring entities would have to be submitted to the central office for information and monitoring purposes.

Changes in the APP, if any, for the budget year shall be submitted to the GPPB in July of the current budget year, and in January of the following budget year.

REVISIONS ON APP



No government procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The APP shall bear the approval of the HOPE or second ranking-official designated by the HOPE to act in his behalf, and must be consistent with its duly approved budget. (Sec. 7.2 of the IRR of RA 9184)

2. Procurement Strategy

The procurement strategy refers to the approach that will be adopted by the BAC in the procurement of the goods, infrastructure projects and consulting services included in the APP.

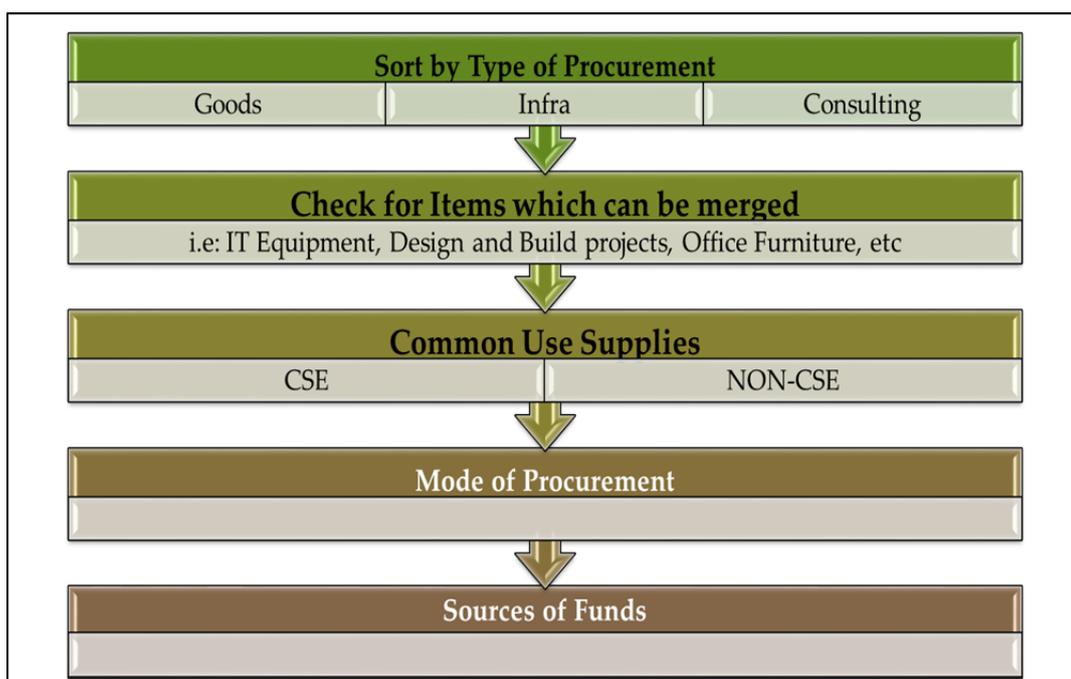
In the review and consolidation of the PPMPs, the BAC will be able to determine the extent of diversity, quantities, quality, cost, the supply market, and other characteristics of the Procuring Entity's requirements for the year. The profile of the procurement is a major determinant in the choice of procurement strategy to be employed, as well as in the scheduling of procurement activities.

There may be common requirements for the various PPMPs. For example, three projects require the purchase of five (5) units of laptop computers for each project office, or a total of fifteen (15) laptop computers. Obviously, it will be more cost effective and efficient if the BAC will procure the 15 laptop computers in one bidding exercise and as one bid lot.

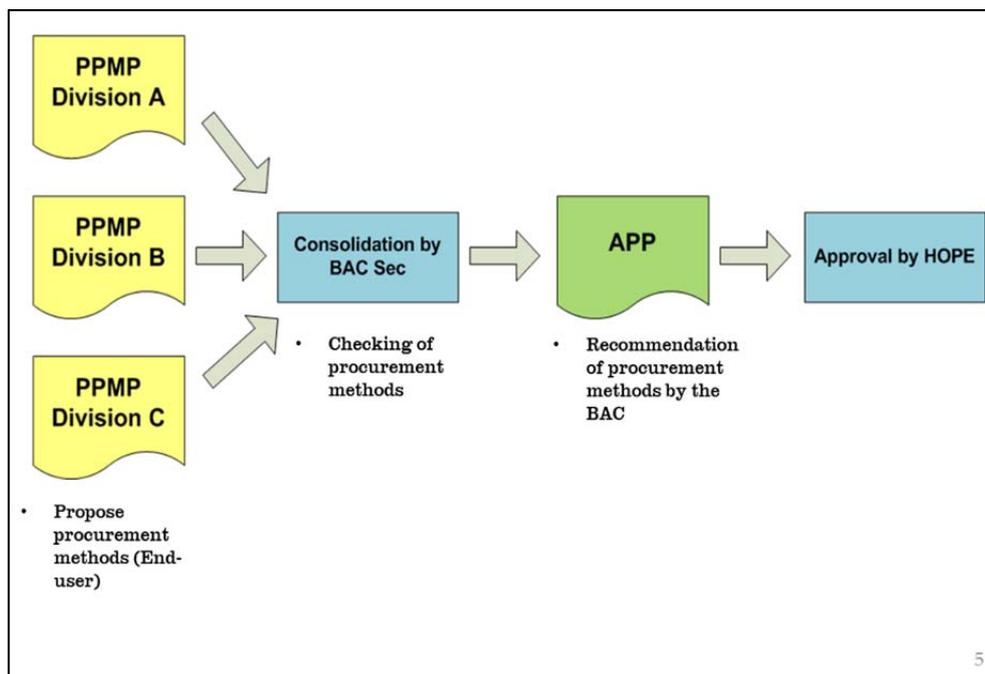
The individual PPMPs sometimes reflect a mix of procurement types, for example, an ICT project might involve the procurement of goods (*e.g.*, workstations, network equipment and peripherals), procurement of civil works (*e.g.*, the installation of cables might involve the repair of some offices and other related civil works) and procurement of consulting services (*e.g.*, design and development of information systems). In similar cases, the BAC will have to exercise judgment in determining the bid lots and contract package. There are two approaches to this case – the project could be bid out as one package, or it could be divided into several bid lots (*i.e.* supply of hardware, supply and installation of cables, design and development of information systems, and repair of facilities). There are advantages and disadvantages to either approach, and the BAC, through the help of the TWG and the Secretariat, shall determine which is the best option for the Procuring Entity.

Under the 2016 IRR, Section 5(aa), in case of projects involving mixed procurements, the nature of the procurement, *i.e.* goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract. This is helpful in determining which type of procurement procedure to apply. However, there may be instances when the PMO, end-user or implementing unit, or the Procuring Entity itself may have difficulty determining or agreeing upon the primary purpose. In these cases, ascertaining the component with the highest price may be useful as an indicator of purpose, though not necessarily as a determining factor. In the example given above, it seems that the purpose is actually to computerize the internal operations of the Procuring Entity; hence the single most important component of the project is the design and development of information systems. This being the case, the project could be bid out as a consulting service.

TIPS IN CONSOLIDATING PPMPs



PPMP CONSOLIDATION



3. Format of the APP²

The BAC may prepare three APPs, one each for Goods, Infrastructure Projects, and Consulting Services or a consolidated APP for all procurement activities.

The APP shall contain the following information:

- a. Name of the Procurement Project;
- b. PMO/end-user/implementing unit;
- c. Method of procurement;
- d. Schedule of identified procurement activities as reflected in the APP form approved by the GPPB;
- e. Source of funds;
- f. Indicative ABC; and
- g. Other relevant descriptions of the project, if applicable.

What are the two types of APP?

First, the **indicative APP** which is the consolidation of the initial PPMPs submitted by the PMO, end-user or implementing units of the Procuring Entity to its Budget Office, then to the BAC Secretariat, during the budget preparation stage.

Second, the **approved APP** which is the consolidation of the revised PPMPs in accordance with the approved GAA, corporate budget, or appropriation ordinance; and approved by the HoPE or his/her second ranking designated official.

Note: The template for APP is downloadable from the GPPB website: www.gppb.gov.ph

² For ADB and WB-funded activities, use the Procurement Plan template issued in their respective NCB Annex

SECTION 4

Various Methods of Procurement

Competitive Bidding

Legal Reference

2016 IRR, Section 10 provides the legal reference for competitive bidding.

All procurement shall be through competitive or public bidding, except as provided in Rule XVI of the IRR, which provides for the conditions for use of the alternative modes of procurement. This is so specified in Section 10, Article IV of R.A. 9184 and Section 10, Rule IV of its 2016 IRR. In keeping with this policy, Procuring Entities are enjoined to provide for sufficient lead time in its procurement program for the conduct of public bidding.

Competitive Bidding or Public Bidding is defined in R.A. 9184 and its IRR as follows:

“Refers to the method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract.”

Competitive bidding opens up the procurement opportunity to a greater number of suppliers or contractors who compete among themselves in providing the best goods or services to the Government for the best value. This enables the Government to obtain goods and services, infrastructure projects, and consulting services at lower prices and better terms, thus optimizing the use of scarce resources. In addition, it allows for greater transparency of the procurement process.

Competitive bidding is discussed in detail in Volumes 2, 3 and 4 of these Manuals.

It is conceded, however, that there are instances when resorting to any of the alternative modes of procurement is necessary.

Alternative Methods of Procurement

Legal Reference

2016 IRR, Sections 48 to 54 provide the legal reference for the alternative methods of procurement.

1. Conditions for Use of Alternative Methods of Procurement

In highly exceptional cases provided for in Article XVI of R.A. 9184 and Rule XVI of its 2016 IRR, the Procuring Entity is allowed to resort to the alternative methods of procurement in order to promote economy and efficiency, subject to the following conditions:

- a. The BAC should recommend to the Head of the Procuring Entity the use of alternative methods of procurement in cases where public bidding is not feasible, to be indicated in the APP;

In cases where the original method of procurement specified in the APP is public bidding and conditions arise justifying the use of an alternative method of procurement after the APP is finalized, the APP may be amended. This can be done after a BAC Resolution recommending the use of the alternative method is approved by the Head of the Procuring Entity. The procedures are discussed in Volumes 2, 3, and 4.

Procuring Entities may charge small value purchases or over-the-counter purchases against petty cash funds provided that the procurement is within the allowable contingency. This is further discussed in Volume 2 of this Manual, in Section 2 (Part 2).

- b. The Head of the Procuring Entity or his duly authorized representative has given prior approval of the use of any of the alternative methods of procurement;
- c. The conditions surrounding the procurement at hand justify the use of any of the alternative methods of procurement, as provided for in Sections 48-54, Article XVI of R.A. 9184 and Sections 48-54, Rule XVI of its 2016 IRR.

2. The Different Alternative Methods

- a. **Limited Source Bidding**, otherwise known as **selective bidding**, is a method of procurement of **goods and consulting services** that involves direct invitation to bid by the concerned entity of all pre-selected suppliers or consultants with known experience or proven capability on the requirements of the particular contract. The pre-selected suppliers or consultants shall be all those appearing in the list maintained by the relevant Government authority (*e.g.*, Food and Drugs Administration for medicines, National Telecommunications Commission for telecommunication equipment, etc.) that has expertise and experience in the type of procurement concerned, which list should have been submitted to, maintained and updated with, the GPPB. If however, no such list is being maintained by the relevant Government authority, the Procuring Entity shall request the latter for the issuance of the list. In case of non-issuance by the relevant Government authority of the list, competitive bidding shall be resorted to.

If no relevant Government authority exists, and/or the Procuring Entity represents that it is the relevant Government authority, it may prepare a self-generated list of suppliers or consultants, with known experience and proven

capability on the requirements of the particular contract, provided that the Procuring Entity attests to such fact and confirms that it has the expertise on the subject matter of procurement by virtue of its mandate and nature of functions and operations. If the Procuring Entity cannot establish on the subject matter procurement, competitive bidding shall be conducted. It is noted that the purpose of the list is to regulate the quality of goods being offered and the qualifications of consultants in the particular field of expertise.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Volume 2 (for procurement of goods, and Section 3, Part 2, Vol. 4 (for procurement of consulting services), of this Manual.

- b. ***Direct Contracting*** or ***single source procurement*** is a method of **procurement of goods** that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Vol. 2 of this Manual.

- c. ***Repeat Order*** is a method of **procurement of goods** from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through Competitive Bidding.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Vol. 2 of this Manual.

- d. ***Shopping*** is a method of **procurement of goods** whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Vol. 2 of this Manual.

- e. ***Negotiated procurement*** is a method of **procurement of goods, infrastructure projects and consulting services**, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor, consultant or, in any of the following cases prescribed under Section 53 of the 2016 IRR:

- i. Two Failed Biddings;
- ii. Emergency Cases;
- iii. Take-Over of Contracts;
- iv. Adjacent or Contiguous;
- v. Agency-to-Agency;
- vi. Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services;
- vii. Highly Technical Consultants;
- viii. Defense Cooperation Agreement;
- ix. Small Value Procurement;
- x. Lease of Real Property and Venue;
- xi. NGO Participation;
- xii. Community Participation;
- xiii. United Nations Agencies, International Organizations or International Financing Institutions.

The particular conditions under which the above-enumerated types of negotiated procurement may be used are outlined in Section 2, Part 2, Vol. 2, Section 3, Part 2, Vol. 3 and Section 3, Part 2, Vol. 4 of this Manual.

SECTION 5
Protest Mechanism

Protest Mechanism

Legal Reference

2016 IRR, Sections 55 to 58 provide the legal reference for the filing of requests for reconsideration and protest by the affected bidder.

1. What is the remedy of an affected bidder who receives an unfavorable decision from the BAC?

The affected bidder may file a request for reconsideration of the BAC's decision issued at any stage of the procurement process, within three (3) calendar days upon receipt of the unfavorable decision by written notice or upon verbal notification.

2. What is the remedy of the affected bidder in the event that the request for reconsideration is denied by the BAC?

In case the request for reconsideration is denied, the affected bidder may file a protest in writing to the HoPE, provided that a prior request for reconsideration should have been filed by the bidder concerned, and the same has been resolved.

The protest must be filed within seven (7) calendar days from receipt by the bidder concerned of the resolution of the BAC denying its request for reconsideration

3. How are requests for reconsideration and protests filed and resolved?

- a. The affected bidder files a request for reconsideration of the BAC's decision within three (3) calendar days upon receipt of written notice or upon verbal notification.
- b. The BAC decides on the request for reconsideration within seven (7) calendar days from receipt. The bidder is not allowed to submit additional documents to correct any defects in the bid submitted.
- c. If a failed bidder signifies his intent to file a request for reconsideration, the BAC keeps the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.
- d. If the request for reconsideration is denied, the affected bidder may file a protest in writing to the HoPE, provided that a prior request for reconsideration should have been filed by the bidder concerned and the same has been resolved.
- e. The protest must be filed within seven (7) calendar days from receipt by the bidder concerned of the resolution of the BAC denying its request for reconsideration. A protest is made by filing a verified position paper with the HoPE concerned, accompanied by the payment of a non-refundable protest fee, which must be paid in cash in accordance with the following schedule:

ABC RANGE	PROTEST FEE
₱50 million and below	0.75% of the ABC
More than ₱50 million to ₱100 million	₱500,000.00
More than ₱100 million to ₱500 million	0.5% of the ABC
More than ₱500 million to ₱1 billion	₱2,500,000.00
More than ₱1 billion to ₱2 billion	0.25% of the ABC

More than ₱2 billion to ₱5 billion	₱5,000,000.00
More than ₱5 billion	0.1 % of the ABC

- f. The verified position paper must contain the following information:
- i. The name of bidder;
 - ii. The office address of the bidder;
 - iii. The name of project/contract;
 - iv. The implementing office/agency or Procuring Entity;
 - v. A brief statement of facts;
 - vi. The issue to be resolved; and
 - vii. Such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper is considered unsigned, produces no legal effect, and results to the outright dismissal of the protest.

In addition, the bidder certifies under oath that:

- i. he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;
- ii. if there is such other pending action or claim, he is including a complete statement of the present status thereof; and
- iii. if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the HoPE wherein his protest is filed.

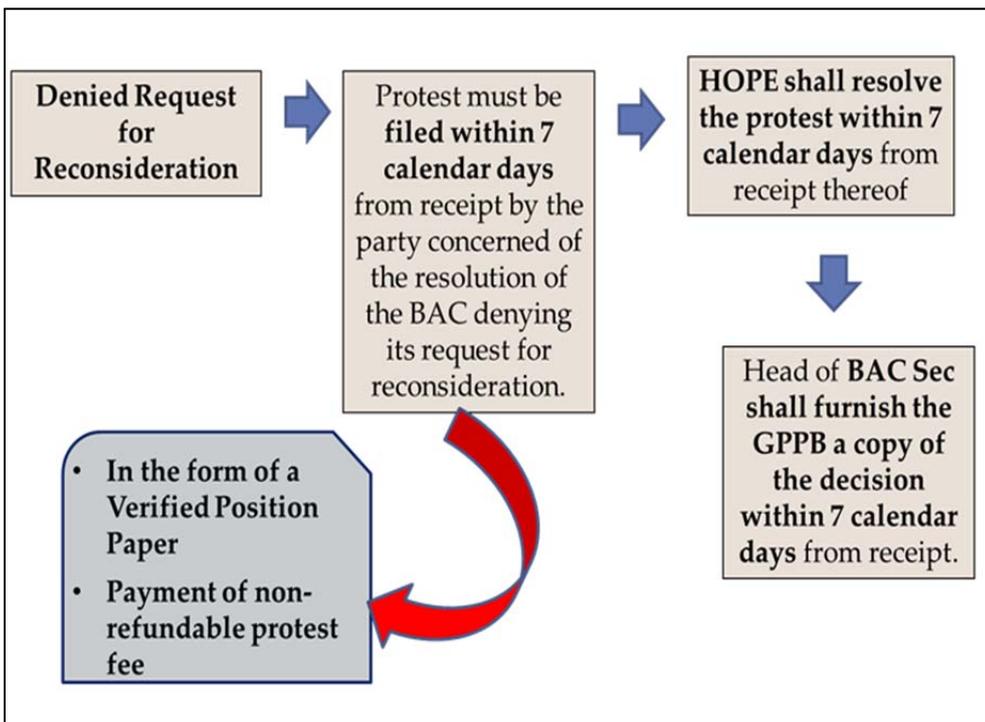
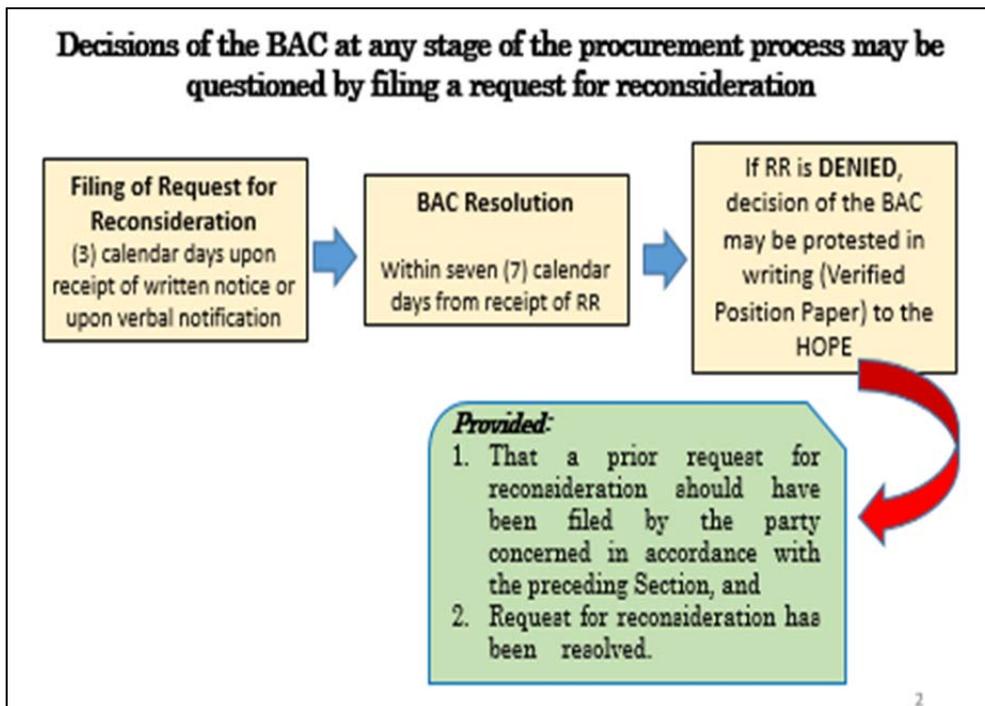
Failure to comply with the foregoing requirements are not curable by mere amendment of the verified position paper.

- g. The protests are resolved strictly on the basis of records of the BAC. The HoPE resolves the protest within seven (7) calendar days from receipt. Subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches, constitutional commissions, or instrumentalities of the GoP to approve contracts, the decisions of the HoPE concerned are final up to the limit of his contract approving authority. With respect to LGUs, the decision of the local chief executive is final.
- h. The protests should not stay or delay the bidding process, however protests must first be resolved before any award is made.

4. May the affected bidder directly resort to court actions?

No. Court action may be resorted to only after the protests have been completed, *i.e.*, resolved by the HoPE with finality. The regional trial court has jurisdiction over final decisions of the HoPE. Court actions are governed by Rule 65 of the 1997 Rules of Civil Procedure.

PROTESTS ON DECISIONS OF BAC



REQUEST TO HOLD THE AWARDING OF CONTRACT IN ABEYANCE UNTIL THE BIDDER HAS SECURED A COPY OF THE MINUTES OF THE POST-QUALIFICATION PROCEEDINGS

[A] protest filed with the HOPE preceded by a request for reconsideration filed with the BAC

are the proper steps to take in order to prevent the awarding of the contract until such time that the protest has been resolved. Hence, a mere request to hold the proceedings in abeyance which is filed after bid opening will not suffice. Otherwise, the bidding process would be unnecessarily hampered if each bidder may simply request to hold the proceedings in abeyance without following the correct process within the proper periods laid out by the rules. NPM 084-2012

PAYMENT OF NON-REFUNDABLE FEE A CONDITION *SINE QUA NON* FOR FILING A WRITTEN PROTEST

[B]eing one of the indispensable requirements for filing a protest, the non-payment of the protest fee does not toll the prescriptive period for filing a protest and it becomes a justifiable basis for the HOPE not to entertain a protest. Simply stated, a bidder whose request for reconsideration was denied must pay the required protest fee to avail of the protest mechanism under the procurement law and its associated rules. NPM 145-2012

RESORT TO COURT ACTION

Court Action may be resorted to only after the protest shall have been resolved with finality. *(Doctrine of Exhaustion of Administrative Remedies)*
Land Bank of the Philippines v. Atlanta Industries, Inc., G.R. No. 193796, July 2, 2014

Non-compliance with this statutory requirement, under Section 58 of R.A. No. 9184, constitutes a ground for the **dismissal of the action for lack of jurisdiction**.
Dimson (Manila), Inc. and Phesco, Inc. v Local Water Utilities Administration, G.R. No. 168656, September 22, 2010.

Protest must comply with Section 55 of R.A. 9184. Where the protest was not verified and the protest fee was not paid, respondent was held to have failed to avail of the correct protest procedure before it filed its petition for annulment of the award before the RTC.
Land Registration Authority, et. al. vs Lanting Security and Watchman Agency, G.R. No. 181735

SECTION 6

Procurement Monitoring

Procurement Monitoring

Legal Reference

R.A. 9184, Section 63 and the 2016 IRR, Section 63.1 (a) provide the mandate of the GPPB to ensure the proper implementation by the Procuring Entities of the GPRA, the 2016 IRR, and all other relevant rules and regulations pertaining to public procurement.

1. The Agency Procurement Compliance and Performance Indicators (APCPI) Tool

The following information are quoted from **GPPB Resolution No. 10-2012 issued on 01 June 2012, and its Annex A: APCPI User's Guide.**

The APCPI Tool was approved by the GPPB as the standard procurement monitoring and assessment tool for all Procuring Entities. The APCPI is a methodology to assess the performance of a government agency's procurement activities and to compare its effectiveness against that of the national public procurement systems and international best practices and standards using baseline standards and indicators.

a. The Pillars and Indicators

There are four key areas called "Pillars" that characterize the basic elements of an agency's procurement as patterned after the national public procurement system. These are:

Pillar I	Compliance with the Legislative and Regulatory Framework
Pillar II	Agency Institutional Framework and Management Capacity
Pillar III	Procurement Operations and Market Practices
Pillar IV	Integrity and Transparency of the Agency Procurement System

These Pillars are further defined by a number of baseline indicators and sub-indicators against which the existing elements of the agency's procurement system may be assessed. The APCPI consists of sixteen (16) indicators and forty (40) sub-indicators representing the four Pillars.

The indicators and their corresponding sub-indicators are as follows:

<i>PILLAR I</i>	<i>Legislative and Regulatory Framework</i>
<u>Indicator 1.</u>	<u>Competitive Bidding as Default Method of Procurement</u>
Sub-Indicator 1a.	Percentage of public bidding contracts in terms of amount of total procurement.
Sub-Indicator 1b.	Percentage of public bidding contracts in terms of volume of total procurement.
<u>Indicator 2.</u>	<u>Limited Use of Alternative Methods of Procurement</u>
Sub-Indicator 2a.	Percentage of Shopping contracts in terms of amount of total procurement.
Sub-Indicator 2b.	Percentage of negotiated contracts in terms of amount of total procurement.
Sub-Indicator 2c.	Percentage of direct contracting in terms of amount of total procurement.

Sub-Indicator 2d.	Percentage of repeat order contracts in terms of amount of total procurement.
Sub-Indicator 2e.	Percentage of limited source bidding contracts in terms of amount of total procurement.
Sub-Indicator 2f.	Preparation of APP for CSE and Procurement of CSE from the Procurement Service.
<u>Indicator 3.</u>	<u>Competitiveness of the Bidding Process</u>
Sub-Indicator 3a.	Average number of entities who acquired bidding documents.
Sub-Indicator 3b.	Average number of bidders who submit bids.
Sub-Indicator 3c.	Average number of bidders who passed eligibility stage.
Sub-Indicator 3d.	Sufficiency of period to prepare bids.
 PILLAR II	 AGENCY INSTITUTIONAL FRAMEWORK AND MANAGEMENT CAPACITY
<u>Indicator 4.</u>	<u>Presence of Procurement Organization</u>
Sub-Indicator 4a.	Creation of Bids and Awards Committee
Sub-Indicator 4b.	Presence of a BAC Secretariat or Procurement Unit
<u>Indicator 5.</u>	<u>Procurement Planning and Implementation</u>
Sub-Indicator 5a.	APP is prepared for all types of procurement.
<u>Indicator 6.</u>	<u>Use of Government Electronic Procurement System</u>
Sub-Indicator 6a.	Percentage of bid opportunities posted by the PhilGEPS-registered Agency
Sub-Indicator 6b.	Percentage of contract award information posted by the PhilGEPS-registered Agency.
Sub-Indicator 6c.	Percentage of contract awards procured through alternative methods posted by the PhilGEPS-registered Agency.
<u>Indicator 7.</u>	<u>System for Disseminating and Monitoring Procurement Information</u>
Sub-Indicator 7a.	Presence of website that provides up-to-date procurement information easily accessible at no cost.
Sub-Indicator 7b.	Preparation of PMRs using the prescribed format, prompt submission to GPPB, and posting in agency website.
 PILLAR III	 PROCUREMENT OPERATIONS AND MARKET PRACTICES
<u>Indicator 8.</u>	<u>Efficiency of Procurement Processes</u>
Sub-Indicator 8a.	Percentage of total amount of contracts awarded against total amount of approved APPs.
Sub-Indicator 8b.	Percentage of total number of contracts awarded and total number of procurement activities done through public bidding.
Sub-Indicator 8c.	Percentage of failed bidding with total number of procurement activities conducted.

<u>Indicator 9.</u>	<u>Compliance with Procurement Timeframes</u>
Sub-Indicator 9a.	Percentage of contracts awarded within the prescribed period to procure goods as indicated in Annex C of the IRR.
Sub-Indicator 9b.	Percentage of contracts awarded within the prescribed period to procure infrastructure projects as indicated in Annex C of the IRR.
Sub-Indicator 9c.	Percentage of contracts awarded within the prescribed period to procure consulting services as indicated in Annex C of the IRR.
<u>Indicator 10.</u>	<u>Capacity Building for Government Personnel and Private Sector Participants</u>
Sub-Indicator 10a.	There is a system within the procuring entity to evaluate the performance of procurement personnel.
Sub-Indicator 10b.	Percentage of participation of procurement staff in annual procurement training.
Sub-Indicator 10c.	Agency has activities to inform and update bidders on public procurement.
<u>Indicator 11.</u>	<u>Management of Procurement and Contract Management Records</u>
Sub-Indicator 11a.	The BAC Secretariat has a system for keeping and maintaining procurement records.
Sub-Indicator 11b.	Implementing Unit has and is implementing a system for keeping and maintaining complete and easily retrievable contract management records.
<u>Indicator 12.</u>	<u>Contract Management Procedures</u>
Sub-Indicator 12a.	Agency has defined procedures or standards in such areas as quality control, acceptance and inspection, supervision of works and evaluation of contractors' performance.
Sub-Indicator 12b.	Agency complies with the thresholds prescribed for amendments to order, variation orders, advance payment, and slippage in publicly bid contracts.
Sub-Indicator 12c.	Timely Payment of Procurement Contracts.
PILLAR IV	INTERGRITY AND TRANSPARENCY OF THE AGENCY PROCUREMENT SYSTEM
<u>Indicator 13.</u>	<u>Observer Participation in Public Bidding</u>
Sub-Indicator 13a.	Observers are invited to all stages of every public bidding activity.
Sub-Indicator 13b.	Percentage of attendance of Observers in public bidding activities.
<u>Indicator 14.</u>	<u>Internal and External Audit of Procurement Activities</u>
Sub-Indicator 14a.	Creation and operation of Internal Audit Unit as prescribed by the DBM Circular Letter No. 2008-5, April 14, 2008
Sub-Indicator 14b.	Agency Action on Prior Year's Audit Recommendation on procurement related transactions.
<u>Indicator 15.</u>	<u>Capacity to Handle Procurement Related Complaints.</u>

Sub-Indicator 15a. The Procuring Entity has an efficient procurement complaints system and has the capacity to comply with procedural requirements.

Indicator 16. Anti-Corruption Programs Related to Procurement

Sub-Indicator 16a. Agency has a specific anti-corruption program/s related to procurement.

b. General Considerations

The APCPI Assessment is the responsibility of the HoPE with the assistance of the BAC and its Secretariat and other departments/divisions/units concerned within the procuring entity.

The Head of the BAC Secretariat and his staff shall be responsible for the conduct of the assessment and shall submit the results to the BAC who will review the findings and results, and subsequently submit the same to the Confirmation Team for verification and to the HoPE for approval. The HoPE, however, in its discretion, may create an *ad hoc* Assessment Committee for purposes of the assessment which will be conducted on an annual basis on the first quarter of the year, and will cover the performance and accomplishments of the previous year. Agencies with attached agencies/offices, regional and sub-regional units are encouraged to conduct the assessment at the same time and to submit the results and the report to the BAC Secretariat or the *ad hoc* Assessment Committee at the Central Office for consolidation into a single agency report. Upon completion, final review, confirmation and approval of the APCPI results by the HoPE, the BAC Secretariat of the Central Office shall immediately submit a copy of the consolidated report to GPPB-TSO.

If the consolidated report is not yet available, the Central Office may submit a compilation of the results of its attached agencies/offices, regional and sub-regional units.

Note: Refer to the APCPI User's Guide for the assessment methodology.

2. The Procurement Monitoring Report (PMR)

The 2016 IRR, Section 12.2 requires procuring entities to prepare and submit a PMR to the GPPB, within fourteen (14) calendar days at the end of each semester. The BAC shall prepare the PMR for the HoPE's approval. The PMR shall be posted in accordance with E.O. 662, s. 2007 as amended.

The PMR shall cover all procurement activities specified in the AP, whether ongoing and completed, from the holding of the pre-procurement conference to the issuance of notice of award and the approval of the contract, including the standard and actual time for each major procurement activity.

SECTION 7

Procurement by Electronic
Means and the PhilGEPS

Procurement by Electronic Means and the Philippine Government Electronic Procurement System

Legal Reference

2016 IRR, Section 8 provides the legal reference for the procurement by electronic means and the PhilGEPS.

1. The PhilGEPS³

Consistent with the policies of transparency and streamlining of the procurement process, and to achieve efficiency, ICT shall be utilized in the conduct of government procurement. A two-pronged approach has been adopted to achieve this:

- a. institutionalization of the PhilGEPS, which will be used for procurement of common-use items and as repository of all Government procurement information; and
- b. use or engagement of electronic procurement service providers by the individual Procuring Entities for procurement of non-common use items.

The PS-DBM manages the PhilGEPS under the supervision of the GPPB. The PhilGEPS serves as the single portal and primary source of information on all government procurement.

All Procuring Entities shall utilize the PhilGEPS, through its Electronic Catalogue facility, for the procurement of common-use supplies. Moreover, all IB, REI, notices of award, and all other procurement-related notices shall be posted in the PhilGEPS, regardless of the method of procurement used by the Procuring Entity.

The GPPB issued the Guidelines for Electronic Bidding (E-Bidding), governing the rules in the procurement of goods, infrastructure projects and consulting services through electronic means utilizing the PhilGEPS. (GPPB Resolution 23-2013, dated July 30, 2013)

2. Features of the PhilGEPS

a. Electronic Bulletin Board

The PhilGEPS shall have a centralized electronic bulletin board.

Procuring Entities are required to post the following in the PhilGEPS Electronic Bulletin Board:

- i. IB/REI for competitive bidding and notices of selected procurement opportunities using the alternative methods of procurement;
- ii. Supplemental/Bid bulletins;
- iii. Contract awards, the corresponding Notices of award, including the reasons for award of contract;
- iv. Results of bidding and related information; and
- v. Other notices, announcements, information for interested parties.

Failure to post a procurement opportunity will render the resulting contract null and void.

Failure to post a Notice of Award shall render the erring government official/s administratively liable in accordance with R.A. 6713 and other pertinent laws, rules and regulations, and appropriate sanctions shall be imposed.

³ In case of FAPs, e-procurement should be consistent with the requirements of the IFI concerned.

Posting of notices and other transactions with the PhilGEPS shall be done through duly authorized personnel of the Procuring Entity. In accordance with Section 8.2.3 of the 2016 IRR, the Procuring Entity shall be required to designate its personnel who will be authorized to transact with the PhilGEPS. For purposes of consistency with the prescribed procurement procedures, the Procuring Entity shall designate such personnel who is a member of the BAC Secretariat or assigned to the Procurement Unit/Office. *(Please refer also to Section 3, Volume 2 of this Manual for the procedures for transacting with the PS-DBM.)*

Posting of the IB/REI shall follow the guidelines in Section 21 of the 2016 IRR, Section 2, Part 1, Vol.2, Section 3, Part 1, Vol.3, and Section 3, Part 1, Volume 4 of this Manual.

b. Registry of Manufacturers, Suppliers, Distributors, Contractors and Consultants

The PhilGEPS shall have a centralized electronic database of all manufacturers, suppliers, distributors, contractors and consultants registered under the system.

Registration shall entail the submission of the requirements specified by the PS-DBM. Details of the requirements may be obtained from the PS-DBM website (procurementsservice.org), or the PhilGEPS website (procurementsservice.net). Submission of these requirements may be done on-line at the PhilGEPS website or physically at the PhilGEPS office. Registration shall be effective for one year and may be renewed, provided that the manufacturer, supplier, distributor, contractor or consultant concerned maintains its registration current and updated at least once a year, or more frequently when needed.

Manufacturers, suppliers, distributors, contractors and consultants applying for registration must also indicate their account number with a bank duly licensed by the BSP to facilitate payment as well as the posting of bid and performance security, when applicable.

The PhilGEPS shall deny registration to or exclude from the registry any party that is found to have willfully misrepresented any of the information provided in the application for registration or who is in the "blacklist" of the Government or any of its procuring entities from participating in any of its procurement opportunities, including foreign government/foreign or IFI whose blacklisting rules have been recognized by the GPPB.

A manufacturer, supplier, distributor, contractor or consultant applying for registration shall be required to provide an e-mail address to which all communications from the BAC and the Procuring Entity shall be sent. The e-mail address provided shall be considered as such applicant's information system for purposes of reckoning the date of sending or receipt of electronic messages or documents.

Once the PhilGEPS allows electronic bid submission and other on-line transactions requiring digital signatures, registered manufacturers, suppliers, distributors, contractors and consultants shall secure a digital certificate from the appropriate certification authority to be able to participate in the procurement activities of the PhilGEPS.

Registration with the PhilGEPS is not an accreditation and thus not tantamount to a finding of eligibility, nor is it a guaranty that a manufacturer, supplier, distributor, contractor or consultant may participate in a public bidding without first being determined to be eligible for that particular public bidding.

c. Electronic Catalogue

The PhilGEPS features a centralized electronic catalogue of common and non-common use goods, supplies, materials and equipment.

Procuring Entities are required to procure common-use goods, supplies, materials and equipment from the PS-DBM through the Electronic Catalogue in the PhilGEPS. The procedures for transacting with the PhilGEPS shall be provided for in detail in the websites of the PhilGEPS (procurement-service.net) and the PS-DBM (procurement-service.org).

The Electronic Catalogue may also feature non-common use items that may be procured directly and without public bidding by procuring entities from suppliers: *Provided, however,* That for an item to be carried in the Electronic Catalogue for this purpose, the supplier thereof must have been determined as the Lowest Calculated Responsive Bidder in a previous bidding conducted by PS-DBM or by a Procuring Entity for PS-DBM: *Provided, further,* That such item will be featured in the Electronic Catalogue for a maximum period of six (6) months unless another supplier offers a price lower by at least five percent (5%) and such supplier is determined by the Procuring Entity that conducted the previous bidding to meet the eligibility and bidding requirements for the item, in which case the item from the latter supplier will be that featured in the Electronic Catalogue for the remainder of the six (6)-month period.

Procuring entities without internet access may avail of the PhilGEPS Public Access Terminals which shall be installed at DBM-designated locations in the provinces and in Metro Manila.

d. Additional Features

The PhilGEPS will also feature the following:

- i. A Virtual Store that will enable the ordering of common-use and non-common use items online. This virtual store shall be open only to registered Procuring Entities and may not be accessed by suppliers.
- ii. An Electronic Payment function that will allow the system to manage the generation of purchase orders and the payment of bids processed through the system. The focus of this feature is to facilitate the electronic transfer of funds from PS-DBM to and from Procuring Entities and suppliers, and from Procuring Entities to suppliers for bids managed directly by the Procuring Entity. This system will:
 - Generate purchase orders from a bid notice, award notice or contract;
 - Support approval process for purchase orders before any payment or fund transfer is processed;
 - Have a process to submit request for payment upon delivery of goods and/or services and the completion of the approval process; and
 - Have the ability to interface with the designated bank of the Procuring Entity and suppliers to support the electronic transfer of funds.
- iii. An Electronic Bid Submission that will support the implementation of e-Bid submission processes, which includes creation of electronic bid forms, creation of bid box, delivery of bid submissions, notification to supplier of receipt of bids, bid receiving and electronic bid evaluation. This facility will cover all types of procurement for goods, infrastructure projects and consulting services.

Use of Procurement Service Providers

Legal Reference

2016 IRR, Section 8.1.2 provides the legal reference for the use of procurement service providers.

Procuring Entities may hire service providers who will provide electronic procurement systems and/or services for the procurement of non-common use supplies, infrastructure projects and consulting services. The Procuring Entity shall conduct a public bidding for this service.

Minimum Requirements for Service Providers

Electronic procurement service providers must meet the following minimum requirements to qualify as a service provider to a Procuring Entity:

1. the system must comply with the provisions of R.A. 9184, its 2016 IRR, and R.A. 8792 (Electronic Commerce Act);
2. the system must be linked to the PhilGEPS, particularly with regard to the posting of all bid opportunities and awards;
3. the system must allow parallel manual submission of bids to the Procuring Entity;
4. the system must ensure that the BAC shall have complete control of the bidding process, and that the BAC's sole authority to open bids is strictly observed;
5. the system must be virus-resilient and the infrastructure must provide sufficient security which is at least equivalent to that employed by the PhilGEPS, such as, but not limited to, firewall and encryption devices;
6. must provide for use of electronic signatures and other current electronic authentication devices;
7. the service provider must have sufficient redundant back-up facilities;
8. the system must have provisions for linkage to the Procuring Entity's Financial Management Information System, Logistics Management System, and other internal information systems that may interact with the procurement process; and
9. Electronic payment facilities, if used, shall comply with all laws, rules and regulations issued by the Government.

The GPPB shall determine and certify compliance with the above requirements. However, it may delegate this task to technically capable agencies/offices of the Government.

SECTION 8

Foreign Assisted Projects

Foreign Assisted Projects

R.A. 9184 adopts international best practices in public procurement processes, and institutionalizes the need for a procurement manual, standard bidding documents and forms. With this, the next logical step is the harmonization of the GOP's procurement rules and those of the major and most active IFIs in the country. This activity was already initiated with ADB, JICA and the World Bank, through the issuance of harmonized standard bidding documents and applicable procedures. It should be noted that these harmonized standard bidding documents only affect the procurement guidelines of the aforementioned IFIs for national or local competitive bidding procedures, and that ICB procedures would have to use the standard documents of the IFI concerned.

To date, JICA has accepted the procurement procedures and processes under R.A. 9184 and its 2016 IRR, for its national competitive bidding contracts for goods and infrastructure projects. ADB and WB, on the other hand, have generally accepted the same for national competitive bidding contracts for goods and infrastructure projects, leaving a number of rules unacceptable. These rules that are not acceptable to ADB and WB are normally identified in the loan or grant agreement, and are addressed in the bidding documents and in these Manuals. These pertain to the following areas:

1. Thresholds for national/local competitive bidding.
2. For ADB, the price of bidding documents must be nominal.
3. For ADB, the posting of the ABC is allowed, provided that it shall not be used as the ceiling of bid prices.
4. The timeline for the preparation of bids, which should be at least four (4) weeks.
5. The eligibility requirements, which include the participation of foreign bidders.
6. The participation of foreign suppliers and contractors, without being required to form or associate joint ventures with local firms; and allowing them to bid, without registration, licensing and other government authorizations, leaving compliance with these after award and before contract signing.
7. For WB, the prohibition of re-scheduling the date of bid opening, after the bids have been received. For ADB, such re-scheduling of the date of bid opening after the Procuring Entity has taken custody of the bids may be allowed only under extraordinary circumstances such as natural calamities.
8. The non-application of domestic preference.
9. For WB, allowing the use of limited source bidding, shopping and direct contracting, and requiring prior Bank concurrence for the use of other alternative methods of procurement. For ADB, the use of alternative methods of procurement such as Shopping should be in accordance with ADB Procurement Guidelines.

SECTION 9

**Penal, Civil and Administrative
Liabilities and Sanctions**

Standard of Ethics

Definition of Corrupt, Fraudulent, Collusive, Coercive and Obstructive Practices

Procuring entities and bidders, manufacturers, suppliers or distributors are required to observe the highest standard of ethics during the procurement and execution of contract. Bidders determined to have committed corrupt, fraudulent, collusive and coercive practices by the government will not be eligible to bid in its projects.⁴ For this purpose:

1. "Corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contracting execution; entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in R.A. 3019.
2. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
3. "Collusive practice" means a scheme or arrangement between two (2) or more bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.
4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.
5. "Obstructive practice" covers the following acts:
 - (a) deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceedings or investigation or making false statements to investigators in order to materially impede an administrative proceedings or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or
 - (b) acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.

The pertinent provisions of the Anti-Graft and Corrupt Practices Act, or R.A. 3019, shall also be applied in determining the existence of "corrupt or fraudulent practice".

⁴ A firm declared ineligible by an IFI for engaging in corrupt, fraudulent, collusive and/or coercive practice/s, shall be ineligible to be awarded an IFI-financed contract during the period of time determined by the IFI concerned.

Applicable penalty for fraud, misrepresentation and collusion

If a bidder is found to have committed an act that constitutes fraud or misrepresentation or to have colluded with others for the purpose of influencing the outcome of the bidding, it will be disqualified by the BAC, its bid security or performance security will be forfeited, and, it will suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. **(2016 IRR, Sections 69.1 and 69.2)** Upon conviction, the bidder will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years. **(2016 IRR, Sections 65.2 and 65.3)**

Conflict of Interest

A bidder that has a conflict of interest shall be disqualified to participate in the procurement at hand. A Bidder would be considered as having a conflict of interest with another bidder in any of the events described in paragraphs 1 through 3 below and a general conflict of interest in any of the circumstances set out in paragraphs 4 through 11 below:

1. If the bidder is a corporation or a partnership and it has officers, directors, controlling shareholders, partners or members in common with another bidder; or if the bidder is an individual or a sole proprietorship and he is the proprietor of another bidder, or an officer, director or a controlling shareholder of another bidder; or if the bidder is a joint venture and it or any of its members has officers, directors, controlling shareholders or members in common with another bidder, or any of its members is a bidder;
2. A bidder receives or has received any direct or indirect subsidy from another bidder;
3. A bidder has the same legal representative as any other bidder for purposes of the bidding at hand.
4. A bidder has a relationship directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder, or influence the decisions of the Procuring Entity regarding the bidding process. This will include a firm or an organization that lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;
5. A bidder submits more than one bid in the bidding process. However, this does not limit the participation of subcontractors in more than one bid;
6. A bidder who participated as a consultant in the preparation of the design or technical specifications of the goods and related services that are the subject of the bid;
7. A Bidder who participated as a consultant in the preparation of the design or technical specifications of the Goods and related services that are the subject of the bid; or
8. A Bidder who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;
9. If a consultant combines the function of consulting with those of contracting and/or supply of equipment;
10. If a consultant is associated with, affiliated to, or owned by a contractor or a manufacturing firm with departments or design offices offering services as consultants unless such consultant includes relevant information on such relationships along with a statement in the technical proposal cover letter to the effect that the consultant shall limit its role to that of a consultant and disqualify itself and its associates from work in any other capacity that may emerge from the project (including bidding for any part of the future project). The contract with the consultant selected to undertake the project shall contain an appropriate provision to such effect; or
11. If there is a conflict among consulting projects, the consultant (including its personnel and subcontractors) and any subsidiaries or entities controlled by such consultant shall not be recruited for the relevant project. The duties of the consultant depend on the circumstances of each case. While continuity of consulting services may be appropriate in particular situations where no conflict exists, a consultant cannot be recruited to carry out a project that, by its nature, shall result in conflict with a prior or current project of such consultant. examples of the situations mentioned are when

a consultant engaged to prepare engineering design for an infrastructure project shall not be recruited to prepare an independent environmental assessment for the same project; similarly, a consultant assisting a Procuring Entity in privatization of public assets shall not purchase, nor advise purchasers, of such assets; or a consultant hired to prepare terms of reference (TOR) for a project shall not be recruited for the project in question.

In accordance with Section 47.1 of the 2016 IRR, the bidder should not be related to the Head of the Procuring Entity, the members of the BAC, the TWG and the BAC Secretariat, the head of the PMO or end the end-user or implementing unit, and the project consultants, by consanguinity or affinity up to the third civil degree. Such relationship will automatically disqualify the bidder from participating in the procurement of contracts by the Procuring Entity notwithstanding the act of the aforementioned persons inhibiting themselves from the procurement process. This prohibition shall apply to the following persons:

1. If the bidder is an individual or a sole proprietorship, to the bidder himself;
2. If the bidder is a partnership, to all its officers and members;
3. If the bidder is a corporation, to all its officers, directors and controlling stockholders;
4. If the bidder is a cooperative, to all its officers, directors and controlling shareholders or members; and
5. If the bidder is a joint venture, items 1 through 4 above shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

To establish the non-existence of the above relationship, and to bind the Bidders to its representation relating to the foregoing, all bids must be accompanied by a Disclosure Affidavit of the bidder to that effect. **(2016 IRR, Sections 25.3 and 47.1)**

A relative by consanguinity is a relative by blood relationship, while a relative by affinity is a relative as a result of marriage, i.e. in laws.

For consanguinity, the first degree relatives are the parents and children; the second degree relatives are the grandparents, grandchildren, brothers, and sisters; and the third degree relatives are the great grandparents, great grandchildren, aunts, uncles, nephews, and nieces.

On the other hand, those relatives who as a result of marriage, are treated as the relatives indicated above, are the relatives by affinity within the prohibited first to third degree. For example, the second degree relatives by affinity are sisters-in-law, brothers-in-law, grand children-in-law, and grandparents-in law.

Does the term "prohibited relations" under Section 47.1 of the IRR apply to subcontractors?

The prohibited relations to the HOPE, BAC, BAC Secretariat, TWG, etc., up to the third civil degree of consanguinity and affinity, does not apply to subcontractors.

Penal Liabilities and Sanctions

Penal Liabilities of Public Officers

Without prejudice to the provisions of R.A. 3019 and other penal laws, public officers who commit any of the following acts shall be criminally liable:

1. Opening any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.
2. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in the 2016 IRR.
3. Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take a particular action which favors, or tends to favor a particular bidder.
4. Splitting of contracts which exceed procedural purchase limits to avoid competitive bidding or to circumvent the limits of approving or procurement authority.
5. Abuse by the Head of the Procuring Entity of his power to reject any and all bids as mentioned under Section 41 of R.A. 9184 and its 2016 IRR, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of R.A. 9184 and its 2016 IRR.

When any of the foregoing acts is done in collusion with a private individual, the private individual shall likewise be liable for the offense.

Penal Sanctions for Public Officers

Without prejudice to the provisions of R.A. 3019 and other penal laws, public officers who commit any of the above acts shall, upon conviction, suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years. In addition, the public officer shall also suffer the penalty of temporary disqualification from public office, while any private individual found to have colluded with him shall be permanently disqualified from transacting business with the government.

The above penalties and offenses shall cover all types of procurement whether done manually or electronically.

When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts. If a person previously held liable or found guilty under the provisions of R.A. 9184 and its 2016 IRR has a controlling interest in a prospective bidder-entity, the said bidder-entity shall be disqualified to participate in any procurement activity being conducted by the Government.

Penal Liabilities of Private Individuals

Private individuals who commit any of the following acts, shall be criminally liable:

1. When two or more bidders agree and submit different bids as bona fide bidders, all the while knowing that the bid(s) of one or more of them was so much higher than the other that the latter could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest bid.

2. When a bidder maliciously submits different bids through two or more persons, corporations, partnerships or any other business entity in which he has an interest to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.
3. When two or more bidders enter into an agreement which calls upon one or more of them to refrain from bidding for procurement contracts, or which requires one or more of them to withdraw Bids already submitted, in order to secure an undue advantage to any one of them.
4. When a bidder, by himself or in connivance with others, employs schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.
5. Submitting eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.
6. Submitting Bidding Documents of whatever kind and nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.
7. Participating in a competitive bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.
8. Withdrawing a Bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or refuse to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

When any of the foregoing acts is done in conspiracy with a public officer, the public officer shall likewise be liable for the offense.

Penal Sanctions for Private Individuals

Private individuals who commit any of the above acts, and any public officer conspiring with them shall, upon conviction, suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years. In addition, for any of the foregoing acts mentioned in Items 1 through 4, the public officer involved shall also suffer the penalty of temporary or perpetual disqualification from public office and the private individual shall be permanently disqualified from transacting business with the Government.

The above penalties and offenses shall cover all types of procurement whether done manually or electronically.

When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts. If a person previously held liable or found guilty under the provisions of R.A. 9184 and its 2016 IRR has a controlling interest in a prospective bidder-entity the said bidder-entity shall be disqualified to participate in any procurement activity being conducted by the Government.

Civil Liability

Civil Liability in Case of Conviction

Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under R.A. 9184 and its 2016 IRR or R.A. 3019 shall carry with it civil liability, which may either consist of restitution for the damage done or the forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both, at the discretion of the courts.

Liquidated Damages

All contracts executed in accordance with R.A. 9184 and its 2016 IRR shall contain a provision on liquidated damages which shall be payable in case of breach thereof. For the procurement of goods, infrastructure projects and consulting services, the amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.001%) of the cost of the unperformed portion for every day of delay. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances.

Administrative Liabilities and Sanctions

Administrative Liabilities

The following violations shall warrant administrative sanctions:

1. Submission of eligibility requirements containing false information or falsified documents.
2. Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the competitive bidding.
3. Allowing the use of one's name, or using the name of another for purposes of public bidding.
4. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after he had been adjudged as having submitted the LCRB or HRRB.
5. Refusal or failure to post the required performance security within the prescribed time.
6. Termination of the contract due to the default of the bidder.
7. Refusal to clarify or validate in writing its Bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification.
8. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.
9. All other acts that tend to defeat the purpose of the competitive bidding, such as an eligible contractor not buying bid documents, and contractors habitually withdrawing from bidding or submitting letters of non-participation for at least three (3) times within a year, except for valid reasons.

Administrative Sanctions

Without prejudice to the imposition of criminal sanctions or the effects of civil liability, the Head of the Procuring Entity shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, as well as disqualification from further participating in the public bidding being undertaken by the Procuring Entity concerned, where applicable, for any of the above violations. In addition to the penalty of suspension, the bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.

The Head of the Procuring Entity may delegate to the BAC the authority to impose the administrative penalties.

The Head of the Procuring Entity may preventively suspend any member of the TWG, the BAC Secretariat, or the BAC if there are strong reasons or *prima facie* evidence showing that the officials or employees concerned are guilty of committing any of the acts constituting criminal or civil liability, or for dishonesty as defined by the Civil Service Laws. For uniformed personnel of the AFP, the substantive and procedural due process under its justice system shall be applied. In all cases, due process as mandated by the Constitution and Civil Service laws, rules and regulations, shall be strictly observed.

Lifting of preventive suspension pending administrative investigation, as well as removal of administrative penalties and disabilities shall be in accordance with the provisions of Sections 52 and 53, Chapter 6, Subtitle A (Civil Service Commission), Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

Blacklisting Guidelines⁵

GPPB Resolution 09-2004 provides the guidelines that govern the blacklisting of manufacturers, suppliers, distributors, contractors and consultants involved in government procurement for offenses or violations committed during competitive bidding and contract implementation, in accordance with Section 69.4 of the 2016 IRR, R.A. 9184.

Prohibition on blacklisted persons/entities to participate in the bidding of Government Projects/Contracts

A person/entity that is blacklisted by a Procuring Entity and/or included in the GPPB Consolidated Blacklisting Report shall not be allowed to participate in the bidding of all government projects during the period of disqualification unless it is delisted.

A joint venture or consortium which is blacklisted or which has blacklisted member/s and/or partner/s as well as a person/entity who is a member of a blacklisted joint venture or consortium are, likewise, not allowed to participate in any government procurement during the period of disqualification.

In the case of corporations, a single stockholder, together with his/her relatives up to the third civil degree of consanguinity or affinity, and their assignees, holding at least twenty percent (20%) of the shares therein, its chairman and president, shall be blacklisted after they have been determined to hold the same controlling interest in a previously blacklisted corporation or in two corporations which have been blacklisted; the corporations of which they are part shall also be blacklisted.

Sanctions and Grounds for Blacklisting

During the competitive bidding stage, pursuant to Section 69 of R.A. 9184, the Procuring Entity shall impose on bidders or prospective bidders the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution, as provided by applicable laws, for the following violations:

1. Submission of eligibility requirements containing false information or falsified documents.
2. Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the competitive bidding.
3. Unauthorized use of one's name, or using the name of the name of another for purpose of public bidding.
4. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the LCRB or HRRB.
5. Refusal or failure to post the required performance security within the prescribed time.
6. Refusal to clarify or validate in writing its Bid during post qualification within a period of seven (7) calendar days from receipt of the request for clarification.
7. Any documented unsolicited attempt by a bidder to unduly influence the outcome of

⁵ For ADB and WB-funded activities, the use of these Blacklisting Guidelines requires their prior consent.

the bidding in his favor.

8. All other acts that tend to defeat the purpose of the competitive bidding, such as but not limited to: an eligible contractor not buying bid documents or not complying with the requirements during bid evaluation, and contractors habitually withdrawing from bidding or submitting letters of non-participation for at least three (3) times within a year, except for valid reasons.

In addition to the penalty of suspension, the bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.

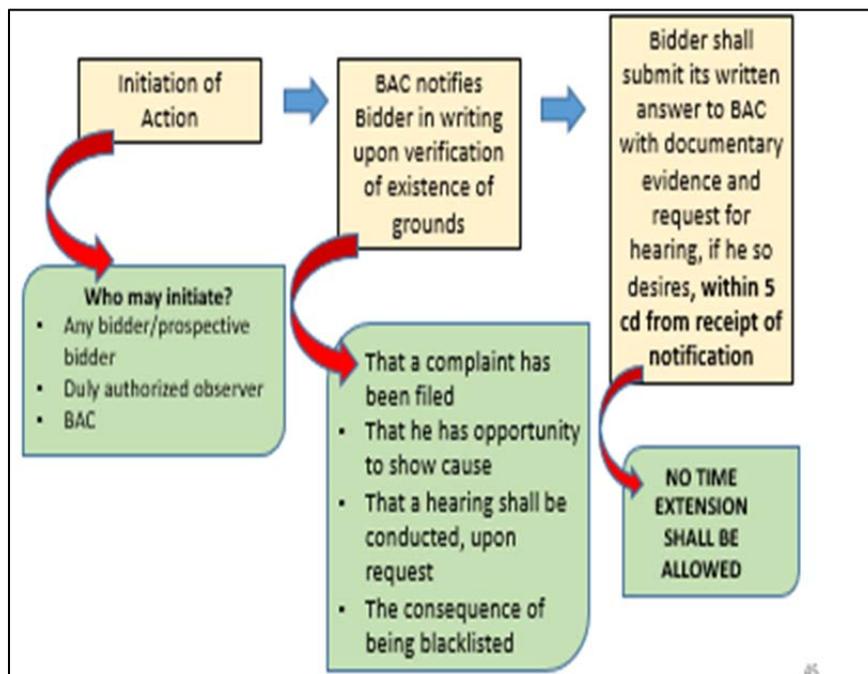
During Contract Implementation Stage, pursuant to Section 69 (6) of R.A. 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the Procuring Entity shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

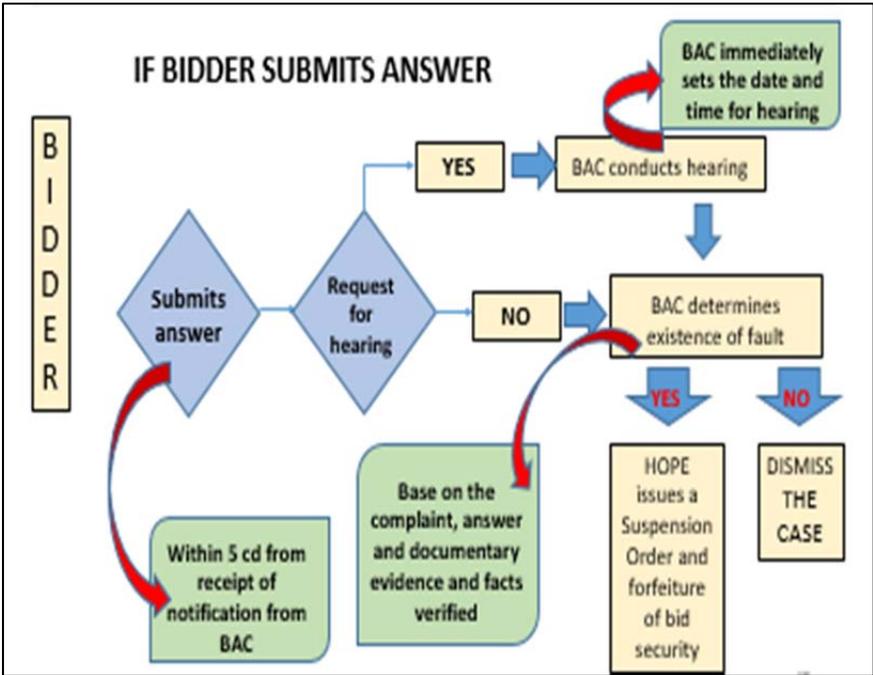
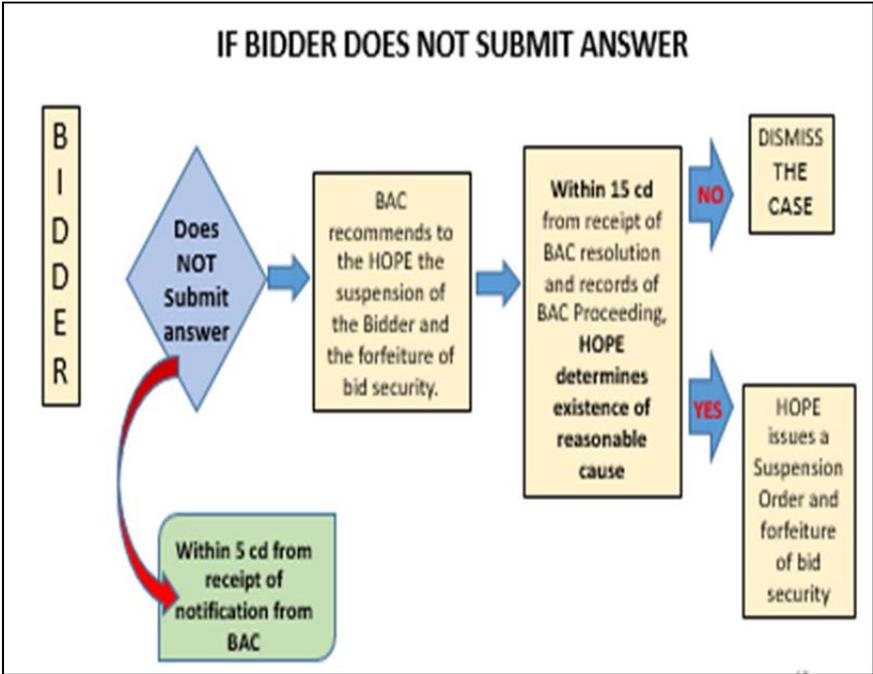
1. Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the NTP;
2. Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the Procuring Entity or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:
 - a. Employment of competent technical personnel, competent engineers and/or work supervisors;
 - b. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 - c. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
 - d. Deployment of committed equipment, facilities, support staff and manpower; and
 - e. Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.
3. Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the Procuring Entity.
4. For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract;
5. For the procurement of consulting services, poor performance by the consultant of his services arising from his fault or negligence. Any of the following acts by the consultant shall be construed as poor performance:
 - a. Defective design resulting in substantial corrective works in design and/or construction;
 - b. Failure to deliver critical outputs due to consultant's fault or negligence; and
 - c. Specifying materials which are inappropriate, substandard, or way above acceptable standards.

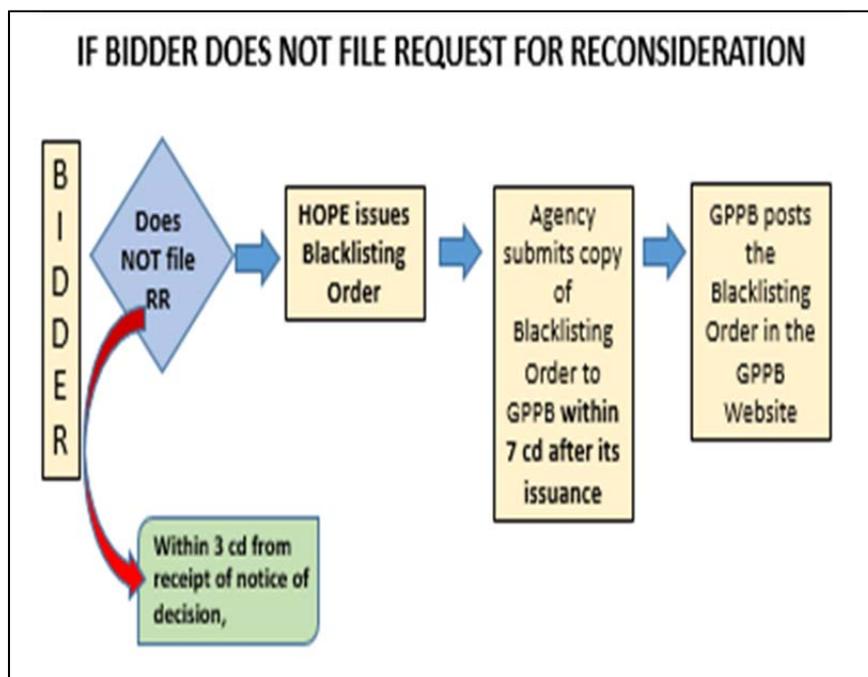
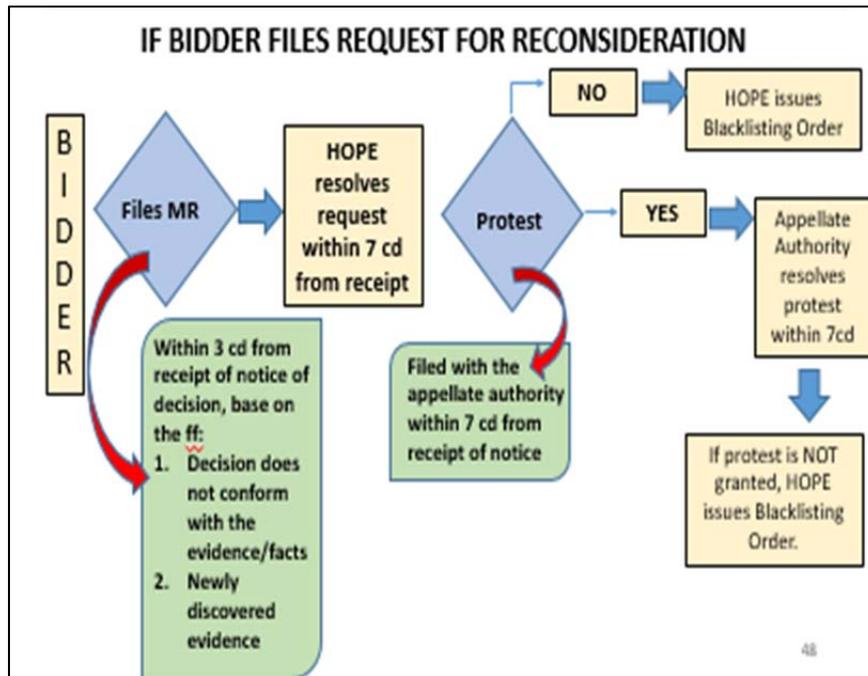
- d. Allowing defective workmanship or works by the contractor being supervised by the consultant.
6. For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the Procuring Entity shall be applied. Any of the following acts by the constructor shall be construed as poor performance:
- a. Negative slippage of fifteen percent (15%) and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
 - b. Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.
7. Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited.

PROCEDURE FOR BLACKLISTING







SECTION 10

Legal Assistance and Indemnification

General Conditions

Pursuant to and in accordance with Sections 72 and 73 of R.A. 9184 and its 2016 IRR, the GPPB issued the Guidelines on Legal Assistance and Indemnification of BAC Members and its Support Staff⁶ for the following purposes:

1. To prescribe the rule and procedures in granting legal assistance and indemnification of the BAC members and BAC Support Staff⁷.
2. To ensure that the mandate to insulate government procurement personnel from the unnecessary loss, damage or injury arising from the lawful exercise of their functions is implemented in accordance with the provisions of R.A. 9184.
3. To establish the legal parameters for the effective implementation of the legal assistance and indemnification provided for BAC members and BAC Support Staff.

The funds to be used for the grant of the free legal assistance, liability insurance or medical assistance shall be taken from the agency's annual appropriation, including the legal fund provided for the purpose. Protest fees, proceeds from the sale of bidding documents, and any other additional funds derived from other income-generating activities of the agency may be used to augment the funds.

Free Legal Assistance

In order for a member of the BAC or its Support Staff to avail of the free legal assistance, the following considerations must be met:

1. The procuring entity shall, to the fullest extent permitted by the above-cited Guidelines, indemnify a BAC member and/or any of the BAC Support Staff who was or is a party to a pending or completed action, suit or proceeding whether civil, criminal or administrative in nature brought against him in the performance of his official functions as BAC member or as BAC Support Staff.
2. The BAC member or BAC Support Staff concerned must have engaged the services of a private lawyer or external counsel.
3. The BAC member or BAC Support Staff must have not been adjudged as guilty of gross negligence, misconduct, or grave abuse of discretion.
4. The free legal assistance shall cover actual cost of suit and attorney's fees. The attorney representing the BAC member or BAC Support Staff shall be entitled to a maximum of Five Thousand Pesos (Php5,000.00) per appearance which shall be paid by the procuring entity.
5. The free legal assistance shall not cover:
 - a. Any action or suit initiated by a BAC member or BAC Support Staff in his personal capacity or in behalf of the procuring entity, unless such action, proceeding, or claim was authorized by the head of the procuring entity or the approving authority therein; or
 - b. Any action or suit initiated by the Government against the BAC members or BAC Support Staff.

⁶ Approved and adopted by GPPB through its Resolution 021-2005, dated 07 October 2005, published at the Official Gazette on 09 January 2006.

⁷ Refers to the members of the BAC Secretariat and the Technical Working Group duly designated by the procuring entity pursuant to the provisions of Rule V of the 2016 IRR of R.A. 9184.

6. The BAC member or BAC Support Staff shall be entitled to actual, moral, and exemplary damages when awarded by the court. Likewise, the attorney representing the BAC member or BAC Support Staff shall be entitled to attorney's fees awarded by the court.

Can a BAC member be reimbursed of the legal expenses he/she incurred by reason of a BAC-related administrative case that was decided against him/her which is still pending appeal?

Under Section 4.1 of the Guidelines on Legal Assistance and Indemnification of BAC Members and its Support Staff issued by the GPPB, the procuring entity shall indemnify a BAC member and/or any BAC Support Staff who is a party to a pending or completed action, suit or proceeding whether civil, criminal or administrative in nature brought against him in the performance of his official functions. Thus, in this case, the BAC member can be reimbursed for the legal expenses incurred, provided the reimbursement or free legal assistance will comply with the rest of the general conditions and procedures found in Section 4 and 5 of the Guidelines. NPM No. 044-2011

Can a BAC member claim for reimbursement while the case is pending or only after judgment has been made declaring him/her as not guilty?

Under the Guidelines for Legal Assistance and Indemnification, the free legal assistance can be claimed by a party to a pending or completed action. Thus, the PE can pay for the actual cost of suit and attorney's fees while it is pending and not only after the judgment has been made.

However, if the BAC member or its support staff is found to be guilty for gross negligence, misconduct, or grave abuse of discretion, he shall pay the cash advances made through salary deductions or reimbursement.

Liability Insurance

Following are the general conditions pertaining to the liability insurance for members of the BAC and the BAC Support Staff:

1. The procuring entity shall have the responsibility to procure and maintain adequate liability insurance for and in behalf of its BAC members or BAC Support Staff.
2. The liability insurance policy shall cover only those liabilities asserted against the public official and incurred by him in his capacity as such BAC members or BAC Support Staff as the case may be.
3. In order to avail of the liability insurance, the BAC members or BAC Support Staff should not be adjudged in such action or proceeding to be guilty of gross negligence, misconduct, or grave abuse of discretion or guilty of any other complaint or charges.
4. In the event of settlement or compromise, indemnification shall be confined only to matters covered by the settlement, and to which the procuring entity had been advised by counsel that the person to be indemnified have not committed gross negligence, misconduct, or grave abuse of discretion in the performance of their duties and functions.
5. The insurer shall pay for the loss arising from the claim or suit made against the BAC members or BAC Support Staff during the policy period where they serve in such capacity. For this purpose, the term "loss" shall include judgments, expenses for settlement or compromise, as well as all reasonable fees and other expenses incurred by such persons in connection with any administrative, civil, or criminal action, suit or proceeding to which they may be or have been made a party by reason of the lawful performance of their official functions and duties in such capacity.

6. The procurement of liability insurance shall be subject to the setting of schedule of premium by the GPPB.

What are the examples of liabilities that may be asserted against the BAC et. al.?

Any loss arising from the claim or suit made against the BAC, which shall include judgments, expenses for settlement or compromise, reasonable fees and other expenses incurred.

Medical Assistance

Medical assistance should be provided to BAC members and BAC Support Staff for injuries/disabilities incurred in the lawful performance of their official functions and duties. The medical assistance consists of indemnification for medicines, laboratory and hospitalization expenses and granted to the claimant as a matter of right and subject to the conditions mandated by law.

Following are the general considerations pertaining to the medical assistance:

1. The claimant(s) should be entitled to indemnification for any injury or disability resulting from the performance of their official functions as defined by law and without any contributory negligence on their part; provided that they exercised due diligence to prevent harm or injury to themselves.
2. The claimant(s) or his/her relatives must notify the head of the procuring entity within seven (7) calendar days from the occurrence of the injury or disability.
3. The amount claimed shall not exceed the actual amount incurred, substantiated by receipts and other supporting documents. Indemnification shall only be made upon presentation of the proof of payment in connection with the injury or disability suffered.

What does "injury" mean?

For this purpose, "injury" means any bodily impairment arising from and in the course of procurement-related activities.

Procedure for Granting Legal Assistance and Indemnification

The claimant(s) should file their respective claim(s) for legal assistance, liability insurance, or medical assistance as the case may be, with the head of the procuring entity; and shall secure the approval of the latter on the terms and conditions of the engagement of counsel.

The head of the procuring entity should be given at least fifteen (15) to thirty (30) calendar days to examine, review, verify and validate the authenticity of the documents presented by the claimant.

Upon finding that all the requirements have been duly complied with and that all the necessary documents submitted are genuine, it should then order the processing of the claims and the subsequent release of funds for the approved claims.

Any expenses incurred in advance by the claimant arising from the performance of his official functions in such capacity shall be subject to reimbursement upon submission of the necessary documents and approval thereof by the head of the procuring entity.

If the BAC member or its support staff is found to be not guilty for gross negligence, misconduct, or grave abuse of discretion, he shall liquidate his cash advances by presenting receipts of payment and other necessary documents. On the other hand, if the BAC member or its support staff is found to be guilty for gross negligence, misconduct, or grave abuse of discretion, he shall pay the cash advances made through salary deductions or reimbursement.

ANNEX

Glossary

Glossary

Approved Budget for the Contract (ABC) – The budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act (GAA), continuing, and automatic appropriations, in the case of national government agencies (NGAs); the corporate budget for the contract approved by the governing board, pursuant to Executive Order No. 518, series of 1979 (E.O. 518), in the case of GOCCs and GFIs, and Republic Act No. 8292 in the case of SUCs; and the budget approved by the *Sanggunian* through an appropriation ordinance in the case of LGUs. For multi-year contracts, for which a Multi-Year Obligational Authority (MYOA) or an equivalent document is required, the ABC shall be that incorporated in the project cost reflected in the MYOA. For Foreign-funded Procurement, the ABC refers to the cost estimate prepared by the Procuring Entity and approved by the foreign government/foreign or international financing institution as specified in the Treaty or International or Executive Agreement. (2016 IRR, Section 5[b])

BAC – The Bids and Awards Committee, established in accordance with Rule V of the 2016 IRR of R.A. 9184. (2016 IRR, Section 5[f])

Bid – A signed offer or proposal to undertake a contract submitted by a bidder in response to and in consonance with the requirements of the bidding documents. Also referred to as *Proposal* and *Tender*. (2016 IRR, Section 5[c])

Bid Evaluation – The process of determining the Bidder with the Lowest Calculated Bid (LCB) or the Highest Rated Bid (HRB).

Bid Opening Date – The date specified in the IB for the opening of bids.

Bid Security – May be in the form of cash, cashier's/manager's check, issued by a universal or commercial bank; or bank draft, bank guarantee, or irrevocable letter of credit, issued by a universal commercial bank; or surety bond issued by a surety or insurance company duly certified by the Insurance Commission; or a bid securing declaration in accordance with the form prescribed by the GPPB; that serves as a guarantee that the successful bidder shall not default on his offer, and shall enter into contract with the Procuring Entity and furnish the performance security.

Bid Validity – A reasonable period determined by the Head of the Procuring Entity concerned, but in no case shall exceed one hundred twenty (120) calendar days from the date of the opening of bids, wherein a Bid Security is considered valid.

Bidder – Refers to a contractor, manufacturer, supplier, distributor and/or consultant who submits a bid in response to the requirements of the Bidding Documents. See *Eligible bidder*, *Prospective bidder*. (2016 IRR, Section 5[d])

Bidding Documents. – The documents issued by the Procuring Entity as the bases for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the Infrastructure Projects, Goods and/or Consulting Services required by the Procuring Entity. (2016 IRR, Section 5[e])

Blacklisting – To place on, or as if on, a list of persons or organizations that have incurred disapproval or suspicion or are to be boycotted or otherwise penalized.

Brand Name – A trade name or product name, which identifies a product as having been made by a particular manufacturer.

Civil Works – See *Infrastructure Projects*.

Collusion – An agreement between two or more persons, to commit acts to accomplish a fraudulent or deceitful purpose.

Common-Use Supplies – Goods, materials and equipment that are repetitively used in the day-to-day operations of procuring entities in the performance of their functions, which are included in the Price List of the Procurement Service (PS) of the Department of Budget and Management (DBM).

Competitiveness– A principle in Government procurement that allows broad participation by eligible and qualified suppliers, contractors, consultants to put forward offers for a project.

Competitive Bidding – A method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract. Also referred to as *Public Bidding*. (2016 IRR, Section 5[h])

Communication costs – mail and fax costs, plus cost of advertising, meetings, internet/web posting, and other costs incurred for the dissemination of information about the bidding.

Conflict of Interest – Refers to a clash between public interest and the private pecuniary interest of the individual concerned (Black's law Dictionary, 5th ed.)

Consolidated Blacklisting Report – A report issued by the GPPB that contains a list of people and/or organizations that are barred from participating in any Government procurement project.

Consulting Services – Refer to services for Infrastructure Projects and other types of projects or activities of the GoP requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the GoP to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. (2016 IRR, Section 5[i])

Contract Completion – Project sign-off or acceptance of the project/goods by the end-user.

Contract Implementation – The execution of a contract, covering the following milestones: effectivity of the contract; contractor's performance of his contractual obligations; Procuring Entity's performance of its contractual obligations, as specified in the Contract; final acceptance or project sign-off; all other related activities; and payment by the Procuring Entity.

Contractor – One who undertakes to perform a work or service, or supply goods for a public or private entity.

Contract Termination – Ending of a contract prior to its completion.

Corrupt practice – the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. Compare *fraudulent practice*.

Direct Contracting – An alternative method of procurement of goods that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Also referred to as *Single Source Procurement*. (2016 IRR, Section 50)

Disclosure – The act of disclosing, uncovering, or revealing.

Disqualification – The act of barring a bidder from further participation in the procurement at hand, even if, in some instances, it has initially been declared eligible or post-qualified.

Domestic Bid – Any offer of unmanufactured articles, materials, or supplies of the growth or production of the Philippines, or manufactured articles, materials or supplies manufactured or to be manufactured in the Philippines, substantially from articles, materials or supplies of the growth, production or manufacture, as the case may be, of the Philippines.

Eligible Bidder – A contractor, manufacturer, supplier, distributor or consultant who meets all the eligibility requirements issued by the Procuring Entity.

Eligibility – Refers to the status of a Bidder in relation to its legal, technical and financial competence to comply with the requirements of the contract to be bid, as shown by eligibility documents submitted to and checked by the BAC.

Eligibility Check – The process of determining the compliance of Prospective Bidders with the eligibility requirements prescribed, using a non-discretionary, “pass/fail” criterion.

Eligibility Screening – see *Eligibility Check*.

End-User Unit – The office, unit or division of the Procuring Entity that needs and uses the goods, infrastructure project or consulting services procured. This is used interchangeably with *Implementing Unit*.

Financial Bid – One of two components comprising a bid, the other being the *Technical Bid*.

Force Majeure – see *Fortuitous events*.

Foreign Bid – Any offer of articles, materials or supplies not manufactured or to be manufactured in the Philippines, substantially from articles, materials or supplies of the growth, production, or manufacture, as the case may be, of the Philippines. (2016 IRR, Section 5[n])

Foreign Supplier – A supplier who is not a local supplier.

Fortuitous events – An event which could not be foreseen, or which though foreseen, was inevitable. (Art. 1174, Civil Code)

Fraudulent practice – Means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.

Goods – Refer to all items, supplies, materials and general support services, except Consulting Services and Infrastructure Projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the Procuring Entity for such services. The term “related” or “analogous services” shall include, but is not limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity. (2016 IRR, Section 5[r])

Head of the Procuring Entity – (i) the head of the agency or body, or his duly authorized official, for NGAs and the constitutional commissions or offices, and other branches of government; (ii) the governing board or its duly authorized official, for GOCCs, GFIs and SUCs; or (iii) the local chief executive, for LGUs: Provided, however, that in an agency, department, or office where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the agency, department, or office. (2016 IRR, Section 5[t])

Implementing Unit - The office, unit or division of the Procuring Entity that implements the project or contract, for which the goods, infrastructure project or consulting service procured are required. See also *End-User Unit*.

Indemnification - Refers to the assistance or remuneration given to the members of the BAC and/or the BAC Support Staff for any loss, damage, or injury caused to them by reason of the lawful performance of their duty.

Infrastructure Projects – Include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. Also referred to as *civil works or works*. (2016 IRR, Section 5[u])

Inspection – Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition, and to verify that it conforms to the applicable specifications.

IB – Invitation to Bid. This serves as the notice to the public and all interested parties of the procurement opportunity.

Liability insurance - Refers to the insurance policy purchased and maintained by the procuring entity in favor of a member of the BAC and/or the BAC Support Staff against any liability asserted against or incurred by the person in any such capacity or arising out of the person's status as such.

Limited Source Bidding – An alternative method of procurement for Goods and Consulting Services that involves direct invitation to bid by the concerned Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract. Also known as *Selective Bidding*. (2016 IRR, Section 49)

Liquidated Damages – Damages agreed upon by the parties to a contract, to be paid in case of breach thereof.

Medical Assistance - The remuneration given by the procuring entity for any injury or disability incurred by members of the BAC and/or the BAC Support Staff in the lawful performance of their official functions and duties. For this purpose, "injury" means any bodily impairment arising from and in the course of procurement-related activities.

Motion for Reconsideration – In procurement, it is an application made to the BAC for the purpose of obtaining a rule or order setting aside a previous decision.

Negotiated Procurement – An alternative method of procurement of Goods, Infrastructure Projects and Consulting Services, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant. (2016 IRR, Section 53)

Notice of Award – The document issued by the Head of the Procuring Entity to the bidder to whom the contract is awarded.

Notice of Eligibility – The document issued by the BAC to the eligible bidder/s formally informing the same that he/she/they met the eligibility requirements issued by the Procuring Entity.

Notice to Proceed – The document issued by the Head of the Procuring Entity to the winning bidder to proceed with the implementation of the contract.

Observer – One who is invited to attend and observe all stages of the procurement, especially: the pre-bid conference; opening of bids; bid evaluation; post-qualification; contract award; and special meetings of the BAC.

Performance Security – A security posted by the winning bidder to guarantee the faithful performance by the same of its obligations under the contract prepared in accordance with the bidding documents.

Portal – A website that integrates a wide variety of contents for the purpose of attracting and aggregating multiple users together in a central virtual space. (2016 IRR, Section 5[z])

Pre-bid Conference – is the forum where the Procuring Entity’s representatives and the Prospective Bidders discuss the different aspects of the procurement at hand.

Pre-procurement Conference – is the forum called by the BAC for procurements undertaken through public bidding, where all officials involved in the procurement meet and discuss all aspects of the transaction, including the technical specifications, the Approved Budget for the Contract (ABC), the applicability and appropriateness of the recommended method of procurement and the related milestones, the bidding documents, availability of the pertinent budget release for the project / contract, among others.

Private Legal Assistance - Refers to the services of a private lawyer or external counsel engaged by or in behalf of the members of the BAC and/or the BAC Support Staff resulting from the filing against him of any criminal or civil action or proceeding for acts made in connection with the lawful performance of his functions.

Procurement – The acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. In case of projects involving mixed procurements, the nature of procurement, i.e. Goods, Infrastructure Projects or Consulting Services, shall be determined based on the primary purpose of the contract. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of R.A. 8974 and other applicable laws, rules and regulations. (2016 IRR, Section 5[aa])

Procurement Observation Report – The report submitted by the Observer to the Head of the Procuring Entity, based on the procurement checklist.

Procurement Unit – Refers to the organic office of the Procuring Entity that carries out the procurement function.

Procuring Entity – Any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of the GoP (NGA), including GOCC, GFI, SUC and LGU procuring Goods, Consulting Services and Infrastructure Projects. (2016 IRR, Section 5[bb])

Procurement Monitoring Report – Refers to the report required for submission by the procuring entities to the GPPB every semester, which covers all procurement activities whether ongoing or completed.

Project Management Office – The unit/office/department of the Procuring Entity that is primarily responsible for implementing and managing a project.

Proposal – See *Bid*.

Prospective Bidder – An interested bidder who may or may not have yet secured copy of the bidding documents issued for the project.

Protest – The remedy that an affected bidder may resort to after receiving the BAC’s decision denying its request for reconsideration, which was filed in accordance with Section 55.1 of the 2016 IRR.

Public Bidding – See *Competitive Bidding*.

Public Monitoring – A principle in Government procurement that allows third-party monitors (e.g. oversight bodies, civil society organizations, professional associations) to witness certain stages of the procurement process, i.e. eligibility checking, shortlisting, pre-bid conference, preliminary examination of bids, bid evaluation and post-qualification.

Repeat Order – An alternative method of procurement of goods from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through *Competitive Bidding*. (2016 IRR, Section 51)

Shopping – An alternative method of procurement of goods whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications. (2016 IRR, Section 52.1)

Single source procurement – See *Direct Contracting*.

Spare parts – Refer to extra components, equipment, tools, instruments or parts of machinery or apparatus that replace the ones that are damaged or worn out.

Specification – A description of what the purchaser requires and what a bidder must offer.

Splitting of Contracts – The act of dividing or breaking up GoP contracts into smaller quantities and amounts. It also is the act of dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and the 2016 IRR, particularly the necessity of public bidding and the requirements for the alternative methods of procurement. (2016 IRR, Section 54.1)

Standard – The established and fixed measure used in assessing quality or performance.

Subcontractor – One who takes a specific part of the work undertaken by the principal contractor. (Black's Law Dictionary, 5th Ed.)

Supplemental/Bid bulletin – A notice issued by the Procuring Entity to Prospective Bidders with respect to any clarifications or modifications in the Bidding Documents, including those affecting the technical specifications, eligibility requirements, procurement schedule, and other similar matters.

Technical Bid – One of two components comprising a bid, the other being *Financial Bid*.

Tender – See *Bid*.