



RESOLUTION NO. 07-2022

APPROVING THE GUIDELINES ON THE ENGAGEMENT OF PROCUREMENT AGENT AND RELATED AMENDMENTS TO SECTIONS 7.3.3 (a), 11.2.2 (e), AND 47.1 OF THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF THE REPUBLIC ACT NO. 9184

WHEREAS, Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act,” took effect on 26 January 2003, while its 2016 revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 63 of RA No. 9184 authorizes the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend its IRR, whenever necessary;

WHEREAS, Section 53 (e) of RA No. 9184 allows Negotiated Procurement of Goods from another agency of the Government, such as the Procurement Service (PS) of the Department of Budget and Management, which is tasked with the centralized procurement of commonly used Goods for the government in accordance with the Letter of Instructions No. 755 and Executive Order No. 359, series of 1989;

WHEREAS, in order to hasten project implementation, Section 7.3.3 of the 2016 revised IRR states that Procuring Entities (PEs) which may not have the proficiency or capability to conduct a particular procurement, as determined by the Head of the Procuring Entity (HoPE) concerned, may outsource the procurement tasks by requesting other government agencies to conduct such procurement on their behalf, through the execution of a Memorandum of Agreement (MOA) containing specific arrangements, stipulations and covenants, in accordance with government budgeting, accounting and auditing rules;

WHEREAS, during the revision of the IRR in 2016, the GPPB approved¹ the transfer of the provision on the Procurement Agent from Sec 53.6 of 2009 IRR under Negotiated Procurement to Section 7.3.3 of the 2016 revised IRR under Procurement Planning, in order to encourage PEs to consider the same when planning their procurement activities for the fiscal year, while giving them the flexibility and convenience to determine their own contractual arrangements with a Procurement Agent;

WHEREAS, in August 2021, the Commission on Audit (COA) released its audit findings on the fund transfers made by the Department of Health to the PS as the Procurement Agent for various Coronavirus Disease 2019 - related supplies, among others. The said findings later became the subject of an inquiry in aid of legislation conducted by the Senate Blue Ribbon Committee in September and October 2021. During the Committee hearings,² the GPPB-TSO representative, who was then invited as a resource person, noted the Senators’ concerns regarding the practice of PEs engaging the PS as Procurement Agent despite having their own Bids and Awards Committee (BAC) and transferring funds to the PS towards the end of the budget year to avoid the lapse of the budget validity, especially since PEs are allowed to transfer funds to government entities that will implement their projects pursuant to COA Circular No. 94-013;³

¹ Based on the minutes of the meeting of the GPPB and its Inter-Agency Technical Working Group (IATWG) on 11 March 2016.

² September 7, 10, 13, 17, 21, 24, and 30; October 5 and 19, all in 2021.

³ Dated 13 December 1994, entitled: Rules and Regulations in the Grant, Utilization and Liquidation of Funds Transferred to Implementing Agencies.

WHEREAS, to address the noted issues that surfaced during the said hearings, the GPPB-TSO studied the matter and proposed interventions, particularly on the conditions to be met in engaging Procurement Agents, such as the PE's capacity and allowable period to engage them. The initial results of the study were presented to the Board on 22 October 2021.⁴ The GPPB-TSO, thus, recommended to the Board the issuance of rules on the engagement of a procurement agent to clarify the roles and responsibilities of Procurement Agents and requesting PEs. The Board approved the said recommendation, and the GPPB-TSO went on to validate the rules and conditions that will govern the engagement of a Procurement Agent;

WHEREAS, from April to July 2022, the GPPB-TSO consulted with three (3) common Procurement Agents, namely: the PS, Philippine International Trading Corporation (PITC), and Department of Public Works and Highways (DPWH) to determine and evaluate their current practices as Procurement Agents for other government entities against existing rules;

WHEREAS, the GPPB-TSO also noted the PS Sales Report FY 2019 - 2021⁵ where the majority of its sales came from its Procurement Agent contracts amounting to Php 33.67 billion, while the sale of its Common-use Supplies and Equipment (CSE) totaled only to Php 4.71 billion;

WHEREAS, to supplement the foregoing data, the GPPB-TSO also conducted a survey among PEs in July 2022, with the following results:

- a. Out of two hundred fifty-two (252) PEs that responded, 80.55% did not engage a Procurement Agent because their BACs were capable of undertaking their own procurement activities, while the remaining 19.44% engaged the DPWH, PS or PITC as their Procurement Agent; and
- b. Among the PEs that engaged a Procurement Agent, 22.44% said that delay in their procurement was due to the volume of projects handled by the DPWH, PS or PITC;
- c. On the other hand, 65.30% of the PEs transferred funds to the Procurement Agent; and
- d. 61.22% of the PEs had an end-to-end MOA with a Procurement Agent or covered all activities from bidding until payment of the project;

WHEREAS, the GPPB-TSO, during the joint inaugural meeting of the GPPB and its Inter-Agency Technical Working Group (IATWG) last 12 September 2022, presented the general parameters in the proposed Guidelines for the Engagement of Procurement Agent (Guidelines), to wit:

- a. The role or responsibility of a Procurement Agent shall be limited to the functions of the BAC under Section 12 of RA No. 9184 and its 2016 revised IRR. On the other hand, the award of the contract shall be undertaken by the PE upon the recommendation of the Procurement Agent. This will prevent PEs from simply passing on the procurement to another agency considering that the HoPE's

⁴ 9th GPPB meeting held via Zoom platform.

⁵ In detail, the sales on the non-CSE items as Procurement Agent amounting to Php33.67 billion was remarkably higher than the sales for CSE items, with a total amount of Php 4.71 billion in 2021. Similarly, the sales data for FY 2019 and 2020 showed increased sales for non-CSE items as Procurement Agent over the sales for CSEs, particularly, the non- CSE sales reflected a total amount of Php179.69 billion for FY 2019 and Php7.75 billion for FY 2020, as compared to the sales for SE items which were pegged at a total amount of Php5.6 billion for FY 2019 and Php4.69 billion for FY 2020.

functions and contract implementation and management shall remain with the PE;

- b. The instances when a Procurement Agent may be engaged by a PE are when (i) the PE's existing human resource complement lacks sufficient qualified personnel to constitute its own BAC, or (ii) the PE's existing BAC lacks the proficiency or expertise to undertake a particular Procurement Project. This will prevent the PE from simply passing on its responsibilities to the Procurement Agent;
- c. The roles and responsibilities of the parties, and service fees, if applicable, in the MOA must be in accordance with the proposed Guidelines. The PE should not be allowed to surrender its obligations and accountability in the proper implementation of its programs and projects through mutual agreement in the MOA;
- d. The engagement of a Procurement Agent shall be on a per project basis, rather than in a lump sum arrangement where the PE's projects are only determined at a later date;
- e. The Procurement Agent shall procure the project through Competitive Bidding, except if the PE lacks sufficient qualified personnel to constitute its own BAC, in which case, it may also procure projects using any of the Alternative Methods of Procurement;
- f. The Procurement Agent to be engaged by the PE should have a track record of having awarded a minimum of three (3) similar contracts, each costing at least fifty percent (50%) of the ABC of the Procurement Project at hand and completed within the relevant period identified by the PE depending on its project requirements. A similar contract is one of similar nature and complexity with the Procurement Project at hand, as determined by the End-User. These requirements are necessary to ensure the capacity of the Procurement Agent to perform its responsibility;
- g. The Procurement Agent cannot subcontract or delegate the performance of its obligations or duties to another entity. This will ensure that the Procurement Agent has the actual capacity to procure for the PE and not simply accept the engagement.
- h. The PE should have at least one (1) Technical Working Group (TWG) representative to be designated by the HoPE to the BAC of the Procurement Agent. The said TWG representative shall monitor the procurement and safeguard the interest of the PE on all matters relating to the procurement of the Procurement Project at hand;
- i. No transfer of funds for the payment of the contract shall be made by the PE to the Procurement Agent. The PE shall remain responsible for making any payments to the supplier, contractor or consultant during contract implementation;
- j. The amount or rate of the service fee, if applicable, shall be rationalized so that this will not be subject to abuse;
- k. The engagement of a Procurement Agent shall be reflected in the Annual Procurement Plan, Procurement Monitoring Report, and Agency Procurement Compliance and Performance Indicator results of the PE for full transparency and greater accountability; and

- I. A report on the engagement of a Procurement Agent shall also be submitted by the PE to the DBM and GPPB-TSO so that the PE's capacity to procure and implement projects may be considered in the next budget cycle, thereby ensuring the prudent and optimal use of budgetary sources.

WHEREAS, the DPWH representative clarified if the prohibition on the transfer of funds in the proposed Guidelines would cover transfer of funds to implementing agencies, like the DPWH. The GPPB-TSO explained that the transfer of funds under COA Circular No. 94-013 pertains to the transfer of funds to an implementing agency which will undertake the implementation of the project as authorized by law. In contrast, the prohibition in the proposed Guidelines covers the transfer of funds by the PE to the Procurement Agent for the latter's payment to the winning bidder. This is prohibited because the Procurement Agent acts only as the BAC of the PE and not the implementing agency for the project;

WHEREAS, after the discussion on the foregoing parameters in the proposed Guidelines, the GPPB approved the same in principle, subject to any comments from the members;

WHEREAS, on 06 October 2022, the GPPB-TSO presented to the IATWG for review: (i) further refinements in the proposed Guidelines relative to the conditions in engaging a Procurement Agent, and (ii) the proposed revisions in the IRR of RA No. 9184, particularly Sections 7.3.3(a) and 11.2.2 (e). The IAWTG approved the same for endorsement to the Board, subject to the consideration of the following:

- a. The PE shall be responsible for the honoraria of its TWG representative, while the Procurement Agent shall be responsible for the honoraria of its BAC;
- b. The Bidding Documents fee should be for the account of the PE;
- c. The phrase, "in accordance with the government budgeting, accounting and auditing rules" should be maintained in Section 7.3.3 (a) of the 2016 revised IRR, considering that certain provisions in the MOA, such as the payment of service fees, are subject to applicable budgeting, accounting and auditing rules; and
- d. The provision on the disclosure of relations indicated in the Omnibus Sworn Statement shall also apply to Procurement Agents.

WHEREAS, in the 6th regular meeting of the GPPB last 27 October 2022, the GPPB-TSO presented the foregoing IATWG recommendations, as well as its proposed additional revisions, particularly:

- a. The Guidelines shall include a provision which states, "Except for projects undertaken through Early Procurement Activities, the engagement of a Procurement Agent shall only be allowed until the third (3rd) quarter of the fiscal year to enjoin PEs to properly plan their procurement activities"; and
- b. Amendments in the 2016 revised IRR of RA No. 9184 shall include:
 - i. Insertion of "**the relevant issuance of the GPPB and**" under Section 7.3.3 (a) to indicate that engaging another government agency to perform procurement task should be in accordance with the relevant issuance of the GPPB and subject to government budgeting, accounting and auditing rules;
 - ii. Deletion of the sentence in Section 11.2 (e) that authorizes the designation of provisional member in the BAC of the Procurement Agent as this results in an

undue delegation of functions. It is emphasized that the PE's authority to designate an individual as a BAC member should be confined only within the same agency. Otherwise, this will enable the appointment of a third party or an outside individual to sit on the BAC. The interest of the PE when engaging a Procurement Agent is nonetheless protected by the designation of at least one (1) TWG representative in the BAC of the Procurement Agent;

- iii. Insertion of "**Procurement Agent if engaged**" under Section 47.1 pertaining to the sworn affidavit of the bidder, which provides that the bidder shall not be related to the HoPE, BAC and its TWG and Secretariat, End-User or project consultants, by consanguinity or affinity up to the third civil degree. The same shall likewise be reflected in the approved template of the OSS.

WHEREAS, regarding the proposal of the GPPB-TSO for the PE to rationalize the amount or rates of service fees of its Procurement Agent, the Department of Transportation and Department of Education (DepEd) representatives further proposed to set a fixed threshold for the said service fees based on the following:

- a. The amount or fee to be charged should be commensurate with the services rendered by the Procurement Agent. Considering that projects outsourced by PEs to Procurement Agents typically cost billions of pesos per contract package, the service fees could be worth a significant amount of money although the percentage of the service fees based on the contract price appeared marginal. By way of example, the DPWH undertook infrastructure projects as Procurement Agent, and its service fees amounted to a fixed 0.5% of the contract price and the utilization of which was itemized, while the PS procured non-CSEs as Procurement Agent and its service fees of up to 4% of the contract price and the breakdown of which was not specified;
- b. The service fee shall be used by the Procurement Agent in the grant of honoraria to its BAC, and as such, the same can be pegged to a percentage proportional to the total amount of the said BAC honoraria; and
- c. The Procurement Agent that is not authorized by any law or issuance to maintain revolving funds will not be affected by the aforementioned threshold since it cannot retain the service fees and must instead remit the same to the Bureau of Treasury;

WHEREAS, the GPPB-TSO clarified that its proposal would allow the PE to determine the reasonable rates of service fees of its Procurement Agent based on applicable laws or issuances. For the PS, it does not have any budgetary appropriations and relies entirely on service fees to cover its administrative and operational costs, as authorized under Letter of Instruction No. 755⁶ and Executive Order No. 359,⁷ as amended. In effect, the fees to be charged by the PS cannot be based on the cost of procuring a project as it is used to sustain its overall operations. Thus, it may not be proper to set a similar threshold for all Procurement Agents as this may unnecessarily restrict one while giving too much to another. For instance, the DPWH is currently charging a service fee of only 0.5% of the total contract price, setting a maximum fee will authorize it to charge more. On the usage of the service fee for payment of honoraria, the same is subject to the rules of the Department of Budget and Management;

⁶ Dated 18 October 1978.

⁷ Dated 02 June 1989.

WHEREAS, the GPPB-TSO further emphasized that, despite not setting thresholds for the rates of the service fees, the PEs shall still determine if the same is commensurate with actual services rendered, as similarly provided under National Economic Development Authority issuances⁸ on the charging of service fees and should not be considered as a commercial profit or undertaking;

WHEREAS, on the proposal to limit the period in outsourcing projects to Procurement Agents, the DepEd and Department of Trade and Industry representatives supported the same in light of the validity of the source of funds within the fiscal year. The GPPB-TSO further emphasized that even if the budget validity is extended, the underlying consideration for the allowable period is to ensure that the PEs did the proper planning so they could timely implement the projects that they proposed to the Congress for funding;

WHEREAS, the DepEd representative interposed that the outsourcing of Procurement Projects through a Procurement Agent should be made as early as the second quarter, instead of the third quarter, to provide flexibility and sufficient time for the government entities to accomplish their physical targets by the end of the fiscal year. The GPPB-TSO, while acknowledging the same to be the ideal scenario, is rather cautious on its adoption given the current procurement performance of PEs. The third quarter deadline is a more realistic target at this point in time;

WHEREAS, the GPPB, after careful review and deliberations, resolved to approve the GPPB-TSO's proposed Guidelines on the Engagement of a Procurement Agent, including the related amendments to Sections 7.3.3 (a), Section 11.2 (e) and Section 47.1 of the 2016 revised IRR and to the Omnibus Sworn Statement template.

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the following:

1. **APPROVE** the issuance of the Guidelines on the Engagement of Procurement Agent, a copy of which is attached as Annex "A;"
2. **AMEND** Sections 7.3.3(a), 11.2(e), and 47.1 of the 2016 revised IRR, a copy of which is attached as Annex "B;" and
3. **AMEND** the Omnibus Sworn Statement template, a copy of which is attached as Annex "C."

This Resolution shall take effect immediately.

APPROVED this 27th day of October 2022 at Pasay City, Philippines.

⁸ National Economic and Development Authority (NEDA) Circular No. 01-2007 (October 31, 2007), as amended by NEDA Circular No. 01-2008 (July 25, 2008), and further amended by NEDA Circular No. 1-2010 (August 11, 2010) - Guidelines for the evaluation of new or increased fees proposed by departments, bureaus, commissions, agencies, offices and instrumentalities of the national government including GOCCs requiring prior NEDA Board Clearance under Memorandum Circular No. 137, Series of 2007.

Sgd.

GPPB, Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

Sgd.

Alternate to the Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

Sgd.

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF EDUCATION

Sgd.

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

Sgd.

DEPARTMENT OF HEALTH

**DEPARTMENT OF INTERIOR AND LOCAL
GOVERNMENT**

Sgd.

DEPARTMENT OF NATIONAL DEFENSE

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

Sgd.

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

Sgd.

DEPARTMENT OF TRADE AND INDUSTRY

Sgd.

DEPARTMENT OF TRANSPORTATION

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

Sgd.

PHILIPPINE SPACE AGENCY

PRIVATE SECTOR REPRESENTATIVE

GUIDELINES ON THE ENGAGEMENT OF PROCUREMENT AGENT

1. PURPOSE

This Guidelines shall prescribe the rules and procedures for the engagement of a Procurement Agent by the Procuring Entity (PE) based on Section 7.3.3 (a) of the 2016 revised Implementing Rules and Regulations (IRR) of the Republic Act (RA) No. 9184.

2. SCOPE AND APPLICATION

- 2.1. This Guidelines shall apply to the outsourcing of procurement tasks by the PE to any branch, constitutional commission, agency, department, bureau, office, or instrumentality of the Government of the Philippines, National Government Agencies, including Government-Owned and/or Controlled Corporations, Government Financial Institutions, State Universities and Colleges, and Local Government Units acting as Procurement Agents;
- 2.2. This shall only cover items not considered as Common-Use Supplies and Equipment (CSE) since the purchase of the CSE is undertaken through the Procurement Service of the Department of Budget and Management (DBM) based on applicable laws and issuances;⁹ and
- 2.3. This shall govern the engagement of a Procurement Agent upon the effectivity hereof. For PEs that have existing agreements with Procurement Agents, they are encouraged to adopt this Guidelines to the extent possible.

3. REQUIREMENTS FOR THE ENGAGEMENT OF A PROCUREMENT AGENT

- 3.1. A PE may engage the services of a Procurement Agent if it lacks the required capacity for the Procurement Project at hand, particularly in any of the following instances:
 - a. The PE's existing human resource complement lacks sufficient qualified personnel to constitute its own Bids and Awards Committee (BAC); or
 - b. The PE's existing BAC lacks the proficiency and expertise to undertake a specific Procurement Project;
- 3.2. The engagement of a Procurement Agent shall be undertaken on a per project basis and not in a lump sum arrangement where the PE's projects are only determined at a later date;

⁹ Letter of Instruction No. 755, Relative to the Establishment of an Integrated Procurement System for the National Government and its Instrumentalities; Executive Order (EO) No. 285, Abolishing the General Services Administration and Transferring its functions to Appropriate Government Agencies; EO No. 359, Reiterating the Policy and Prescribing Guidelines and Procedures in the Implementation of the Provision of Executive Order No. 285, "Abolishing the General Services Administration and Transferring its Functions to Appropriate Government Agencies" on the Operation of a Procurement System for Common-Use Supplies, Materials and Equipment; EO No. 322, Requiring All National Government Agencies, Instrumentalities and Government-Owned and/or Controlled Corporations to Participate in the electronic Procurement System; EO No. 406, Consolidating Procurement Rules and Procedures for All National Government Agencies, Government-Owned and/or Controlled Corporations and Government Financial Institutions, and Requiring Use of the Government Electronic Procurement System; Administrative Order No. 17, s. 2011, Directing the Use of Procurement Service and the Philippine Government Electronic Procurement System in Procurement Activities in Accordance with RA No. 9184, and Improving the Operations of the Procurement Service.

- 3.3. As a general rule, the procurement modality for the project to be procured by a Procurement Agent shall be Competitive Bidding, except if the PE lacks sufficient qualified personnel to constitute its own BAC, in which case, it may also procure projects using any of the Alternative Methods of Procurement;
- 3.4. The PE, through its Head of the Procuring Entity (HoPE), shall designate at least one (1) Technical Working Group (TWG) representative to the BAC of the Procurement Agent. The TWG representative shall be responsible in ensuring that the requirements of the PE are properly reflected in the Bidding Documents and shall actively participate in all of the procurement activities to safeguard the interest of the PE;
- 3.5. The PE and the Procurement Agent shall enter into a Memorandum of Agreement (MOA) in accordance with the provisions of this Guidelines and shall include details on the project to be procured with its Approved Budget of the Contract (ABC), the roles and responsibilities of the parties, including possible changes in the bidding requirements, service fees, if applicable, and such other information as may be necessary for the proper implementation of the agreement.
- 3.6. For post-award procurement functions, such as recommending the renewal or extension of the contract for approval of the HoPE, the parties may agree in the MOA to have this undertaken by the PE's BAC or End-User, in case of no BAC, or the Procurement Agent depending on the need for specialized knowledge or expertise for the Procurement Project.
- 3.7. There can be several Procurement Projects covered in the MOA as long as the details for each project are provided therein to comply with the prohibition against lump sum agreement under Item 3.2 hereof.
- 3.8. Except for Procurement Projects undertaken through Early Procurement Activities, the engagement of a Procurement Agent shall only be allowed until the third quarter of the fiscal year to enjoin PEs to properly plan their procurement activities. For this purpose, the MOA covering the engagement of a Procurement Agent should have been entered into no later than 30 September of the covered fiscal year; and
- 3.9. No transfer of funds for the payment of the contract covering the subject procurement shall be made by the PE to the Procurement Agent.

4. CRITERIA IN SELECTING A PROCUREMENT AGENT

The Procurement Agent to be engaged by the PE should have a track record of having awarded a minimum of three (3) similar contracts, each costing at least fifty percent (50%) of the ABC of the Procurement Project at hand and completed within the relevant period identified by the PE depending on its project requirements. A similar contract is one of similar nature and complexity with the Procurement Project at hand, as determined by the End-User.

5. PROCEDURE

If the PE's BAC has determined that it does not have the proficiency and experience to undertake the Procurement Project or the PE has not constituted its own BAC due to lack of qualified officials or personnel, the PE, through its own BAC or End-User, as the case may be, may engage a Procurement Agent following the procedure below:

- 5.1. The BAC or the End-User, as the case may be, shall look for a qualified Procurement Agent based on the criteria provided herein and discuss the project

requirements and the terms and conditions of engaging a Procurement Agent consistent with this Guidelines.

- 5.2. If the Procurement Agent agrees to undertake the procurement, the PE's BAC or the End-User, as the case may be, shall recommend for approval of the HoPE or his/her duly authorized representative the following:
 - a. Annual Procurement Plan (APP) reflecting the engagement of a Procurement Agent under the "Remarks"¹⁰ of the Procurement Project;
 - b. MOA with the Procurement Agent; and
 - c. Office order (OO) or any equivalent document that designates the PE's TWG representative to the Procurement Agent's BAC.
- 5.3. Within a period not exceeding fifteen (15) calendar days from the receipt of the above recommendation, the HoPE shall decide to approve or disapprove the same.
- 5.4. Upon approval of the HoPE, the PE's BAC or End-User, as the case may be, shall immediately endorse to the Procurement Agent the following documents:
 - a. Approved MOA;
 - b. Approved APP;
 - c. PE's project requirements and costing supported by market study. This covers the project name, ABC, technical specifications, scope of work, or terms of reference, schedule of requirements, and other relevant information;
 - d. Certificate of Availability of Funds for the Procurement Project;
 - e. OO or any equivalent document authorizing the PE's representative/s to the TWG of the Procurement Agent's BAC; and
 - f. Any other documents as may be agreed upon by the parties.
- 5.5. The PE shall ensure the completeness of the details of the project requirements to properly guide the Procurement Agent in the conduct of procurement. Should there be any clarifications or proposed changes in the project requirements, it is the responsibility of the PE's TWG representative/s to ensure that any changes in the Bidding Documents reflect the requirements of the PE.
- 5.6. After validating all the submitted information or documents of the PE, the Procurement Agent's BAC shall commence with the procurement activities in accordance with RA No. 9184 and its 2016 revised IRR, and other associated issuances.
- 5.7. Upon the determination of the bidder with the Lowest Calculated and Responsive Bid, Highest Rated and Responsive Bid, Single Calculated and Responsive Bid, or Single Rated and Responsive Bid, as the case may be, the Procurement Agent's BAC shall recommend to the HoPE of the PE the award of contract in accordance with Section 37 of RA No. 9184 and its 2016 revised IRR, and other associate issuances.
- 5.8. Within a period not exceeding fifteen (15) calendar days from receipt of the said recommendation to award the contract, the HoPE shall decide to approve or disapprove the same.
- 5.9. Upon approval of the recommendation of the Procurement Agent, the HoPE shall immediately issue the Notice of Award (NOA) to the winning bidder within the

¹⁰ Pertains to the brief description of the program or project.

same period. The subsequent procurement activities shall be undertaken by the PE pursuant to RA No. 9184 and its revised 2016 revised IRR, and other associated issuances.

5.10. The HoPE shall issue the Notice to Proceed together with the copy of the approved contract to the winning bidder within seven (7) calendar days from the date of the approval of the contract.

5.11. If the HoPE disapproved the recommendation of the Procurement Agent for the award of contract due to the grounds stated in the Reservation Clause under Section 41 of RA No. 9184 and its 2016 revised IRR, the PE shall undertake the procurement of its project, or engage a different Procurement Agent in accordance with this Guidelines.

6. ROLES AND RESPONSIBILITIES IN THE MEMORANDUM OF AGREEMENT

In defining their respective roles and responsibilities in the MOA, the PE and Procurement Agent shall comply with the following:

6.1. The procurement tasks to be outsourced by the PE shall be limited to the following functions of the BAC under Section 12 of RA No. 9184 and the 2016 revised IRR:

- a. advertise or post the invitation to bid, request for quotations, or request for expressions of interest;
- b. conduct pre-procurement and pre-bid conferences;
- c. determine the eligibility of prospective bidders;
- d. receive and open bids;
- e. conduct the evaluation of bids;
- f. undertake post-qualification proceedings;
- g. resolve requests for reconsideration;
- h. recommend award of contracts to the HoPE or his/her duly authorized representative;
- i. recommend the imposition of sanctions to bidders for violations under RA No. 9184 and its 2016 revised IRR;¹¹
- j. undertake any of the appropriate Alternative Methods of Procurement in case the requesting PE has not constituted its own BAC as provided in Item 3.1 (b); and
- k. perform such other related functions as may be necessary, in relation to the foregoing;

6.2. The HoPE shall authorize at least one (1) representative from the PE to the TWG of the Procurement Agent's BAC, which shall be reflected in an OO or equivalent document;

6.3. The HoPE's function to decide on all matters relating to the Procurement Project shall remain with the PE, including but not limited to the following:

- a. During procurement stage: approve or disapprove the recommendations of the BAC to award the contract and impose administrative sanctions or blacklisting of erring bidders, exercise his/her rights under the Reservation Clause, or resolve protests; and

¹¹ In accordance with Rule XXIII on Administrative Sanctions and the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants under Appendix 17 of the 2016 revised IRR of RA No. 9184.

- b. During contract implementation stage: enter into the contract, approve or disapprove recommendations to renew or extend the contract, approve or disapprove variation orders or amendment to orders, termination of contracts, imposition of administrative sanctions or blacklisting of erring suppliers, contractors, and consultants, and disbursement of payments.
- 6.4. The Procurement Agent shall not transfer, delegate or assign to another entity in whole or in part the performance of its obligations under the MOA;
- 6.5. Any mutual agreement where the PE surrenders its obligation and accountability in the proper implementation of its project is prohibited and shall not be a valid provision in the MOA.

7. SERVICE FEE

- 7.1. If the Procurement Agent is allowed by law or issuance to charge service fees, the PE shall determine if these are reasonable rates or commensurate with the services to be rendered by the Procurement Agent to ensure prudent use of public funds.
- 7.2. No additional payment shall be made by the PE to the Procurement Agent other than the agreed service fees in the MOA. The Procurement Agent shall be responsible for the payment of the honoraria of its BAC, TWG, and Secretariat, subject to applicable rules;
- 7.3. No service fee shall be paid in case the HoPE of the PE rejects the bid, declares a failure of bidding, or does not award the contract in accordance with Section 41 of RA No. 9184 and its 2016 revised IRR; and
- 7.4. The payment of service fees to the Procurement Agent is subject to existing budgeting, accounting and auditing rules.

8. REPORTORIAL REQUIREMENTS

- 8.1 The PE shall identify all Procurement Projects for which a Procurement Agent shall be engaged in the Procurement Reports,¹² such as the APP, Procurement Monitoring Report (PMR), and Agency Procurement Compliance and Performance Indicator results; and
- 8.2 The Government Procurement Policy Board – Technical Support Office shall submit an annual report based on the APP and PMR regarding the engagement of PEs with a Procurement Agent to the DBM not later than 31 March of the following year, so that the DBM may consider the PE's capacity to procure and implement projects in the next budget cycle to attain optimal use of budgetary resources.

9. REPEALING CLAUSE

All guidelines and issuances or any part thereof that are inconsistent with the provisions of this Guidelines are hereby repealed, amended or modified accordingly.

10. EFFECTIVITY

To allow the proper transition to the mandatory implementation of this Guidelines, this shall take effect fifteen (15) calendar days after its publication in the Official Gazette or in a newspaper of general nationwide circulation.

¹² To be reflected under the remarks of the procurement project.



**2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF THE
REPUBLIC ACT NO. 9184**

| ORIGINAL PROVISIONS | AMENDED PROVISIONS |
|--|---|
| <p>7.3.3 In order to hasten project implementation, Procuring Entities which may not have the proficiency or capability to undertake a particular procurement, as determined by the HoPE concerned, may outsource the procurement tasks by:</p> <p>a) Requesting other GoP agencies to undertake such procurement for them, through the execution of a memorandum of agreement containing specific arrangements, stipulations and covenants, in accordance with government budgeting, accounting and auditing rules;</p> | <p>7.3.3 In order to hasten project implementation, Procuring Entities which may not have the proficiency or capability to undertake a particular procurement, as determined by the HoPE concerned, may outsource the procurement tasks by:</p> <p>a) Requesting other GoP agencies to undertake such procurement for them, through the execution of a memorandum of agreement containing specific arrangements, stipulations and covenants, in accordance with the RELEVANT ISSUANCE OF THE GPPB AND government budgeting, accounting and auditing rules;</p> |
| <p>11.2. BAC Composition</p> <p>11.2.2 The BAC for NGAs, departments, bureaus, offices, or instrumentalities of the GoP, including the judicial and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs shall be composed of the following:</p> <p><u>Provisional Members:</u></p> <p>d) Xxx</p> <p>e) A representative from the end-user or implementing unit who has knowledge of procurement laws and procedures. When procurement tasks are outsourced to another GoP agency as a Procurement Agent pursuant to Section 7.3.3, a representative from the Procuring Entity may be designated as a provisional member to the BAC. For this purpose, the procuring entity shall recommend the provisional</p> | <p>11.2 BAC Composition</p> <p>11.2.2 The BAC for NGAs, departments, bureaus, offices, or instrumentalities of the GoP, including the judicial and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs shall be composed of the following:</p> <p><u>Provisional Members:</u></p> <p>d) Xxx</p> <p>e) A representative from the end-user or implementing unit who has knowledge of procurement laws and procedures, SUBJECT TO EXISTING LAWS, RULES AND REGULATIONS. When procurement tasks are outsourced to another GoP agency as a Procurement Agent pursuant to Section 7.3.3, a representative from the Procuring Entity may be designated as a provisional member to the BAC. For this purpose, the procuring</p> |

| | |
|--|---|
| <p>member to be designated.</p> | <p>entity shall recommend the provisional member to be designated.</p> |
| <p>Section 47. Disclosure of Relations</p> <p>47.1 All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the HoPE, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user or implementing unit, and the project consultants, by consanguinity or affinity up to the third civil degree.</p> | <p>Section 47. Disclosure of Relations</p> <p>47.1 All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the HoPE, PROCUREMENT AGENT IF ENGAGED, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user or implementing unit, and the project consultants, by consanguinity or affinity up to the third civil degree.</p> |

OMNIBUS SWORN STATEMENT

| ORIGINAL PROVISIONS | AMENDED PROVISIONS |
|--|---|
| <p><i>[Select one, delete the rest:]</i></p> <p>6. <i>[If a sole proprietorship:]</i> The owner or sole proprietor is not related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;</p> <p><i>[If a partnership or cooperative:]</i> None of the officers and members of <i>[Name of Bidder]</i> is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;</p> <p><i>[If a corporation or joint venture:]</i> None of the officers, directors, and controlling stockholders of <i>[Name of Bidder]</i> is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;</p> | <p><i>[Select one, delete the rest:]</i></p> <p>6. <i>[If a sole proprietorship:]</i> The owner or sole proprietor is not related to the Head of the Procuring Entity, PROCUREMENT AGENT IF ENGAGED, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;</p> <p><i>[If a partnership or cooperative:]</i> None of the officers and members of <i>[Name of Bidder]</i> is related to the Head of the Procuring Entity, PROCUREMENT AGENT IF ENGAGED, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;</p> <p><i>[If a corporation or joint venture:]</i> None of the officers, directors, and controlling stockholders of <i>[Name of Bidder]</i> is related to the Head of the Procuring Entity, PROCUREMENT AGENT IF ENGAGED, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;</p> |

Omnibus Sworn Statement (Revised)

[shall be submitted with the Bid]

REPUBLIC OF THE PHILIPPINES)
CITY/MUNICIPALITY OF _____) S.S.

AFFIDAVIT

I, [Name of Affiant], of legal age, [Civil Status], [Nationality], and residing at [Address of Affiant], after having been duly sworn in accordance with law, do hereby depose and state that:

1. *[Select one, delete the other:]*

[If a sole proprietorship:] I am the sole proprietor or authorized representative of [Name of Bidder] with office address at [address of Bidder];

[If a partnership, corporation, cooperative, or joint venture:] I am the duly authorized and designated representative of [Name of Bidder] with office address at [address of Bidder];

2. *[Select one, delete the other:]*

[If a sole proprietorship:] As the owner and sole proprietor, or authorized representative of [Name of Bidder], I have full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract for [Name of the Project] of the [Name of the Procuring Entity], as shown in the attached duly notarized Special Power of Attorney;

[If a partnership, corporation, cooperative, or joint venture:] I am granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract for [Name of the Project] of the [Name of the Procuring Entity], as shown in the attached [state title of attached document showing proof of authorization (e.g., duly notarized Secretary's Certificate, Board/Partnership Resolution, or Special Power of Attorney, whichever is applicable);];

3. [Name of Bidder] is not "blacklisted" or barred from bidding by the Government of the Philippines or any of its agencies, offices, corporations, or Local Government Units, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board, by itself or by relation, membership, association, affiliation, or controlling interest with another blacklisted person or entity as defined and provided for in the Uniform Guidelines on Blacklisting;

4. Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;

5. [Name of Bidder] is authorizing the Head of the Procuring Entity or its duly authorized representative(s) to verify all the documents submitted;

6. *[Select one, delete the rest:]*

[If a sole proprietorship:] The owner or sole proprietor is not related to the Head of the Procuring Entity, **PROCUREMENT AGENT IF ENGAGED**, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

[If a partnership or cooperative:] None of the officers and members of *[Name of Bidder]* is related to the Head of the Procuring Entity, **PROCUREMENT AGENT IF ENGAGED**, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

[If a corporation or joint venture:] None of the officers, directors, and controlling stockholders of *[Name of Bidder]* is related to the Head of the Procuring Entity, **PROCUREMENT AGENT IF ENGAGED**, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

7. *[Name of Bidder]* complies with existing labor laws and standards; and
8. *[Name of Bidder]* is aware of and has undertaken the responsibilities as a Bidder in compliance with the Philippine Bidding Documents, which includes:
 - a. Carefully examining all of the Bidding Documents;
 - b. Acknowledging all conditions, local or otherwise, affecting the implementation of the Contract;
 - c. Making an estimate of the facilities available and needed for the contract to be bid, if any; and
 - d. Inquiring or securing Supplemental/Bid Bulletin(s) issued for the *[Name of the Project]*.
9. *[Name of Bidder]* did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.
10. In case advance payment was made or given, failure to perform or deliver any of the obligations and undertakings in the contract shall be sufficient grounds to constitute criminal liability for Swindling (Estafa) or the commission of fraud with unfaithfulness or abuse of confidence through misappropriating or converting any payment received by a person or entity under an obligation involving the duty to deliver certain goods or services, to the prejudice of the public and the government of the Philippines pursuant to Article 315 of Act No. 3815 s. 1930, as amended, or the Revised Penal Code.

IN WITNESS WHEREOF, I have hereunto set my hand this __ day of __, 20__ at _____, Philippines.

[Insert NAME OF BIDDER OR ITS AUTHORIZED REPRESENTATIVE]

[Insert signatory's legal capacity]

Affiant

[Jurat]

[Format shall be based on the latest Rules on Notarial Practice]