

The Procurement Manual for LGUs was developed to guide local government procurement practitioners through the different steps involved in the whole procurement process under RA 9184 and its IRR taking into consideration the distinct structure and systems of local governments.

Local Government Units

Procurement Manual

2014

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Abbreviations and Acronyms

| | |
|----------------------------|--|
| ABC | Approved Budget for the Contract |
| ABM | Agency Budget Matrix |
| ADB | Asian Development Bank |
| AFP | Armed Forces of the Philippines |
| APCPI | Agency Procurement Compliance & Performance Indicators |
| APP | Annual Procurement Plan |
| BAC | Bids and Awards Committee |
| BSP | Bangko Sentral ng Pilipinas |
| CIAP | Construction Industry Authority of the Philippines |
| COA | Commission on Audit |
| COFILCO | Confederation of Filipino Consulting Organizations |
| CPES | Contractors Performance Evaluation System |
| CPESIU | Contractors Performance Evaluation System Implementing Unit |
| CSO | Civil Society Organization |
| CSC | Civil Service Commission |
| DBM | Department of Budget and Management |
| DBM-PS | Department of Budget and Management-Procurement Service |
| E.O. | Executive Order |
| FAPs | Foreign Assisted Projects |
| GCC | General Conditions of the Contract |
| GFI | Government Financial Institution |
| GOCC | Government-Owned and/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 |
| ICB | International Competitive Bidding |
| ICT | Information and Communications Technology |
| IFI | International Financing Institution |
| ITB | Instructions to Bidders |
| IRR | Revised Implementing Rules and Regulations |
| JICA | Japan International Cooperation Agency |
| LCB | Lowest Calculated Bid |
| LCE | Local Chief Executive |
| LCRB | Lowest Calculated and Responsive Bid |
| LGU | Local Government Unit/Procuring Entity |
| LGUPM | Local Government Unit Procurement Manual |
| LOI | Letter of Instructions |
| MOOE | Maintenance and Other Operating Expenses |
| NCB | National Competitive Bidding |
| NFCC | Net Financial Contracting Capacity |
| NGA | National Government Agency |
| NGO | Non-Government Organization |
| NSO | National Statistics Office |
| NTP | Notice to Proceed |
| ObR | Obligation Request |
| OS | Obligation Slip |
| PA | Professional Association |
| PBDs | Philippine Bidding Documents |
| PCA | Philippine Constructors Association, Incorporated |
| PCAB | Philippine Contractors Accreditation Board |
| PCCI | Philippine Chamber of Commerce and Industry |
| PER | Procuring Entity’s Representative |
| PERT/CPM | Project Evaluation and Review Technique / Critical Path Method |
| PhilGEPS/ G-EPS | Philippine Government Electronic Procurement System |

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| PICE | Philippine Institute of Civil Engineers |
| PICPA | Philippine Institute of Certified Public Accountants |
| PMO | Project Management Office |
| PNP | Philippine National Police |
| PMR | Procurement Monitoring Report |
| PPA | Philippine Ports Authority |
| PPMP | Project Procurement Management Plan |
| PRC | Professional Regulation Commission |
| R.A. | Republic Act |
| R.A. 9184 | Republic Act No. 9184 or the "Government Procurement Reform Act" |
| RIS | Request and Issuance Slip |
| RFP | Request for Proposal |
| RFQ | Request for Quotation |
| ROW | Right-of-Way |
| SARO | Special Allotment Release Order |
| SBD | Standard Bidding Documents |
| SCC | Special Conditions of the Contract |
| 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 |
| UBOM | Updated Budget Operations Manual |
| UNDB | United Nations Development Business |
| VAT | Value-Added Tax |
| WB | World Bank |
| WFP | Work and Financial Plan |

CHAPTER 1

General Provisions

Section 1: Purpose, Scope and Application

I. Purpose

The Procurement Manual for Local Government Units (LGUs) was developed to guide local government procurement practitioners through the different steps involved in the whole procurement process under Republic Act No. 9184 (R.A. 9184) and its revised Implementing Rules and Regulations (IRR) taking into consideration the distinct structure and systems of local governments.

In case of inconsistency or conflict between this Manual and the provisions of R.A. 9184 and/or its IRR, the procurement law and its associated IRR shall govern.

II. Scope

This Manual shall apply to all procurement activities of all LGUs, *i.e.*, provinces, cities, municipalities, regardless of class or category.

Any Treaty or International or Executive Agreement to which the GOP is a signatory affecting the subject matter of the Act and this Manual shall be observed. In case of conflict between the terms of the Treaty or International or Executive Agreement and this Manual, the former shall prevail **(Section 4.2, IRR of R.A. 9184)**.

Unless the Treaty or International or Executive Agreement expressly provides use of foreign government/foreign or international financing institution procurement procedures and guidelines, this Manual shall apply to Foreign-funded Procurement for goods, infrastructure projects, and consulting services by the GOP

Consistent with the policies and principles set forth in Sections 2 and 3 of the IRR of R.A. 9184, the GOP negotiating panels shall adopt, as its default position, use of this Manual, or at the very least, selection through competitive bidding, in all foreign-funded Procurement. If the Treaty or International or Executive Agreement states otherwise, then the negotiating panels shall explain in writing the reasons therefor. **(Section 4.3, IRR of R.A. 9184)**.

Similar to R.A. 9184 and its IRR, this Manual does not cover the following:

- a. Procurement of goods, infrastructure projects, and consulting services funded from Foreign Grants covered by R.A. 8182, as amended by R.A. 8555, entitled "An Act Excluding Official Development Assistance (ODA) from the Foreign Debt Limit in order to Facilitate the Absorption and Optimize the Utilization of ODA Resources, Amending for the Purpose Paragraph 1, Section 2 of Republic Act No. 4860, as amended", unless the GOP and the foreign grantor/foreign or international financing institution agree otherwise;
- b. Acquisition of real property which shall be governed by R.A. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes," and other applicable laws;
- c. Public-Private sector infrastructure or development projects and other procurement covered by R.A. 6957, as amended by R.A. 7718, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes," as amended; **(Section 4.4, IRR of RA 9184)**
- d. Disposal of government properties;

- e. Leasing out of publicly-owned real property for private use;
- f. Consignment; and,
- g. Formation of Joint Venture Partnerships between government corporations and private entities.

III. Application

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

- a. Goods and Services;
- b. Infrastructure Projects; and
- c. Consulting Services

Section 2: Principles of Government Procurement

Government procurement is governed by the following principles: (**Section 3, R.A. 9184 and its IRR**)

I. Transparency

The procurement process and the implementation of procurement contracts must be transparent. LGUs must ensure the widest dissemination of bid opportunities and award notices, as well as, the participation of pertinent non-government organizations (NGOs) and private sector associations acting as observers. Towards this end, posting in the LGU's website, in the PhilGEPS website, and in a conspicuous place within the premises of the LGU is required for all procurements, unless otherwise provided. Finally, each procurement transaction must be properly documented and such records must be maintained and made available to proper parties.

II. Competitiveness

Public procurement must be competitive and, as a rule, be conducted through public bidding, except as otherwise provided for under the GPRA and its IRR. A competitive bidding process treats bidders equitably, creates a level playing field 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 under highly exceptional circumstances pursuant to the conditions laid down in R.A. 9184, its IRR and associated guidelines.

III. Streamlining and Use of Modern 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.

IV. Accountability

Public office is a public trust, public officials should be made accountable for their actions. For this purpose, they should see to it that the pertinent law and the prescribed procedures are faithfully complied with in the discharge of their functions in all stages of the procurement process as well as the implementation of contracts. To achieve this, the responsibilities of each official directly or indirectly involved in the procurement process must be clear and legally identifiable. Private parties that deal with government should also be held accountable for their actions.

V. Public Monitoring

A system of monitoring and reporting of procurement actions should be established. This system allows public involvement of qualified and eligible Civil Society Organizations (NGOs, PAs, academic institutions, and religious groups) to observe and

monitor the procurement process until contract implementation. When public monitoring is effectively carried out, a feedback mechanism is achieved which results in increased transparency of procurement transactions and improvement of the public procurement system. Reference can be made to the Procurement Observers' Manual on the roles and responsibilities of Observers.

The GPPB has approved and adopted the Agency Procurement Compliance and Performance Indicators (APCPI) System as a standard procurement monitoring and assessment tool through GPPB Resolution No. 10-2012 dated 1 June 2012 to assess the performance of a government agency's procurement activities and to compare its effectiveness against that of the national public procurement legal framework

VI. Procurement Audit

The COA's role as the supreme audit institution in the country is to ensure that the expenditures are proper and in accordance with the law, rules and regulations. As part of its Annual Audit Program, COA implements the Procurement Audit of all branches, agencies, departments, bureaus, offices, or instrumentalities of the GOP, including GOCCs, GFIs, SUCs, and LGUs. Since the COA is the repository of all original transaction documents, its post audit normally covers more than fifty percent (50%) of the number of transactions. COA's Procurement Audit goes beyond procurement as it reviews the effectiveness of internal controls of the branch, agency, department, bureau, office, or instrumentality of the GOP, including GOCCs, GFIs, SUCs, and LGUs.

CHAPTER 2

Procurement Organization

Section 1: The Organizational Structure

I. Head of the Procuring Entity

The Procuring Entity shall be the province, city and municipality. It shall act through the Head of the Procuring Entity (HOPE).

The HOPE in LGUs shall be the Local Chief Executive (LCE) who shall be the Governor (for Provinces) or the Mayor (for Cities and Municipalities). All procurement activities of the LGUs require the approval of the HOPE.

II. Bids and Awards Committee (BAC)

A. Creation:

The LCE must, as a general rule, create a single BAC. However, separate BACs may be created under any of the following conditions:

- a. The items to be procured are complex or specialized;
- b. If the single BAC cannot reasonably manage the procurement transactions as shown by delays beyond the allowable limits; or
- c. If the creation is required according to the nature of the procurement.

B. Membership and Qualifications:

The LCE must designate the members of the BAC as follows:

- a. The BAC shall consist of at least five (5) members and shall not exceed seven (7).
- b. The LCE shall designate the members of the LGU BAC, including the alternates, if any.
- c. The BAC members, whether principal or alternate, should occupy *plantilla* positions of the LGU concerned.
- d. All members are regular members except the end-user member who is considered as provisional member. The members, whether regular or provisional, are equally entitled to participate and to vote during deliberations.

How many regular and provisional members should be designated if the BAC is composed of seven (7) members?

If the BAC has seven (7) members, the LCE may designate additional members in any of the following manner:

- a) two (2) more regular;
- b) two (2) more provisional; or
- c) a combination of one (1) regular and one (1) provisional.

- e. The BAC for provinces, cities or municipalities shall be composed of the following:

- i. Representatives coming from the regular offices under the Office of the LCE (Governor or Mayor), such as, but not limited to the following:
 - 1. Office of the Administrator;
 - 2. Budget Office;
 - 3. Legal Office;
 - 4. Planning Office;
 - 5. General Services Office; and
 - 6. Engineering Office.
- ii. A representative from the end-user unit
- f. 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.
- g. Alternate BAC members shall have the same qualifications as their principals. For instance, the principal BAC Chairperson for LGUs shall be at least a third (3rd) ranking permanent employee; the alternate BAC Chairperson shall also be at least a third (3rd) ranking permanent employee.
- h. The relationship of the principal and the alternate is of co-equal nature, rather than hierarchical. The alternate BAC members shall attend BAC meetings whenever their respective principals are absent. Each shall be entitled to the corresponding honoraria for attendance in meetings. The honoraria to be received by the principal and alternate BAC members shall be proportionate to the meetings each have attended. The accountability of the principal and the alternate member shall be limited to their respective acts and decisions.

The alternate shall have the same term as the principal.

C. Election of BAC Chair and Vice Chair

The BAC members of LGUs shall elect among themselves the Chairperson and Vice-Chairperson.

The Chairperson shall be at least a third (3rd) ranking permanent official. In case of provinces, cities and municipalities, the head of any of the regular offices under the Office of the LCE shall be considered third (3rd) ranking permanent employee. The first (1st) ranking official shall be the Mayor or the Governor, while the second (2nd) ranking permanent official shall be the Vice-Governor or Vice-Mayor.

D. Terms of Membership

The BAC members shall be designated for a term of one (1) year only, reckoned from the date of designation. However, the LCE may renew or terminate such designation at his discretion.

The designation of the BAC members is within the exclusive prerogative and discretion of the LCE and they may be removed from such designation for justifiable causes (*e.g.* gross misconduct and violation of the provisions of RA 9184 and its IRR, among others).

In case of resignation, retirement, separation, transfer, re-assignment, or removal of a BAC member, the LCE shall designate a replacement that **has similar qualifications as the official replaced**. 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.

Upon expiration of the terms of the current members, they shall continue to exercise their functions until new BAC members are designated.

E. Prohibited BAC Members

The following officials are disqualified from membership in the BAC:

- a. LCE and other elective officials of the province/city/municipality;
- b. Official who approves procurement contracts;
- c. 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. **(COA Circular Letter No. 2004 – 3)**

F. Quorum

The simple 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.

Physical presence of the Chairperson or the Vice Chairperson is necessary for the BAC to conduct its business. The Chairperson or, in his absence, the Vice-Chairperson shall preside over the meetings.

The Chairperson or the Vice-Chairperson, acting as the Presiding Officer shall vote only in case of a tie.

Presence of alternate BAC members in BAC meetings are considered for purposes of quorum. On the other hand, representatives of BAC members shall be allowed to sit and listen during BAC meetings but they shall not be considered for purposes of quorum.

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

III. BAC Secretariat

A. Creation

It is encouraged that the LCE create a permanent BAC Secretariat. Not only will this ensure an orderly management of procurement actions and records, but it will also facilitate the continuity and the professionalization of procurement functions. For this purpose, the LCE may create a new office or designate an existing organic office to act as BAC Secretariat.

In designating an already existing office as BAC Secretariat, the LCE shall consider homogeneity or similarity of functions (*i.e.* also carrying out procurement functions) and the availability of resources, in terms of personnel and the capacity to absorb additional responsibilities on top of regular office functions.

Generally, the LCE has the prerogative to determine the appropriate number of members of the BAC Secretariat to be designated. There is no minimum or maximum number of members of the BAC Secretariat.

B. Qualifications

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

- a. Integrity;
- b. Procurement proficiency, as shown by experience and trainings attended;
- c. Satisfactory completion of a certification program conducted by the GPPB or its accredited institutions, if any;
- d. The appropriate Civil Service qualification and competency standards;
- e. The head of the BAC Secretariat should be:
 - e.1. A third (3rd) ranking permanent employee, which should be at least a Section chief; or
 - e.2. A permanent official of the next lower rank, if the third (3rd) ranking permanent employee is not available.

IV. Technical Working Group (TWG)

A. Creation

The BAC may create a TWG from a pool of technical, financial and/or legal experts to assist in the procurement process, particularly in the eligibility screening, evaluation of bids and post-qualification.

The BAC has the discretion as to the number of TWG members to be designated.

To be able to effectively study the requirements and assist in the evaluation the bids submitted, the BAC may create separate TWGs to handle different procurements (e.g. Goods, Infrastructure Projects, Consulting Services, or according to the nature of the procurement undertaking and the field of expertise required).

B. Qualifications of Members

The BAC shall consider the expertise required based on the nature of the procurement. It is recommended that the TWG members include representative(s) of the end-user unit and experts in various disciplines, such as, but not limited to, the legal, technical and financial areas, who can handle the different aspects of the procurement at hand. These members should ensure that the bid documents properly reflect the requirements of the LGU, and the bids submitted will be rigorously evaluated.

With regard to the Head of the TWG, it is proposed that the LCE designates the LGU Treasurer as Head of the TWG.

The IRR of RA 9184 allows the inclusion of technical, financial, and/or legal experts other than those in the LGU concerned.

In some cases, the LGU may engage the assistance of government personnel and officials, and consultants from the private sector and academe with

proven expertise on the sourcing of the goods, works or consulting services to be procured in accordance with the IRR and this Manual. **(GPPB Circular 02-2012)**

They shall only serve in an advisory capacity, and may not vote during deliberations.

V. Observers

A. Issuing the invitation

To enhance the transparency of the process, at least three (3) days before the scheduled procurement activity, the BAC is required to invite observers who may attend and observe all stages of the procurement process. An organization or association of good reputation preferably within the locality may also be invited at least three (3) days before the scheduled procurement activity. The observers represent the public and the taxpayers who are interested in seeing to it that procurement laws and rules are observed and irregularities are averted. However, non-attendance of observers does not invalidate the proceedings as long as the observers were properly invited and notified in writing of the scheduled procurement activity.

- a. The BAC must invite, in writing, at least three (3) Observers, who shall be:
 - i. a representative from the **Commission on Audit (COA)**;
 - ii. at least one (1) observer from **a duly recognized private group** in a sector or discipline relevant to the procurement at hand, **for example**:
 - ii.1. FOR INFRASTRUCTURE PROJECTS
 - ii.1(a) National constructors associations duly recognized by the Construction Industry Authority of the Philippines (CIAP), such as, but not limited to, the Philippine Constructors Association, Incorporated (PCA); and the National Constructors Association of the Philippines, Incorporated (NACAP); or
 - ii.1(b) Philippine Institute of Civil Engineers (PICE).
 - ii.2. FOR GOODS
 - ii.2(a) A specific relevant chamber-member of the Philippine Chamber of Commerce and Industry (PCCI).
 - ii.3. FOR CONSULTING SERVICES
 - ii.3(a) A project-related professional organization accredited or duly recognized by the Professional Regulation Commission (PRC) or the Supreme Court, such as, but not limited to, the PICE; and the Philippine Institute of Certified Public Accountants (PICPA); or
 - ii.3(b) The Confederation of Filipino Consultants (COFILCO); and

- iii. At least one (1) observer from an **NGO** duly registered with the Securities and Exchange Commission (SEC) or Cooperative Development Authority (CDA).
- b. **Qualifications of Observers.** The observers 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 out; and
 - iii. Other criteria that may be determined by the BAC. (**Section 13.2, IRR of RA 9184**)

NOTE:

For additional discussions regarding Observers, please refer to the Procurement Observer's Guide.

Section 2: Roles and Responsibilities

I. Head of the Procuring Entity

The LCE, as the HOPE shall have the following responsibilities:

- a. Ensure that the Annual Procurement Plan (APP) is regularly prepared, reviewed, and updated by the BAC Secretariat, in accordance with the guidelines set forth herein.
- b. Approve the APP, or delegate the authority to a second-ranking official.
- c. Ensure that all procurements are in line with the APP.
- d. Approve the Procurement Monitoring Report (PMR) and submit the same to the GPPB in a printed and electronic format within fourteen (14) days after the end of each semester.
- e. Establish the BAC and the BAC Secretariat or Procurement Unit.
- f. Approve/disapprove BAC recommendations, i.e. adoption of the appropriate mode of procurement and award of the contract. Disapproval of the recommendation should be based on **valid, reasonable, and justifiable grounds to be expressed in writing and furnished the BAC.**
- g. Issue the Notice to Proceed (NTP).
- h. Resolve protests filed by bidders.
- i. Ensure that the BAC and the BAC Secretariat give utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the said assignments are completed.
- j. Ensure that the staff of the Procurement Unit and the members of the BAC, BAC Secretariat/Procurement Unit, and TWG are given ample training, with the end in view of professionalizing procurement practitioners in the Procuring Entity.
- k. Impose the necessary administrative sanctions on errant bidders, members of the BAC, BAC Secretariat/Procurement Unit, and TWG.
- l. Ensure that the members of the BAC, BAC Secretariat/Procurement Unit, and TWG shall receive their incentives.
- m. In case of consulting services, approves the following recommendations of the BAC:
 - m.1. Evaluation procedure to be adopted, whether quality-cost based or quality based evaluation;
 - m.2. Short-listed bidders; and
 - m.3. The bidder with the Highest Rated Bid (HRB), after bid evaluation.
- n. Terminate contracts upon recommendation by the implementing unit.

II. Bids and Awards Committee (BAC)

The BAC responsibilities are:

- a. Ensure that the Procuring Entity abides by the standards set forth by R.A. 9184 and its IRR.
- b. Conduct of the bidding process
 - b.1. Issue the Invitation to Bid/Request for Expression of Interest through the BAC Chairperson;
 - b.2. Conduct pre-procurement and pre-bid conferences;
 - b.3. Determine the eligibility of prospective bidders and conduct short-listing, in case of consulting services;
 - b.4. Receive, open and perform preliminary examination of bids;
 - b.5. Conduct detailed evaluation of bids; and
 - b.6. Undertake post-qualification proceedings.
- c. Resolve request for reconsideration
- d. Recommend:
 - d.1. Use to the appropriate procurement method;
 - d.2. Award of contract to LCRB/HRRB to the LCE or his/her duly authorized representative; and
 - d.3. Impose sanctions in accordance with Rule XXIII of the IRR.
- e. Create the TWG, if necessary, from a pool of technical, financial and/or legal experts to assist in the procurement process.
- f. Prepare a PMR in the form prescribed by GPPB that shall be approved and submitted by the LCE to the GPPB on a semestral basis or whenever required.
- g. Accomplish a checklist showing its compliance with R.A. 9184, its IRR, and this Manual for each procurement transaction. The checklist shall subsequently be submitted to the LCE and made part of the transaction record.
- h. Invite Observers required to be present during all stages of the procurement process, in accordance with the guidelines stipulated in R.A. 9184, its IRR, and this Manual.
- i. Allow Observers access to the following documents upon the latter's request and signing of a confidentiality agreement:
 - i.1. Minutes of BAC meetings;
 - i.2. Abstract of bids;
 - i.3. Post-qualification summary report;
 - i.4. APP and related PPMP; and
 - i.5. Opened proposals.

NOTE: The above-mentioned list of documents is exclusive.

- j. Conduct due diligence review or verification of the qualifications of Observers;
- k. Give utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand are completed (Jury Duty); and
- l. Perform such other related functions as may be necessary and desirable to facilitate the procurement process.

III. BAC Secretariat

As the main administrative support of the BAC (and the TWG, if necessary) the Secretariat shall have the following functions and responsibilities:

- a. Organize and make all necessary arrangements for the BAC meetings and conferences;
- b. Prepare minutes of meetings and resolutions of the BAC;
- c. Take custody of procurement documents and other records. The BAC Secretariat shall ensure that all procurements undertaken by the Procuring Entity are properly documented. (**COA Circular 2009-001**);
- d. Manage the sale and distribution of bidding documents to interested bidders;
- e. Advertise and/or post bidding opportunities, Bidding Documents, Supplemental Bid Bulletin, NOA, NTP and copies of the contract;
- f. Monitor procurement activities and milestones;
- g. Consolidate PPMPs from end-user units or PMOs of the LGU to make them available for review as indicated in Section 7 of the IRR;
- h. Act as the central channel of communication for the LGU BAC, its TWG, BAC Secretariat, end-users, PMOs, other units of the LGU, other government agencies, providers of goods, infrastructure projects, and consulting services, and the general public;
- i. Assist in managing the procurement process;
- j. Supports the BAC to complete its assignments over all other duties and responsibilities (Jury Duty).

IV. Technical Working Group (TWG)

As the technical, financial and legal support of the BAC, the TWG shall assist the BAC in the following functions:

- a. Prepare the bidding documents, ensuring that the same properly reflects the requirements of the LGU and that these conform to the standards set forth by R.A. 9184, its IRR, and the PBDs prescribed by the GPPB;
- b. Assist the BAC in the conduct of eligibility screening and short-listing of prospective bidders, in case of biddings for consulting services;
- c. Assist the BAC in the evaluation of bids and prepare the accompanying reports for the BAC's consideration and approval;
- d. Assist the BAC in the conduct of post-qualification activities and prepare the post-qualification summary report for the BAC's approval;

- e. Prepare the resolution recommending award, with regard to the technical aspect, if necessary; and
- f. Provide utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand is completed (Jury Duty).

V. Observers

The observers shall have the following responsibilities:

- a. Prepare the Procurement Observer's Report either jointly or separately, indicating their observations made on the conduct of the bidding.

What is the Procurement Observer's Report?

This is an assessment report of the extent of the BAC's compliance with the substantive and procedural requirements of R.A. 9184, its IRR, and this Manual; and the areas of improvement in the BAC's procurement proceedings.

If there are substantive or procedural irregularities in the procurement at hand, the report should provide therein details of the alleged irregularity.

To assist in the preparation of the report:

Observers may be granted access to minutes of BAC meetings, abstract of bids, post-qualification summary reports, APP and related PPMP, and opened proposals, only upon their request and signing of a confidentiality agreement.

- b. Submit their Procurement Observer's Report to the Procuring Entity and furnish a copy to the BAC Chairperson, the GPPB and Office of the Ombudsman/Resident Ombudsman. Upon receiving the Observers' Report, the BAC Chairperson shall forward the same 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 procurement activities, and part of the audit trail. If the observers do not submit their report, it is understood that the bidding activity was conducted properly.
- c. Immediately inhibit and notify in writing the Procuring Entity concerned of any actual or potential interest in the contract to be bid.

The actual or potential interest is personal to the representative of the organization. It may not necessarily prohibit the same organization from sending a different but disinterested representative.

VI. Bidders

The Bidder is responsible for the following:

- a. Having taken steps to carefully examine all aspects and parts of the Bidding Documents;

- b. Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
- c. Having made an estimate of the facilities available and needed for the contract to be bid, if any;
- d. Having complied with its responsibility to inquire or secure Supplemental/Bid Bulletin(s) as provided under **ITB** Clause 10.3 of the Standard Bidding Documents;
- e. Ensuring that it is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution, in the event that their blacklisting rules have been recognized by the GPPB;
- f. Ensuring that 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;
- g. Authorizing the Head of the Procuring Entity or its duly authorized representative/s to verify all the documents submitted;
- h. Ensuring that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the Bidder is a corporation, partnership, cooperative, or joint venture, or if a person other than the general manager or sole proprietor submits a bid for or represents the sole proprietorship, a special power of attorney delegating such authority to the person;
- i. Complying with the disclosure provision under Section 47 of RA 9184 in relation to relevant provisions of RA 3019;
- j. Complying with existing labor laws and standards; and
- k. Entering into Contract with the Procuring Entity and faithfully performing his duties and responsibilities during contract implementation.

Failure to observe any of the above responsibilities shall be the risk of the Bidder concerned.

The Bidder is expected to examine and read all the instructions, forms, terms, and specifications in the Bidding Documents.

It shall be the sole responsibility of the Bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the contract to be bid, including: (a) the location and the nature of the Project; (b) climatic conditions; (c) transportation facilities; and (d) other factors that may affect the cost, duration, and execution or implementation of the Project.

The Procuring Entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the procuring entity.

The Bidder shall bear all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

Before submitting their bids, the Bidder is deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect the Project or the procurement activity in any way.

The Bidder should note that the Procuring Entity will accept bids only from those that have paid the non-refundable fee for the Bidding Documents at the office indicated in the Invitation to Bid.

Section 3: Benefits for BAC, TWG and Secretariat

I. Professionalization of BAC Members

Section 16 of the IRR of R.A. 9184 provides the legal reference for the professionalization of procurement units, BAC, and the TWG.

A. Training and Continuing Education Program:

The GPPB, through its TSO, has established in cooperation with qualified organizations and institutions, a sustained training program to develop the capability of the members of the BAC, BAC Secretariat, TWG, and the Procurement Unit of 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.

It is the responsibility of the LCE to ensure that all officials and employees involved in the procurement process will avail of the procurement training conducted by the GPPB-TSO and other GPPB-TSO recognized trainers and training institutions offering the different modules on procurement-related training. (See www.gppb.gov.ph for details)

B. In-house Training and Work Quality Monitoring:

The LGUs must develop and implement their own in-house training programs in accordance with the guidelines and standards prescribed by the GPPB-TSO. The required training budget should be included in their annual budget proposals to be included in the appropriations ordinance.

Moreover, the LCE must regularly monitor the work quality of the procurement organization, through a review of the PMRs 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, LCEs 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 11.1.2 of the IRR, which allows for the creation of several BACs.

II. Grant of Honoraria

The LGU is authorized to grant honoraria to the members of the BAC, the TWG, and the BAC Secretariat provided the amount so granted does not exceed twenty-five percent (25%) of their respective basic monthly salary, subject to the following conditions:

- a. Funds are available for the purpose; and
- b. The grant of honoraria conforms to the guidelines promulgated by the DBM. **(Section 15, IRR of R.A. 9184)**

Budget Circular No. 2004-5A¹, dated 7 October 2005, issued by the DBM provides the guidelines on the grant of honoraria to government personnel involved in public procurement. Among others, this Circular provides the following:

- a. The Chairs and Members of the BAC and the TWG may be paid honoraria only for successfully completed procurement projects as identified, described, detailed, scheduled and budgeted for in the Project Procurement Management Plan prepared by the agency. A procurement project shall be considered successfully completed once the contract has been awarded to the winning bidder.
- b. The payment of honoraria shall be limited to procurement that involves competitive bidding. Competitive bidding activities are present only in:
 - i. Open and Competitive Bidding;
 - ii. Limited Source Bidding; and
 - iii. Negotiated Procurement under Section 53.1 of the IRR, where the bidding has failed twice.

Conversely, honoraria will not be paid when the procurement is through:

- i. Direct Contracting;
 - ii. Repeat Order;
 - iii. Shopping; and
 - iv. Negotiated procurement under Section 53.2 of the IRR where the Procuring Entity is authorized to directly negotiate with a previous supplier, contractor, or consultant; or when the infrastructure project is undertaken by administration or through the Armed Forces of the Philippines (AFP).
- c. To be entitled to honoraria, personnel should be duly designated as Chair or Member of the BAC or the TWG.
 - d. The members of the BAC Secretariat who are performing the attendant functions in addition to their regular duties and functions may likewise be paid honoraria at the same rate as the TWG Chair and Members, subject to the same regulations.
 - e. 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.
 - f. 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.
 - g. Payment of the honoraria and overtime pay authorized herein shall be sourced only from the following:
 - i. Collections from successfully completed procurement projects, limited to activities prior to the awarding of contracts to winning bidders:
 - i.1. proceeds from sale of bidding documents;
 - i.2. fees from contractor/supplier registry;

¹ As amended by Budget Circular No. 2007-3, dated 29 November 2007.

- i.3. fees charged for copies of minutes of bid openings, BAC resolutions and other BAC documents;
 - i.4. protest fees;
 - i.5. proceeds from bid security forfeiture; and
 - i.6. Savings from local budgets approved by their respective *Sanggunian* subject to the pertinent provisions of RA 7160, otherwise known as the "Local Government Code of 1991."
- h. Savings refer to portions or balances of LGUs' budget free from any obligation or encumbrance which are:
 - i. Still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized;
 - ii. Arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absences without pay; and
 - iii. Realized from the implementation in improved systems and efficiencies and thus enabled the LGU to meet and deliver the required or planned targets, programs, and services at lesser cost.
- i. 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 duly authorized overtime pay. 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 form part of the local government funds.
- j. The manner of payment of honoraria and overtime pay shall be in accordance with the immediately preceding paragraph.

III. Legal Assistance and Indemnification Package

GPPB Resolution No. 021-2005 on the Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff² was issued by the GPPB for the following purposes:

- a. To prescribe the rule and procedures in granting legal assistance to, and indemnification of the BAC members and BAC Support Staff.³
- b. 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.
- c. 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 LGU's appropriation. Protest fees, proceeds from the sale of bidding documents, and any other additional funds derived from other income-generating activities of the LGU may be used to augment the funds.

² Approved and adopted by GPPB through its Resolution 021-2005, dated 07 October 2005, published at the Official Gazette on 09 January 2006.

³ 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 IRR of R.A. 9184.

A. Private Legal Assistance

All the members of the LGU BAC are authorized to engage the services of private lawyers or external counsel immediately upon receipt of Court Notice that a civil or criminal action, suit or proceeding is filed against them in connection with the lawful performance of their official functions and duties as BAC members. The lawyer's fee shall be part of the indemnification package for the BAC members. BAC members shall be understood to include its support staff, such as the members of the TWG and the BAC Secretariat.

B. Free Legal Assistance

The LGU shall, to the fullest extent permitted by the rules, 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 by reason of the lawful performance of his official duties and functions as BAC member or as BAC Support Staff. 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:

- a. The BAC member or BAC Support Staff concerned must have engaged the services of a private lawyer or external counsel.
- b. The BAC member or BAC Support Staff must have not been adjudged as guilty of gross negligence, misconduct, or grave abuse of discretion.

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 LGU.

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 LGU, unless such action, proceeding, or claim was authorized by the LCE or the approving authority therein; or
- b. Any action or suit initiated by the Government against the BAC members or BAC Support Staff.

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.

C. Liability Insurance

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

- a. The LGU shall have the responsibility to procure and maintain adequate liability insurance for and in behalf of its BAC members or BAC Support Staff.
- b. 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.
- c. 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.

- d. In the event of settlement or compromise, indemnification shall be confined only to matters covered by the settlement, and to which the LGU 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.
- e. 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.

D. 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:

- a. 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 exercise due diligence to prevent harm or injury to themselves.
- b. The claimant(s) or his/her relatives must notify the LCE within seven (7) calendar days from the occurrence of the injury or disability.
- c. 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.

E. Procedures

- a. The claimant(s) should file their respective claim(s) for legal assistance, liability insurance, or medical assistance as the case may be, with the LCE; and shall secure the approval of the latter on the terms and conditions of the engagement of counsel.
- b. The LCE 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.
- c. Upon finding that all the requirements have been duly complied with and that all the necessary documents submitted are genuine, LCE should then order the processing of the claims and the subsequent release of funds for the approved claims.
- d. 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 LCE.

- e. 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.

Section 4: Procurement Planning and Budget Linkage

Procurement planning ensures that the overall goal of a particular project will be achieved effectively and efficiently. Through plans, an LGU 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 timeline as well as to identify choke-points, weaknesses, and delays in the entire activity that can be addressed or eliminated. Also, a sound procurement planning enables the LGU to be cost efficient in its procurement, as it ensures a strong link between procurement needs and goals.

Proper planning ensures that only goods, infrastructure projects, and consulting services which have been included in the approved APP shall be procured, thereby precluding occasions for unnecessary government purchases and circumventions of the prescribed procurement procedures such as advance deliveries, "suki system", or unwarranted resort to alternative methods of procurement, among others.

Procurement planning should be done within budgetary context, reflecting the LGU's priorities and objectives for the budget period. Procurement Planning therefore involves two levels: the LGU's over-all 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.

I. Preparation of the Project Procurement Management Plan (PPMP)

A. PPMP

A Project Procurement Management Plan (PPMP) serves as a guide document in the procurement and contract implementation process, as well as a vital reference in procurement monitoring. It deals primarily with:

- a. planning for the procurement of project requirements;
- b. bidding or procurement strategy;
- c. source selection;
- d. time schedule for each procurement activity;
- e. delivery schedules;
- f. contract administration;
- g. contract termination;
- h. procurement milestones; and
- i. other important procurement details or information.

The PPMP is prepared by the end-user unit during the budget preparation to support the cost estimates in the budget proposal.

B. Developing the Project Requirements

The development of the project requirements should be done by the end-user units during the preparation of the proposed PPMP. At this stage of

the procurement planning process, the end-user unit must identify its needs and the alternative solutions/products/services available from the market to address such needs. The purpose of the procurement is specified.

Doing market research

The end-user unit should conduct the market research at this point, and gather as much information about the goods, services, or expertise required alongside the identified needs and the corresponding budget identified for the project. At the end of this activity, it should know the market or the industry well enough to make an informed choice.

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

The Technical Specifications (for Procurement of Goods), Scope of Work and plans/drawings (for General Services and Infrastructure Projects) or Terms of Reference (for Consulting Services) are the documents that provide the detailed description of the deliverables of the Supplier, Contractor or Consultant, respectively.

D. Determining the Approved Budget for the Contract (ABC)

The ABC refers to the budget approved by the LCE based on the appropriation approved by the *Local Sanggunian* for the particular procurement to be undertaken. In determining the ABC, the end-user unit has to consider several factors, such as, but not limited to: the appropriation for the project or procurement; the market price of the goods and/or services being procured, including the historical cost; inflation; maintenance, parts and service costs; and cost of money which are directly related to the procurement time table, among others.

In determining the ABC, the end-user unit, with the assistance of the TWG (when necessary), must consider the different cost components, namely:

- a. Cost or market price of the product or service itself;
- b. Freight, insurance, taxes, and other incidental expenses such as installation costs, training costs, if necessary, and cost of inspection (For goods only);
- c. Cost of money, to account for government agencies usually buying on credit terms;
- d. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date (For goods only);
- e. Quantities, considering that buying in bulk usually means lower unit prices;
- f. Supply of spare parts and/or maintenance services, if these are part of the contract package (For goods only); and
- g. Cost of securing all types and forms of securities other than cash. (*e.g. premiums for surety bond, bank fees and other charges to be incurred by the bidder in obtaining bid, performance and warranty securities*)
- h. For infrastructure projects, the procuring entity/LGU shall consider Item 3.g of "Annex A" of the IRR of R.A. 9184: Approved Budget for the Contract – ABC to be bid shall be prepared by official(s)

duly designated by the LCE concerned or by his duly authorized official. It shall be approved by the LCE or his duly designated official. Since the contracts are fixed price contracts, the ABC to be bid shall provide for the projected movements of construction costs over period considering the projected inflation and foreign exchange rates as issued by the Development Budget Coordination Committee (DBCC). It shall also show the local and foreign currency requirement, as the case may be. The ABC to be bid shall specify for each major item, such as earthwork, roadwork, and massive concreting, the components for equipment rentals, fuel, labor, materials and overhead, including the cost of the approved construction safety and health program and warranty premium.

If the project or contract has a foreign component, it is also best to include a currency valuation adjustment factor, in order to address foreign exchange rate fluctuations between the planning phase and the actual procurement date. To determine the factor to be used, the end-user unit may request for guidance from the BSP, or refer to BSP forecasts, if available.

If the sum of the different cost components is lower than the appropriation for the procurement, then the ABC should be equal to the sum of the cost components. If the resulting sum is higher than the appropriation, it is advisable to review the technical specifications and the computation of the ABC. In any case, the ABC should not exceed the appropriation.

E. Procurement Milestones

The PPMP must include a schedule of procurement milestones. These procurement milestones referred to are the following:

- a. pre-procurement conference (if required or necessary);
- b. advertisement and/or posting of the Invitation to Bid or Request for Expression of Interest;
- c. pre-bid conference
- d. eligibility check and short-listing, in case of consulting services ;
- e. submission, receipt, opening and preliminary examination of bids;
- f. determination of the LCB/HRB through detailed bid evaluation;
- g. determination of LCRB or HRRB through post-qualification;
- h. issuance of notice of award;
- i. contract signing and approval;
- j. issuance of notice to proceed; and
- k. delivery dates or commencement of project implementation.

Each of these significant activities should be scheduled so as to provide the end-user unit with a guide to efficiently manage every procurement undertaken by the LGU.

F. Method of Procurement

As a general rule, all procurement should be through **competitive bidding**. However, the law recognizes that certain exceptional circumstances may 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.

G. Format of the PPMP

At the start of every budget period, the procuring entity shall prepare its proposed budget for the succeeding calendar year, taking into consideration the budget framework for that year in order to reflect its priorities and objectives for the budget period.

The end-user units of the procuring entity shall prepare their respective Project Procurement Management Plan (PPMP) for their different programs, activities, and projects (PAPs). The PPMP shall contain the following information:

- a. Information on whether PAPs will be contracted out, implemented by administration in accordance with guidelines issued by the GPPB, or consigned;
- b. Name of the project/procurement;
- c. General description of the project/procurement;
- d. Extent/size of contract scopes/packages (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.);
- e. Procurement methods to be adopted, indicating if the procurement tasks are to be outsourced as provided in Sections 53.5 and 53.6 of the IRR;
- f. Time schedule for each procurement activity and for the contract implementation; and
- g. Estimated budget for the general components of the contract.

The PPMP shall then be submitted to the LGU's Budget Office. The LGU's Budget Office shall evaluate each end-user's submitted PPMP and, if warranted, include it in the LGU's budget proposal for approval by the HOPE.

After the budget proposal has been approved by the HOPE and/or other oversight bodies, the LGU's Budget Office shall furnish a copy of the procuring entity's budget proposal as well as the corresponding PPMPs to the BAC Secretariat for its review and consolidation into the proposed APP. The proposed APP shall be consistent with the LGU's budget proposal.

As soon as the appropriation ordinance becomes final, the end-user units shall revise and adjust the PPMP to reflect the budgetary allocation for their respective PAPs. The revised PPMPs shall be submitted to the BAC, through its Secretariat, for the finalization of the modes of procurement under the proposed APP.

Updating of the individual PPMPs and the consolidated APP shall be undertaken every six (6) months or as often as may be required by the HOPE. The updating of the PPMPs shall be the responsibility of the respective end-user units of the LGUs, while the consolidation of these PPMPs into an APP shall be lodged with the BAC Secretariat, subject to approval of the HOPE. The ABC as reflected in the APP or PPMP shall be at

all times consistent with the appropriations for the project authorized in the appropriation ordinance

A sample format of the PPMP can be secured from the official website of the GPPB, www.gppb.gov.ph.

II. Annual Procurement Plan (APP)

All procurement shall be within the approved budget of the procuring entity and should be meticulously and judiciously planned by the procuring entity. The APP shall include provisions for foreseeable emergencies based on historical records. No procurement shall be undertaken unless it is in accordance with the approved APP of the LGU. The APP shall bear the approval of the HOPE or second-ranking official designated by the HOPE to act on his behalf, and must be consistent with its duly approved yearly budget.

APP is the document that consolidates the various PPMPs submitted by the various end-user units or the PMO within the LGU. It reflects the entirety of the procurement activities that will be undertaken by the LGU within the calendar year. This is approved by the HOPE.

A. Preparation of an APP

In the consolidation of PPMPs, the BAC may adopt a strategy through which similar items of procurement are packaged into one procurement undertaking and under a single PPMP, in which the original PPMPs shall be consolidated and revised. During the review of the PPMPs, the BAC shall determine the nature of the procurement, whether they be procurement of goods, infrastructure or consulting services.

The APP is prepared by the BAC through the BAC Secretariat upon submission by the end-user units or PMOs of their respective PPMPs. In preparing the APP, the BAC shall take into consideration the following factors:

- a. One year planning perspective. The APP should include all procurement activities planned for the year. The approved APP shall be the basis for the LGU's procurement, and only those projects/procurement included therein shall be undertaken.
- b. Emergency or Contingency Fund. The APP shall include provisions for a lump sum to cover foreseeable emergencies or contingencies usually indicated by historical records.
- c. Schedule of Activities. Scheduling of procurement activities in the APP should be done in such a manner that the BAC and the other offices/units in the LGU 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.

B. Maintenance and Updating of the APP

A review and updating of the individual PPMPs and the APP shall be done regularly or as often as necessary. The review and updating of the PPMPs will be done by the end-user units or PMOs of the LGUs. 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 subsequent inclusion and consolidation in the updated APP. The updated APP shall then be approved by the HOPE in accordance with Sec 7.2 of IRR of R.A. 9184.

For flexibility and to encourage advance procurement actions, the APP and PMPP should also be based on the proposed budget to allow for advance planning for the succeeding budget year.

C. APP Format

The BAC, with assistance from the BAC Secretariat, shall prepare an APP, which shall classify the different procurement according to their nature, i.e. Procurement of Goods, Infrastructure Projects, or Consulting Services.

The APP shall contain the following information:

- a. Name of the project/procurement;
- b. End-user unit;
- c. General description of the project/procurement (general description of requirements and quantities, where applicable);
- d. Procurement methods to be adopted, indicating if the procurement tasks are to be outsourced as provided in Sections 53.5 and 53.6 of the IRR;
- e. Time schedule for each procurement activity; and
- f. ABC.

A sample format of the APP can be secured from the official website of the GPPB, www.gppb.gov.ph.

D. APP and Budget Preparation

The Budget Process in LGUs consists of five (5) phases. These are: (i) Budget Preparation; (ii) Budget Authorization; (iii) Budget Review; (iv) Budget Execution; and (v) Budget Accountability. Among these phases, the linkage between budget preparation and the APP clearly exist in Budget Preparation and Budget Execution.

In relation to Budget Preparation, the Updated Budget Operations Manual (UBOM) recognizes preparation of the PPMP as an important factor in identifying the mode of procurement and projecting the quantity and quality of the expected results of the program/activity/project, among others.

CHAPTER 3

Modes of Procurement

Section 1: Primary Mode of Procurement

I. Competitive Bidding

Pursuant to Section 10 of R.A. 9184 and its IRR, all procurement shall be undertaken through competitive bidding as the default mode or primary method of procurement.

Competitive Bidding or **Public Bidding** refers to the method of procurement which is open to participation by any interested party and which consists of advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract. **(Section 5(e), R.A. 9184)**

The procedures for the conduct of competitive bidding for the procurement of goods, infrastructure projects and consulting services are extensively discussed in Chapters 4, 5 and 6 this Manual, respectively.

Section 2: Alternative Methods of Procurement

I. Conditions for Use of Alternative Methods of Procurement

As a rule, LGUs shall adopt competitive bidding as the primary mode of procurement and shall see to it that the procurement program allows sufficient lead time for such competitive bidding. **(Section 48.2, IRR of RA 9184)**

As an exception, **alternative methods of procurement** may be adopted upon approval of the HOPE, after favorable recommendation from the BAC that all of the conditions in resorting to any of the alternative modalities are complied with. These are subject to the following conditions:

- a. Procurement is made in highly exceptional circumstances, as justified by procurement environment on the ground;
- b. Alternative modalities are resorted to promote economy and efficiency in procurement; and
- c. No splitting of contracts in accordance with Section 54.1 of the IRR: Splitting of Government Contracts is not allowed. Splitting of Government Contracts is present when there is division or breaking of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this Manual, especially the necessity of public bidding and the requirements for the alternative methods of procurement.
- d. Where the ABC is at least Five Hundred Million Pesos (PhP500,000,000.00), the HOPE shall, before proceeding with any of the alternative methods of procurement, obtain the approval of the GPPB that said proposed procurement undertaking falls within the exceptions from public bidding and that the proposed alternative mode of procurement is appropriate. **(Section 4, Executive Order (EO) No. 432, Series of 2005, as amended by EO 645, Series of 2007.)**

In cases where the original method of procurement specified in the APP is competitive bidding or a different alternative method of procurement and conditions arise justifying the use of an alternative method of procurement after the APP is finalized, the APP may be updated following the same process for its approval as provided in Chapter 2, Section 4 of this Manual.

II. Different Alternative Methods

A. Limited Source Bidding or Selective Bidding

LIMITED SOURCE BIDDING, otherwise known as **SELECTIVE BIDDING**, is a method of procurement of goods that involves the issuance of a direct invitation to bid by the concerned LGU from a list of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract. **(Section 49, RA 9184 and its IRR)**

A.1. Applicability: Goods and Consulting Services

It involves direct invitation to bid by the LGU from the list of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract.

A.2. Conditions:

- a. Procurement of highly specialized types of goods and consulting services where only few suppliers or consultants are known to be available, such that resorting to public bidding will not likely result in any additional suppliers or consultants participating; or
- b. Procurement of major plant components where it is deemed advantageous, to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.

A.3. Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement is Limited Source Bidding, and the conditions required therefor exist.
- b. The BAC reviews the Bidding Documents, including the invitation notices, technical specifications, and/or terms of reference prepared by the end user unit.
- c. Upon determination that a procurement activity may be done through Limited Source Bidding, the Procuring Entity through its BAC, shall prepare a list of pre-selected suppliers or consultants which should come from the list of pre-selected suppliers or consultants that is being maintained and updated by the relevant government authority with expertise in the type of procurement concerned.
- d. In the event that there is a relevant government authority, but no list exists, the procuring entity shall request the identified relevant government authority for the issuance of the list. The relevant government authority concerned shall not unduly and unreasonably delay the issuance of such list. In case of non-issuance by the relevant government agency authority of the list, the procuring entity shall resort to open competitive bidding in its selection of supplier or consultant.
- e. In the event that 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 it establishes, 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 its functions and operations; *Provided*, further, that in the event that the procuring entity cannot establish its expertise on the subject matter of procurement within the purview of Section 49.2 of the IRR of R.A. 9184, the procuring entity shall resort to open competitive bidding in the selection of supplier or consultant.

f. In preparing the pre-selected list, the BAC possibly with the assistance of the TWG, shall adopt a set of criteria to be used as basis in evaluating the capability of the entities, Said criteria shall take into consideration the following characteristics:

- i. Capability and resources to perform the contract taking into account their experience and past performance on similar contracts;
- ii. Capability with respect to personnel, equipment, or manufacturing facilities; and
- iii. Financial position.

In the conduct of the pre-selection proceedings, procuring entities shall ensure that the list or source of known eligible bidders is accurate, definite, and distinct, and resorting to competitive bidding will not likely result in any additional suppliers or consultants participating in the bidding.

- i. The BAC invites all industry players of known experience and proven capability on the requirements of the particular contract to submit the necessary documents for evaluation.
- ii. The BAC evaluates and submits the recommended pre-selected list to the HOPE for approval. The pre-selected list should include the technical specifications of the project and the specific criteria used for evaluation.
- iii. Upon approval, the HOPE shall transmit the pre-selected list to the GPPB in compliance with Section 49.2 of the IRR of R.A. 9184. The list must be accompanied with a Certification from the HOPE: (a) justifying the recourse to Limited Source Bidding; (b) verifying the compliance with the criteria previously set; (c) certifying that the pre-selected list of known suppliers or consultants where resort to public bidding will not likely result in any additional suppliers or consultants participating in the bidding.
- iv. The GPPB-TSO acknowledges receipt of the pre-selected list and posts it on the GPPB or PhilGEPS website for purpose of information and transparency.

g. Upon identification of the pre-selected list or receipt of the acknowledgment from the GPPB-TSO, the BAC, through the BAC Secretariat, posts the IB/REI for a period of seven (7) calendar days in the following:

- i. PhilGEPS website;
- ii. LGU's website, if any; and
- iii. Any conspicuous place in the premises of the LGU.

h. The BAC, through its BAC Secretariat directly invites all the suppliers or consultants appearing in the pre-selected list.

- i. The BAC holds the same processes required for public or competitive bidding, and recommends the award of contract to the HOPE.
- j. The HOPE evaluates the recommendation and approves/disapproves the same. In case of approval, the HOPE shall immediately issue the Notice of Award (NOA).
- k. After the NOA is issued by the HOPE and contractual procedures have been accomplished, the BAC Secretariat posts the award notices (NOA and copies of the contract and NTP) in the following:
 - i. PhilGEPS website;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

B. Direct Contracting or Single Source Procurement

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. **(Section 50, RA 9184 and its IRR)**

B.1. Applicability: Goods

This does not require elaborate Bidding Documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice with the condition of sale. The offer may be accepted outright or after some negotiations.

B.2. Conditions:

- a. Procurement of items of proprietary nature which can be obtained only from the proprietary source, i.e., when patents, trade secrets, and copyrights prohibit others from manufacturing the same item.
- b. Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance in accordance with the provisions of its contract.

This is applicable when there is a contract for an infrastructure project consisting of the construction/repair/renovation of a plant, and critical components of such plant are prescribed by the contractor for it to guarantee its contract performance. For example, in the construction of a power generation plant, the contractor may require the use of certain components manufactured by a specific manufacturer, whose products have been found to meet certain standards and are compatible with the technology used by the contractor. In this instance, Direct Contracting may be resorted to in the procurement of such critical plant components. However, the BAC must require technical proof that such critical plant components are the **ONLY** products compatible with the plant.

- c. Those sold by an exclusive dealer or manufacturer that does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

This condition anticipates a situation where the goods are sold by an exclusive dealer or distributor, or directly sold by the manufacturer. In this instance, it is highly unlikely that sub-dealers can sell the same at lower prices. Further, the LGU has not identified a suitable substitute for the product that can be procured at terms more advantageous to the government.

B.3. Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement for the goods is Direct Contracting, and the conditions required therefor exist.
- b. The BAC, through the TWG and the BAC Secretariat, prepares the RFQ or pro-forma invoice together with the conditions of the sale.
- c. The BAC, through the BAC Secretariat, sends the Request for Quotation to the identified supplier.
- d. If necessary, negotiations are conducted to ensure that the Government is able to procure the goods at the most advantageous terms.
- e. The BAC proceeds to recommend the approval and signing of the contract to the HOPE.
- f. The HOPE evaluates the recommendation and approves/disapproves the same. In case of approval, the HOPE shall immediately issue the Notice of Award (NOA).
- g. After the NOA is issued by the HOPE and contractual procedures have been accomplished, the BAC Secretariat posts the award notices (NOA and copies of the contract and NTP) on the following:
 - i. PhilGEPS website;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

Exclusivity of the source and necessity of the goods to be procured are required under this condition before a LGU may resort to Direct Contracting

To justify the need to procure through the Direct Contracting method, the BAC should conduct a survey of the industry and determine the supply source. This survey should confirm the exclusivity of the source of goods or services to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. Moreover, the LGU must justify the necessity for an item that may only be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms.

C. Repeat Order

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 procurement should be covered by the contingency provided for in the APP. **(Section 51, RA 9184 and its IRR)**

C.1. *Applicability: Goods*

This method can be adopted whenever there is a need to replenish goods procured under a contract previously awarded through Competitive Bidding.

C.2. *Conditions:*

- a. Unit prices of the repeat order must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the LGU after price verification;
- b. The repeat order will not result in splitting of contracts, requisitions, or purchase orders;
- c. The repeat order shall be availed of only within six (6) months from the contract effectivity date stated in the NTP arising from the original contract except in cases duly approved by the GPPB; and
- d. The repeat order shall not exceed twenty-five percent (25%) of the quantity of each item in the original contract.

C.3. *Procedural Requirements:*

- a. The end-user unit or PMO checks the prevailing market price of the goods to be procured and compares this with the price of the goods in the original contract.
- b. The end-user unit or PMO requests for the procurement of additional units of goods previously procured and prepares the necessary Purchase Request.
- c. The BAC ensures that the APP indicates that the method of procurement for the requested goods is Repeat Order, and the conditions required therefor exist.
- d. The BAC, with the assistance of the TWG and end-user unit, confirms the price with the supplier that won the previous competitive bidding and ensures that the price is equal to or lower than the original price, and the terms and conditions in the original contract is most advantageous to the government after price verification.
- e. The BAC, through the BAC Secretariat, confirms the Repeat Order with the previous supplier, and proceeds with the preparation of the Supplemental Contract or Purchase Order, using the same Technical Specifications in the Bidding Documents used in the previous Bidding.
- f. The BAC submits its recommendation to the HOPE together with all the supporting documents for the transaction.

- h. The HOPE evaluates the recommendation and approves/disapproves the same. In case of approval, the HOPE shall immediately issue the Notice of Award (NOA).
- g. After the approval is issued by the HOPE and contractual procedures have been accomplished, the BAC, through the BAC Secretariat, posts for information purposes the award on the following:
 - i. PhilGEPS;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

What is "splitting of contract"?

Splitting of contracts is the act of dividing or breaking up government contracts into smaller quantities and amounts. It also is the act of dividing contract implementation into artificial phases or sub-contracts. Both actions are for the purpose of evading or circumventing the requirements of law and the IRR-A of R.A. 9184, especially the necessity of public bidding and the requirements for the alternative methods of procurement. **(Section 54.1, IRR of RA 9184)**

If the LGU is found to have resorted to this mechanism to subvert the law, those responsible for this act shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years. This penalty is without prejudice to the imposition of other sanctions provided for in RA 3019 and other penal laws. **(Section 65.1.(d), IRR of RA 9184)**

D. Shopping (Section 52, RA 9184 and its IRR)

D.1. Applicability: Goods

It is a method of procurement of goods whereby the LGU 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.

D.2. Instances:

- a. When there is an unforeseen contingency requiring immediate purchase and the amount shall not exceed the prescribed thresholds set by Annex H of the IRR. The threshold amount shall be as follows:

| DOF Classification of LGUs | Maximum Amount (in Philippine Peso) | | |
|----------------------------|-------------------------------------|---------|--------------|
| | Province | City | Municipality |
| 1 st Class | 100,000 | 100,000 | 50,000 |
| 2 nd Class | 100,000 | 100,000 | 50,000 |
| 3 rd Class | 100,000 | 80,000 | 50,000 |
| 4 th Class | 80,000 | 60,000 | 50,000 |
| 5 th Class | 60,000 | 50,000 | 50,000 |
| 6 th Class | 50,000 | 50,000 | 50,000 |

For Barangays, PhP50,000.

When is there an unforeseen contingency?

There is unforeseen contingency when there is an immediate need to purchase goods due to the happening of an event or series of events which could not have been reasonably foreseen by the LGU.

Take note that Emergency Purchase under Section 368 of the Local Government Code has been superseded by the provisions on alternative methods of procurement under R.A. 9184 and its IRR. Hence, necessary immediate purchases to address a particular emergency may be made through Shopping under Section 52.1(a) or Negotiated Procurement under Section 53.2 of the IRR depending on the urgency and conditions present at the time of procurement.

- b. Procurement of ordinary or regular office supplies and equipment not available in the DBM-PS involving an amount not exceeding the thresholds prescribed in Annex "H" of the IRR. The threshold amount shall be as follows:

| Classification of LGUs | Maximum Amount (in Philippine Peso) | | |
|------------------------|-------------------------------------|---------|--------------|
| | Province | City | Municipality |
| 1 st Class | 500,000 | 500,000 | 100,000 |
| 2 nd Class | 500,000 | 500,000 | 100,000 |
| 3 rd Class | 500,000 | 400,000 | 100,000 |
| 4 th Class | 400,000 | 300,000 | 50,000 |
| 5 th Class | 300,000 | 200,000 | 50,000 |
| 6 th Class | 200,000 | 100,000 | 50,000 |

For Barangays, PhP50,000.

Practical Tips**Certification from DBM-PS**

To justify resort to Shopping under Section 52.1(b) of the IRR, the end-user unit must ensure that a Reply/Action Document from the DBM-PS or from its Depot is obtained stating that the regular office supplies and equipment that will be procured from commercial sources are not available in the Procurement Service.

Technical Definition of Ordinary Office Supplies

The phrase "ordinary or regular office supplies" shall be understood to include those supplies, commodities or materials which, depending on the procuring entity's mandate and nature of operations, are necessary in the transaction of its official businesses; and consumed in the day-to-day operations of said procuring entity. However, office supplies shall not include services as repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services. **(Section 52.2, IRR of RA 9184)**

For LGUs, a particular type of goods may be considered "ordinary or regular office supplies" depending on the mandate of the requesting end-user concerned. For example, construction materials may be considered as an

“ordinary or regular office supplies” for the Engineer’s Office as these are necessary in the transaction of its official business and consumed in its day-to-day operations.

D.3. Procedural Requirements:

The succeeding steps are to be followed, to the extent possible, in procuring readily available off-the-shelf goods or ordinary/regular equipment through Shopping when there is an unforeseen contingency requiring immediate purchase (**Section 52.1, IRR of RA 9184**):

- a. The end-user unit or PMO submits an RIS to the BAC indicating therein the urgency of the requirement and the unforeseen contingency that caused its necessity.
- b. The BAC ensures that the APP indicates that the method of procurement for the requested goods is Shopping, and the conditions required therefor exist. The BAC should also ascertain that there is no splitting of contracts.
- c. The BAC purchases the requested goods from a supplier of known qualifications after inspecting and testing the items procured. The BAC should ask the supplier to issue an Official Receipt addressed to the Procuring Entity or for any valid substitute proof of purchase, which will then be attached to the RIS for liquidation or replenishment purposes.
- d. Except for those with ABCs equal to Fifty Thousand Pesos (Php 50,000.00) and below, the BAC Secretariat posts the award notice, for information purposes, at the following:
 - i. PhilGEPS website,
 - ii. LGU’s website, if available, and
 - iii. Any conspicuous place in the premises of the LGU.

Practical Tip

Delegation of conduct of purchases through Shopping

After the decision to resort to Shopping (or Small Value Procurement) has been made, the conduct thereof may be delegated to the appropriate bureau, committee, or support unit duly authorized by the Bids and Awards Committee. (**Item 2.c of the Guidelines for Shopping and Small Value Procurement, GPPB Resolution No. 09-2009**)

Considering the small value of procurement through Shopping, the Local Chief Executive is likewise encouraged to delegate the function of approving such requests to officials, such as provincial, city or municipal administrator, or general services officer, provided the aggregate amount of such procurement transactions still falls within the amount allowed for contingencies in the APP.

The succeeding steps are to be followed in procuring ordinary or regular office supplies and equipment not available in the DBM-PS (**Section 52.2, IRR of RA 9184**):

- a. The BAC submits an Agency Procurement Request to the DBM-PS indicating the specifications and quantity of the goods sought to be procured. If the DBM-PS does not

- have the goods in stock, the requesting Procuring Entity receives a Reply Action Document indicating that the requested goods are not available in stock.
- b. Upon receipt of the Reply Action Document stating the non-availability of the requested goods, the BAC submits a resolution to the HOPE recommending the conduct of Shopping for the procurement of such goods.
 - c. Upon approval by the HOPE, the BAC Secretariat amends the APP in order to reflect the procurement of the items by Shopping.
 - d. The BAC, through the BAC Secretariat, sends the RFQs to at least three (3) suppliers of known qualifications and posts the RFQs for a period of seven (7) calendar days at the following:
 - i. PhilGEPS website,
 - ii. LGU's website, if available, and
 - iii. Any conspicuous place in the premises of the LGU.
 - e. After the deadline for submission of price quotations, an Abstract of Quotations shall be prepared setting forth the names of those who responded to the RFQ, their corresponding price quotations, and the lowest quotation.
 - f. The BAC should have received at least three (3) price quotations. If none or less than the required number of price quotations is received, the BAC extends the deadline for submission. Extensions of deadline should be posted in the same places mentioned above.
 - g. If at least three (3) quotations are received, the BAC evaluates which among the offers is the lowest quotation that complies with the specifications and other terms and conditions stated in the RFQ. The BAC validates whether the supplier is technically, legally, and financially capable by requiring the submission of relevant documents or through other means.
 - h. The BAC submits its recommendation to the HOPE together with all the supporting documents for the transaction.
 - i. The HOPE evaluates the recommendation and approves or disapproves the same. In case of approval, the HOPE shall immediately issue the Notice of Award (NOA).
 - j. After the approval is issued by the HOPE and contractual procedures have been accomplished, the BAC, through the BAC Secretariat, posts all award notices in the same places mentioned above, except those procurement with an ABC amounting to Fifty Thousand Pesos (PhP 50,000.00) and below.

Shopping and Small Value Procurement

Shopping should not be confused with Small Value Procurement under Section 53.9 of the IRR. Shopping as an alternative method of procurement is limited to the procurement of readily available off the shelf goods or ordinary/regular equipment. On

the other hand, Negotiated Procurement under Section 53.9 of the IRR or Small Value Procurement applies to procurement of goods (not falling under shopping), infrastructure projects and consulting services in an amount not exceeding the prescribed thresholds. Take note also that Shopping and Small Value Procurement are mutually exclusive, hence, if conditions exist that would justify the procurement of goods through Shopping, such cannot be procured through Negotiated Procurement under Section 53.9 of the IRR.

E. Negotiated Procurement (Section 53, RA 9184 and its IRR)

It is a method of procurement, where a contract is directly negotiated with a technically, legally and financially capable supplier, contractor or consultant.

E.1. Instances:

E.1.1. Two Failed Biddings (Section 53.1, IRR of RA 9184)

Where there has been failure of public bidding for the second time as provided in Section 35 of RA 9184 and its IRR.

E.1.1.1. Applicability: Goods, Infrastructure Projects, and Consulting Services

E.1.1.2. Procedural Requirements:

- a. After the BAC's declaration of a second failure of bidding, the LGU conducts a mandatory review of the terms, conditions, specifications, and cost estimates, as prescribed in Section 35 of the IRR of R.A. 9184 in order to determine the possible reasons behind the failure of bidding, if any.
- b. Based on the findings arising from the mandatory review, the end-user unit revises and agrees on the minimum technical specifications/project requirements/terms of reference as well as the minimum terms and conditions of the contract or project. The review includes a mandatory consultation with all interested parties.
- c. If necessary, the ABC may also be adjusted, subject to the required approvals on revision of the APP. The ABC, however, cannot be increased by more than twenty percent (20%) of the ABC for the last failed bidding.
- d. Since the original mode of procurement in the approved APP is competitive bidding but cannot ultimately be pursued, the BAC ensures that the APP is revised to indicate that the goods, works or consultancy services will be procured through Negotiated Procurement (Two Failed Biddings).
- e. The BAC, through the BAC Secretariat, posts the procurement opportunity, for a period of at least seven (7) calendar days, in the following:

- i. PhilGEPS website,
 - ii. LGU's website, if available, and
 - iii. Any conspicuous place in the premises of the LGU.
- f. To ensure effective competition, the BAC invites sufficient number of bidders to submit their first offer on a specified date. The invitation should include relevant project and procurement information, such as, technical specifications/SOW/TOR, timelines, and terms and conditions. The BAC also invites Observers to attend each stage of the process.

Reminders: In the case of infrastructure projects, bona fide contractors licensed with the CIAP (through the Philippine Contractors Accreditation Board [PCAB]) whose eligibility documents are on file with the LGU concerned or the DPWH Contractors' Registry, as the case may be, and who have been classified under the type of contract/project where the subject contract falls are eligible to be invited for negotiation. Other contractors not previously deemed eligible may also apply for eligibility.

Even those who did not participate in the previous failed biddings may be invited.

All interested parties, including those who respond to the posting in PhilGEPS, LGU's website, and conspicuous places of the LGU shall be accommodated.

- g. On the date specified in the invitation, the BAC opens the quotations received and informs the bidders of the date of negotiation and the submission of their best and final offer (BAFO).
- h. The BAC negotiates with the bidders either jointly or separately. Any requirements, guidelines, documents, clarifications, or other information relative to the negotiations should be communicated by the BAC on an equal basis to all suppliers, contractors, or consultants invited and engaged in the negotiations.

Reminder: Negotiations must be properly documented. All clarifications and other relevant information should be communicated to all parties involved.

- i. Following completion of the negotiations, the BAC requests those remaining in the proceedings to submit, on a specified date, their BAFO with respect to all aspects of their proposals.
- j. On the date identified, the BAC opens the quotations submitted by the bidders and selects the successful offer on the basis of such BAFO which should be the lowest offer that is within the ABC and which meets the minimum technical requirements.

- k. The BAC submits its recommendation to the HOPE together with all the supporting documents for the transaction.
- l. The HOPE evaluates the recommendation and approves or disapproves the same. In case of approval, the HOPE shall immediately issue the Notice of Award (NOA).
- m. After the approval is issued by the HOPE and contractual procedures have been accomplished, the BAC, through the BAC Secretariat, shall post all award notices in the same places mentioned above.

E.1.2. Emergency Cases (Sec. 53.2, IRR of RA 9184)

In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.

E.1.2.1 Applicability: Goods, Infrastructure Projects, and Consulting Services

E.1.2.2 Procedural Requirements:

- a. The BAC directly negotiates with any legally, technically, and financially capable supplier, contractor, or consultant.
- b. The BAC submits its recommendation to the HOPE together with all the supporting documents for the transaction.
- c. The HOPE evaluates the recommendation and approves or disapproves the same.
- d. After the approval is issued by the HOPE and contractual procedures have been accomplished, the BAC, through the BAC Secretariat, posts for information purposes the award at the following:
 - i. PhilGEPS;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

E.1.3. Take-Over of Contracts (Sec. 53.3, IRR of RA 9184)

Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.

E.1.3.1 Applicability: Goods, Infrastructure Projects, and Consulting Services

E.1.3.2 Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (Take Over of Contract), and the conditions required therefor exist.
- b. The BAC negotiates with the bidder who submitted the second LCB/HRB for the project under consideration at the bidder's original bid price.
- c. If the negotiation fails again, and there is no bidder left from the previous bidding, the BAC creates a short list of at least three (3) eligible suppliers/contractors/consultants, which will be invited to submit bids, and negotiate with starting from the bidder with the LCB/HRB.

Reminder: Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the Local Chief Executive concerned, within the respective limits of approving authority.

- d. The BAC submits its recommendation to the HOPE together with all the supporting documents for the transaction.
- e. The HOPE evaluates the recommendation and approves or disapproves the same.
- f. After the approval is issued by the HOPE and contractual procedures have been accomplished, the BAC, through the BAC Secretariat, posts for information purposes the award in the following:
 - i. PhilGEPS;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

E.1.4. Adjacent or Contiguous (Sec. 53.4, IRR of RA 9184)

Where the subject contract is adjacent or contiguous to an ongoing infrastructure project or consulting service where the contractor or consultant has unique experience and expertise to deliver the required service, subject to the following conditions:

- a. Original contract is the result of a Competitive Bidding;
- b. Subject contract to be negotiated has similar or related scopes of work;
- c. It is within the contracting capacity of the contractor/consultant;
- d. The contractor/consultant uses the same prices or lower unit prices as in the original contract less mobilization cost;
- e. The amount involved does not exceed the amount of the ongoing project; and

- f. Contractor/consultant has no negative slippage/delay provided, further, that
- g. Negotiations for the procurement are commenced before the expiry of the original contract.

E.1.4.1 Applicability: Infrastructure Projects and Consulting Services

E.1.4.2 Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (Adjacent or Contiguous), and the conditions required therefor exist.
- b. The BAC negotiates with the contractor/consultant for the ongoing infrastructure project or consulting service.
- c. The BAC submits its recommendation to the HOPE together with all the supporting documents for the transaction.
- d. The HOPE evaluates the recommendation and approves or disapproves the same.
- e. After the approval is issued by the HOPE and contractual procedures have been accomplished, the BAC, through the BAC Secretariat, posts for information purposes the award in the following:
 - i. PhilGEPS;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

Reminder: The phrase "adjacent or contiguous" refers to projects that are in actual physical contact with each other in the case of infrastructure projects. Thus, the physical connection of the two (2) projects should be actual and not superficial. The objective of this policy is to take the advantage of the economy and efficiency in engaging the contractor for the on-going project, and ensure that the two structures are soundly connected.

In consulting services, "adjacent or contiguous" pertains to the linkage or relationship of the subject matters, outputs or deliverables required.

E.1.5. Agency-to-Agency (Sec. 53.5, IRR of RA 9184)

Procurement from another agency of the GOP that has the mandate to deliver goods or services required to be procured to undertake infrastructure projects or consultancy as required by the LGU. For instance, DBM-PS, which is tasked with a centralized procurement of Common-Use Supplies for the GOP in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

E.1.5.1 Applicability: Goods, Infrastructure Projects, and Consulting Services

E.1.5.2 Conditions:

- a. Conduct of a Cost-benefit Analysis by the LGU indicating that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical for the government;
- b. Total amount of all goods, consulting, and infrastructure projects undertaken or to be undertaken through Agency-to-Agency Agreements shall not exceed twenty-five percent (25%) of the LGU's total procurement budget for each category (*i.e.*, goods, infrastructure, or consulting) as reflected in its approved APP;
- c. Servicing Agency shall refer to the agency which delivers the goods, undertakes the infrastructure project, or provide consulting services.; and
- d. Servicing Agency owns or has access to the necessary tools and equipment required for the project.

Reminders: Other Considerations

- i. All procurement to be undertaken by the Servicing Agency, including those required for the project, shall continue to be governed by the provisions of R.A. 9184.
- ii. All projects undertaken through Agency-to-Agency Agreements shall be subject to pertinent budgeting, accounting, and auditing rules.
- iii. In addition, for procurement of infrastructure projects under Agency-to-Agency agreements, the Servicing Agency must comply with the following conditions:
 - a. It must have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand;
 - b. It shall not directly or indirectly engage private contractors to undertake the project and may only implement the infrastructure project in-house, by job-order, or through the *pakyaw* contracting system.
 - c. In-house labor is undertaken if the workers are employees or personnel occupying regular *plantilla* positions in the Servicing Agency. Job-order contracts shall be governed by the applicable rules of the Commission on Audit and/or Civil Service Commission. *Pakyaw* Contracting System shall be governed by Section 4 of the GPPB Revised Guidelines for the Implementation of Infrastructure Projects by Administration.

E.1.5.3 Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (Agency to Agency), and the conditions required therefor exist.
- b. The HOPE negotiates with the Servicing Agency on the terms and conditions of the Memorandum of Agreement (MOA), and enters into such agreement with the Servicing Agency.
- c. For purposes of transparency, the LGU posts for a period of seven (7) calendar days, general information pertaining to the procurement activity conducted, at the following:
 - i. PhilGEPS website;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place of the LGU.

E.1.6. Procurement Agents (Sec. 53.6, IRR of RA 9184)

The HOPE may determine and request other government agencies to undertake procurement for the LGU or at the HOPE's option, recruit and hire consultants or procurement agents to assist the HOPE directly and/or train his staff in the management of the procurement function to hasten project implementation.

E.1.6.1 Applicability: Goods, Infrastructure Projects, and Consulting Services

E.1.6.2 Procedural Requirements:

- a. The BAC, or in its absence the HOPE, ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (Procurement Agent), and the conditions required therefor exist.
- b. The HOPE negotiates with the procurement agent on the terms and conditions of the agreement, and enters into such agreement.
- c. For purposes of transparency, the LGU posts for a period of seven (7) calendar days, general information pertaining to the procurement activity conducted, at the following:
 - i. PhilGEPS website;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place of the LGU.

E.1.7. Highly Technical Consultants (Sec. 53.7, IRR of RA 9184)

Acquisition of consultancy contract involving an individual consultant who will be hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration. The term of the individual

consultant shall, at the most, be on a six (6) month basis, renewable at the option of the appointing authority but should in no case exceed the term of the later.

E.1.7.1 Applicability: Consulting Services

E.1.7.2 Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (Highly Technical Consultant), and the conditions required therefor exist.
- b. The BAC submits its recommendation to the HOPE together with all the supporting documents for the transaction.
- c. The HOPE evaluates the recommendation and approves or disapproves the same.
- d. After the approval is issued by the HOPE and contractual procedures have been accomplished, the BAC, through the BAC Secretariat, posts for information purposes the award at the following:
 - i. PhilGEPS;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

E.1.8. Small Value Procurement (Sec. 53.9, IRR of RA 9184)

Where the procurement does not fall under Shopping in Section 52 of the IRR and the amount involved does not exceed the thresholds prescribed in Annex "H" of the IRR. The threshold amount shall be as follows:

| Classification of LGUs | Maximum Amount (in Philippine Peso) | | |
|------------------------|-------------------------------------|---------|--------------|
| | Province | City | Municipality |
| 1 st Class | 500,000 | 500,000 | 100,000 |
| 2 nd Class | 500,000 | 500,000 | 100,000 |
| 3 rd Class | 500,000 | 400,000 | 100,000 |
| 4 th Class | 400,000 | 300,000 | 50,000 |
| 5 th Class | 300,000 | 200,000 | 50,000 |
| 6 th Class | 200,000 | 100,000 | 50,000 |

For Barangays, PhP50,000.

E.1.8.1 Applicability: Goods, Infrastructure Projects, and Consulting Services

E.1.8.2 Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (Small Value Procurement), and the conditions required therefor exist.

- b. The BAC, with the assistance of the BAC Secretariat, prepares the RFQ, which indicates the following:
 - i. Technical specifications;
 - ii. Quantity;
 - iii. ABC;
 - iv. Terms and conditions of the item to be procured;
 - v. Manner by which price quotations shall be submitted (*i.e.*, by sealed or open quotation); and
 - vi. Deadline for the submission of quotations.

The LGU can prepare its own format of an RFQ as long as the above-mentioned contents are duly considered.

- c. The BAC sends the RFQ to at least three (3) suppliers, contractors, or consultants of known qualifications.
- d. After the deadline for submission of price quotations, an Abstract of Quotations shall be prepared setting forth the names of those who responded to the RFQ, their corresponding price quotations, and the lowest quotation (for goods or infrastructure projects) or highest rated offer (for consulting services) submitted.
- e. The deadline for submission may be extended if none or less than the required number of price quotations are received. Extensions of deadline shall be posted in the PhilGEPS website, LGU's website, if available, and at any conspicuous place of the LGU.
- f. Award of contract is made to the lowest quotation (for goods and infrastructure projects) or, after successful negotiations, the highest rated offer (for consulting services) which complies with the specifications and other terms and conditions stated in the RFQ.
- g. Except for those with ABCs equal to Fifty Thousand Pesos (Php 50,000.00) and below, all award notices shall be posted, for information purposes at the following:
 - i. PhilGEPS website,
 - ii. LGU's website, if available, and
 - iii. any conspicuous place of the LGU.
- h. The LGU must validate whether it is entering into a contract with a technically, legally and financially capable supplier, contractor or consultant by requiring the submission of relevant documents or through other means.

E.1.9. Lease of Real Property and Venue (Sec. 53.10, IRR of R.A. 9184)

E.1.9.1 Applicability: Lease of real property and venue for public use

E.1.9.2 Procedural Requirements:

- a. The end user unit shall conduct a Cost-Benefit Analysis to assess the feasibility of leasing a privately-owned real estate or venue as against purchasing or leasing from a government-owned real estate or venue.
- b. The recommendation of the end user unit to lease a privately-owned real estate or venue shall also indicate the proposed location/s, the justifications therefor, and the result of the market analysis of the prevailing rates of lease contracts within the vicinity of the selected location/s.
- c. The ABC shall be set using the midpoint of the range obtained from the results of the market analysis on the prevailing lease rates for real estates or venue within the vicinity of the selected location complying with the criteria and technical specifications of the end user unit. In no case shall the rental rates, including additional expenses, such as association dues in the case of lease of real estate, exceed the ABC.
- d. The BAC ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (Lease of Real Property), and the conditions required therefor exist.

Reminder: Selection of the Lessor following the procedures prescribed in Items 6 and 7 of the Implementing Guidelines for Lease of Privately-Owned Real Estate and Venue (Guidelines), provided under GPPB Resolution No. 08-2009, dated 3 November 2009, may be delegated to the appropriate bureau, committee, or support unit duly authorized by the Bids and Awards Committee.

- e. Eligibility documents need not be submitted by prospective Lessors. The LGU must nevertheless validate whether the Lessor to be awarded the contract is technically, legally and financially capable through other means.
- f. **For Lease of Real Property**
 - i. The draft contract and technical specifications for the lease shall be prepared taking into consideration the rating factors under Appendix A of the Guidelines;
 - ii. At least three (3) prospective lessors shall be invited to submit sealed price quotations;
 - iii. On a specified date, submitted price quotations shall be opened to determine the Lowest

Calculated Bid (LCB). The real estate being offered by the Lessor with the LCB shall be rated in accordance with the technical specifications prepared pursuant to Appendix A of the Guidelines, and the reasonableness of its price quotation shall be determined in accordance with the methodology prescribed in Appendix B of the Guidelines;

- iv. If the LCB is determined to be responsive and reasonable, said bid shall be declared as the Lowest Calculated Responsive Bid (LCRB). If not, then the second LCB shall be evaluated. This procedure shall be repeated for the next LCB until the LCRB is determined; and
- v. Lease contract shall be awarded to the LCRB. If no LCRB has been determined, then another round of prospective Lessors shall be invited to submit sealed price quotations until an LCRB has been determined and awarded the contract.

g. **For Lease of Venue**

- i. Technical specifications shall be prepared taking into consideration the rating factors under Appendix C of the Guidelines;
- ii. At least three (3) price quotations shall be obtained within the vicinity of the selected location;
- iii. The venue being offered by the Lessor with the LCB shall then be rated in accordance with the technical specifications prepared pursuant to Appendix C. Compliance rating with technical specifications may be conducted through ocular inspection, interviews, or other forms of due diligence; and
- iv. If the LCB is determined to be responsive, said bid shall be declared as the LCRB. If not, then the second LCB shall be evaluated. This procedure shall be repeated for the next LCB until the LCRB is determined.

- h. Except for lease contracts amounting to Fifty Thousand Pesos (PhP 50,000.00) and below, RFQs, generally, shall be posted for a period of seven (7) calendar days at the following:

- i. PhilGEPS website;
- ii. LGU's website; and
- iii. Any conspicuous place of the LGU.

E.1.10. NGO Participation (Sec. 53.11, IRR of RA 9184)

The LGU may enter into a MOA with an NGO as procurement agent provided an appropriation law or ordinance earmarks an amount to be specifically contracted out to them.

Reminders: When an ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the LGU may select an NGO through competitive public bidding or negotiated procurement under Section 53.11 of the IRR.

E.1.10.1 Applicability: Goods, Infrastructure Projects and Consulting Services

What is the Non-Governmental Organization (NGO) contemplated by the rules?

The NGO refers to a non-stock, non-profit domestic corporation duly registered with the Securities and Exchange Commission or a cooperative duly registered with the Cooperative Development Authority committed to the task of socio-economic development and established primarily for providing goods and services to the public.

E.1.10.2 Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (NGO Participation), and the conditions required therefor exist.
- b. After the required posting period, the LGU invites at least three (3) prospective NGOs to submit sealed price quotations.
- c. On the date specified in the notice, the LGU opens the price quotations and determines the LCB.
- d. After determination that the proposal submitted by the NGO with the LCB complies with the technical requirements of the project, the LGU requires submission of the eligibility documents to ensure that said NGO is technically, legally, and financially capable to undertake the proposed project.
- e. The BAC submits its recommendation to the HOPE together with all the supporting documents for the transaction.
- f. The HOPE evaluates the recommendation and approves or disapproves the same.
- g. After the approval is issued by the HOPE and contractual procedures have been accomplished, the BAC, through the BAC Secretariat, posts for information purposes the award at the following:
 - i. PhilGEPS;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

Reminders: To guarantee its faithful performance, the selected NGO shall post a Performance Security upon the signing of the MOA.

After performance of its obligations under the MOA, the selected NGO shall likewise submit a warranty security.

E.1.11. Community Participation (Sec. 53.12, IRR of RA 9184)

Where, in the interest of project sustainability or to achieve certain specific social objectives, it is desirable in selected projects, or its components, to call for participation of local communities in the delivery of goods, including non-consulting services, and simple infrastructure projects. The threshold amount shall be as follows:

| LGU | Maximum Amount (in Philippine Peso) | |
|--|--|----------------------------|
| | Goods | Infrastructure Projects |
| 1 st -3 rd Class Provinces 1 st -2 nd Class Cities Highly Urbanized Cities | 1,000,000.00 | 2,500,000 |
| 4 th Class Provinces 3 rd Class Cities | 800,000 | 1,750,000 |
| 5 th Class Provinces 4 th Class City | 600,000 | 1,000,000 |
| 6 th Class Provinces 5 th -6 th Class Cities Municipalities Barangays | 500,000 | 750,000 |

E.1.11.1 Applicability: Goods, Non-consulting Services and Simple Infrastructure Projects

E.1.11.2 Procedural Requirements: The procedures, specifications, and contract packaging are contained Community Participation Procurement Manual (CPPM) issued by the GPPB. (**GPPB Resolution No. 09-2014**)

E.1.12. United Nations Agencies (Sec. 53.13, IRR of RA 9184)

Procurement from specialized agencies of the United Nations of any of the following: (a) small quantities of off-the-shelf goods, primarily in the fields of education and health; and (b) specialized products where the number of suppliers is limited, such as vaccines or drugs.

E.1.12.1 Applicability: Goods

E.1.12.2 Procedural Requirements:

- a. The BAC ensures that the APP indicates that the method of procurement for the requested project is Negotiated Procurement (UN Agency), and the conditions required therefor exist.
- b. The end-user unit, with the assistance of the TWG finalizes the technical specifications and quantities.

- c. The BAC directly negotiates with any agency or office of the United Nations offering said items and enters into contract with the same.
- d. Award notices shall be posted at the following:
 - i. PhilGEPS;
 - ii. LGU's website, if any; and
 - iii. Any conspicuous place in the premises of the LGU.

CHAPTER 4

**Competitive Bidding and
Contract Implementation
Procedures for the
Procurement of Goods and
Services**

SECTION 1: Introduction

This Chapter seeks to provide the procurement officials and personnel of the LGUs with clear, concise, and accurate information on the conduct of competitive bidding for the **procurement of goods and services** by discussing the steps that need to be undertaken as prescribed by R.A. 9184 and its IRR.

SECTION 2: Definition of Terms

I. Goods and Services (Section 5 [r], IRR of RA 9184)

It refers to all items, supplies, materials & 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. It includes, but is not limited to the following:

- a. Equipment;
- b. Furniture;
- c. Stationery;
- d. Materials for construction;
- e. Personal property of any kind; and
- f. Non-personal or contractual services:
 - f.1. Repair & maintenance of equipment and furniture
 - f.2. Trucking, hauling, and courier
 - f.3. Janitorial, security and manpower

Related or analogous services shall include, but not limited to the following:

- a. Lease or purchase of office space;
- b. Media advertisements;
- c. Health maintenance services;
- d. Other services essential to the operations of the LGUs:
 - d.1. Rental of venues and facilities
 - d.2. Catering services
 - d.3. Attendance to trainings and seminars
 - d.4. Lease of computers and other information technology equipment.

II. Common-Use Supplies

Refer to goods, materials, and equipment that are repetitively used in the day-to-day operations of LGUs in the performance of their functions. Common-use supplies shall be those included in the Electronic Catalogue of the PhilGEPS.

III. Inventory Items

Refer to goods, materials and equipment that are not in the Price List of the DBM-PS but are regularly used and kept on stock by the LGUs.

IV. Non-Common Use Supplies

Refer to goods, materials, and equipment that are neither “common-use supplies” nor “inventory items”, and may include those goods, materials and equipment that are required by the LGU for a specific project only.

V. Purchase Order

It is a contract between the government and the supplier/dealer for the delivery of supplies, subject to stipulations in the order. Thus, for contracts procured covered by purchase orders, the inclusion of a clause in the purchase order making reference to the general and specific conditions of the contract as reflected in the bidding documents shall be necessary to indicate that those conditions form part of the contract between the parties.

SECTION 3. Procurement Planning

Procurement planning entails ensuring that plans for procurement are linked to budgets, preparing the PPMP and consolidating all PPMPs into the APP.

The end-user unit should consider the following factors, which have an impact on contract packaging, the procurement method to be used, and other related components.

I. Preparation of Project Procurement Management Plan and Annual Procurement Plan

A. Identifying the procurement project requirement

Projects should contain sufficient information to aid the LGU's task to undertake the procurement. An accurate description of what and how much is to be procured is one of the most important elements in the procurement process. Each end-user unit should do the following:

- a. Make a list of goods needed to achieve a project objective or essential to its operation.
- b. Examine the local market for the availability of the required goods. As a general rule, goods that are readily available should be procured through competitive bidding.
- c. Prepare the estimated cost for the items to be procured by securing from the suppliers, manufacturers, previous contracts, and catalogues, among others, the items' unit prices.

B. Writing Technical Specifications

The term "technical specifications" refers to the physical description of the goods or services, as well as the LGU's requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. The technical specifications must include the testing parameters for goods, when such testing is required in the contract.

"Functional description" is the description of the functions for which the Goods are to be utilized. For example, a ballpen is expected to write 1.5 km of straight, continuous lines.

"Performance description" refers to the manner that the Goods are required to perform the functions expected of them. For example, a ballpen that writes at 1.5km should do so continuously and smoothly, without skipping, and with the color of the ink being consistent.

"Environmental interface" refers to the environment in which the required functions are performed at the desired level. For example, a ballpen should write continuously for 1.5km on pad paper or bond paper, but not necessarily on wood or on a white board.

"Design" refers to the technical design or drawing of the goods being procured. A design standard is particularly useful in cases where the goods procured are specially manufactured for the LGU. For example, in procuring ballpen for the LGU, there is a specific pattern of color and shade that should be followed.

The Project Management Office and/or the end-user unit must consider the project's objectives or the procurement at hand. The description of goods should be:

- a. Clear to avoid confusion and to facilitate the bid evaluation process.
- b. Generic and based on relevant characteristics and/or performance standards, and not tailored to a particular brand.

Use of brand names is prohibited (Section 18, R.A. 9184 and its IRR) and has no exceptions. Likewise, LGUs are **precluded from requiring specific country of origin** as part of the technical specification for the project. Rather, the specifications shall be based on the performance requirements and recognized industry standards and not on the basis of country of origin. **(Section 43.1.1, IRR of RA 9184)**

Reminder: Consistent with the obligation of the Philippines under international treaties or agreement, goods may be obtained from domestic or foreign sources and the procurement shall be open to all eligible suppliers, manufacturers, and distributors. As such, although LGUs are given leeway in formulating the specifications in the terms of reference, they cannot limit the origin of goods to their preferred countries of origin to the exclusion of other countries.

C. Determining the ABC

The ABC is duly approved by the HOPE based on the APP and may be equal to or less than the appropriation for the particular project/activity contained in the annual/supplemental budget approved by the Sanggunian. It will be the ceiling for bid prices that shall be submitted by prospective bidders, and bid prices exceeding the ABC shall be rejected. **(Section 31, R.A. 9184 and its IRR)**

The end-user should ensure that the ABC for a particular procurement of goods is the most advantageous price prevailing in the market.

In determining the ABC, the end-user unit, with the assistance of the TWG, must also consider the following:

- a. Cost or market price of the product or service itself;
- b. Freight, insurance, taxes, and other incidental expenses such as installation costs, training costs, if necessary, and cost of inspection;
- c. Cost of money, to account for government agencies usually buying on credit terms;
- d. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date;
- e. Quantities, considering that buying in bulk usually means lower unit prices;
- f. Supply of spare parts and/or maintenance services, if these are part of the contract package; and
- g. Cost for securing all types and forms of securities other than cash. *(e.g. premiums for surety bond, bank fees and other charges to be*

incurred by the bidder in obtaining bid, performance and warranty securities)

D. Identifying Procurement Milestones

The PPMP should also include schedule of procurement activities. The procurement milestones referred to are the following: Pre-procurement conference (if required or necessary), advertisement/posting of Invitation to Bid, Issuance and Availability of the Bidding Documents, Pre-bid Conference, Submission and Opening of Bids, Bid Evaluation, Post Qualification, Approval of Resolution and Issuance of Notice of Award, Contract Preparation and Signing and Issuance of Notice to Proceed.

Schedule and milestones of procurement activities shall be consistent with Annex "C" of the IRR of R.A. 9184.

E. Determining the method of procurement

The primary mode for government procurement under Section 10 of R.A. 9184 and its IRR is competitive bidding. However, in order to promote efficiency and economy, the LGU may resort to any alternative mode of procurement, subject to the approval of the HOPE, upon prior BAC recommendation, and whenever justified by the conditions provided under Sections 48 to 54 of R.A. 9184 and its IRR⁴, as discussed in Chapter 3 of this Manual.

II. Preparation of the Bidding Documents

Bidding documents are documents issued by the LGU to provide prospective bidders all the necessary information that they need to prepare their bids. **(Section 5 [f], IRR of RA 9184)**

These documents form part of the contract and clearly and adequately define:

- a. Objectives, scope and expected outputs and/or results of the proposed contract;
- b. Technical specifications of goods to be procured;
- c. Expected contract duration, the estimated quantity, delivery schedule and/or time frame;
- d. Obligations, duties and/or functions of the winning bidder; and
- e. Minimum eligibility requirements of bidders, such as track record to be determined by the HOPE. **(Section 23.1, IRR of RA 9184)**

The LGU must always follow the Standard Bidding Documents (SBDs) issued by the GPPB. In accordance with GPPB Resolution No. 06-2010, entitled "Adopting the 4th Edition of the Philippine Bidding Documents (PBDs) for Goods (As Harmonized by Development Partners)", all LGUs are mandated to use the approved PBDs, and its revised or updated version, if any, in the preparation of their bidding documents for all of their procurement activities.

A. Contents of the Philippine Bidding Documents for Goods

- a. Invitation to Bid (IB);
- b. Instructions to Bidders (ITB);

⁴ Section 48, RA 9184 and its IRR.

- c. Bid Data Sheet (BDS);
- d. General Conditions of Contract (GCC);
- e. Special Conditions of Contract (SCC);
- f. Schedule of Requirements;
- g. Technical Specifications of the goods and Scope of Work (SOW) of services to be procured;
- h. Bidding Forms; and
- i. Foreign Assisted Projects. This Section is intended to assist the Procuring Entity in providing the specific information for foreign-assisted projects of the Asian Development Bank (ADB) and the World Bank (WB). If the funding source is ADB, the Procuring Entity should use the ADB Bid Data Sheet and the ADB Special Conditions of Contract. If the Funding Source is World Bank, the Procuring Entity should use the WB Bid Data Sheet and the WB Special Conditions of the Contract.

B. Timeline for the Preparation of the Bidding Documents:

The Bidding Documents must be prepared in time for presentation at the pre-procurement conference, and must be finalized before the advertisement and/or posting of the IB.

C. Responsible Parties for the Development of the Bidding Documents:

The end-user, members of the BAC, BAC Secretariat, TWG, with the assistance of consultants, if any, and the representatives from the Project Management Office (PMO), if any, prepares the bidding documents following the PBDs prescribed by the GPPB.

D. Procedural Requirements for the Preparation of the PBDs

D.1 The bidding documents must contain the following information:

- a. ABC and source of funds;
- b. Date, time and place of the pre-bid conference (where applicable), submission, receipt, opening and examination of bids;
- c. Eligibility requirements;
- d. ITB, including criteria for the examination of all documentary requirements inside the submitted bid envelopes, detailed bid evaluation and post-qualification;
- e. Technical Specifications, for goods, and SOW, for services, which must not contain any reference to brand names;
- f. Bid Form, Bill of Quantities and Detailed Estimates;
- g. Delivery Time or Completion Schedule;
- h. Allowable Forms, Amount and Validity Period of Bid Security;

- i. Allowable Forms and amount of Performance Security and Warranty; and
- j. Form of Contract, GCC and SCC.

D.2 The LGU may require additional specifications or project requirements, where applicable and necessary for prospective bidders to prepare their respective bids. The bidding documents, as amended, shall subsequently form an integral part of the contract. Bidding documents may only be modified upon issuance of Supplemental/Bid Bulletins.

The following general directions should be observed when using the PBDs:

- a. All the documents listed in the Table of Contents are normally required. However, they should be adopted as necessary to the circumstances of the particular Project.
- b. Specific details, such as the name of the LGU and address for bid submission, should be provided in the ITB, BDS, and SCC. The final documents should contain neither blank spaces nor options.
- c. The Preface and the footnotes or notes in italics included in the IB, BDS, SCC, Schedule of Requirements, Specifications and Bill of Quantities, are not part of the text of the final document, although they contain instructions that the LGU should strictly follow. The Bidding Documents should contain no footnotes except Section VIII. Bidding Forms, since these provide important guidance to Bidders.
- d. The cover should be modified as required to identify the Bidding Documents as to the names of the Project, Contract, and LGU, in addition to the date of issue.
- e. If modifications must be made to bidding procedures, they can be presented in the BDS. Modifications for specific Project or Contract details should be provided in the SCC as amendments to the Conditions of Contract. For easy completion, whenever reference has to be made to specific clauses in the BDS or SCC these terms shall be printed in bold type face on Section I. Instructions to Bidders and Section III. General Conditions of Contract, respectively.
- f. ITB and GCC contain provisions that are to be used unchanged. Any supplement, amendment, or specification in detail, information or requirements in the ITB and GCC shall be provided in the BDS and SCC respectively.

III. Pre-procurement Conference

The pre-procurement conference is the forum where the BAC, the Secretariat, the end-user unit or officials, including consultant hired by the LGU, who prepared the Bidding Documents and the draft Invitation to Bid/Request for Expression of Interest for each procurement meet and discuss all aspects of a specific procurement activity, which includes, among others:

- a. Ascertainment that the procurement is in accordance with the PPMP and APP;
- b. Technical specifications (goods) and ABC;
- c. Applicability and appropriateness of recommended method of procurement and related milestones;
- d. Bidding documents; and
- e. Availability of the pertinent budget release for the project.

The activities to be undertaken during pre-procurement conference:

- a. Confirm the description and scope of the contract, ABC and contract duration;
- b. Ensure procurement is in accordance with the **project and APP**;
- c. Determine **readiness** of the procurement:
 - c.1. Availability of appropriations and programmed budget for contract;
 - c.2. Completeness of bidding documents and adherence to relevant general procurement guidelines;
 - c.3. Technical Specifications/Scope of Work/Project Requirements; and
 - c.4. Other related matters.
- d. Review, modify and agree on the **criteria for (a) examination of bid and eligibility requirements (b) detailed bid evaluation and (c) post-qualification** to ensure their fairness, reasonableness and that they are of the "pass/fail" type and are written in such manner;
- e. Clarify that the terms in the bidding documents are **minimum requirements** and a bidder may submit an offer, which provides for **better terms and conditions** to the Government but at **no extra cost**.
- f. Reiterate and emphasize the importance of **confidentiality** during the **bid evaluation process**, applicable sanctions and penalties and measures to ensure compliance with the foregoing.

A. Pre-procurement Conference as a Legal Requirement

Pre-procurement conference is required for goods involving an ABC amounting to more than Two Million Pesos (PhP 2,000,000.00) to determine the readiness of the LGU to conduct the procurement activity in terms of the legal, technical and financial requirements of the project.

While pre-procurement conference is not mandatory for small procurements (procurement of goods with an ABC of PhP 2,000,000.00 and below), the BAC, however, is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the technical specifications, warrant the holding of such conference before the LGU proceeds with the procurement.

If the BAC members fail to conduct the required Pre-procurement Conference for the procurement of goods with an ABC of more than Two

Million Pesos (PhP 2,000,000.00), they may be held administratively liable for neglect of duty under the Civil Service Rules (Presidential Decree 807) without prejudice to other civil and criminal liabilities under applicable laws.

B. Time for the Conduct of the Pre-procurement Conference

The pre-procurement conference must be conducted prior to the advertisement and/or posting of the IB. It is suggested that the pre-procurement conference be conducted at least seven (7) calendar days prior to the advertisement and/or posting of the bid notice.

In summary:

| ABC of the Contract | When Conducted? | |
|----------------------------|-----------------|---|
| Above PhP 2,000,000.00 | Mandatory | Conducted at least seven (7) calendar days prior to the date of advertisement and/or 1 st day of posting of the IB |
| PhP 2,000,000.00 and below | Discretionary | |

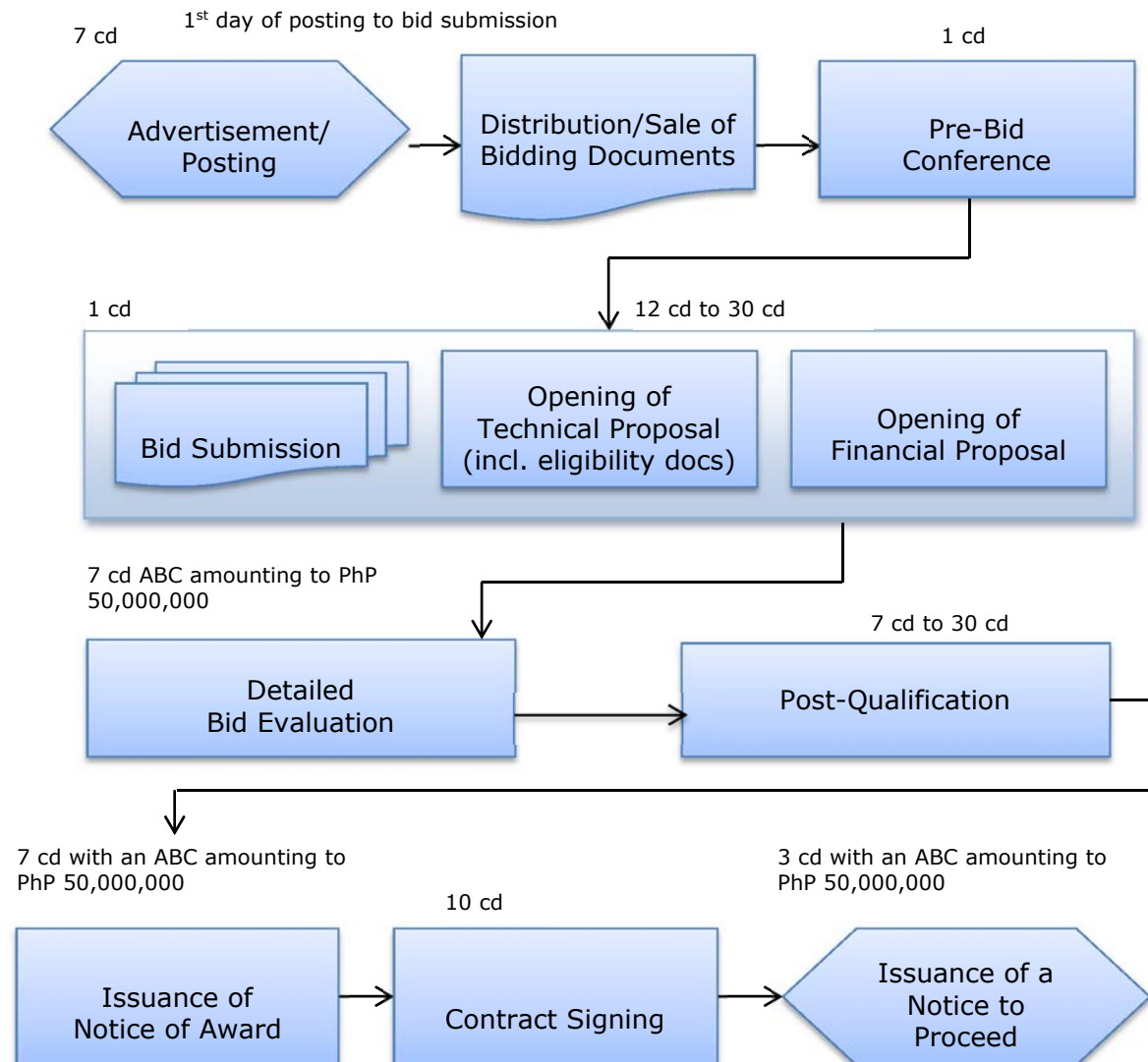
C. Participants in a Pre-procurement Conference

Participants in the pre-procurement conference are:

- a. BAC;
- b. BAC Secretariat;
- c. Representatives of end-user unit/s;
- d. Members of the TWG/s and consultants hired by the LGU who prepared the technical specifications for goods, scope of work for services, bidding documents and the draft advertisement, as the case may be, for the procurement at hand;
- e. Officials who reviewed the above-enumerated documents prior to final approval, if any; and other officials concerned, as may be required.

SECTION 4. Procedural Steps for Competitive Bidding

Bidding Process



I. Advertisement and/or Posting the Invitation to Bid (IB)

The IB serves as the notice to the public and all interested parties of the procurement opportunities of the LGU.

A. Contents of the IB

The IB must contain the following (**Section 21.1, IRR of RA 9184**):

- a. Name of the contract to be bid, and a brief description of the goods or services to be procured;
- b. General statement on the criteria to be used by the LGU for:
 1. Eligibility check;

2. Examination and evaluation of bids; and
 3. Post-qualification;
- c. Date, time and place of the deadline for:
1. Pre-bid conference, if any;
 2. Submission and receipt of bids;
 3. Opening of bids; and
- d. ABC;
- e. Source of funding;
- f. Period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the bidding documents;
- g. Contract duration or delivery schedule;
- h. Decision of the BAC whether it will limit the attendance and participation of bidders during the conduct of a pre-bid conference;
- i. Name, address, telephone number, facsimile number, e-mail and website addresses of the concerned LGU, as well as its designated contact person;
- j. Reservation Clause, which is normally located at the bottom of the notice; and
- k. Such other necessary information deemed relevant by the LGU.

B. Posting in Conspicuous Place

Though no longer required, the LGU may continue its old practice under the Local Government Code (**Section 363, RA 7160**) of posting the call for bids (now the IB) in at least three (3) publicly accessible and conspicuous places, such as, public markets, sari-sari stores, public transport terminals, waiting sheds, and churches, among others. This will help ensure the widest publicity of the procurement activity and encourage more participants in the bidding process.

C. Advertisement/Posting of the Invitation to Bid as a Legal Requirement

The advertisement and/or posting of the IB ensures transparency of the procurement process, widest possible dissemination to increase the number of prospective bidders, and intensify competition for the procurement activity or project. Intensified competition, in turn, will ensure that LGU will get the best possible quality and cost for the goods and services sought to be procured. The IB shall be advertised and/or posted as follows:

| Medium | ≤ 2 Million (Goods) | > 2 Million (Goods) | Frequency |
|--|---------------------|---------------------|---------------------|
| Newspaper of general nationwide circulation which should be in existence for at least two (2) years from the date of its publication | NO | YES | Once |
| PhilGEPS Website | YES | YES | Continuously for at |

| | | | |
|---|-----|-----|---|
| | | | least seven (7) calendar days |
| LGU's Website, if any | YES | YES | Continuously for at least seven (7) calendar days |
| Conspicuous Places within the premises of the LGU concerned | YES | YES | Continuously for at least seven (7) calendar days |
| Website prescribed by the foreign government or foreign funding institution, in case of foreign funded projects | YES | YES | Continuously for at least seven (7) calendar days |

D. Procedure for Advertising/Posting the Invitation to Bid

The following steps are followed in the advertising and/or posting of IBs:

D.1. For public bidding of contracts with an ABC of more than Two Million Pesos (PhP 2,000,000.00):

- a. The BAC Secretariat, prepares the draft IB for review/approval of the BAC.
- b. The BAC approves the contents of the IB during the pre-procurement conference.
- c. The BAC Secretariat posts the IB in any conspicuous place reserved for this purpose in the premises of the LGU for seven (7) calendar days; and this fact will be certified to by the head of the BAC Secretariat. It is recommended that the BAC Secretariat prepare a bulletin board where the IB shall be posted.
- d. The BAC Secretariat advertises the IB in a newspaper of general nationwide circulation.
- e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IB on the PhilGEPS website and LGU website, if any, for seven calendar (7) days starting on the date of advertisement.

D.2. For public bidding of contracts with an ABC of Two Million Pesos (PhP 2,000,000.00) and below:

- a. The BAC Secretariat prepares the draft IB for review/approval of the BAC.
- b. The BAC approves the contents of the IB.
- c. The BAC Secretariat shall post the IB on the LGU's website, PhilGEPS website and at any conspicuous places within the premises of the LGU concerned.

E. Effect in Case the LGU Failed to Advertise/Post the Invitation to Bid

The policy that all LGUs shall post all their procurement opportunities, results thereof, and other related information on the PhilGEPS bulletin board, as provided under Sections 8, 21 and 37 of the IRR of R.A. 9184 was reiterated under Executive Order (EO) No. 662⁵, Series of 2007, as amended by EO 662-A and Administrative Order No. 17.

Non-compliance with posting obligations shall render the accountable officials liable for dereliction of duty and conduct grossly prejudicial to the best interest of the service, without prejudice to other charges, whether administrative, civil, or criminal, that may be filed under appropriate laws and regulations. **(Section 7, IRR of EO 662, as amended by EO 662-A)**

II. Distribution and Sale of the Bidding Documents

Bidding documents are documents issued by the LGU to provide prospective bidders all the necessary information that they need to prepare their bids.

A. Rules on the Distribution and Sale of Bidding Documents

A.1. Timeline for the Distribution and Availability Period of the Bidding Documents

To provide prospective bidders ample time to examine the Bidding Documents and to prepare their respective bids, the concerned BAC, through its BAC Secretariat, shall make the Bidding Documents for the contract to be bid available from the time the IB is first posted and/or advertised until the deadline for the submission and receipt of bids. **(Section 17.3(a), IRR of RA 9184)**

Likewise, the Bidding Documents shall be posted from the time the IB is first posted and/or advertised until the deadline for the submission and receipt of bids at the following:

1. PhilGEPS website; and
2. Website of the LGU concerned.

Prospective bidders may get a copy of the Bidding Documents by downloading the same from the above-mentioned websites free of charge anytime from the time said documents are posted; provided that, bidders shall pay the fee for the Bidding Documents upon submission of their bids. **(Section 17.5, IRR of R.A. 9184)**

On the other hand, prospective bidders also have the option to secure a hard copy from the BAC Secretariat.

A.2. Rules for Sale of the Bidding Documents

Bidding Documents may be sold for a reasonable price as determined by the BAC and approved by the HOPE based on the cost of its preparation and development. **(Section 17.4, IRR of RA 9184)**

If bidding documents are sold, the BAC shall issue the Bidding Documents upon payment of the corresponding cost thereof to the

⁵ Enhancing Transparency Measures under Republic Act No. 9184 and Creating the Procurement Transparency Board. Promulgated on 20 September 2007.

collecting/disbursing officer of the LGU concerned. Prior to the issuance of the bidding documents, prospective bidders may be required to show the official receipt as proof of payment. **(Section 17.4, IRR of RA 9184)**

On the other hand, if the prospective bidder decides to secure a copy of the Bidding Documents by downloading the same from the websites of PhilGEPS and the LGU concerned, the BAC shall only accept the submitted bid envelopes, upon payment of the corresponding bid fee. The BAC of the LGU concerned may also request the prospective bidder to show first the official receipt as proof of payment before it accepts the bidder's submitted bid envelopes.

However, the BAC must issue copies of the bidding documents to the Observers free of charge.

A.2.1. Standard Rates for Sale of Bidding Documents

The cost of bidding documents shall correspond to the ABC range as indicated in the table below. This shall be the maximum amount of fee that procuring entities can set:

| Approved Budget for the Contract | Maximum Cost of Bidding Documents (in Philippine Peso) |
|--|--|
| 500,000 and below | 500.00 |
| More than 500,000 up to 1 Million | 1,000.00 |
| More than 1 Million up to 5 Million | 5,000.00 |
| More than 5 Million up to 10 Million | 10,000.00 |
| More than 10 Million up to 50 Million | 25,000.00 |
| More than 50 Million up to 500 Million | 50,000.00 |
| More than 500 Million | 75,000.00 |

(Guidelines on the Sale of Bidding Documents, GPPB Resolution No. 04-2012)

B. Confidentiality of Bidding Documents

The bidding documents are strictly confidential and shall not be divulged or released to any person prior to its official release, except those officially authorized to handle them. **(Section 19, IRR of RA 9184)** However, after its official release, it shall be made available to the public, unless the procurement at hand affects national security.

III. Call a Pre-Bid Conference and, if necessary, Issue Supplemental/Bid Bulletins

A. Conduct of a Pre-Bid Conference

The pre-bid conference is the initial forum where the LGU's representatives and the prospective bidders discuss the different aspects of the procurement at hand.

A.1 Pre-Bid Conference as a Legal Requirement

At least one pre-bid conference must be held for contracts with ABCs of at least One Million Pesos (PhP 1,000,000.00). For contracts with ABCs of less than One Million Pesos (PhP 1,000,000.00), pre-bid conferences may or may not be held at the discretion of the BAC. The BAC may also decide to hold a pre-bid conference upon the written request of a prospective bidder. **(Section 22.1, IRR of R.A. 9184)**

If the BAC members fail to conduct the required Pre-bid Conference for the procurement of goods with an ABC of One Million Pesos (PhP 1,000,000.00) and above, they may be held administratively liable for neglect of duty under the Civil Service Rules (**Presidential Decree 807**) without prejudice to other civil and criminal liabilities under applicable laws.

A.2 Timeline for the Conduct of the Pre-Bid Conference

A pre-bid conference must be conducted **at least twelve (12) calendar days before the deadline for the submission and receipt of bids.**

If the LGU, however, determines that, by reason of the method, nature and complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids. (**Section 22.2, IRR of RA 9184**)

The timeline for the conduct of pre-bid conference is mandatory and cannot be shortened.

It is prudent for the LGU to hold the Pre-bid Conference not earlier than seven (7) calendar days after newspaper advertisement or the last day of posting the IB. This time period will give prospective bidders reasonable time to examine, study and scrutinize the bidding documents so that they can meaningfully participate during the Pre-bid conference and effectively clarify their concerns with respect to the legal, technical and financial components of the contract to be bid.

In summary:

| Contract Amount | When Conducted? | |
|----------------------------|-----------------|---|
| PhP 1,000,000.00 or more | Mandatory | At least twelve (12) calendar days before the deadline for the submission and receipt of bids. |
| Less than PhP 1,000,000.00 | Discretionary | If the LGU, however, determines that, by reason of the method, nature and complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids. (Section 22.2, IRR of RA 9184) |

A.3 Subject for Discussion during Pre-Bid Conference

The ground rules that will govern the procurement are discussed during the conference, more specifically:

- a. Eligibility requirements of the contract to be bid;
- b. Technical and financial components of the contract to be bid;
- c. Requirements in the ITB; and
- d. Terms and conditions of the contract.

This is also the forum where prospective bidders are given the opportunity to request for clarifications and queries about the bidding documents, as well as, raised their issues and concerns.

REMEMBER: Any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin. **(Section 22.4, IRR of R.A. 9184)**

A.4 Participants in the Pre-Bid Conference

The following shall attend the Pre-Bid Conference:

- a. BAC;
- b. Members of the BAC Secretariat;
- c. TWG;
- d. End-user unit or PMO;
- e. Prospective bidders; and
- f. Observers.

Attendance of the bidders shall not be mandatory. However, at the option of the LGU, only those who have purchased the bidding documents shall be allowed to participate in the pre-bid conference and raise or submit written queries or clarifications. **(Section 22.3, IRR of R.A. 9184)**

It is also advisable that technical and knowledgeable officials attend the conference. The persons who actually formulated the scope of work, plans and technical specifications for the project should be present and among those representing the LGU. Prospective bidders, on the other hand, should be encouraged to send representatives who are legally and technically knowledgeable about the requirements of the procurement at hand. It is also important that the prospective bidders are given ample time to review the bidding documents prior to the pre-bid conference.

A.5 Procedure for the Conduct of the Pre-Bid Conference

The BAC must initiate discussions on contentious issues, most especially if the participating prospective bidders have no ready questions. It is probable that there are issues that may not be apparent in the bidding documents but are known to the representatives of the LGU. If these issues are brought out and openly discussed, prospective bidders will be able to prepare responsive bids, thus avoiding situations that may give rise to a failure of bidding due to lack of bids received or failure of bids to comply with all the bid requirements. This would also help prevent the birth of contentious issues during the bidding itself.

The manner by which the pre-bid conference is conducted depends on the discretion of the BAC. However, several events need to take place in the conference, namely:

- a. The presentation by the BAC of the eligibility requirements, as well as, the technical and financial components of the contract to be bid, the evaluation procedure, evaluation criteria, and possible causes of failure of the bidding.
- b. The BAC Chairperson shall also discuss the requirements in the ITB, the replies to the bidders' queries about the requirements, specifications and other conditions of the project, the bid evaluation of all bidders and post-qualification evaluation of the LCB. Emphasis should also be given to the warranty requirement of the project and the different offenses and penalties provided for in IRR of R.A. 9184.
- c. The minutes of the pre-bid conference shall be recorded by the BAC Secretariat and made available to all participants not later than three (3) calendar days after the pre-bid conference. **(Section 22.4, IRR of RA 9184)**

B. Issuance of a Supplemental Bid Bulletin

B.1. Time of Issuance

B.1.1. If there is a request for clarification during the pre-bid conference or thereafter

The BAC of the LGU shall respond to the request for clarification by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairman to be made available to all those who have properly secured the bidding documents at least seven (7) calendar days before the deadline for the submission and receipt of bids. **(Section 22.5.1, IRR of RA 9184)**

B.1.2. Upon the LGU's own initiative

The BAC of the LGU may issue Supplemental/Bid Bulletin for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the bidding documents must be identified as "AMENDMENT." **(Section 22.5.2, IRR of RA 9184)**

B.2. Posting Requirement

Any Supplemental/Bid Bulletin issued by the BAC shall be posted on the PhilGEPS and the LGU website, if available.

It will be the prospective bidders' responsibility to ask for, and secure, these bulletins. Bidders who have submitted bids before a supplemental/bid bulletin is issued have to be informed in writing and allowed to modify or withdraw their respective bids. **(Section 22.5.3, IRR of RA 9184)**

B.3. Parties Involved in the Issuance of the Supplemental/Bid Bulletin

The following are involved in the issuance of the supplemental/bid bulletin:

- a. BAC;

- b. BAC Secretariat;
- c. TWG members; and
- d. Prospective bidders.

B.4. Procedure for the Issuance of a Supplemental/Bid Bulletin

B.4.1. If upon the initiative of the BAC

- a. The BAC Secretariat and/or the TWG draft the Supplemental/Bid Bulletin for approval by the BAC.
- b. The BAC approves the Supplemental/Bid Bulletin and the BAC Chairperson signs it.
- c. The BAC Secretariat may send copies of the Supplemental/Bid Bulletin to all prospective bidders who have properly secured or purchased the bidding documents, not later than seven (7) calendar days before the deadline for the submission and receipt of bids
- d. The BAC Secretariat posts the Supplemental/Bid Bulletin on the website of PhilGEPS and the LGU concerned, if any.

B.4.2. If in response to a request for clarification submitted by a prospective bidder

- a. The prospective bidder submits to the BAC, through the BAC Secretariat, a written request for clarification. The request for clarification shall be submitted anytime provided it is undertaken at least ten (10) calendar days before the deadline for the submission and receipt of bids.
- b. The BAC directs the BAC Secretariat and/or TWG to study the request for clarification.
- c. The BAC Secretariat and/or the TWG draft the Supplemental/Bid Bulletin for approval by the BAC.
- d. The BAC approves the Supplemental/Bid Bulletin and the BAC Chairperson signs it.
- e. The BAC Secretariat may send copies of the Supplemental/Bid Bulletin to all prospective bidders who have properly secured or purchased the bidding documents, not later than seven (7) calendar days before the deadline for the submission and receipt of bids
- f. The BAC Secretariat posts the Supplemental/Bid Bulletin in the website of PhilGEPS and the LGU concerned, if any.

IV. Receipt, Opening and Preliminary Examination of Bids

A. Definition of a "Bid"

A Bid refers to a signed offer or proposal to undertake a contract submitted by a bidder in response to, and in consonance with, the requirements stated in the bidding documents.

Two (2) components:

- a. **Technical Proposal/Bid**, and
- b. **Financial Proposal/Bid**.

The Technical and Financial Bids must each be contained in separate sealed bid envelopes.

B. Minimum Contents of the First Bid Envelope [Eligibility Requirements and Technical Proposal (Section 25.2, IRR of RA 9184)]

- a. Eligibility Requirements;
- b. Bid Security as to form, amount and validity period;
- c. Technical specifications (Goods), which may include the following:
 - i. Production/delivery schedule,
 - ii. Manpower Requirements, and/or
 - iii. After sales services/parts, if applicable;
- d. Omnibus sworn statement of the prospective bidder or duly authorized representative in the GPPB prescribed form:
 - i. It is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
 - ii. 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;
 - iii. It is authorizing the LCE or his duly authorized representative/s to verify all the documents submitted;
 - iv. The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership or joint venture;
 - v. It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of RA 3019;
 - vi. It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs; and
 - vii. It complies with existing labor laws and standards.

- viii. It 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.

C. Minimum Contents of the Second Bid Envelope [Financial Proposal (Section 25.3, IRR of RA 9184)]

The Financial Proposal shall contain the following financial information/documents, at the least:

- a. Financial Bid Form, which includes bid prices and the bill of quantities and the applicable Price Schedules;
- b. If the Bidder claims preference as a Domestic Bidder or Domestic Entity, a certification from the Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC), or Cooperative Development Authority (CDA); and
- c. Any other financial document as required in the bidding documents. A good example of other financial documents that may be required by LGUs would be documents that would establish the financial liquidity of the supplier.

D. Eligibility Requirements

For purposes of determining the bidder's eligibility, only the following documents shall be required by the BAC, using the forms prescribed in the Bidding Documents: **(Section 23.1, IRR of RA 9184)**

a. Class "A" Documents

Legal Documents

- i. Registration certificate from SEC for corporations, partnerships and joint ventures, DTI for sole proprietorship, or CDA for cooperatives, or any proof of such registration as stated in the Bidding Documents.
- ii. Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located.
- iii. Tax clearance per Executive Order 398, Series of 2005, as finally reviewed and approved by the BIR.

Technical Documents

- i. Statement of the prospective bidder of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid; and

Statement identifying the bidder's single largest completed contract (SLCC) similar to the contract to be bid, except under conditions provided for in Section 23.5.1.3 of the IRR, within the relevant period as provided in the Bidding Documents in the case of goods.

The statement of on-going government and private contracts shall include, for each contract, the following:

- i. name of the contract;
- ii. date of the contract;
- iii. kinds of Goods;
- iv. amount of contract and value of outstanding contracts; and
- v. date of delivery.

On the other hand, the statement of SLCC shall be accompanied by an end user's acceptance or official receipt(s) issued for the contract.

Financial Documents

- i. Audited financial statements, showing, among others, the values of the bidder's total and current assets and liabilities shall be based on the data submitted to the BIR, through its Electronic Filing and Payment System (EFPS).
- ii. Net Financial Contracting Capacity (NFCC) computation.

b. Class "B" Document

Valid joint venture agreement (JVA) or a duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.

Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security.

Each partner of the joint venture shall submit the legal eligibility documents.

The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance.

E. Eligibility Criteria

E.1 Legal Eligibility Criteria

E.1.1 General Rule (Section 23.5.1.1, IRR of R.A. 9184)

The following shall be eligible to participate in the bidding process for the supply of goods:

- a. Duly licensed Filipino citizens/sole proprietorships;
- b. Partnerships, corporations or joint ventures duly organized under Philippine laws and at least sixty percent (60%) of the interest belongs to Filipinos;
- c. Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;

- d. Cooperatives duly registered with the Cooperatives Development Authority (CDA); and

Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.

E.1.2 Exceptions (Section 23.5.1.2, IRR of RA 9184)

Foreign bidders may be eligible to participate under any of the following circumstances:

- a. When provided for under any Treaty or International or Executive Agreement;
- b. When the foreign supplier is a citizen, corporation or association of a country, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines;
- c. When the goods sought to be procured are not available from local suppliers; or
- d. When there is a need to prevent situations that defeat competition or restrain trade.

In case of foreign bidders, the foregoing eligibility requirements under Class "A" Documents may be substituted by the appropriate equivalent documents, if any, issued by the country of the foreign bidder concerned. The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines (**Section 23.2, IRR of RA 9184**)

E.2 Technical Eligibility Criteria (Section 23.5.1.3, IRR of RA 9184)

E.2.1 General Rule

The prospective bidder must have completed, within the period specified in the IB, a single contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the National Statistics Office (NSO) consumer price indices, must be at least fifty percent (50%) of the ABC. However, in the case of Expendable Supplies, said single contract must be at least twenty five percent (25%) of the ABC.

E.2.2 Exceptions

If, at the outset and after conducting market research, the LGU can already determine that imposing the same will likely result to: (a) failure of bidding, or (b) monopoly that will defeat the purpose of public bidding, the LGU, in lieu of the above, may require the following:

- a. The prospective bidder should have completed at least two (2) similar contracts and the aggregate contract amounts should be equivalent to at least the percentage of the ABC as required above; and
- b. The largest of these similar contracts must be equivalent to at least half of the percentage of the ABC as required above.

For this purpose, the similar contracts mentioned under (a) and (b) above must have been completed within the period specified in the IB. The Procuring Entity may clarify in the Bidding Documents the definition or description of what it considers to be a similar project.

Illustration:

Expendable Goods:

ABC = PhP1,000,000.00

SLCC: 25% of the ABC or at least PhP250,000.00

EXCEPTION: At least 2 similar contracts aggregate amount at least equivalent to required percentage; and Largest of the similar contracts amounts to at least 50% of required percentage.

THUS, the following contracts are acceptable under the exception:

1st contract = P100,000.00

2nd contract = P200,000.00

Non-Expendable Goods:

ABC = PhP1,000,000.00

SLCC: 50% of the ABC or at least PhP500,000.00

EXCEPTION: At least 2 similar contracts aggregate amount at least equivalent to required percentage; and Largest of the similar contracts amounts to at least 50% of required percentage.

THUS, the following contracts are acceptable under the exception:

1st contract = P300,000.00

2nd contract = P400,000.00

E.3. Financial Eligibility Criteria:

If the prospective bidder submits an NFCC computation, it must be at least equal to the ABC. NFCC shall be calculated as follows:

NFCC = [(Current assets minus current liabilities) (K)] minus the value of all outstanding or uncompleted portions of the projects under ongoing contracts, including awarded contracts yet to be started coinciding with the contract to be bid.

Where:

K = 10 for a contract duration of one (1) year or less, 15 for a contract duration of more than one (1) year up to two (2) years, and 20 for a contract duration of more than two (2) years.

The values of the bidder's current assets and current liabilities shall be based on the data submitted to the BIR, through its Electronic Filing and Payment System (EFPS). (**Section 23.5.1.4, IRR of RA 9184**)

For Domestic Bidders, current assets and current liabilities shall be based on the Annual Income Tax Return and the accompanying Audited Financial Statements filed through the EFPS.

However, for purposes of computing Foreign Bidders' NFCC, the value of the current assets and current liabilities shall be based on their Audited Financial Statements in accordance with International Financial Reporting Standards (**GPPB Resolution No. 11-2014**)

F. Format and Signing of Bids

Bidder shall prepare an original and the number of copies of the Eligibility and Technical and Financial Proposals, stated in the bidding documents

Original and the number of copies of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the Contract.

All pages of the Bid, except for un-amended printed literature, shall be initialed by the person or persons signing the Bid. It may also be stressed that bidders should still put their initials on pages with signatures.

Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the bidder or his duly authorized representative.

G. Sealing and Marking of Bids

All envelopes shall:

- a. contain the name of the contract in capital letters;
- b. bear the bidder's name and address in capital letters;
- c. address to the LGU's BAC;
- d. bear the specific identification of this bidding process; and
- e. bear a warning "DO NOT OPEN BEFORE..." the date and time for the opening of Bids.

If all envelopes are not sealed and marked as required, the LGU will assume no responsibility for the misplacement or premature opening of the Bid.

H. Procedure for Receipt and Opening of Eligibility and Bid Envelopes for Eligibility Check and Bid Examination

- a. The BAC shall receive the two (2) bid envelopes at the time, date and place specified in the bidding documents and the IB. The First Bid Envelope shall contain the Technical Component of the Bid,

together with the eligibility requirements, while the Second Bid Envelope shall contain the Financial Component of the Bid. Upon receipt of these envelopes, the BAC Secretariat must stamp the face of the outer envelope as "RECEIVED," indicating thereon the date and time of receipt, and have the stamp countersigned by the bidder or his duly authorized representative.

- b. The BAC shall open the First Bid Envelope in public as specified in the bidding documents to determine each Bidder's compliance with the documents required to be submitted for eligibility and technical requirements, as prescribed by RA 9184 and its IRR.

For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion, as stated in the ITB. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said First Bid Envelope as "passed." (**Section 30.1, IRR of R.A. 9184**)

For a document, to be deemed "complete" and "sufficient", it must be complete on its face, that is, it contains all the information required, and must comply with the requirements set out in the bidding documents.

An example of an insufficient submission is a Bid Security in an amount below the requirement.

- c. The BAC shall inquire from ineligible bidders who are present during the Eligibility Check whether or not they intend to file a **request for reconsideration**; if they signify their intention to do so, the BAC shall keep the Eligibility envelopes containing the eligibility requirements and re-seal the same in the presence of all the participants. These shall be deposited in the Bid Box or any other secured place or location, together with the Technical and Financial envelopes, ensuring that the latter documents remain sealed and unopened. If an ineligible bidder does not signify its intention to file a motion for reconsideration during the Eligibility Check, considering that it may decide to exercise its right to file one during the mandated seven (7) calendar day period therefor, it would be advisable for the BAC to place its own seal over the Technical and Financial Bid envelopes of the said ineligible bidder – which BAC seal shall be over the existing seal of the ineligible bidder – to ensure that no tampering of these documents may be committed while in possession of the ineligible bidder before resubmission. In any case, with or without any indication on the part of the prospective bidder of its intention to file a request for reconsideration, it would be advisable for the BAC to hold on to the Eligibility envelopes containing the eligibility requirements, duly re-sealed and deposited, including the technical and financial bid envelopes, until the expiration of the period for filing a request for reconsideration, to ensure the integrity of these documents; unless if the said prospective bidder waives its right to file a request for reconsideration.
- d. The BAC shall return the Bid envelopes of a prospective bidder if it is declared "failed" or "disqualified" and upon submission of a written waiver of their right to file a request for reconsideration and/or protest.

- e. Immediately after determining compliance with the requirements in the First Bid Envelope, the BAC shall forthwith open the Second Bid Envelope of each remaining qualified bidder whose First Bid Envelope was rated "passed". The Second Bid Envelope of each complying bidder shall be opened within the same day.

In case one or more of the requirements in the Second Bid Envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid concerned as "failed". Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison. **(Section 30.2, IRR of R.A. 9184)**

- f. The BAC shall adopt a procedure for ensuring the integrity, security and confidentiality of all submitted bids. **(Section 29, IRR of R.A. 9184)**
- g. The BAC Secretariat shall record the proceedings using a tape or video recorder or any device that may facilitate the recording.
- h. The minutes of the bid opening should be prepared within three (3) calendar days after the bid opening date, so that copies thereof could immediately be sent to the BAC members, Observers, bidders and other interested parties. Copies of the minutes shall also be made available to the public upon written request and payment of a specified fee to recover cost of materials.

I. Modification and Withdrawal of Bids

I.1. Modification

A bidder may modify its bid, provided this is done before the deadline for the submission and receipt of bids. Where a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked or related to its original bid and marked as a "MODIFICATION" of the original, and stamped "RECEIVED" by the BAC. Bid modifications received after the deadline will not be considered and shall be returned to the bidder unopened. **(Section 26.1, IRR of R.A. 9184)**

I.2. Withdrawal

A bidder may, through a letter, withdraw its bid before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline must be subject to appropriate sanctions as prescribed in the IRR of RA 9184. A bidder may also express its intention not to participate in the bidding through a letter, which should reach and be stamped "RECEIVED" by the BAC before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. **(Section 26.2, IRR of R.A. 9184)**. It should be noted however that the act of habitually withdrawing from bidding or submitting letter of non-participation for at least three (3) times within a year is a ground for the imposition of administrative penalties provided in Section 69.1 of the IRR of RA 9184, except when done for a valid reason.

J. Registry of Suppliers

To facilitate determination of eligibility, the BAC of an LGU may use the contents of the PhilGEPS electronic registry of contractors. **(Section 23.4, IRR of RA 9184)**

The PhilGEPS registry system shall contain the foregoing Class “A” documents, which should be maintained current and updated by the bidder concerned at least once a year or more frequently as may be necessary. **(Section 23.4.1, IRR of RA 9184)**

A bidder who maintains a current and updated file of his Class “A” Documents may submit to the procuring entity, in lieu of the said documents, the Certificate of Registration and Membership issued by PhilGEPS. **(Section 23.4.2, IRR of RA 9184)**

K. Bid Security

The LGU shall indicate in the Bidding Documents the acceptable bid security that bidders may opt to use, which shall include the Bid Securing Declaration provided in Section 27.5 of the IRR of R.A. 9184 and at least one other form, the amount of which shall be equal to a percentage of the ABC in accordance with the following schedule:

K.1. Forms and Corresponding Amounts

| Form of Bid Security | Amount of Bid Security (Equal to Percentage of the ABC) |
|---|---|
| 1. Cash, cashier’s/manager’s check, issued by a Universal or Commercial Bank. | Two percent (2%) |
| 2. Bank draft/irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. | |
| 3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. | Five percent (5%) |
| 4. Any combination of the foregoing | Proportionate to share of form with respect to total amount of security |

A Bid Securing Declaration is an undertaking which states, among others, that the bidder shall enter into contract with the LGU and furnish the performance security within ten (10) calendar days, or less as indicated in the Bidding Documents, from receipt of the Notice of Award, and committing to pay the corresponding fine, and be suspended for a period of time from being qualified to participate in any government procurement activity in the event that it violates any of the conditions stated therein as provide in the guidelines issued by the GPPB. **(Section 27.5, IRR of RA 9184)**

The prospective bidder shall be given the option to post a BSD **OR** any other form of bid security indicated by the Procuring Entity in the Bidding Documents.

To illustrate, the procuring entity shall include BSD, as one of the choices; the other form of bid security may be Cashier’s Check (or Cash, Manager’s Check, Bank Draft/Guarantee, Irrevocable Letter of Credit, Surety Bond, or combination of the identified forms). The prospective bidder may opt to post a BSD **OR** Cashier’s Check as its bid security. Accordingly, the prospective bidder is required to post only one (1) form of bid security, in this example, it could either be a BSD **OR** Cashier’s Check.

The LGU may also require bidders to submit bid securities in the form of cashier's/manager's check, bank draft guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.

The bid security must be enclosed with every bid and must be operative on the date of bid opening, and payable to the LGU.

The Bidder's failure to enclose the required bid security in the prescribed form and amount shall be automatically disqualified by the LGU.

For instance, if the ABC is One Million Pesos (PhP 1,000,000.00) and the bidder intends to secure its bid sixty percent (60%) by cash and the remaining forty percent (40%) by surety bond, then the amount of each form of bid security should be as follows:

$$\begin{aligned}
 \text{Amount of Cash} &= (\text{ABC} \times 2\%) \times 60\% \\
 &= (1,000,000 \times .02) \times .6 \\
 &= 20,000 \times .6 \\
 &= \text{P}12,000 \\
 \text{Amount of Surety Bond} &= (\text{ABC} \times 5\%) \times 40\% \\
 &= (1,000,000 \times .5\%) \times .4 \\
 &= 50,000 \times .4 \\
 &= 20,000
 \end{aligned}$$

In biddings with lots or items, whereby a bidder submits a bid for more than one lot or item, the bid security shall be based upon the sum of the ABC for each of the lots or items for which bids are submitted.

K.2. Period of Validity of Bids and Bid Securities

Bids and bid securities shall be valid for a reasonable period as determined by the LCE concerned, which shall be indicated in the Bidding Documents, but in no case shall the period exceed one hundred twenty (120) calendar days from the date of the opening of bids. (**Section 28.1, IRR of RA 9184**)

Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, the procuring entity concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security. (**Section 28.2, IRR of RA 9184**)

The recommended period for bid validity is ninety (90) calendar days with the corresponding bid security valid for one hundred twenty (120) calendar days to provide reasonable time thirty (30) calendar days for the BAC to act if the security is to be called.

Bidders who refuse to grant the LGU's request for an extension of the period of validity of their bid and bid security will have the same returned to them. However, they are deemed to have waived their right to further participate in the bidding.

K.3. Return of Bid Securities to Bidders

General Rule

Bid Securities shall be returned only after the bidder with the LCRB has signed the contract and furnished the Performance Security, but in no case later than the expiration of the Bid Security validity period indicated in the ITB.

Exceptions

- a. Where a bidder failed to comply with any of the requirements to be submitted in the first bid envelope (Technical Proposal) and submitted a written waiver of its right to file a motion for reconsideration and/or protest; and
- b. Where a bidder was post-disqualified and submitted a written waiver of its right to file a motion for reconsideration and/or protest, as provided in the IRR of R.A. 9184.

K.4. Forfeiture of Bid Security

The bid security may be forfeited:

- a. if a Bidder:
 - i. does not accept the arithmetical correction of errors;
 - ii. fails to submit the requirements within the prescribed period or a finding against their veracity;
 - iii. submission of eligibility or bidding requirements containing 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 public bidding;
 - iv. allowing the use of one's name, or using the name of another for purposes of public bidding;
 - v. withdrawal of a bid during the bid validity period, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Bidder had been adjudged as having submitted the Lowest Calculated and Responsive Bid;
 - vi. refusal or failure to post the required performance security within the prescribed time;
 - vii. 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;
 - viii. any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor;
 - ix. failure of the potential joint venture partners to enter into the joint venture after the bid is declared successful;

- x. all other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons.

K.5. Penalties under Bid Securing Declaration

- a. Penalty of automatic blacklisting for two (2) years in all government procurement activities;
- b. Payment of fine equivalent to the amount subject to the following rules:

- i. In case of multiple bidders:

Two Percent (2%) of the Approved Budget for the Contract (ABC) or the Difference between the evaluated bid prices of the bidder with the Lowest Calculated/Highest Rated Bid and the bidder with the next Lowest Calculated/Highest Rated Bid, and so on, whichever is HIGHER;

As regards the bidder with the Highest Calculated/Lowest Rated Bid, the amount shall be Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the ABC, whichever is HIGHER.

- ii. In case of a single bidder:

Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the Approved Budget for the Contract, whichever is HIGHER.

- iii. Violations committed prior to opening of financial envelope:

A fix amount equivalent to two percent (2%) of the ABC.

- iv. The bidder shall pay the above-mentioned fine within fifteen (15) days from receipt of the written demand by the procuring entity as a result of the violation of the conditions in the Bid Securing Declaration.

- v. The imposition of the foregoing fine is without prejudice to other legal action the government may undertake against the erring bidder.

V. Detailed Bid Evaluation

A. Purpose

Determine the bidder with the Lowest Calculated Bid (LCB). **(Section 32.2, IRR of R.A. 9184)**

B. Timeline

The entire evaluation process shall be completed within seven (7) calendar days from the deadline for receipt of proposals. **(Section 32.4, IRR of R.A. 9184)**

C. Procedure

C.1. Establish the Correct Calculated Prices of the Bids

After the preliminary examination of bids, the BAC, or through the TWG, shall immediately conduct a detailed evaluation of all bids rated "passed," using a **non-discretionary pass/fail criteria**, as stated in the IB and the ITB, which shall include a consideration of the following: **(Section 32.2, IRR of R.A. 9184)**

1. ***Completeness of the bid***

Partial bids or bids not addressing or providing all of the required items in the bidding documents shall be considered non-responsive and automatically disqualified, unless the ITB specifically allows partial bids.

If a required item is provided in the financial proposal, but no price is indicated, the same shall be considered as non-responsive. Specifying a "0" (zero) for the said item, however, would mean it is being offered for free and such bid should be considered. **(Section 32.2.1(a), IRR of RA 9184)**

2. ***Arithmetical corrections***

Consider computational errors and omissions to enable proper comparison of all eligible bids. Minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed in the bidding documents, shall be made to enable proper comparison of all eligible bids. **(Section 32.2.1(b), IRR of RA 9184)**

3. ***All bids shall be evaluated on equal footing***

All bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison. **(Section 32.2.2, IRR of RA 9184)**

4. ***Bid discrepancies***

In case of discrepancies between:

- a. bid prices in figures and in **words**, the latter shall prevail;
- b. total prices and **unit prices**, the latter shall prevail; and
- c. unit cost in the detailed estimate and **unit cost in the bill of quantities**, the latter shall prevail. **(Sections 32.2.3, IRR of R.A. 9184)**

During the bid evaluation stage, the BAC, BAC Secretariat and the TWG are prohibited from initiating any kind of communication with the bidders nor shall they entertain clarifications from the bidders.

C.2. Ranking of Bids

Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall be ranked in the

ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications. The bid with the lowest price shall be identified as the LCB. Total calculated bid prices which exceed the ABC shall be disqualified. **(Section 32.4.4, IRR of RA 9184)**

C.3. Preparation of Abstract of Bids

After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding Bid Securities and the minutes or proceedings of the bidding. **(Section 32.3, IRR of RA 9184)**

The Observers who are present may also sign the Abstract of Bids if, in their independent observation, the bidding activity conducted by the BAC followed the correct procedure.

The contents of the Abstract of Bids:

- a. name of the contract and its location, if applicable;
- b. time, date and place of bid opening; and
- c. name of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.

D. Parties Involved in Bid Evaluation

The following must participate in the bid evaluation process:

- a. BAC;
- b. BAC Secretariat;
- c. TWG members; and
- d. Observers.

E. Ceiling for Bid Prices

The ABC shall be the upper limit or the ceiling for acceptable bid prices. If a bid price, as evaluated and calculated in accordance with the IRR, is higher than the ABC, the bidder submitting the same shall be automatically disqualified. There shall be no lower limit or floor on the amount of the award. **(Section 31, IRR of RA 9184)**

F. No Contact Rule:

General Rule: Members of the BAC, BAC Secretariat and TWG, as well as its staff and personnel are prohibited from making/accepting any communication with any bidder regarding the evaluation of their bids from bid submission until issuance of NOA.

Exception: BAC, through its BAC Secretariat, may request in writing bidders for clarification of its bid in writing. **(Section 32.1, IRR of RA 9184)**

What is the Rule on “Domestic Preference”?

The rule on domestic preference allows the procuring entity to give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality, in accordance with the provisions of Commonwealth Act No. 138. **(Section 43.1.1, IRR of RA 9184)**

The procuring entity shall give preference to materials and supplies produced, made and manufactured in the Philippines and to Domestic Entities subject to the following conditions:

- a. A Domestic Entity can only claim preference if it secures a certification that it has all the qualifications required under the IRR, from the DTI for sole proprietorships, SEC for partnerships and corporations, or CDA for cooperatives.
- b. A Domestic Bidder can only claim preference if it secures from the DTI a certification that the articles forming part of its bid are substantially composed of articles, materials, or supplies grown, produced, or manufactured in the Philippines.

How is it applied?

The preference shall be applied when (a) the lowest Foreign Bid is lower than the lowest bid offered by a Domestic Bidder, or (b) the lowest bid offered by a non-Philippine national is lower than the lowest bid offered by a Domestic Entity. Both bids must be responsive to the minimum requirements as specified in the Bidding Documents.

For evaluation purposes, the lowest Foreign Bid or the bid offered by a non-Philippine national shall be increased by fifteen percent (15%). In the event that the lowest bid offered by a Domestic Bidder/Domestic Entity does not exceed the lowest Foreign Bid/bid offered by a non-Philippine national as increased by 15%, the procuring entity shall award the contract to the Domestic Bidder/Entity at the amount of the lowest Foreign Bid or bid offered by a non-Philippine national.

The Domestic Entity/Bidder has two (2) CDs from receipt of the BAC’s written advice to accept the award of contract at the amount of the Foreign Bid or bid offered by a non-Philippine national. If the Domestic Entity/Bidder refuses, the procuring entity shall award to bidder offering the Foreign Bid or the non-Philippine national, as the case may be, subject to post-qualification and submission of all the documentary requirements under the IRR.

Sample computation:

| | Lowest Calculated Bid | Next Lowest Calculated Bid |
|--------------------------------|--|-----------------------------------|
| | Foreign Bid | Domestic Bid |
| <i>Bid</i> | 2,653,360.00 | 3,009,492.00 |
| <i>% Preference</i> | x 15% | |
| | 398,004.00 | |
| | + 2,653,360.00 | |
| <i>Bid as increased Result</i> | 3,051,364.00 | 3,009,492.00 |
| | Award to Domestic Bidder/Entity at 2,653,360.00 , or award to Foreign Bidder/non-Philippine national if Domestic Entity/Bidder refuses. | |

VI. Post-qualification

A. Nature and Purpose

Post-qualification is the process of **verifying, validating** and **ascertaining** all the statements made and documents submitted by the bidder with the Lowest Calculated Bid (LCB) or Single Calculated Bid (SCB), which includes ascertaining the said bidder's compliance with the eligibility, technical bid and financial bid requirements.

B. Procedure for Post-qualification

Within three (3) CDs from receipt by the bidder of the notice from the BAC that the bidder has the LCB/SCB, the bidder shall submit the following documentary requirements to the BAC:

- a. Latest income and business tax returns;
- b. Certificate of PhilGEPS Registration;
- c. Other appropriate licenses and permits required by law and stated in the Bidding documents. **(Section 34.2, IRR of RA 9184)**

The following steps are followed in the conduct of post-qualification:

- a. The BAC/TWG verifies, validates, and ascertains the genuineness, validity and accuracy of the legal, technical and financial documents submitted by the bidder with the LCB/SCB, using the non-discretionary criteria as stated in the IB and ITB. These criteria shall consider, but shall not be limited to, the verification and validation of the following:
 - i. Legal Requirements:

Verification, validation and ascertaining of the following:

 - a. Registration certificates coming from SEC/ DTI or CDA;
 - b. Mayor's permit from the principal place of business;
 - c. Tax clearance, income and business tax returns;
 - d. Certificate of PhilGEPS Registration or PhilGEPS Registration Number if the procuring entity is a Philippine foreign office or post, provided that participating bidders should register with the PhilGEPS prior to bid opening; and
 - e. Other appropriate licenses required by existing laws and indicated in the bidding documents, such as, but not limited to License to Operate (LTO) and Certificate of Product Registration issued by BFAD.
 - ii. Technical Requirements. Determination of the documents submitted by a supplier to prove compliance of the goods and services offered with the requirements of the contract and bidding documents. This involves verification and validation of the following:
 - a. Authenticity and sufficiency of the Bid Security as to type, amount, form and wording, and validity period.
 - b. Bidder's stated competence and experience as a whole, as well as its key personnel;

- c. Omnibus Sworn Statement, including the bidder's inclusion in the Consolidated Report of Blacklisted Suppliers, Contractors and Consultants, Bidder's Compliance to Labor Laws, Rules and Regulations and Relationship of the Bidder with the HOPE, members of the BAC, TWG and BAC Secretariat, Head of the End-user Unit Representatives or PMO, and consultants, if any.
 - d. Availability, commitment and performance of the equipment units to be owned or leased;
 - e. Performance of the bidder in its on-going government and private contracts:
 - substandard quality of work as per contract plans and specification
 - unsatisfactory performance of the bidder's obligation
 - negative slippage
- iii. Financial Requirements.
- Verification, validation and ascertaining of the following:
- a. Bid price proposal of the bidder;
 - b. Computation of the NFCC;
 - c. Bidder's net worth and liquid assets, as well as, the net working capital; and,
 - d. Value of all outstanding or unfinished works under on-going contracts, including contracts awarded but not yet started.
- b. The BAC/TWG conducts a site inspection of the bidder's place of business and/or plant/factory, where applicable.
 - c. The BAC/TWG tests samples for compliance with specifications and performance levels, where applicable.
 - d. The BAC/TWG inquires about the bidder's performance in relation with other contracts/transactions as indicated in its eligibility statement (statement of on-going, completed or awarded contracts).
 - e. If the TWG conducts the post-qualification, it prepares a Post-qualification Report to be submitted to the BAC. The Report shall contain, among others, the activities undertaken with regard to the post-qualification process, feedback from inquiries conducted, and the results of any tests conducted by the TWG or an accredited government testing center, where applicable.
 - f. The BAC reviews the Post-qualification Report submitted by the TWG.
 - g. The BAC determines whether the bidder with the LCB/SCB passes all the criteria for post-qualification.

- h. If the bidder with the LCB/SCB passes the post-qualification, the BAC declares it as the bidder with the Lowest Calculated and Responsive Bid (LCRB)/Single Calculated and Responsive Bid (SCRB).
- i. If the bidder with LCB is post-disqualified, the BAC shall then proceed to initiate and complete the post-qualification of the bidder with the second LCB. This procedure is repeated until the LCRB is determined.
- j. Should the SCB or all eligible bidders fail post-qualification, the BAC must declare a failure of bidding pursuant to Section 35 of the IRR of R.A. 9184.
- k. After the BAC has determined the LCRB/SCRB, the Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the LCRB and the corresponding Notice to the said bidder informing it of its successful post-qualification.

C. Timeline:

The post-qualification process must be conducted and completed **within seven (7) calendar days** from the determination of the LCB. However, in exceptional cases, the post-qualification period may be extended by the HOPE to a maximum of **thirty (30) calendar days**. (**Section 34.8, IRR of R.A. 9184**)

VII. Issuance of the Notice of Award

A. Rule on Award of the Contract

The contract shall be awarded to the bidder with the Lowest Calculated Responsive Bid (LCRB) or Single Calculated and Responsive Bid (SCRB) at its submitted bid price or its calculated bid price, whichever is lower. (**Section 34.4, IRR of R.A. 9184**)

The BAC shall issue a Resolution recommending to the HOPE to award the contract to the bidder with the LCRB at its submitted bid price or its calculated bid price, whichever is lower.

Prior to the expiration of the period of bid validity, the LGU should notify the successful bidder in writing that its bid has been accepted, through a NOA received personally or sent by registered mail or electronically.

B. Procedure

The following steps are followed in the awarding of a contract:

- a. The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand, and attaches the same to the BAC Resolution.
- b. The BAC Secretariat drafts the BAC Resolution recommending award.
- c. The BAC approves and signs the Resolution Recommending Award, and transmits the same to the HOPE. (**Section 37.1.1, IRR of R.A. 9184**).
- d. The HOPE acts on the recommendation for award within seven (7) calendar days from the date of determination and declaration by

the BAC of the LCRB/SCRB. The HOPE should approve or disapprove the BAC recommendation for award of the contract.

- e. In case of approval of the BAC recommendation, the HOPE, through the BAC, issues the NOA to the bidder with the LCRB/SCRB.
- f. Simultaneously, the BAC, through the BAC Secretariat, shall notify all losing bidders of its decision. **(Section 37.1.3, IRR of RA 9184).**
- g. In case of a disapproval of the recommendation of award, the HOPE shall state the reason(s) for disapproval and instruct the BAC on the subsequent steps to be adopted.
- h. BAC, through the BAC Secretariat, shall post the NOA, within three (3) calendar days from its issuance, at the following:
 - i. PhilGEPS website;
 - ii. LGU's website, if any, and
 - iii. Any conspicuous place in the premises of the LGU. **(Section 37.1.6, IRR of R.A. 9184).**
- i. The bidder with the LCRB/SCRB accepts the NOA.

If the deadline for each activity falls on a non-working day (*i.e.* Saturday and Sunday), legal holiday, or special non-working holiday, the deadline shall be the next working day **(Section 38.2, IRR of R.A. 9184).**

C. Single Calculated and Responsive Bid

A single calculated and responsive bid shall be considered for award if after the advertisement only one (1) submitted responsive bid.

Provided that the bid is responsive and complying to the requirement of the bidding documents, and has not exceeded the ABC.

D. Timeline

The HOPE should approve or disapprove the recommendation of award **within seven (7) calendar days from the date of determination and declaration by the BAC of the LCRB. (Section 37.1.2, IRR of RA 9184)**

The **NOA** shall be given to the bidder with the LCRB **immediately** after approval of the recommendation. Simultaneously, the BAC shall **notify** all losing bidders of its decision, and the award shall be posted in the website of the PhilGEPS, as well as the websites of the LGU and its electronic procurement service provider, if any. **(Section 37.1.3, IRR of RA 9184)**

E. Legal Effects if the Bidder Having the LCRB/SCRB Fails or Refuses to Accept Award of the Contract

E.1 Forfeiture of Bid Security and Blacklisting

If the bidder refuses or fails to accept the award without justifiable cause within the bid validity period, the BAC shall forfeit the bid security of the bidder. The BAC may also impose on the erring bidder the penalty 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. **(Sections 69.1 and 69.2, IRR of R.A. 9184)**

In case of imposing the administrative sanction to the erring bidder, the Uniform Guidelines for Blacklisting of Suppliers, Contractors and Consultants shall be duly considered.

E.2 Next Steps

The BAC shall then proceed to initiate and complete the post-qualification of the bidder with the second LCB. If found qualified and determined as the LCRB, said bidder shall then be recommended for award of the contract. This procedure is repeated until the LCRB is determined.

Should all eligible bidders fail post-qualification, the BAC must declare a failure of bidding pursuant to Section 35 of the IRR of R.A. 9184.

E.3 Criminal Action

If the refusal or failure to accept the NOA is without just cause or for the purpose of forcing the LGU to award the contract to another bidder, the LGU concerned may initiate a criminal action against the erring bidder as well as against its co-conspirators, including public officers, for violation of the provisions of R.A. 9184 and its IRR. If proven guilty, the bidder and its co-conspirators shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years. **(Section 65.3(d), IRR of R.A. 9184)**

F. Posting of Performance Security

A performance security is a guarantee that the winning bidder will faithfully perform its obligations under the contract prepared in accordance with the bidding documents. **(Section 39.1, IRR of RA 9184)** It must be posted in favor of the LGU, and will be forfeited in its favor in the event it is established that the winning bidder fails to perform any of its obligations under the contract.

F.1 Time for Posting the Performance Security

The winning bidder should furnish the LGU with the performance security within a maximum period of ten (10) calendar days from the receipt of the NOA from the LGU, and in all cases upon signing of the contract. **(Section 37.2.1, IRR of R.A. 9184)** The performance security forms part of the contract. **(Section 37.2.3, IRR of R.A. 9184)**

F.2 Forms and Corresponding Amounts

The Procuring Entity shall indicate in Bidding Documents at least two (2) acceptable forms of performance security taken from two (2) categories, below that bidders may use, the amount of which shall be to a percentage of the total contract price in accordance with the following schedule:⁶

| Form of Performance Security (Sec. 39.2, IRR of RA 9184) | Minimum Amount in Percentage of the Contract Price |
|---|--|
|---|--|

⁶ For FAPs, reference should be made to the appropriate standard bidding documents for the project in order to determine the applicable amount and form of the performance security.

| | |
|--|---|
| a. Cash, or cashier's/manager's check issued by a Universal or Commercial Bank | 5% |
| b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if it is issued by a foreign bank. | |
| c. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security or | 30% |
| d. Any combination of the foregoing. | Proportionate to share of form with respect to total amount of security |

The Procuring Entity may also require bidders to submit bid securities in the form of cashier's/manager's check, bank draft guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.

The LGU should not accept the performance security furnished by the winning bidder if it is deficient as to the minimum amount prescribed above, even if the deficiency is minimal and insignificant. For example, in the procurement of goods with a contract price of Five Hundred Thousand Pesos (P 500,000.00), a manager's check of Twenty Thousand Nine Hundred Ninety Pesos (P 24,990.00) as a form of performance security furnished by the winning bidder should be rejected as it does not satisfy the minimum amount of five percent (5%) of the contract price, even if it is just deficient by Ten Pesos (P10.00).

F.3 Procedure for Posting of Performance Security

The following steps are followed in the posting of the performance security:

- a. The bidder with the LCRB/SCRB posts a performance security. In so doing, it must comply with the following conditions:
 - i. The performance security must be executed in the form prescribed by the LGU in the ITB; and
 - ii. The performance security must at least be co-terminus with the period of completion of the contract.
- b. The LGU accepts the performance security and indicates such posting and acceptance by attaching the appropriate form to the contract.

F.4. Release of Performance Security

Subject to the conditions of the contract, the LGU may release the performance security to the winning bidder after the issuance of the Certificate of Final Acceptance, provided that there are no claims filed against the contract awardee or the surety company. However, it must ensure that the performance security is replaced by a warranty security in accordance with the provisions under Section 62.

F.5 Changes in the Amount of Performance Security

There shall be a corresponding change in the amount of the Performance Security posted by the winning bidder in the following instances:

- a. Amendment to Order - The winning bidder shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order. **(Section 1.4, Annex "D", IRR of RA 9184)** The percentages in the schedule above must be applied to increases in the original value of the contract. The winning bidder must also cause the extension of the validity of the performance security to cover approved contract time extensions.
- b. Partial delivery/performance - If the contract value is reduced because part of the goods or services under the contract had already been delivered or completed, and accepted by the government, the local government shall allow a proportional reduction in the original performance security. However, this proportional reduction in the value of the performance security is allowed only when the contract allows for partial deliveries or performance. Moreover, the reductions must be more than ten percent (10%), and the aggregate of such reductions must not be more than fifty percent (50%) of the original performance security. **(Section 39.7, IRR of RA 9184)**

VIII. Contract Signing and Approval

The winning bidder must sign the contract within ten (10) calendar days from receipt of the NOA. **(Section 37.2.1, IRR of RA 9184)**

The LGU shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.

A. Documents that Form Part of the Contract

The following documents shall form part of the contract.

- a. Contract Agreement;
- b. Bidding Documents, including Instructions to Bidders, Bid Data Sheet and Conditions of the Contract;
- c. Copy of the Invitation to Bid;
- d. Addenda and/or Supplemental/Bid Bulletins, if any;
- e. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;

- f. Performance Security;
- g. Credit line in accordance with the provisions of this IRR, if applicable;
- h. Notice of Award of Contract and the winning bidder's "Conforme" thereto; and
- i. Other contract documents that may be required by existing laws and/or the LGU concerned in the Bidding Documents

B. Procedure for Contract Signing and Approval

- a. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
- b. The BAC Secretariat transmits the contract and its attachments to the Budget Office (for issuance of OS) and the Chief Accountant (for issuance of CAF).
- c. The BAC Secretariat transmits the contract documents to the HOPE or appropriate signing authority for signature, together with the following documents:
 - i. Duly approved delivery schedule and cost estimates or the PPMP;
 - ii. Abstract of Bids, as submitted and calculated;
 - iii. Resolution of the BAC recommending award;
 - iv. Approval of award by the HOPE; and
 - v. Other pertinent documents that may be required by existing laws and/or the LGU.
- d. The HOPE or his/her duly authorized representative signs the contract from receipt by the winning bidder of the NOA, provided that the winning bidder has complied with all the documentary requirements, if any.

(Steps a-d shall be accomplished within ten (10) calendar days from receipt of the NOA)

- e. The HOPE or his/her duly authorized representative issues the NTP together with a copy or copies of the approved contract to the successful bidder within three (3) calendar days from the date of the approval of the contract.

Authorization from the Sanggunian is an indispensable requirement before the Local Chief Executive may enter into and sign all contracts and obligations in behalf of the Sanggunian. Such authorization may either be given through the Appropriation Ordinance or through a separate approval if the Appropriation Ordinance describes the project in generic terms (**NPM No. 017-2014 dated 5 May 2014, citing *Quisumbing v. Garcia*, G.R. No. 175527, 8 December 2008**)

IX. Issuance of Notice to Proceed

The LCE or his/her duly authorized representative issues the Notice to Proceed (NTP) together with a copy or copies of the approved contract to the successful

bidder within three (3) calendar days from the date of the approval of the contract. The LGU, through the BAC Secretariat, shall post a copy of the Notice to Proceed and the approved contract within fifteen (15) calendar days from its issuance in the PhilGEPS or the website of the LGU, if any. **(Section 37.4.2, IRR of RA 9184)**

A. Effectivity of the Contract

The contract effectivity date shall be provided in the Notice to Proceed by the LGU, which date shall not be later than seven (7) calendar days from its issuance. **(Section 37.4.1, IRR of RA 9184)**

B. Effect of Failure to Enter into Contract and Post Performance Security

If the bidder with the LCRB or SCRB fails, refuses or is unable to submit the documents required under Section 37.1 of the IRR or to make good its bid by entering into a contract with the LGU or post the required Performance Security within the period stipulated in the IRR of R.A. 9184 or in the Bidding Documents, the bid security shall be forfeited and the appropriate sanctions provided in this IRR and existing laws shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder. **(Section 40.1, IRR of RA 9184)**

In the case of the failure, refusal or inability of the bidder with the LCRB to submit the documents required under Section 37.1 of the IRR of R.A. 9184 or to enter into contract and post the required Performance Security, the BAC shall disqualify said bidder and shall initiate and complete the post-qualification process on the bidder with the second Lowest Calculated Bid. This procedure shall be repeated until the Lowest Calculated Responsive Bid is determined for award. However, if no bidder passes post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into a negotiated procurement. **(Section 40.2, IRR of RA 9184)**

In the case of failure, refusal or inability of the bidder with the SCRB to submit the documents required under Section 37.1 of the IRR of R.A. 9184 or to enter into contract and post the required Performance Security, the BAC shall disqualify the said bidder, and shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Sections 21 and 25 of the IRR of RA 9184. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into negotiated procurement. **(Section 40.3, IRR of RA 9184)**

SECTION 5. Reservation Clause and Failure of Bidding

I. Reservation Clause

The Reservation Clause declares that the HOPE reserves the right to reject any and all bids, to declare a failure of bidding, or not to award the contract. **(Section 41, IRR of R.A.)**

HOPE may exercise the following:

1. Reject any and all bids

If there is *prima facie* evidence of existence of collusion

- a. between appropriate public officers or employees of the LGU, or
- b. between the BAC and any of the bidders, or
- c. between or among the bidders themselves, or
- d. between a bidder and a third party.

2. Declare a failure of bidding

If the *BAC is found to have failed*⁷ in following the prescribed bidding procedures; or

3. Not award the contract

For any justifiable and reasonable ground where the award of the contract **will not redound to the benefit of the government** as follows:

- a. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the HOPE;
- b. If the project is no longer necessary as determined by the HOPE; or
- c. If the source of funds for the project has been withheld or reduced through no fault of the LGU.

In the case of *Mata v. San Diego, G.R. No. L-30447 (21 March 1975)*, the Supreme Court of the Philippines declared that a bidder is bound by the reservation clause, and the said clause vests in the authority concerned the discretion to ascertain who among the bidders is the lowest responsive bidder or the lowest and best bidder or most advantageous to the best interest of the Government. As such, a bidder has no right or cause of action to compel the BAC or agency to award the contract to it.

⁷ What are the instances wherein the BAC fails to follow the prescribed procedures?

The following are some instances when a BAC fails to follow procedures:

1. Prescribing an insufficient number of days in the posting of the IB;
2. Exceeding the required periods for eligibility screening, bid evaluation, post-qualification for each highest rated bidder or for awarding the contract without justifiable cause;
3. Conducting the pre-bid conference or issuing the bidding documents in less than the required number of days before deadline for the submission and opening of bids;
4. Requiring the bidder to submit additional documents which is tantamount to improving his bidding documents; and
5. Allowing a bidder to become eligible or pass the post-qualification with incomplete documents.

The Court further stated that this requires inquiry, investigation, comparison, deliberation and decision – a quasi-judicial function which, when honestly exercised, may not be reviewed by the courts. It should be noted, however, that Section 41 of R.A. 9184, has placed some limiting qualifiers on the possible contents of the Reservation Clause.

Practical Tip

The Reservation Clause must be exercised with Caution by the HOPE

The LGU should be prudent in the use of the reservation clause and should be strictly limited to the three (3) grounds discussed above, If the HOPE abuses his power to reject any and all bids, as provided by therein, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of the IRR of R.A. 9184, or if it is proven that he exerted undue influence or undue pressure on any member of the BAC or any officer or employee of the LGU to take such action, and the same favors or tends to favor a particular bidder, he shall be meted with the penalties provided in Section 65 of the IRR of R.A. 9184. **(Section 65.1.5, IRR of R.A. 9184)**

II. Failure of Bidding

A. Grounds; The BAC shall declare a failure of bidding in any of the following circumstances:

- a. No bids are received
- b. All prospective bidders declared ineligible
- c. All bids fail to comply with bid requirements, fail post-qualification, or no successful negotiation in case of consulting services
- d. LCRB unjustifiably refuses to accept award and award not made to next bidders. **(Section 35.1, IRR of R.A. 9184)**

B. Next Steps

In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates. **(Section 35.2, IRR of R.A. 9184)**

Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the IRR of RA 9184. **(Section 35.3, IRR of R.A. 9184)**

All bidders who have initially responded to the Invitation to Bid/Request for Expression of Interest and have been declared eligible or short listed in the previous biddings shall be allowed to submit new bids. The BAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding(s). **(Section 35.4, IRR of R.A. 9184)**

Should there occur a second failure of bidding, the LGU may resort to Negotiated Procurement, as provided for in Section 53.1 of the IRR of RA 9184.

SECTION 6: The Procurement Service of the Department of Budget and Management (DBM-PS) and the Philippine Government Electronic Procurement System (PhilGEPS)

I. DBM-PS

LGUs are mandated to purchase common-use supplies from the DBM-PS. To improve its services and better address the nationwide demand for common-use supplies of all government agencies, the DBM-PS has been expanding its operations with the establishment of regional and provincial depots. This will enhance the administrative efficiency of DBM-PS to better serve the procurement needs of LGUs most especially those in far-flung regions. In turn, the LGUs are encouraged to regularly submit its APP to DBM-PS for the latter to have a better estimate of the volume of demand for the different common-use supplies for the ensuing year.

The LGU shall obtain from the DBM-PS its latest Price List of Common-Use Supplies. It then prepares the Agency Procurement Request (APR) where it will indicate the description, quantity and price of the goods it will procure. The APR is submitted to the HOPE for approval, and to the LGU Treasurer for certification of availability of funds. The corresponding disbursement voucher and check payable to DBM-PS is prepared. The approved APR and the check is then forwarded to DBM-PS for processing. The LGU is informed of the availability of the requested supplies and picks up the same where it is subsequently inspected and accepted by the Inspection and Acceptance Committee of the LGU.

The DBM-PS website (www.procurementservice.gov.ph) contains an electronic catalogue of common-use supplies that can be bought from the DBM-PS. This catalogue includes the descriptions of the items, current prices, stock positions, and other relevant information. Although this information is available online, purchasing is currently still done manually.

II. PhilGEPS

To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be a single portal that shall serve as the primary source of information on government procurement. The PhilGEPS shall serve as the primary and definitive source of information on government procurement. Therefore, all procurement opportunities, notices of awards of contract, and other related information must be posted on the bulletin board of the PhilGEPS website.

The DBM-PS is mandated under the GPRA to administer the PhilGEPS. All government units, including LGUs, are required to use the PhilGEPS in all its procurement of common-use supplies.

The existing PhilGEPS has two features that are of special relevance to the procurement of goods, namely:

- a. Notification feature which includes the posting of IBs and other notices, as well as the matching of procurement opportunities with the appropriate supplier; and
- b. Registry of suppliers.

Section 7: Two-Stage Competitive Bidding

I. Concept of Two-Stage Competitive Bidding

The Two-Stage Competitive Bidding is one where the bidding process is divided in two (2) stages. The first stage involves the issuance by the LGU of bidding documents with technical specifications that are not yet well defined and merely in the form of performance criteria, and the submission by the bidders of their respective Letters of Intent, eligibility requirements, if needed, and initial Technical Proposals without price. This allows the LGU to receive inputs from the eligible bidders whose Technical Proposals meet the minimum performance standards (a meeting/discussion may be held with these bidders), for purposes of drawing up the final revised technical specifications/requirements of the contract. The second stage involves the release of the well-defined technical specifications by the LGU, followed by the conduct of the regular procedure for public bidding with all the bidders identified during the first stage, who shall then be required to submit their respective revised Technical Proposals including their Financial Proposals. **(Section 30.3, IRR of RA 9184)**

II. When Applicable

The Two-Stage Competitive Bidding Procedure may be employed for the procurement of goods when:

- a. Due to the nature of the project requirements (*e.g.* complex information and communications technology), the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or it may be undesirable or impractical to prepare complete technical specifications in advance.

LGUs may consider it undesirable or impractical to compare complete technical specifications in advance under any of the following circumstances:

- i. In the case of turnkey contracts;
 - ii. Contracts for large complex facilities;
 - iii. Complex information and communications technology; or
 - iv. Works of a special nature.
- b. The problem of technically unequal bids is likely to occur.

The purpose of the bidding procedure is to come up with well-defined, standardized technical specifications, with inputs from all stakeholders, including the bidders themselves.

III. Timeline

The timeline for the conduct of a Two-Stage Competitive Bidding will depend on several variables:

- a. The Project Timelines as defined by the end-user unit;
- b. The technical complexity of the Project; and
- c. The time required for drawing up the final technical specifications.

These variables, however, affect only the first stage of the bidding, as well as the drawing up of the final technical specifications. Thus, while the timelines for the first stage may not be definite, the second stage shall follow the timelines prescribed for the regular competitive bidding procedure. In setting the timelines, the LGU should ensure that the time periods involved are reasonable and that there is no undue delay of the entire procurement procedure and project implementation.

IV. Procedure for the Two-Stage Competitive Bidding Process

A. General Procedure

- a. In the first stage, bidders are first invited to submit technical offers (plus other bid requirements) without prices, on the basis of a conceptual design or performance specifications which lay down the minimum operating and performance requirements.
- b. Each of the unpriced technical bids shall then be discussed between those bidders whose technical proposals meet the minimum performance standards and the LGU and its consultants, if any, for the purpose of providing for technical and commercial clarifications and adjustments, and in order to agree on an acceptable technical standard for all bids.
- c. At the second stage, the bidding documents will then be amended, but in revising the said bidding documents, the LGU would have to respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights. After the discussions, the bidders shall be given an opportunity to revise or adjust their proposals to conform to the standards agreed upon. The bidders shall also be invited to submit price proposals and these shall be evaluated.

B. Specific Procedure

- a. The TWG, with the assistance of the GSO or end-user unit, prepares the bidding documents in accordance with the usual procedures. However, the technical specifications shall only be in the form of performance criteria, *i.e.* the technical specifications shall contain functional descriptions of the goods, or expected output for services, without specifying the details thereof.
- b. If necessary, the BAC calls a Pre-Procurement Conference, following the procedures set forth in Step 1 of competitive Bidding.
- c. The BAC issues the Bidding Documents which contain, in addition to the items prescribed for competitive bidding, a request for the prospective bidders to submit the following:
 - i. Eligibility requirements, if needed; and
 - ii. Initial Technical Proposals only (no price tenders).

Practical Tip

On drawing up of the final technical specifications under the Two-Stage Competitive Bidding Procedure

In drawing up the final technical specifications, the TWG and BAC should ensure that the end-user unit is properly consulted, and has agreed to the said specifications.

- d. The BAC, with the assistance of the TWG, conducts the Eligibility Check, as conducted in a Single-Stage Competitive Bidding procedure, and proceeds with the determination of the eligible and ineligible bidders.
- e. The TWG evaluates the technical merits of the proposals received from eligible bidders vis-à-vis the required performance standards, and determines the proposals that meet the minimum standards.
- f. The TWG and BAC meet/discuss with the eligible bidders whose Technical Proposals meet the minimum required standards stipulated in the bidding documents. The purpose of this meeting is to draw up the final revised technical specifications/requirements of the contract.
- g. Once the final revised technical specifications are completed and duly approved by the BAC, copies of the same shall be provided to all eligible bidders that met the minimum technical standards. The latter are then required to submit their revised Technical Proposals, including their Financial Proposals in two (2) separate sealed envelopes, at a specified deadline, after which time no more bids shall be received.
- h. The BAC proceeds with the bid evaluation, post-qualification, award of contract and contract signing in accordance with the procedure and timelines prescribed for competitive bidding.

SECTION 8: Contract Implementation

Contract implementation covers the following milestones:

- a. Supplier’s performance of its contractual obligations;
- b. LGU’s performance of its contractual obligations, as specified in the contract;
- c. Final acceptance or project sign-off;
- d. All other related activities; and
- e. Payment by the LGU.

The end-user unit should determine the period of contract implementation during the procurement planning stage, and include it in the PPMP. In determining the contract implementation period, it must ensure that the supplier is given ample time to undertake any preparatory activity/ies necessary for it to comply with the conditions of the contract.

I. Warranty

A. Definition

A Warranty is required in the procurement of goods to ensure that the supplier, manufacturer or distributor, as the case may be, will correct any manufacturing defect.

| | Warranty Period | Forms of Warranty | Amount of Warranty Security |
|----------------|---------------------------|------------------------|-----------------------------------|
| Expendable | At least three (3) months | Retention Money or | At least Ten Percent (10%) of the |
| Non-expendable | At least one (1) year | Special Bank Guarantee | Contract Price |

B. Defective Goods

Goods are considered as defective when they are “unfit for the use for which it is intended,” or “its fitness for such use is diminished to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it...” **(Article 1561, New Civil Code)**. A defect can either be:

1. A patent defect, which is one that is apparent to the buyer on normal observation. It is an apparent or obvious defect. For example, a ballpen that does not write is patently defective.
2. A latent defect, which is one that is not apparent to the buyer by reasonable observation. A latent defect is “hidden” or one that is not immediately determinable. For example, a ballpen that writes .75 kilometers instead of the expected 1.5 kilometers, has a latent defect.

Both latent and patent defects are covered by the warranty expressly required in R.A. 9184 and its IRR. This means that the Procuring Entity may proceed against the warranty whenever any of these defects are determined to be present in the goods procured, and the same are determined within the period covered

by the warranty. However, wear and tear due to normal usage of the goods is excluded from the coverage of the warranty.

C. Release of Warranty

The warranty shall only be released after the lapse of the warranty period, provided that the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met. **(Section 62.1, IRR of R.A. 9184)**

Partial release or reduction of the warranty may be allowed in the case of partial deliveries. In this case, the warranty periods will vary among the various lots. The warranty for goods delivered ahead will lapse earlier than the succeeding deliveries. The retention money or a portion of the special bank guarantee covering the warranty for goods received or delivered ahead may thus be released. The effect is that there will be partial releases of the retention money or special bank guarantee to coincide with the lapse of the warranty period for each delivered lot.

However, the warranty must be in the form of retention fee equivalent to ten percent (10%) of every progress payment. For example, in the case of a procurement transaction allowing partial deliveries and progress payment for each delivery, the amount of the warranty for the first partial delivery may be released after the lapse of the warranty period for such first delivery. The remaining goods that are still under warranty will be covered by a warranty fee equivalent to ten percent (10%) of each progress payment.

II. Amendment to Order

A. Nature of Amendment to Order

An Amendment to Order refers to any necessary adjustment within the general scope of the contract in any one or more of the following aspects in order to fully meet the requirements of the project:

- a. Drawings, design or specifications of the goods, provided that:
 - i. The goods to be furnished are to be specifically manufactured for the government in accordance therewith;
 - ii. The change is an improvement of the goods and advantageous to the government;
 - iii. It is done at no extra cost; and
 - iv. It is not prejudicial to the losing Bidders in the sense that such change/s could not have been foreseen during the conduct of the bidding and would have significantly affected the other bidders' bids;
- b. Method of shipment or packing;
- c. Place of delivery;
- d. Place of performance of the services;
- e. Additional items needed and necessary for the protection of the goods procured, which were not included in the original contract; or

- f. Any other change affecting the specifications or scope of work of the goods and/or services to be procured.

Such amendment may or may not result to an increase or a decrease of the contract price, and/or an extension or reduction of the delivery period. However, the amendment should not have the result of changing the subject matter of the contract or the specifications of the goods or services, in any material aspect and to such an extent that, if introduced during the bidding stage, may have had a significant effect on other bidders' bids, because this situation would actually require another bidding activity, except if the original procurement was done through an alternative method that did not involve a bidding.

B. Instances When Amendment to Order May be Issued

Amendments to Order may be issued by the LGU at any time during contract implementation, provided that such adjustment is required to fully meet the requirements of the project. Any of the following circumstances may serve as basis for such amendment/s:

- a. Emergency cases, fortuitous events or unforeseen contingencies arising during project/contract implementation, and such contingencies have an impact on the procurement at hand, such as:
 - i. Changes in the conditions affecting the project, *e.g.*, a change in the place of delivery;
 - ii. Time is of the essence in the implementation of the project, and any changes require immediate implementation; and
 - iii. Additional requirements have been identified as necessary for the protection of the goods procured, such as changes in the packaging of the goods, or additional items have become necessary to ensure that the goods are sufficiently protected from the elements;
- b. When the contract does not reflect the real intention of the parties due to mistake or accident, and the amendment is necessary to reflect the parties' intention; and
- c. Other analogous circumstances that could affect the conditions of the procurement at hand.

C. Adjustments in Contract Price and/or Delivery Schedules in Amendment to Order

If an amendment to order increases or decreases the cost of, or the time required for executing any part of the work under the original contract, an equitable adjustment in contract price and/or delivery schedule should be mutually agreed upon between the parties concerned, and the contract should be modified in writing.

It is required, however, that any increase in contract price must not exceed ten percent (10%) of the original contract price. Otherwise, the procurement should be subject to another bidding, unless the original procurement was done using any of the alternative methods that did not involve bidding.

Moreover, in the adjustment of the price, the supplier and the LGU must ensure that the principle of “no loss, no gain” is applied, such that neither party gains or loses anything from the resulting price adjustment.

D. Rules that Govern Price Adjustments due to Amendment to Order

If the amendment to order consists of additional items, the price adjustment shall be based on the unit prices in the original contract for items of goods similar to those in the original contract. If the contract does not contain any rate applicable to the additional items, then suitable prices shall be mutually agreed upon between the parties, based on prevailing market prices.

Any request for payment by the supplier for additional items must be accompanied by a statement with the approved supporting forms, giving a detailed accounting and record of the amount for which it claims payment.

If the amendment to order consists of a change in drawings, design or specifications of the goods, method of shipment or packing, or place of delivery, the price adjustment shall be equivalent to the corresponding value of the change, based on prevailing market prices.

E. Parties Involved in the Issuance of an Amendment to Order

The following parties are involved in the issuance of an Amendment to Order:

- a. The end-user unit;
- b. The supplier/manufacturer/distributor;
- c. The procurement unit/office; and
- d. The HOPE or his duly authorized representative.

F. Procedure in the Issuance of an Amendment to Order

The following steps are undertaken in the issuance of an Amendment to Order:

- a. The end-user unit determines the existence of condition/s that require an amendment to order.
- b. The end-user unit discusses with the supplier/manufacturer/distributor regarding the adjustments in contract price and/or delivery schedule, if necessary.
- c. The end-user unit drafts the contract amendment containing the agreements reached with the supplier/manufacturer/distributor.
- d. The end-user unit secures an ObR for the procurement, to be attached to the contract amendment when this is submitted to the HOPE for approval.
- e. The contract amendment is submitted to the HOPE or his duly authorized representative, for approval, with the approval process following the same timelines prescribed by the IRR of R.A. 9184 and this Manual for contract approval.
- f. Upon approval by the HOPE or his duly authorized representative, the end-user unit notifies the supplier/manufacturer/ distributor to proceed with the work/delivery of items in accordance with the amendment. It shall also notify the procurement unit/office of such

approval, and furnish the latter with a copy of the amended contract.

- g. The procurement unit/office posts the Amendment to Order on the website of the PhilGEPS and the LGU, and the latter's electronic procurement service provider, if any.
- h. The supplier/manufacturer/distributor proceeds with the work/delivery of items in accordance with the amended contract.

Under no circumstance shall a supplier proceed to commence work under any Amendment to Order unless the same has been approved by the HOPE or his duly authorized representative.

Payment for any work or delivery done in accordance with an Amendment to Order shall not be made unless the approval of the HOPE or his duly authorized representative has been secured.

III. Suspension of Delivery

A. Grounds for Suspension of Delivery

The LGU may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period of time, as it deems necessary due to **force majeure or any fortuitous event** as defined in the contract.

B. Adjustments in Contract Price and/or Delivery Schedules in Amendment to Order

Appropriate adjustments shall be made in the delivery or contract schedule, or contract price, or both, and the contract shall be modified accordingly. **(Annex D, IRR of RA 9184)**

When warranted, price adjustments may be made in accordance with the guidelines previously discussed in the immediately preceding section on "Amendment to Order."

C. Resumption of Delivery and/or Contract Implementation

Work must be resumed or delivery made either upon the lifting or the expiration of the suspension order. However, if the LGU terminates the contract covered by such order, resumption of work cannot be done.

D. Parties involved in the Issuance of a Suspension Order

The following parties are involved in the issuance of a Suspension Order:

- a. End-user unit;
- b. Supplier/manufacturer/distributor; and
- c. The HOPE or his duly authorized representative.

E. Procedure in the Issuance of a Suspension Order

The following steps are necessary for the issuance of a suspension order:

- a. The end-user unit determines the existence of a force majeure or fortuitous event that will be the basis for the issuance of a suspension order.

- b. Based upon the findings and recommendation of the end-user, the HOPE issues a written order suspending the order or work, wholly or partly, for a certain period of time.
- c. The supplier/manufacturer/distributor shall take all reasonable steps to minimize the costs allocable to the order or work covered by the order during the suspension.
- d. The end-user unit discusses with the supplier/manufacturer/distributor any need for adjustments in the delivery or contract schedule and/or contract price, including any need to modify contract.
- e. The end-user unit drafts the contract amendment containing the agreements reached with the supplier/manufacturer/distributor.
- f. The contract amendment is submitted to the HOPE or his duly authorized representative, for approval.
- g. Prior to the expiration of the suspension order, the end-user unit determines whether or not the grounds for suspension are still existent. If such grounds continue to exist, or if it is no longer practicable to complete the delivery or continue with the work, it shall cancel the delivery of the items subject of the suspension order, or terminate the work subject of the order, by written notice. If, however, the grounds for suspension no longer exist, and completion of delivery or continuation of the work may already be done, the end-user unit, with the approval of the HOPE or his duly authorized representative, shall lift the suspension order by written notice, thereby instructing the supplier/manufacturer/distributor to proceed with the delivery or work in accordance with the amended contract.

IV. Delays in Delivery of Goods or Performance of Services and Liquidated Damages

A. Rule on the Applicable Period for the Delivery of Goods or Performance of Services

The supplier/manufacturer/distributor must deliver the goods or perform the services procured within the period prescribed by the HOPE, as specified in the Contract.

If delays are likely to be incurred, the supplier/manufacturer/distributor must notify the HOPE in writing. It must state therein the cause/s and duration of the expected delay. The HOPE may grant time extensions, at its discretion, if based on meritorious grounds, with or without liquidated damages.

In all cases, the request for extension should be submitted before the lapse of the original delivery date. The maximum allowable extension shall not be longer than the initial delivery period as stated in the original contract.

B. Liquidated Damages

Liquidated damages are damages agreed upon by the parties to a contract, to be paid in case of breach thereof. **(Civil Code of the Philippines Art. 2226)**

C. Grounds for the imposition of Liquidated Damages

When the supplier fails to satisfactorily deliver the goods or services under the contract within the specified delivery schedule or project implementation schedule, inclusive of duly granted time extensions, if any, the supplier shall be liable for damages for the delay and shall pay the LGU liquidated damages, not by way of penalty, for every day of delay until such goods or services are finally delivered or performed and accepted by the LGU. The LGU need not prove that it has incurred actual damages to be entitled to liquidated damages.

D. Amount of Liquidated Damages that may be imposed upon the supplier

The supplier must pay the LGU liquidated damages, not by way of penalty, an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods or services scheduled for delivery or performance for every day of delay. The liquidated damages will be imposed until such goods or services are finally delivered or performed and accepted by the LGU concerned.

In no case shall the sum of liquidated damages reach ten percent (10%) of the contract amount. If it does, the contract shall automatically be rescinded by the LGU, without prejudice to other courses of action and remedies open to it. The LGU may also take over the contract or award the same to a qualified supplier through negotiation. In addition to the liquidated damages, the erring supplier's performance security shall also be forfeited.

E. Procedure for Imposition of Liquidated Damages

The following steps need to be followed in the imposition of liquidated damages:

- a. The supplier/manufacturer/distributor submits a written request to the PMO/End-user unit for an extension of the delivery or performance period, citing the reason/s for such delay.
- b. The PMO/End-user unit either approves or disapproves the request for extension.
- c. If the extension is granted, the liquidated damages may or may not be imposed and the supplier/manufacturer/distributor is informed of this in writing. The supplier/manufacturer/distributor is then asked to extend the validity of the performance bond, to conform to the extended period.
- d. If, however, the request for extension is denied, the PMO/End-user unit informs in writing the supplier/manufacturer/distributor of such denial, and ensures that the said notice or communication is received by the latter within a reasonable time from receipt of the request for extension. In this case, the LGU imposes the liquidated damages in accordance with the provisions of the contract and the procedures outlined below.
- e. If the supplier/manufacturer/distributor incurs delay and it does not request for an extension
 - i. The PMO/End-user unit informs, within a reasonable time from the first day of delay, the supplier/manufacturer/distributor that the LGU shall impose the liquidated damages agreed upon by the parties.

- ii. Upon delivery, the PMO/End-user unit and the Technical Inspection and Acceptance Committee records the delay in the inspection documents, noting therein the amount of the liquidated damages imposed on the supplier.
- iii. Upon payment, the amount of liquidated damages due is deducted from the total amount payable to the supplier, and the same shall be reflected in the DVs. Or, if the contract provides that the liquidated damages is to be collected from securities or warranties posted by the supplier, the PMO/End-user unit informs the official authorized to call on the securities or warranties about the delay and the corresponding liquidated damages imposed.

V. Payment (Advance and Progress Payments)

The method and conditions of payment must be specified in the contract. As a general rule, no advance payment, or any payment made prior to the delivery and acceptance of goods, shall be made to any supplier except when the procurement is made from another government agency such as the DBM-PS. Partial payment of the contract price will only be allowed if the contract provides for partial or staggered delivery of goods procured, and such partial payment must correspond to the value of the goods delivered and accepted. Appropriate inspection and acceptance procedures on the goods delivered must be conducted before payment is effected.

A. Advance Payment

General Rule:

As reiterated from Presidential Decree No. 1445, advance payment may be made only after prior approval of the President in an amount not exceeding fifteen percent (15%) of the contract price. **(Section 4.1, Annex "D," IRR of RA 9184)**

Exceptions:

Prior approval by the President is not necessary in the following cases:

- a. In contracts entered into by the LGU for the proceeding services where requirement of down payment is a standard industry practice, a single advance payment not to exceed fifty percent (50%) of the contract amount is allowed, to with:
 - i. hotel and restaurant services;
 - ii. use of conference/seminar and exhibit areas; and
 - iii. lease of office space; **(Section 4.3, Annex "D," IRR of R.A. 9184)**
- b. For procurement of goods required to address contingencies arising from natural or man-made calamities in areas where a "State of Calamity" has been declared by appropriate authorities, an advance payment not exceeding fifteen percent (15%) of the contract amount is allowed, unless otherwise directed by the President **(Section 4.4, Annex "D," IRR of R.A. 9184)**; and
- c. Advance payment not to exceed fifteen percent (15%) of the contract price shall be allowed and paid within sixty (60) days from

signing of the contract upon submission of an irrevocable letter of credit or bank guarantee issued by a universal or commercial bank. **(Section 4.5, Annex "D," of the IRR of R.A. 9184, as amended by Memorandum Order No. 15, dated 9 May 2011)**

B. Progress Payments

All progress payments shall first be charged against the advance payment until the latter has been fully exhausted, unless otherwise approved by the President. **(Section 4.2, Annex "D," IRR of R.A. 9184)**

C. Time of Payment

Payments must be made promptly and in no case later than **forty-five (45) days** after the supplier's request/s for payment shall have been made in writing and the needed accompanying documents have been determined to be complete.

D. Denomination of Payment

Goods and services are expected to be supplied from within the Philippines. As such, and unless otherwise provided in the bidding documents, the price in the contract shall be denominated and payable in Philippine Pesos.

E. Incentive Bonus

No incentive bonus, in whatever form or for whatever purpose, shall be allowed **(Section 42.4, IRR of RA 9184)**

VI. Taxes and Duties

A local supplier must also be entirely responsible for all taxes, duties, license fees, and other related expenses, incurred until delivery of the contracted goods to the LGU.

A foreign supplier must be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed up to the delivery of the goods to the Project Site as specified in the contract.

VII. Subcontracts

The LGU may allow a supplier to subcontract a portion of the contract or project, provided that it is expressly stated in the bidding documents. However, the supplier should not be allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed twenty percent (20%) of the total project cost. The bidding documents must specify what are considered as significant/material component(s) of the project.

Subcontracting of any portion shall not relieve the Bidder from any liability or obligation that may arise from the contract for this Project. The Supplier shall be responsible for the acts, defaults, and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Supplier's own acts, defaults, or negligence, or those of its agents, servants or workmen.

The Bidder may identify the subcontractor to whom a portion of the Goods will be subcontracted at any stage of the bidding process or during contract implementation.

If the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid.

If the subcontracting arrangement is disclosed at the time of bidding, subcontractors must be identified in the bid submitted by the principal supplier. Subcontractors must comply with the eligibility criteria and the documentary requirements specified in the bidding documents. In the event that any subcontractor is found by the LGU to be ineligible, the subcontracting of such portion of the Goods shall be disallowed.

Subcontractors disclosed and identified during the bidding may be changed during the implementation of this Contract, subject to compliance with the required qualifications and the approval of the LGU.

VIII. Standards

The goods supplied under the contract must conform to the standards mentioned in the technical specifications, which must preferably be Philippine standards, or standards specified by the Bureau of Product Standards (BPS) of the Department of Trade and Industry (DTI). If there is no Philippine standard applicable, the goods must conform to the authoritative standards appropriate to the goods' country of origin. Such standards must be the latest issued by the concerned institution.

IX. Packaging

The supplier must provide such packaging of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract and in accordance with existing industry standards. The packaging must be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packaging case size and weights must take into consideration, where appropriate, the distance and remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

The packaging, marking, and documentation within and outside the packages must comply strictly with such special requirements as must be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the Procuring Entity. Moreover, the outer packaging must contain a "Packing List" which must reflect the actual contents of the package.

X. Insurance

The goods procured must be fully insured by the supplier against loss or damage incidental to their manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Contract.

XI. Transportation

The contract must contain provisions on who will bear the cost of transportation and insurance (as well as customs duties in case of importation). For this purpose, the specific Incoterm must be used and identified in the contract. The Incoterm also defines the point at which the risk of loss or damage to the goods passes from the seller to the buyer.

The LGU shall identify which terms are most responsive to the requirements of the project.

If the Supplier is required under the Contract to deliver the goods CIF, CIP or DDP, it shall arrange and pay for the transport of the goods to the port of destination or such other named place of destination in the Philippines, as shall be specified in the contract. It will also have to pay for the cost that will be incurred in the transport of these goods, the cost to be included in the contract price.

If the supplier is required under the contract to transport the Goods to a specified place of destination within the Philippines, defined as the Project Site, it will arrange and pay for the transport of the goods to such place of destination. It must also pay for insurance and storage, and related costs. These costs must be included in the Contract Price.

The LGU is encouraged to enlist the assistance of an accredited customs broker or forwarder in all importation.

XII. Inspection and Tests

The LGU or its representative has the right to inspect and/or to test the goods to confirm their conformity to the contract specifications at no extra cost to it. The bidding documents and the contract must specify what inspections and tests are required by the LGU, and where these are to be conducted. The LGU must notify the supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

The inspections and tests may be conducted on the premises of the supplier or its subcontractor(s), at point of delivery, and/or at the goods' final destination. If conducted on the premises of the supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, must be provided by the supplier to the inspectors at no charge to the LGU.

The LGU must bear its own costs and expenses incurred in connection with its attendance at inspections, including, but not limited to, all traveling and board and lodging expenses.

The LGU may require the supplier to carry out any test and/or inspection not required by the contract but deemed necessary to verify that the characteristics and performance of the goods comply with the technical specifications, codes and standards under the contract. However, the reasonable costs and expenses incurred by the supplier in the carrying out of such test and/or inspection will be added to the contract price. Furthermore, if such test and/or inspection impedes the progress of manufacturing and/or the supplier's performance of its other obligations under the contract, due allowance will be made in respect of the delivery dates and completion dates and the other obligations so affected. These tests shall be conducted by a government-testing laboratory, or, where there is none for the particular item being procured, in any testing laboratory accredited by the DTI. The supplier must provide the LGU with a report of the results of any such test and/or inspection. These results will be conclusive of the quality of the items and not subject to further dispute between the parties.

The LGU may reject any goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The supplier should either rectify or replace such rejected goods or parts thereof or make alterations necessary to meet the specifications at no cost to the LGU, and shall repeat the test and/or inspection, at no cost to the LGU, upon giving a notice pursuant to the contract.

The supplier should agree in the contract that neither the execution of a test and/or inspection of the goods or any part thereof, nor the attendance by the LGU or its representative, shall release the supplier from any warranties or other obligations under the contract.

XIII. Intellectual Property Rights

The LGU should not be liable for any infringement of intellectual property rights arising from the use of the goods procured. In case there are third-party claims of such infringement of patent, trademark, or industrial design rights, the supplier must hold the LGU free and harmless against such claims. These terms should be expressed in the contract.

XIV. Limitations of Liability

Except in cases of criminal negligence or willful misconduct, and in the case of infringement of intellectual property rights, and unless otherwise specified in the contract, the supplier is generally not liable to the LGU, whether in contract, tort or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion does not apply to any obligation of the supplier to pay liquidated damages to the LGU. This is without prejudice to any other liability, penalty or appropriate sanction that may be imposed upon the supplier under R.A. 9184 and other applicable laws.

XV. Termination of Contract

A. Termination for Default

Any of the following conditions shall constitute as a ground for termination of the contract for default:

- a. There being no force majeure, the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the LGU pursuant to a request made by the Supplier prior to delay, and such failure amounts to at least ten percent (10%) of the contract price;
- b. As a result of force majeure, the supplier is unable to deliver or perform any or all of the goods or services, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after the receipt of the notice from the LGU stating that the circumstance of force majeure is deemed to have ceased; or
- c. The supplier fails to perform any other obligation(s) under the contract.

If the contract is not wholly terminated, the supplier shall continue to deliver the remaining goods or to perform the remaining services contracted.

B. Termination for Insolvency

The LGU shall at any time terminate the contract by giving written notice to the supplier, if the latter is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the LGU and/or the supplier.

C. Termination for Convenience

The LGU, by written notice sent to the supplier, may terminate the contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the LGU's convenience,

the extent to which performance of the supplier under the contract is terminated, and the date upon which such termination becomes effective.

The HOPE may terminate the contract for convenience on the following grounds:

- a. If physical and economic conditions have significantly changed as to render the project no longer economically, financially or technically feasible, as determined by the HOPE;
- b. The HOPE has determined the existence of conditions that make project implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies;
- c. Funding for the project has been withheld or reduced by higher authorities through no fault of the LGU; or
- d. Any circumstance analogous to the foregoing

The goods that are complete and ready for shipment within thirty (30) days after the supplier's receipt of notice of termination shall be accepted by the LGU at the contract terms and prices.

For the remaining goods, the LGU may do the following:

- a. Elect to have any portion completed and delivered at the contract terms and prices, and/or
- b. Cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services and for materials and parts previously procured by the supplier.

If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for Goods specially manufactured for the LGU which cannot be sold in the open market, it shall be allowed to recover partially from the contract, on a quantum meruit basis. The fact of loss must be established before recovery may be made.

D. Termination for Unlawful Acts

A LGU may also terminate a contract for any unlawful acts, which may include, but are not limited to, the following:

- a. Corrupt, fraudulent, and coercive practices;
- b. Drawing up or using forged documents;
- c. Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- d. Any other act analogous to the foregoing.

XVI. Assignment

As a general rule, the supplier may not assign the contract, or any of its rights or obligations arising from the contract, to a third party, except with the LGU's prior written consent.

XVII. Other Rules and Guidelines

A. Incidental Services

Incidental Services are those services ancillary to the supply of the goods, such as transportation and insurance, installation, commissioning, provision of technical assistance, training, and other such obligations of the supplier specified in the Contract and the Bidding Documents. In particular, these services may refer to any of the following:

- a. Performance or supervision of on-site assembly and/or start-up of the supplied goods;
- b. Furnishing of tools required for assembly and/or maintenance of the supplied goods;
- c. Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- d. Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under the Contract;
- e. Training of the LGU's personnel, at the supplier's plant and/or on-site, on assembly, start-up, operation, maintenance, and/or repair of the supplied goods; and
- f. Any other related services necessary for the completion of the project and indicated in the contract.

The Incidental Services must be clearly specified in the contract, and identified as separate components from the goods to be supplied or services to be rendered, so that prices indicated on the price schedule shall be entered separately, in accordance with the ITB. The cost thereof should also be indicated in the contract.

B. Spare Parts

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.

Information required from the Supplier with regard to spare parts of goods

The supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

- a. Such spare parts as the LGU may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract;
- b. Such spare parts that the LGU may be able to purchase from other suppliers/manufacturers but are compatible with the goods procured; and
- c. In the event of termination of production of the spare parts:
 - i. Advance notification to the LGU of the pending termination, in sufficient time to permit the LGU to procure needed requirements; and

- ii. Following such termination, furnishing at no cost to the LGU the blueprints, drawings, and specifications of the spare parts, if requested.

The supplier may likewise be required to issue a Certification that spare parts, particularly those that are product-specific, shall continue to be manufactured by them within a period of time, *e.g.*, five (5) years, after the bidding date.

The above information shall be included in the Technical Bid.

The LGU may include the delivery of a limited supply of fast-moving and/or hard-to-find spare parts in the technical specifications when procuring heavy equipment or machinery. This is to ensure the continued use or operation of the equipment.

C. Purchaser's Responsibilities

Whenever the supply of goods and related services requires that the supplier/manufacturer/distributor obtain permits, approvals, and import and other licenses from local public authorities, the LGU may, upon request by the supplier/manufacturer/distributor, assist the latter in complying with such requirements in a timely and expeditious manner. However, the supplier/ manufacturer/ distributor shall bear the costs of such permits and/or licenses. On the other hand, the LGU shall pay all costs involved in the performance of its responsibilities, in accordance with the contract.

D. Prices

The contract price must not vary from the price quoted by the supplier in its bid. This is based on the rule that the contract, as awarded, should not differ in any material aspect from the terms stipulated in the bidding documents, considering that these terms were the basis for the comparison of bids. Otherwise, the purpose of the bidding process would have been defeated.

However, if there were arithmetical errors in the derivation of the submitted bid price the award of contract shall be made at the submitted bid price or the calculated bid price whichever is lower. **(Section 34.4, IRR of RA 9184)**

E. Denomination of Contract Price

For goods and services that will be supplied from within the Philippines, the price in the contract shall be denominated and payable in Philippine currency, and this shall be stated in the bidding documents.

For goods and services that will be supplied from outside the Philippines, such as in the case of goods with a high import content, *i.e.* more than fifty percent (50%) of the contract cost, the LGU may disaggregate the cost components into foreign and local costs, and may denominate and pay contract prices in foreign and Philippine currencies, as stipulated in the bidding documents. For this purpose, the ITB may provide that the prices for goods and services supplied from outside the Philippines may be quoted either in Philippine Pesos or United States Dollars, at the discretion of the bidder.

Unless otherwise provided, payment of the contract price shall be made in Philippine Pesos. In instances where the LGU is allowed to receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate officially prescribed for similar transactions as established by the BSP on the date of the bid opening. However, this conversion rate shall only be for purposes of bid evaluation.

The contract must state the foreign currency denominated amount and the peso equivalent on the date of bid opening.

F. Rule on Price Escalation

Price escalation is generally not allowed. For the given scope of work in the contract as awarded, the price must be considered as a fixed price, except under extraordinary circumstances as determined by the NEDA in accordance with the Civil Code of the Philippines, upon recommendation of the LGU concerned, and upon prior approval of the GPPB. Any request for price escalation under extraordinary circumstances should be submitted by the concerned entity to the NEDA with the endorsement of the LGU. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

Extraordinary circumstances shall refer to events defined in the Civil Code of the Philippines, consistent with the guidelines issued by the GPPB. In particular, the Guidelines for Contract Price Escalation approved by the GPPB in Resolution No. 07-2004, dated 22 July 2004, provides that the term "extraordinary circumstances" shall refer to the following Articles of the Civil Code of the Philippines:

- a. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen to which could be reasonable foreseen but are inevitable, such as, but not limited to the following: (a) typhoons; (b) thunderstorms; (c) flooding of lowly areas; and (d) vehicular accidents; provided that the following are present:
 - i. The cause of the extraordinary circumstances must be independent of the will of the parties;
 - ii. The event must be either unforeseeable or unavoidable;
 - iii. The event must be such as to render it difficult but not impossible for the supplier to fulfill his obligation in a normal manner or within the contemplation of the parties;
 - iv. The supplier must be free from any participation in or aggravation of the injury to the LGU; and
 - v. The allowance for price escalation, should an ordinary fortuitous event occur, is stipulated by the parties or the nature of the obligation requires the assumption of risk.
- b. Article 1250, as it pertains to Extraordinary Inflation or Deflation, which may refer to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed in accordance with the Guidelines for Contract Price Escalation, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.
- c. Article 1680, as it enumerated Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following: (a) fire; (b) war; (c) pestilence; (d) unusual flood; (e) locusts; and (f) earthquake; provided that the circumstances before, during and after the event shall be taken into consideration.

F.1 Procedure for Price Escalation

In the review and approval of a request for price escalation, the LGU should comply with the following conditions detailed in the Guidelines for Contract Price Escalation, before the same can be acted upon:

- a. Endorsement. The HOPE concerned shall endorse the request for price escalation to the NEDA, through its Director-General, accompanied by several documentary requirements.
- b. Two-Stage Review Process. The review process shall commence only after the NEDA has acknowledged the completeness of the request. A request for price escalation shall only be granted if it satisfies both the First Stage (Legal Parameters) and Second Stage (Technical Parameters) reviews of the NEDA.
- c. Amount of Price Escalation to be Granted. The amount of escalation to be granted in the case of goods should only be the remaining amount over and above the thresholds as computed under the Second Stage review process.
- d. Period and Frequency of Requests for Price Escalation. Requests for price escalation shall only be made for cost items already incurred by the supplier. No request for price escalation shall be made for prospective application. Further, price escalation shall only be granted to those items included in a specific request. Provided further, that requests for price escalation shall be made not shorter than six (6) months reckoned from the start of the contract implementation, and not shorter than the six (6)-month period thereafter. For contracts wherein the duration is shorter than six (6) months, the request for contract price escalation shall be made after the completion of the contract.
- e. Misrepresentation. Any misrepresentation made by the LGU or the supplier in any stage of the processing of a particular request for price escalation shall cause the automatic denial/disapproval of said claim.
- f. Recommendation/Approval. The NEDA shall, upon completion of its review pursuant to the Guidelines for Contract Price Escalation, submit its recommendation to the GPPB for appropriate action. The GPPB shall then approve/act upon the request for price escalation during one of its meetings, to be attended by the HOPE concerned or his duly authorized representative/s.

CHAPTER 5

Competitive Bidding and
Contract Implementation
Procedures for the
Procurement of
Infrastructure Projects

SECTION 1: Introduction

This Chapter seeks to provide the procurement officials and personnel of the LGU with clear, concise, and accurate information on the conduct of bidding for the **procurement of infrastructure projects** by discussing the steps that need to be taken as prescribed by R.A. 9184 and its IRR.

SECTION 2: Definition of Terms

I. INFRASTRUCTURE PROJECTS/CIVIL WORKS (Section 5 [u], IRR of RA 9184)

Include the Construction, Improvement, Rehabilitation, Demolition, Repair, Restoration, and Maintenance of:

- a. Roads and bridges
- b. Railways
- c. Airports and seaports
- d. Communication facilities
- e. Civil works components of IT projects
- f. Irrigation
- g. Flood control and drainage
- h. Water supply
- i. Sanitation
- j. Sewerage and solid waste management systems
- k. Shore protection
- l. Energy/power and electrification facilities
- m. Buildings (National, School, Hospital)
- n. Other related construction projects

SECTION 3: Procurement Planning

I. Procurement Planning

Procurement planning entails ensuring that plans for procurement are linked to budgets, preparing the PPMP and consolidating all PPMPs into the APP.

The end-user unit should consider the following factors, which have an impact on contract packaging, the procurement method to be used, and other related components.

A. Procurement of Infrastructure Projects

A.1. Detailed Engineering

No bidding and award of contract for infrastructure projects shall be made unless the detailed engineering investigations, surveys and designs including the acquisition of the ROW for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the Head of the LGU concerned or his duly authorized representative, and in accordance with the provisions of Annex "A" of the IRR. The only exception to this are design and build schemes wherein bidders are allowed to submit detailed engineering designs as part of their bids.⁸ **(Section 17.6, IRR of R.A. 9184)**

Prior to the conduct of the detailed engineering investigations, surveys and designs, the implementing office should draw a feasibility or preliminary engineering study to establish the technical viability of the project and its conformance to land use and zoning guidelines prescribed by existing laws.

The findings contained in the feasibility study, if undertaken for the project, should be examined. If, in the course of this exercise, it is found that changes would be desirable in the design standards of principal features, as proposed, specific recommendations for such changes should be supported by detailed justifications, including their effects on the cost, and, if necessary, the economic justification.

After the acceptance and approval of the feasibility study, the detailed engineering investigations shall be conducted.

A schedule of detailed engineering activities shall include the following:

- a. Survey
- b. Site Investigation
- c. Soils and Foundation Investigation
- d. Construction Materials Investigation
- e. Preparation of Design Plans and Design Analysis

⁸ See Annex A on the Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects.

- f. Preparation of Technical Specifications
- g. Preparation of Quantity and Cost Estimates
- h. Preparation of Program of Work
- i. Preparation of Proposed Construction Schedule [and estimated Cash Flow for projects with Schedule over six (6) Months]
- j. Preparation of Site or Right-of-Way Plans including Schedule of Acquisition
- k. Preparation of Utility Relocation Plan
- l. Preparation and Submission of Design Report
- m. Environmental Impact Statement for critical project or project in a critical area, as defined by the Department of Environment and Natural Resources
- n. Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered
- o. Preparation of Bidding Documents

Furthermore, work under detailed engineering shall include, but not necessarily be limited to, the following:

- a. Design Standards – Design standards shall be in accordance with appropriate standards and accepted detailed engineering practice adopted by the agency concerned. Design standards for structures shall take into account, among other things, the seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage.
- b. Field Surveys and Investigations – Necessary field surveys and investigations which may include aerial, hydrographic, topographic, hydrologic, sub-surface, monumenting and other surveys shall be carried out in accordance with the design guidelines, criteria and standards adopted by the agency concerned. All survey and investigation works shall be prepared in a manner satisfactory to carry out accurate design and production of plans.
- c. Contract Plans – The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the Procuring Entity concerned, incorporating at least the following:
 - i. Site development plan;
 - ii. Plans and profile sheet;
 - iii. Typical sections and details;
 - iv. Drainage details where applicable;
 - v. Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed; and

- vi. Other details which may be required by the head of the agency.
- d. Quantities – All construction quantities shall be computed to a reasonable accuracy of plus or minus ten percent (10%).
- e. Special Provisions – Specifications shall be prepared for specific items of work or methods of construction, measurement and payment under each contract, which are not covered by standard construction and material specifications adopted by the Procuring Entity concerned.
- f. Unit Prices – These shall be prepared for each contract using costs based on reasonable approved current prices as projected over the proposed construction period, divided into local and foreign exchange costs, as the case may be.
- g. Approved Budget for the Contract – The approved budget for the contract to be bid shall be prepared by official(s) duly designated by the Head of the Procuring Entity concerned or by his duly authorized official. It shall be approved by the Head of the Procuring Entity or his duly designated official. Since the contracts are fixed price contracts, the approved budget for the contract to be bid must provide for the projected movements in construction costs over the construction period. It thus has to consider the projected inflation and foreign exchange rates as issued by the DBCC or other authorized agencies (NSO, BSP, others), as well as the cost of money. It must also show the local and foreign currency requirements, as the case may be. The approved budget for the contract to be bid must also specify for each major work item, such as earthwork, roadwork, and massive concreting. It must also specify the components for equipment rentals, fuel, labor, materials and overhead, including the cost of the approved construction safety and health program and security premiums, taxes, profit, cost of money, inflation, contingencies, etc. For infrastructure contract packages projects, the ABC shall cover the individual cost components of civil works only. The other components of the project such as ROW, consulting services and ESAO, shall comply with the applicable provisions of law or agency guidelines.
- h. Program of Work – The program of work must include, among other things, estimates of the work, items, quantities and costs and a PERT/CPM network of the project activities. The program of work must cover at least a usable portion of the project and no construction shall be started for portions of the project that are less than usable, except projects requiring stage construction. In projects requiring stage construction, continuity of construction up to the completion of a usable portion must be assured.

The above rules shall apply to the implementation of infrastructure projects under normal or ordinary conditions. However, under emergency or extraordinary cases involving major calamities and disasters as declared by the President of the Philippines, where time is of the essence to save lives and properties and restore damaged infrastructures, detailed engineering works shall be conducted in accordance with the guidelines and

procedures, as prescribed by the head of the appropriate infrastructure agency and approved by the Infrastructure Committee of the NEDA Board. This ought to enable quick response to said cases, while maintaining the safety and integrity of the structure.

II. Preparation of the Bidding Documents

Bidding documents are documents issued by the LGU to provide prospective bidders all the necessary information that they need to prepare their bids. **(Section 5 [f], IRR of R.A. 9184)**

These documents form part of the contract and clearly and adequately define:

- a. objectives, scope and expected outputs and/or results of the proposed contract;
- b. Plans/drawings and technical specifications
- c. expected contract duration, the estimated quantity, delivery schedule and/or time frame;
- d. obligations, duties and/or functions of the winning bidder; and
- e. minimum eligibility requirements of bidders, such as track record to be determined by the HOPE. **(Section 17.2, IRR of RA 9184)**

The LGU must always follow the Standard Bidding Documents (SBDs) issued by the GPPB. In accordance with GPPB Resolution No. 06-2010, entitled "Adopting the 4th Edition of the Philippine Bidding Documents (PBDs) for Goods and Infrastructure Projects (As Harmonized by Development Partners), all LGUs are hereby mandated to use the PBDs 4th Edition in the preparation of their bidding documents for all of their procurement activities effective 21 February 2011.

In the preparation of the Bidding Documents, the agency must estimate the actual number of working days required to complete the project through a PERT/CPM analysis of the project activities and corrected for holidays and weekends. The agency must also estimate the number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site. These considerations must be indicated in the bidding documents, incorporated in the corrected actual number of working days determined above, and made the basis of the total contract time. The estimated number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site shall be made known before the date of bidding through the ITB for the purpose of guiding both the government and winning contractors in the request for an approval of time extensions. Without the estimated number of rainy/unworkable days established before the bidding date and known to all participating bidders, the contract time is presumed to have excluded the unfavorable conditions. The number of rainy/unworkable days may be taken from the records of PAGASA. □Likewise, the bidding documents should specify the type of project and the corresponding warranty period required by the LGU.

A. Contents of the PBDs for Infrastructure Projects

- a. Invitation to Bid (IB);
- b. Instructions to Bidders (ITB);
- c. Bid Data Sheet (BDS);
- d. General Conditions of Contract (GCC);

- e. Special Conditions of Contract (SCC);
- f. Specifications;
- g. Drawings;
- h. Bill of Quantities;
- i. Bidding Forms; and
- j. Foreign Assisted Projects. . This Section is intended to assist the Procuring Entity in providing the specific information for foreign-assisted projects of the Asian Development Bank (ADB) and the World Bank (WB). If the funding source is ADB, the Procuring Entity should use the ADB Bid Data Sheet and the ADB Special Conditions of Contract. If the Funding Source is World Bank, the Procuring Entity should use the WB Bid Data Sheet and the WB Special Conditions of the Contract.

B. Timeline for the Preparation of the Bidding Documents:

The Bidding Documents must be prepared in time for presentation at the pre-procurement conference, and must be finalized before the advertisement and/or posting of the IB.

C. Responsible Parties for the Development of the Bidding Documents

The members of the BAC, TWG and BAC Secretariat, with the assistance of consultants, if any, and the representatives from the end-user unit or Project Management Office (PMO), prepares the bidding documents following the PBDs prescribed by the GPPB.

D. Procedural Requirements for the Preparation of the Bidding Documents

D.1 The bidding documents must contain the following information:

- a. Approved Budget for the Contract (ABC) and source of funds;
- b. Date, time and place of the pre-bid conference (where applicable), submission, receipt, opening and examination of bids;
- c. Eligibility requirements;
- d. ITB, including criteria for the examination of all documentary requirements inside the submitted bid envelopes, detailed bid evaluation and post-qualification;
- e. Scope of Work (SOW);
- f. Plans/Drawings and Technical Specifications;
- g. Bid Form, Bill of Quantities and Detailed Estimates;
- h. Completion Schedule/contract duration;
- i. Allowable Forms, Amount and Validity Period of Bid Security;

- j. Allowable Forms and amount of Performance Security and Warranty; and
 - k. Form of Contract, GCC and SCC.
- D.2 The LGU may require additional specifications or project requirements, where applicable and necessary for prospective bidders to prepare their respective bids. The bidding documents, as amended, shall subsequently form an integral part of the contract. Bidding documents may only be modified upon issuance of Supplemental/Bid Bulletins.

The following general directions should be observed when using the PBDs:

- a. All the documents listed in the Table of Contents are normally required. However, they should be adapted as necessary to the circumstances of the particular Project.
- b. Specific details, such as the name of the LGU and address for bid submission, should be clearly stated in the ITB, BDS, and SCC. The final documents should contain neither blank spaces nor options.
- c. The Preface and the footnotes or notes in italics included in the Invitation to Bid, BDS, SCC, Schedule of Requirements, Drawings, Specifications and Bill of Quantities, are not part of the text of the final document, although they contain instructions that the LGU should strictly follow. The Bidding Documents should contain no footnotes except Section VIII Bidding Forms since these provide important guidance to Bidders.
- d. The cover should be modified as required to identify the Bidding Documents as to the names of the Project, Contract, and concerned LGU/Procuring Entity, in addition to date of issue.
- e. If modifications must be made to bidding procedures, they can be presented in the BDS. Modifications for specific Project or Contract details should be provided in the SCC as amendments to the Conditions of Contract. For easy completion, whenever reference has to be made to specific clauses in the BDS or SCC these terms shall be printed in bold type face on Section I. Instructions to Bidders and Section III. General Conditions of Contract, respectively.
- f. ITB and GCC contain provisions that are to be used unchanged. Any supplement, amendment, or specification in detail, information or requirements in the ITB and GCC shall be provided in the BDS and SCC respectively.

III. Pre-procurement Conference

The pre-procurement conference is the forum called by the BAC where all LGU officials involved in the procurement meet and discuss all aspects of a specific procurement activity, which includes, among others:

- a. Ascertainment that the procurement is in accordance with the PPMP and APP;
- b. Project Requirements and ABC;

- c. Applicability and appropriateness of recommended method of procurement and related milestones;
- d. Bidding documents; and
- e. Availability of the pertinent budget release for the project.

The activities to be undertaken during pre-procurement conference:

- a. Confirm the description and scope of the contract, ABC and contract duration;
- b. Ensure procurement is in accordance with the **Project and APP**;
- c. Determine **readiness** of the procurement
 - i. Availability of appropriations and programmed budget for contract,
 - ii. Completeness of bidding documents and adherence to relevant general procurement guidelines,
 - iii. Technical Specifications/Scope of Work/Project Requirements, and
 - iv. Other related matters
- d. Review, modify and agree on the **criteria for (a) examination of bid and eligibility requirements, (b) detailed bid evaluation and (c) post-qualification** to ensure their fairness, reasonableness and that they are of the "pass/fail" type and are written in such manner;
- e. Clarify that the terms in the bidding documents are **minimum requirements** and a bidder may submit an offer that provides for **better terms and conditions** to the Government but at **no extra cost**.
- f. Reiterate and emphasize the importance of
 - i. **confidentiality** during the **bid evaluation process**,
 - ii. applicable **sanctions** and penalties, and
 - iii. measures to **ensure** compliance with the foregoing

A. Pre-procurement Conference as a Legal Requirement

Pre-procurement conference is required for the procurement of Infrastructure projects involving an ABC amounting to more than Five Million Pesos (PhP 5,000,000.00), to determine the readiness of the LGU to conduct the procurement activity in terms of the legal, technical and financial requirements of the project.

While pre-procurement conference is not mandatory for small procurements (procurement of infrastructure projects with an ABC of PhP 5,000,000.00 and below), the BAC, however, is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the technical specifications, warrant the holding of such conference before the LGU proceeds with the procurement.

If the BAC members fail to conduct the required Pre-procurement Conference for the procurement of infrastructure projects with an ABC amounting to more than Five Million Pesos (PhP 5,000,000.00), they may be held administratively liable for neglect of duty under the Civil Service Rules (**Presidential Decree 807**) without prejudice to other civil and criminal liabilities under applicable laws.

B. Time for the Conduct of the Pre-procurement Conference

The pre-procurement conference must be conducted prior to the advertisement and/or posting of the IB. It is suggested that the pre-procurement conference be conducted at least seven (7) calendar days prior to the advertisement and/or posting of the bid notice.

In summary:

| ABC of the Contract | When Conducted? | |
|---------------------------|-----------------|---|
| Above PhP 5,000,000.00 | Mandatory | Conducted at least seven (7) calendar days prior to the date of advertisement and/or 1 st day of posting of the IB |
| PhP5,000,000.00 and below | Discretionary | |

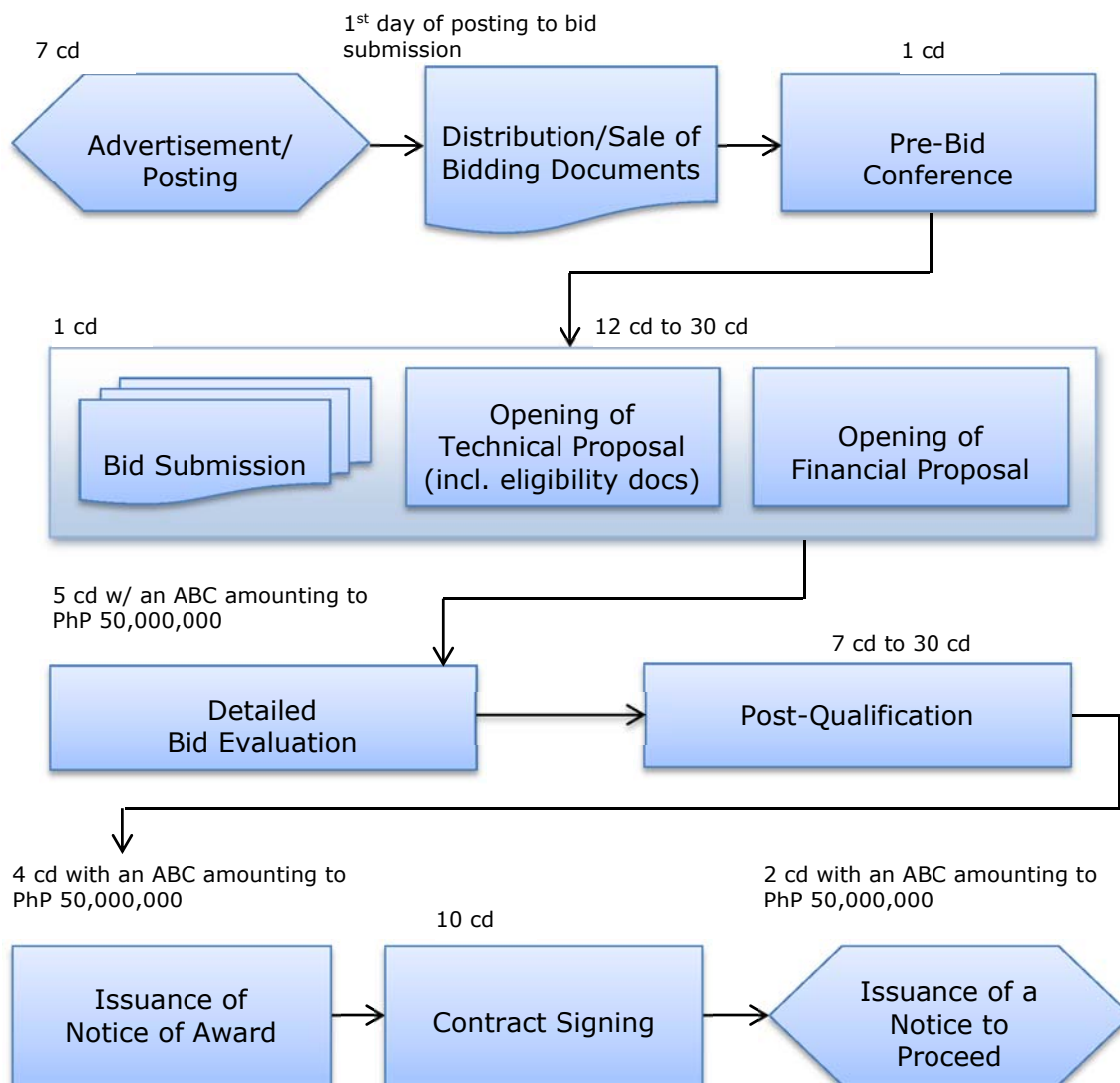
C. Participants in a Pre-procurement Conference

Participants in the pre-procurement conference are the following:

- a. BAC;
- b. BAC Secretariat;
- c. Representatives of end-user unit/s;
- d. Members of the TWG/s and consultants hired by the LGU who prepared the technical specifications, scope of work for services, bidding documents and the draft advertisement, as the case may be, for the procurement at hand;
- e. Officials who reviewed the above-enumerated documents prior to final approval, if any; and other officials concerned;

SECTION 4. Procedural Steps for Competitive Bidding

Bidding Process



I. Advertisement and/or Posting the Invitation to Bid (IB)

The IB serves as the notice to the public and all interested parties of the procurement opportunities of the LGU.

A. Contents of the IB

The IB must contain the following: **(Section 21.1, IRR of RA 9184)**

- a. Name of the contract to be bid, Name and location of the contract to be bid, the project background and other relevant information regarding the proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works;

- b. General statement on the criteria to be used by the LGU for:
 - i. Opening and examination;
 - ii. Evaluation of bids; and
 - iii. Post-qualification;
- c. Date, time and place of the deadline for:
 - i. Submission and receipt of bids;
 - ii. Opening of bids; and
 - iii. Pre-bid conference, if any;
- d. ABC;
- e. Source of funding;
- f. Period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the bidding documents;
- g. Contract duration or delivery schedule;
- h. Decision of the BAC whether it will limit the attendance and participation of bidders during the conduct of a pre-bid conference;
- i. Name, address, telephone number, facsimile number, e-mail and website addresses of the concerned LGU, as well as its designated contact person;
- j. Reservation Clause, which is normally located at the bottom of the notice; and
- k. Such other necessary information deemed relevant by the LGU.

B. Posting in Conspicuous Place

Though no longer required, the LGU may continue its old practice under the Local Government Code (**Section 363, RA 7160**) of posting the call for bids (now the IB) in at least three (3) publicly accessible and conspicuous places, such as, public markets, sari-sari stores, public transport terminals, waiting sheds, and churches, among others. This will help ensure the widest publicity of the procurement activity and encourage more participants in the bidding process.

C. Advertisement/Posting of the Invitation to Bid as a Legal Requirement

The advertisement and/or posting of the IB ensures transparency of the procurement process, widest possible dissemination to increase the number of prospective bidders, and intensify competition for the procurement activity or project. Intensified competition, in turn, will ensure that LGU will get the best possible quality and cost sought to be procured.

The IB shall be advertised and/or posted as follows:

| Medium | ≤ 5 Million (Infra) | > 5 Million (Infra) | Frequency |
|--|---------------------|---------------------|---|
| Newspaper of general nationwide circulation which should be in existence for at least two (2) years from the date of its publication | NO | YES | Once |
| PhilGEPS Website | YES | YES | Continuously for at least seven (7) calendar days |
| LGU's Website, if any | YES | YES | Continuously for at least seven (7) calendar days |
| Conspicuous Places within the premises of the LGU concerned | YES | YES | Continuously for at least seven (7) calendar days |
| Website prescribed by the foreign government or foreign funding institution, in case of foreign funded projects | YES | YES | Continuously for at least seven (7) calendar days |

D. Procedure for Advertising/Posting the Invitation to Bid

The following steps are followed in the advertising and/or posting of IBs:

D.1 For public bidding of contracts in the procurement of infrastructure projects with an ABC of more than Five Million Pesos (PhP 5,000,000.00):

- a. The BAC Secretariat, prepares the draft IB for review/approval of the BAC.
- b. The BAC approves the contents of the IB during the pre-procurement conference.
- c. The BAC Secretariat posts the IB in any conspicuous place reserved for this purpose in the premises of the LGU for seven (7) calendar days; and the head of the BAC Secretariat will certify to this fact. It is recommended that the BAC Secretariat prepare a bulletin board where the IB shall be posted.
- d. The BAC Secretariat advertises the IB in a newspaper of general nationwide circulation.
- e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IB on the PhilGEPS website and LGU website, if any, for seven calendar (7) days starting on the date of advertisement.

D.2 For public bidding of contracts in the procurement of infrastructure projects with an ABC of Five Million Pesos (PhP 5,000,000.00) and below:

- a. The BAC Secretariat prepares the draft IB for review/approval of the BAC.
- b. The BAC approves the contents of the IB.

- c. The BAC Secretariat shall post the IB in the LGU's website, PhilGEPS website and any conspicuous places within the premises of the LGU concerned.

E. Effect in Case the LGU Failed to Advertise/Post the Invitation to Bid

The policy that all LGUs shall post all their procurement opportunities, results thereof, and other related information in the PhilGEPS bulletin board, as provided under Sections 8, 21 and 37 of the IRR of R.A. 9184 was reiterated under Executive Order (EO) 662, Series of 2007, as amended by EO 662-A and Administrative Order (AO) No. 17.

Non-compliance with posting obligations shall render the accountable officials liable for dereliction of duty and conduct grossly prejudicial to the best interest of the service, without prejudice to other charges, whether administrative, civil, or criminal, that may be filed under appropriate laws and regulations. **(Section 7, IRR of EO 662, as amended by EO 662-A)**

II. Distribution and Sale of the Bidding Documents

Bidding documents are documents issued by the LGU to provide prospective bidders all the necessary information that they need to prepare their bids.

A. Rules on the Distribution and Sale of Bidding Documents

A.1. Timeline for the Distribution and Availability Period of the Bidding Documents

To provide prospective bidders ample time to examine the Bidding Documents and to prepare their respective bids, the concerned BAC, through its BAC Secretariat, shall make the Bidding Documents for the contract to be bid available from the time the IB is first posted and/or advertised until the deadline for the submission and receipt of bids. **(Section 17.3(a), IRR of R.A. 9184)**

Likewise, the Bidding Documents shall be posted from the time the IB is first posted and/or advertised until the deadline for the submission and receipt of bids, at the following:

- i. PhilGEPS website; and
- ii. Website of the LGU concerned.

Prospective bidders may get a copy of the Bidding Documents by downloading the same at the above-mentioned websites, free of charge anytime from the time said documents are posted; provided that, bidders shall pay the fee for the Bidding Documents upon submission of their bids. **(Section 17.5, IRR of R.A. 9184)**

On the other hand, prospective bidders also have the option to secure a hard copy from the BAC Secretariat.

A.2. Rules on Sale of the Bidding Documents

Bidding Documents may be sold for a reasonable price as determined by the BAC and approved by the HOPE based on the cost of its preparation and development. **(Section 17.4, IRR of R.A. 9184)**

If bidding documents are sold, the BAC shall issue the Bidding Documents upon payment of the corresponding cost thereof to the collecting/disbursing officer of the LGU concerned. Prior to the issuance of the bidding documents, prospective bidders may be required to show the official receipt as proof of payment. **(Section 17.4, IRR of R.A. 9184)**

On the other hand, if the prospective bidder decides to secure a copy of the Bidding Documents by downloading the same at the websites of PhilGEPS and the LGU concerned, the BAC shall only accept the submitted bid envelopes, upon payment of the corresponding bid fee. The BAC of the LGU concerned may also request the prospective bidder to show first the official receipt as proof of payment before it accepts the bidder's submitted bid envelopes.

However, the BAC must issue copies of the bidding documents to the Observers free of charge.

A.2.1. Standard Rates for Sale of Bidding Documents

The cost of bidding documents shall correspond to the ABC range as indicated in the table below. This shall be the maximum amount of fee that procuring entities can set:

| Approved Budget for the Contract | Maximum Cost of Bidding Documents (in Philippine Peso) |
|--|---|
| 500,000 and below | 500.00 |
| More than 500,000 up to 1 Million | 1,000.00 |
| More than 1 Million up to 5 Million | 5,000.00 |
| More than 5 Million up to 10 Million | 10,000.00 |
| More than 10 Million up to 50 Million | 25,000.00 |
| More than 50 Million up to 500 Million | 50,000.00 |
| More than 500 Million | 75,000.00 |

(Guidelines on the Sale of Bidding Documents, GPPB Resolution No. 04-2012)

B. Confidentiality of Bidding Documents

The bidding documents are strictly confidential and shall not be divulged or released to any person prior to its official release, except those officially authorized to handle them. **(Section 19, IRR of R.A. 9184)** However, after its official release, it shall be made available to the public, unless the procurement at hand affects national security.

III. Call a Pre-Bid Conference and, if necessary, Issue Supplemental/Bid Bulletins

A. Conduct of a Pre-Bid Conference

The pre-bid conference is the initial forum where the LGU's representatives and the prospective bidders discuss the different aspects of the procurement at hand.

A.1. Pre-Bid Conference as a Legal Requirement

At least one pre-bid conference must be held for contracts with ABCs of at least One Million Pesos (PhP 1,000,000.00). For contracts with ABCs of less than One Million Pesos (PhP 1,000,000.00), pre-bid conferences may or may not be held at the discretion of the BAC. The BAC may also decide to hold a pre-bid

conference upon the written request of a prospective bidder. **(Section 22.1, IRR of R.A. 9184)**

If the BAC members fail to conduct the required Pre-bid Conference with an ABC of One Million Pesos (PhP 1,000,000.00) and above, they may be held administratively liable for neglect of duty under the Civil Service Rules **(Presidential Decree 807)** without prejudice to other civil and criminal liabilities under applicable laws.

A.2. Timeline for the Conduct of the Pre-Bid Conference

A pre-bid conference must be conducted at least twelve (12) calendar days before the deadline for the submission and receipt of bids.

If the LGU, however, determines that, by reason of the method, nature and complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids. **(Section 22.2, IRR of R.A. 9184)**

The timeline for the conduct of pre-bid conference is mandatory and cannot be shortened.

It is prudent for the LGU to hold the Pre-bid Conference not earlier than seven (7) calendar days after newspaper advertisement or the last day of posting the IB. This time period will give prospective bidders reasonable time to examine, study and scrutinize the bidding documents so that they can meaningfully participate during the Pre-bid conference and effectively clarify their concerns with respect to the legal, technical and financial components of the contract to be bid.

In summary:

| Contract Amount | When Conducted? | |
|----------------------------|-----------------|---|
| PhP 1,000,000.00 or more | Mandatory | At least twelve (12) calendar days before the deadline for the submission and receipt of bids. |
| Less than PhP 1,000,000.00 | Discretionary | If the LGU, however, determines that, by reason of the method, nature and complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids. (Section 22.2, IRR of RA 9184) |

A.3. Subject for Discussions During Pre-Bid Conference

The ground rules that will govern the procurement are discussed during the conference, more specifically:

- a. Eligibility requirements of the contract to be bid;
- b. Technical and financial components of the contract to be bid;
- c. Requirements in the ITB; and
- d. Terms and conditions of the contract.

This is also the forum where prospective bidders are given the opportunity to request for clarifications and queries about the bidding documents, as well as, raised their issues and concerns.

REMEMBER: Any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin. **(Section 22.4, IRR of R.A. 9184)**

A.4. Participants in the Pre-Bid Conference

The following shall attend the Pre-Bid Conference:

- a. BAC;
- b. Members of the BAC Secretariat;
- c. TWG;
- d. Representatives from the end-user unit or PMO;
- e. Prospective bidders;
- f. Observers.

Among the matters that will be discussed during the pre-bid conference are the eligibility requirements and technical and financial components of the contract to be bid. Attendance of the bidders shall not be mandatory. However, at the option of the LGU, only those who have purchased the bidding documents shall be allowed to participate in the pre-bid conference and raise or submit written queries or clarifications. **(Section 22.3, IRR of R.A. 9184)**

It is also advisable that technical and knowledgeable officials attend the conference. These persons are those who actually formulated the scope of work, plans and technical specifications for the project should be present and among those representing the LGU. Prospective bidders, on the other hand, should be encouraged to send representatives who are legally and technically knowledgeable about the requirements of the procurement at hand. It is also important that the prospective bidders are given ample time to review the bidding documents prior to the pre-bid conference.

A.5. Procedure for the Conduct of the Pre-Bid Conference

The BAC must initiate discussions on contentious issues, most especially if the participating prospective bidders have no ready questions. It is probable that there are issues that may not be apparent in the bidding documents but are known to the representatives of the LGU. If these issues are brought out and openly discussed, prospective bidders will be able to prepare responsive bids, thus avoiding situations that may give rise to a failure of bidding due to lack of bids received or failure of bids to comply with all the bid requirements. This would also help prevent the birth of contentious issues during the bidding itself.

The manner by which the pre-bid conference is conducted depends on the discretion of the BAC. However, several events need to take place in the conference, namely:

- a. The presentation by the BAC of the eligibility requirements, as well as, the technical and financial components of the contract to be bid, the evaluation procedure, evaluation criteria, and possible causes of failure of the bidding.
- b. The BAC Chairperson shall also discuss the requirements in the ITB, the replies to the bidders' queries about the requirements, specifications and other conditions of the project, the bid evaluation of all bidders and post-qualification evaluation of the LCB. Emphasis should also be given to the warranty requirement of the project and the different offenses and penalties provided for in IRR of R.A. 9184.
- c. The minutes of the pre-bid conference shall be recorded by the BAC Secretariat and made available to all participants not later than three (3) calendar days after the pre-bid conference. **(Section 22.4, IRR of R.A. 9184)**

B. Issuance of a Supplemental Bid Bulletin

B.1. Time of Issuance

B.1.1. If there is a request for clarifications during the pre-bid conference or thereafter

The BAC of the LGU shall respond to the request for clarification by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairman to be made available to all those who have properly secured the bidding documents at least seven (7) calendar days before the deadline for the submission and receipt of bids. **(Section 22.5.1, IRR of RA 9184)**

B.1.2. Upon the LGU's own initiative

The BAC of the LGU may issue Supplemental/Bid Bulletin for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the bidding documents must be identified as "AMENDMENT." **(Section 22.5.2, IRR of RA 9184)**

B.2. Posting Requirement

Any Supplemental/Bid Bulletin issued by the BAC shall be posted on the PhilGEPS and the LGU website, if available.

It will be the prospective bidders' responsibility to ask for, and secure, these bulletins. Bidders who have submitted bids before a supplemental/bid bulletin is issued have to be informed in writing and allowed to modify or withdraw their respective bids. **(Section 22.5.3, IRR of RA 9184)**

B.3. Parties Involved in the Issuance of the Supplemental/Bid Bulletin

The following are involved in the issuance of the supplemental/bid bulletin:

- a. BAC;
- b. BAC Secretariat;
- c. TWG members; and
- d. Prospective bidders.

B.4. Procedure for the Issuance of a Supplemental/Bid Bulletin

B.4.1. If upon the initiative of the BAC

- a. The BAC Secretariat and/or the TWG draft the Supplemental/Bid Bulletin for approval by the BAC.
- b. The BAC approves the Supplemental/Bid Bulletin and the BAC Chairperson signs it.
- c. The BAC Secretariat may send copies of the Supplemental/Bid Bulletin to all prospective bidders who have properly secured or purchased the bidding documents, not later than seven (7) calendar days before the deadline for the submission and receipt of bids
- d. The BAC Secretariat posts the Supplemental/Bid Bulletin in the website of PhilGEPS and the LGU concerned, if any.

B.4.2. If in response to a request for clarification submitted by a prospective bidder

- a. The prospective bidder submits to the BAC, through the BAC Secretariat, a written request for clarification. The request for clarification shall be submitted anytime provided it is undertaken at least ten (10) calendar days before the deadline for the submission and receipt of bids.
- b. The BAC directs the BAC Secretariat and/or TWG to study the request for clarification.
- c. The BAC Secretariat and/or the TWG draft the Supplemental/Bid Bulletin for approval by the BAC.
- d. The BAC approves the Supplemental/Bid Bulletin and the BAC Chairperson signs it.
- e. The BAC Secretariat may send copies of the Supplemental/Bid Bulletin to all prospective bidders who have properly secured or purchased the bidding documents, not later than seven (7) calendar days before the deadline for the submission and receipt of bids
- f. The BAC Secretariat posts the Supplemental/Bid Bulletin in the website of PhilGEPS and the LGU concerned, if any.

IV. Receipt, Opening and Preliminary Examination of Bids

A. Definition of a "Bid"

A Bid refers to a signed offer or proposal to undertake a contract submitted by a bidder in response to, and in consonance with, the requirements stated in the bidding documents.

Two (2) components:

- a. **Technical Proposal/Bid, and**
- b. **Financial Proposal/Bid.**

The Technical and Financial Bids must each be contained in separate sealed bid envelopes.

B. Minimum Contents of the First Bid Envelope [Eligibility Requirements and Technical Proposal (Section 25.2, IRR of RA 9184)]

- a. Eligibility Requirements
- b. Bid Security as to form, amount and validity period;
- c. Project Requirements, which shall include the following:
 - i. Organizational chart for the contract to be bid;
 - ii. List of contractor's personnel (viz. Project Manager, Project Engineers, Materials Engineers and Foremen), with their complete qualification and experience data; and/or
 - iii. List of contractor's equipment units, which are owned, leased and/or purchase agreements and/or under purchase agreements, supported by certification of availability of equipment from the lessor/vendor for the duration of the project;
- d. Sworn statement of the prospective bidder or duly authorized representative in the GPPB prescribed form:
 - i. It is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
 - ii. 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;
 - iii. It is authorizing the Head of the LGU or his duly authorized representative/s to verify all the documents submitted;
 - iv. The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership or joint venture;

- v. It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of RA 3019;
- vi. It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs; and
- vii. It complies with existing labor laws and standards.
- viii. It 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 or representative of the government in relation to any procurement project or activity.

C. Minimum Contents of the Second Bid Envelope [Financial Proposal (Section 25.3, IRR of RA 9184)]

The Financial Proposal shall contain the following financial information/documents, at the least:

- a. Financial Bid Form, which includes bid prices and the bill of quantities and the applicable Price Schedules;
- b. Any other financial document as required in the bidding documents. A good example of other financial documents that may be required by LGUs would be documents that would establish the financial liquidity of the supplier.

D. Eligibility Requirements

For purposes of determining the bidder's eligibility, only the following documents shall be required by the BAC, using the forms prescribed in the Bidding Documents: **(Section 23.1, IRR of RA 9184)**

a. Class "A" Documents

Legal Documents

- i. Registration certificate from SEC for corporations, partnerships and joint ventures, DTI for sole proprietorship, or CDA for cooperatives, or any proof of such registration as stated in the Bidding Documents.
- ii. Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located.
- iii. Tax clearance per Executive Order 398, Series of 2005 as finally reviewed and approved by the BIR.

Technical Documents

- iv. Statement of the prospective bidder of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid; and

Statement identifying the bidder's single largest completed contract (SLCC) similar to the contract to be bid, and whose value, adjusted to current prices using the NSO consumer price indices, must be at least fifty percent (50%) of the ABC to be bid: Provided, however, that

contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines to be prescribed by the PCAB.

The statement for the procurement of infrastructure projects shall include, for each contract, the following:

- a. name of the contract;
- b. date of the contract;
- c. contract duration;
- d. owner's name and address;
- e. nature of work;
- f. contractor's role (whether sole contractor, subcontractor, or partner in a JV) and percentage of participation;
- g. total contract value at award;
- h. date of completion or estimated completion time;
- i. total contract value at completion, if applicable;
- j. percentages of planned and actual accomplishments, if applicable;
- k. value of outstanding works; if applicable.

The statement for infrastructure projects shall be accompanied by the following:

1. Notices of award and/or notices to proceed; and,
 2. Constructors Performance Evaluation System (CPES) rating sheets and/or certificates of completion and owner's acceptance, if applicable.
- v. Valid Philippine Contractors Accreditation Board (PCAB) license and registration for the type and cost of contract to be bid.

Financial Documents

- vi. Audited financial statements, showing, among others, the values of the bidder's total and current assets and liabilities shall be based on the data submitted to the BIR, through its Electronic Filing and Payment System (EFPS).
 - vii. Net Financial Contracting Capacity (NFCC) computation.
- b. Class "B" Document

Valid joint venture agreement (JVA).

Each partner of the joint venture shall submit the legal eligibility documents.

The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance.

E. Eligibility Criteria

E.1. Legal Eligibility Criteria

General Rule (Section 23.5.2.1, IRR of R.A. 9184)

The following persons/entities shall be allowed to participate in the bidding for infrastructure projects:

- a. Duly licensed Filipino citizens/sole proprietorships;
- b. Partnerships duly organized under the laws of the Philippines and of which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;
- c. Corporations duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines;
- d. Cooperatives duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) belongs to citizens of the Philippines; or
- e. Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That, in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%).

Exceptions

Foreign bidders may be eligible to participate under any of the following circumstances:

- a. Where the structures to be built require the application of techniques and/or technologies, which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement, Foreign bidders may be eligible to participate by entering into a joint venture, provided that Filipino ownership or interest shall not be less than twenty-five percent (25%). **(Section 23.5.2.1(e), IRR of R.A. 9184)**
- b. When provided for under any Treaty or International or Executive Agreement as provided in Section 4 of RA 9184 and this IRR. **(Section 23.5.2.2, IRR of R.A. 9184)**

In case of foreign bidders, the foregoing eligibility requirements under Class "A" Documents may be substituted by the appropriate equivalent documents, if any, issued by the country of the foreign bidder concerned. The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign

government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines (**Section 23.2, IRR of RA 9184**)

E.2 Technical Eligibility Criteria (Section 23.5.2.5, IRR of RA 9184)

General Rule

The prospective bidder must have an experience of having completed at least one (1) contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the NSO consumer price indices, must be at least fifty percent (50%) of the ABC to be bid.

Exception

Contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines as prescribed by the PCAB.

For Foreign-funded Procurement, the GOP and the foreign government or foreign/international financing institution may agree on another track record requirement.

Moreover, a contract shall be considered "similar" to the contract to be bid if it has the same major categories of work.

E.3 Financial Eligibility Criteria

The computation of a prospective bidder's NFCC must be at least equal to the ABC to be bid, calculated as follows:

NFCC = [(Current assets minus current liabilities) (K)] minus the value of all outstanding or uncompleted portions of the projects under ongoing contracts, including awarded contracts yet to be started coinciding with the contract to be bid.

Where:

K = 10 for a contract duration of one year or less, 15 for a contract duration of more than one year up to two years, and 20 for a contract duration of more than two years.

The values of the bidder's current assets and current liabilities shall be based on the data submitted to the BIR, through its Electronic Filing and Payment System (EFPS). (**Section 23.5.2.6, IRR of RA 9184**)

For Domestic Bidders, current assets and current liabilities shall be based on the Annual Income Tax Return and the accompanying Audited Financial Statements filed through the EFPS.

However, for purposes of computing Foreign Bidders' NFCC, the value of the current assets and current liabilities shall be based on their Audited Financial Statements in accordance with International Financial Reporting Standards (**GPPB Resolution No. 11-2014**)

F. Format and Signing of Bids

Bidder shall prepare an original and the number of copies of the Eligibility and Technical and Financial Proposals, stated in the bidding documents.

Original and the number of copies of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the Contract.

The person or persons signing the Bid shall initial all pages of the Bid, except for un-amended printed literature. It may also be stressed that bidders should still put their initials on pages with signatures.

Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the bidder or his duly authorized representative.

G. Sealing and Marking of Bids

If all envelopes are not sealed and marked as required, the LGU will assume no responsibility for the misplacement or premature opening of the Bid.

All envelopes shall:

- a. contain the name of the contract in capital letters;
- b. bear the bidder's name and address in capital letters;
- c. address to the LGU's BAC;
- d. bear the specific identification of this bidding process; and
- e. bear a warning "DO NOT OPEN BEFORE..." the date and time for the opening of Bids.

If all envelopes are not sealed and marked as required, the LGU will assume no responsibility for the misplacement or premature opening of the Bid.

H. Procedure for Receipt and Opening of Eligibility and Bid Envelopes for Eligibility Check and Bid Examination

- a. The BAC shall receive the two (2) bid envelopes at the time, date and place specified in the bidding documents and the IB. The First Bid Envelope shall contain the Technical Component of the Bid, together with the eligibility requirements, while the Second Bid Envelope shall contain the Financial Component of the Bid. Upon receipt of these envelopes, the BAC Secretariat must stamp the face of the outer envelope as "RECEIVED," indicating thereon the date and time of receipt, and have the stamp countersigned by the bidder or his duly authorized representative.
- b. The BAC shall open the First Bid Envelope in public as specified in the bidding documents to determine each Bidder's compliance with the documents required to be submitted for eligibility and technical requirements, as prescribed by RA 9184 and its IRR.

For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion, as stated in the ITB. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any

requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said First Bid Envelope as "passed." (**Section 30.1, IRR of R.A. 9184**)

For a document, to be deemed "complete" and "sufficient", it must be complete on its face, that is, it contains all the information required, and must comply with the requirements set out in the bidding documents.

An example of an insufficient submission is a Bid Security in an amount below the requirement.

- c. The BAC shall inquire from ineligible bidders who are present during the Eligibility Check whether or not they intend to file a **request for reconsideration**; if they signify their intention to do so, the BAC shall keep the Eligibility envelopes containing the eligibility requirements and re-seal the same in the presence of all the participants. These shall be deposited in the Bid Box or any other secured place or location, together with the Technical and Financial envelopes, ensuring that the latter documents remain sealed and unopened. If an ineligible bidder does not signify its intention to file a motion for reconsideration during the Eligibility Check, considering that it may decide to exercise its right to file one during the mandated seven (7) calendar day period therefor, it would be advisable for the BAC to place its own seal over the Technical and Financial Bid envelopes of the said ineligible bidder – which BAC seal shall be over the existing seal of the ineligible bidder – to ensure that no tampering of these documents may be committed while in possession of the ineligible bidder before resubmission. In any case, with or without any indication on the part of the prospective bidder of its intention to file a request for reconsideration, it would be advisable for the BAC to hold on to the Eligibility envelopes containing the eligibility requirements, duly re-sealed and deposited, including the technical and financial bid envelopes, until the expiration of the period for filing a request for reconsideration, to ensure the integrity of these documents; unless if the said prospective bidder waives its right to file a request for reconsideration.
- d. The BAC shall return the Bid envelopes of a prospective bidder if it is declared "failed" or "disqualified" and upon submission of a written waiver of their right to file a request for reconsideration and/or protest.
- e. Immediately after determining compliance with the requirements in the First Bid Envelope, the BAC shall forthwith open the Second Bid Envelope of each remaining qualified bidder whose First Bid Envelope was rated "passed". The Second Bid Envelope of each complying bidder shall be opened within the same day.
- f. In case one or more of the requirements in the Second Bid Envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid concerned as "failed". Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison. (**Section 30.2, IRR of R.A. 9184**)
- g. The BAC shall adopt a procedure for ensuring the integrity, security and confidentiality of all submitted bids. (**Section 29, IRR of R.A. 9184**)
- h. The BAC Secretariat shall record the proceedings using a tape or video recorder or any device that may facilitate the recording.

- i. The minutes of the bid opening should be prepared within three (3) calendar days after the bid opening date, so that copies thereof could immediately be sent to the BAC members, Observers, bidders and other interested parties. Copies of the minutes shall also be made available to the public upon written request and payment of a specified fee to recover cost of materials.

I. Modification and Withdrawal of Bids

I.1. Modification

A bidder may modify its bid, provided this is done before the deadline for the submission and receipt of bids. Where a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked or related to its original bid and marked as a "MODIFICATION" of the original, and stamped "RECEIVED" by the BAC. Bid modifications received after the deadline will not be considered and shall be returned to the bidder unopened. **(Section 26.1, IRR of R.A. 9184)**

I.2. Withdrawal

A bidder may, through a letter, withdraw its bid before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline must be subject to appropriate sanctions as prescribed in the IRR. A bidder may also express its intention not to participate in the bidding through a letter, which should reach and be stamped "RECEIVED" by the BAC before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. **(Section 26.2, IRR of RA 9184)** Moreover, a bidder that withdraws its bid without any justifiable cause therefor shall be subject to the administrative sanctions provided in Section 69.1 of the IRR.

J. Registry of Contractors

To facilitate determination of eligibility, the BAC of an LGU may use the contents of the PhilGEPS electronic registry of contractors. **(Section 23.4, IRR of RA 9184)**

The PhilGEPS registry system shall contain the foregoing Class "A" documents, which should be maintained current and updated by the bidder concerned at least once a year or more frequently as may be necessary. **(Section 23.4.1, IRR of RA 9184)**

A bidder who maintains a current and updated file of his Class "A" Documents may submit to the procuring entity, in lieu of the said documents, the Certificate of Registration and Membership issued by PhilGEPS. **(Section 23.4.2, IRR of RA 9184)**

K. Bid Security

The LGU shall indicate in the Bidding Documents the acceptable bid security that bidders may opt to use, which shall include the Bid Securing Declaration provided in Section 27.5 of the IRR of R.A. 9184 and at least one other form, the amount of which shall be equal to a percentage of the ABC in accordance with the following schedule:

K.1. Forms and Corresponding Amounts

| Form of Bid Security | Amount of Bid Security (Equal to Percentage of the ABC) |
|---|---|
| 1. Cash, cashier’s/manager’s check, issued by a Universal or Commercial Bank. | Two percent (2%) |
| 2. Bank draft/irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. | |
| 3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. | Five percent (5%) |
| 4. Any combination of the items 1 to 3 above. | Proportionate to share of form with respect to total amount of security |
| 5. Bid Securing Declaration | |

A Bid Securing Declaration is an undertaking which states, among others, that the bidder shall enter into contract with the Procuring Entity and furnish the performance security within ten (10) calendar days, or less as indicated in the Bidding Documents, from receipt of the Notice of Award, and committing to pay the corresponding fine, and be suspended for a period of time from being qualified to participate in any government procurement activity in the event that it violates any of the conditions stated therein as provide in the guidelines issued by the GPPB. **(Section 27.5, IRR of RA 9184)**

The prospective bidder shall be given the option to post a BSD **OR** any other form of bid security indicated by the Procuring Entity in the Bidding Documents.

To illustrate, the procuring entity shall include BSD, as one of the choices; the other form of bid security may be Cashier’s Check (or Cash, Manager’s Check, Bank Draft/Guarantee, Irrevocable Letter of Credit, Surety Bond, or combination of the identified forms). The prospective bidder may opt to post a BSD **OR** Cashier’s Check as its bid security. Accordingly, the prospective bidder is required to post only one (1) form of bid security, in this example, it could either be a BSD **OR** Cashier’s Check.

The Procuring Entity may also require bidders to submit bid securities in the form of cashier’s/manager’s check, bank draft guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.

It must be enclosed with every bid and must be operative on the date of bid opening, and payable to the LGU.

The Bidder's failure to enclose the required bid security in the prescribed form and amount shall be automatically disqualified by the LGU.

For instance, if the ABC is One Million Pesos (PhP. 1,000,000.00) and the bidder intends to secure its bid sixty percent (60%) by cash and the remaining forty percent (40%) by surety bond, then the amount of each form of bid security should be as follows:

$$\begin{aligned}
 \text{Amount of Cash} &= (\text{ABC} \times 2\%) \times 60\% \\
 &= (1,000,000 \times .02) \times .6 \\
 &= 20,000 \times .6 \\
 &= \text{P}12,000 \\
 \text{Amount of Surety Bond} &= (\text{ABC} \times 5\%) \times 40\% \\
 &= (1,000,000 \times .5\%) \times .4 \\
 &= 50,000 \times .4 \\
 &= 20,000
 \end{aligned}$$

In biddings with lots or items, whereby a bidder submits a bid for more than one lot or item, the bid security shall be based upon the sum of the ABC for each of the lots or items for which bids are submitted.

K.2. Period of Validity of Bids and Bid Securities

Bids and bid securities shall be valid for a reasonable period as determined by the Head of the Procuring Entity concerned, which shall be indicated in the Bidding Documents, but in no case shall the period exceed one hundred twenty (120) calendar days from the date of the opening of bids. (**Section 28.1, IRR of RA 9184**)

Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, the procuring entity concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security. (**Section 28.2, IRR of RA 9184**)

The recommended period for bid validity is ninety (90) calendar days with the corresponding bid security valid for one hundred twenty (120) calendar days to provide reasonable time thirty (30) calendar days for the BAC to act if the security is to be called.

Bidders who refuse to grant the LGU's request for an extension of the period of validity of their bid and bid security will have the same returned to them. However, they are deemed to have waived their right to further participate in the bidding.

K.3. Return of Bid Securities to Bidders

General Rule

Bid Securities shall be returned only after the bidder with the LCRB has signed the contract and furnished the Performance Security, but in no case later than the expiration of the Bid Security validity period indicated in the ITB.

Exceptions

- a. Failed to comply with any of the requirements to be submitted in the first bid envelope (Technical Proposal) and submitted a written waiver of its right to file a motion for reconsideration and/or protest;
- b. Were post-disqualified and submitted a written waiver of its right to file a motion for reconsideration and/or protest, as provided in the IRR.

K.4. Forfeiture of Bid Security

The bid security may be forfeited:

- a. if a Bidder:
 - i. does not accept the arithmetical correction of errors;
 - ii. fails to submit the requirements within the prescribed period or a finding against their veracity;
 - iii. submission of eligibility or bidding requirements containing 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 public bidding;
 - iv. allowing the use of one's name, or using the name of another for purposes of public bidding;
 - v. withdrawal of a bid during the bid validity period, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Bidder had been adjudged as having submitted the Lowest Calculated and Responsive Bid;
 - vi. refusal or failure to post the required performance security within the prescribed time;
 - vii. 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;
 - viii. any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor;
 - ix. failure of the potential joint venture partners to enter into the joint venture after the bid is declared successful;
 - x. all other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons; or

K.5. Penalties under Bid Securing Declaration

- a. Penalty of automatic blacklisting for two (2) years in all government procurement activities;
- b. Payment of fine equivalent to the amount subject to the following rules:

- i) In case of multiple bidders:

Two Percent (2%) of the Approved Budget for the Contract (ABC) or the Difference between the evaluated bid prices of the bidder with the Lowest Calculated/Highest Rated Bid and the bidder with the next Lowest Calculated/Highest Rated Bid, and so on, whichever is HIGHER;

As regards the bidder with the Highest Calculated/Lowest Rated Bid, the amount shall be Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the ABC, whichever is HIGHER.

- ii) In case of a single bidder:

Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the Approved Budget for the Contract, whichever is HIGHER.

- iii) Violations committed prior to opening of financial envelope:

A fix amount equivalent to two percent (2%) of the ABC.

- iv) The bidder shall pay the above-mentioned fine within fifteen (15) days from receipt of the written demand by the procuring entity as a result of the violation of the conditions in the Bid Securing Declaration.

- v) The imposition of the foregoing fine is without prejudice to other legal action the government may undertake against the erring bidder.

V. Detailed Bid Evaluation

A. Purpose

Determine the bidder with the Lowest Calculated Bid (LCB). **(Section 32.2, IRR)**

B. Timeline

The entire evaluation process for the procurement of infrastructure projects shall be completed within seven (7) calendar days. However, for projects costing Fifty Million Pesos (PhP 50,000,000) and below shall be completed within five (5) calendar days from the deadline for receipt of proposals. **(Section 32.4, IRR of R.A. 9184)**

C. Procedure

C.1. Establish the Correct Calculated Prices of the Bids

After the preliminary examination of bids, the BAC, or through the TWG, shall immediately conduct a detailed evaluation of all bids

rated "passed," using a **non-discretionary pass/fail criteria**, as stated in the IB and the ITB, which shall include a consideration of the following: **(Section 32.2, IRR of RA 9184)**

1. *Completeness of the bid*

Partial bids or bids not addressing or providing all of the required items in the bidding documents shall be considered non-responsive and automatically disqualified, unless the ITB specifically allows partial bids.

If a required item is provided in the financial proposal, but no price is indicated, the same shall be considered as non-responsive. Specifying a "0" (zero) for the said item, however, would mean it is being offered for free and such bid should be considered. **(Section 32.2.1.a, IRR of R.A. 9184)**

2. *Arithmetical corrections*

Consider computational errors and omissions to enable proper comparison of all eligible bids. Minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed in the bidding documents, shall be made to enable proper comparison of all eligible bids. **(Section 32.4.1.b, IRR of R.A. 9184)**

3. *All bids shall be evaluated on equal footing*

All bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties, which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison. **(Section 32.2.2, IRR of RA 9184)**

4. *Bid discrepancies*

In case of discrepancies between:

- a. bid prices in figures and in **words**, the latter shall prevail;
- b. total prices and **unit prices**, the latter shall prevail;
- c. unit cost in the detailed estimate and **unit cost in the bill of quantities**, the latter shall prevail. **(Sections 32.2.3, IRR of RA 9184)**

During the bid evaluation stage, the BAC, BAC Secretariat and the TWG are prohibited from initiating any kind of communication with the bidders nor shall they entertain clarifications from the bidders.

C.2. Ranking of Bids

Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, discounts and other

modifications. The bid with the lowest price shall be identified as the LCB. Total calculated bid prices that exceed the ABC shall be disqualified. **(Section 32.4.4, IRR of RA 9184)**

C.3. Preparation of Abstract of Bids

After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding Bid Securities and the minutes or proceedings of the bidding. **(Section 32.3, IRR of RA 9184)**

The Observers who are present may also sign the Abstract of Bids if, in their independent observation, the bidding activity conducted by the BAC followed the correct procedure.

The contents of the Abstract of Bids:

- a. name of the contract and its location, if applicable;
- b. time, date and place of bid opening; and
- c. names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.

D. Parties Involved in Bid Evaluation

The following must participate in the bid evaluation process:

- a. BAC;
- b. BAC Secretariat;
- c. TWG members; and
- d. Observers.

E. Ceiling for Bid Prices

The ABC shall be the upper limit or the ceiling for acceptable bid prices. If a bid price, as evaluated and calculated in accordance with the IRR, is higher than the ABC, the bidder submitting the same shall be automatically disqualified. There shall be no lower limit or floor on the amount of the award. **(Section 31, IRR of RA 9184)**

F. No Contact Rule

General Rule

Members of the BAC, BAC Secretariat and TWG, as well as its staff and personnel are prohibited from making/accepting any communication from bid submission until issuance of NOA.

Exception

BAC, through its BAC Secretariat, may request in writing bidders for clarification of its bid in writing. **(Section 32.1, IRR of RA 9184)**

VI. Post-qualification

A. Nature and Purpose

Post-qualification is the process of **verifying, validating and ascertaining** all the statements made and documents submitted by the bidder with the Lowest Calculated Bid (LCB) or Single Calculated Bid (SCB), which includes ascertaining the said bidder's compliance with the eligibility, technical bid and financial bid requirements.

B. Procedure for Post-qualification

Within three (3) CDs from receipt by the bidder of the notice from the BAC that the bidder has the LCB/SCB, the bidder shall submit the following documentary requirements to the BAC:

- a. Latest income and business tax returns;
- b. Certificate of PhilGEPS Registration;
- c. Other appropriate licenses and permits required by law and stated in the Bidding documents. **(Section 34.2, IRR of RA 9184)**

The following steps are followed in the conduct of post-qualification:

- a. The BAC/TWG verifies, validates, and ascertains the genuineness, validity and accuracy of the legal, technical and financial documents submitted by the bidder with the LCB, using the non-discretionary criteria as stated in the IB and ITB. These criteria shall consider, but shall not be limited to, the verification and validation of the following:

- i. Legal Requirements:

Verification, validation and ascertaining of the following:

- a. Registration certificates coming from SEC/ DTI or CDA;
 - b. Mayor's permit from the principal place of business;
 - c. Tax clearance and returns;
 - d. Certificate of PhilGEPS Registration or PhilGEPS Registration Number if the procuring entity is a Philippine foreign office or post, provided that participating bidders should register with the PhilGEPS prior to bid opening; and
 - e. Other appropriate licenses required by existing laws and indicated in the bidding documents, such as PCAB License.

- ii. Technical Requirements. Determination of the documents submitted by a contractor to prove compliance of infrastructure projects offered with the requirements of the contract and bidding documents. This involves verification and validation of the following:

1. Authenticity and sufficiency of the Bid Security as to type, amount, form and wording, and validity period.
 2. Bidder's stated competence and experience as a whole, as well as its key personnel;

3. Omnibus Sworn Statement, including the bidder's inclusion in the Consolidated Report of Blacklisted Suppliers, Contractors and Consultants, Bidder's Compliance to Labor Laws, Rules and Regulations and Relationship of the Bidder with the HOPE, members of the BAC, TWG and BAC Secretariat, Head of the End-user Unit Representatives or PMO, and consultants, if any.
4. Availability, commitment and performance of the equipment units to be owned or leased;
5. Performance of the bidder in its on-going government and private contracts;
 - Sub-standard quality of work as per contract plans and specification
 - unsatisfactory performance of the bidder's obligation
 - negative slippage of at least fifteen percent (15%)

iii. Financial Requirements.

Verification, validation and ascertainment of the following:

1. Bid price proposal of the bidder;
 2. Computation of the NFCC;
 3. Bidder's net worth and liquid assets, as well as, the net working capital; and,
 4. Value of all outstanding or unfinished works under on-going contracts, including contracts awarded but not yet started.
- b. The BAC/TWG conducts a site inspection of the bidder's place of business and/or plant/factory, where applicable.
- c. The BAC/TWG tests samples for compliance with specifications and performance levels, where applicable.
- d. The BAC/TWG inquires about the bidder's performance in relation with other contracts/transactions as indicated in its eligibility statement (statement of on-going, completed or awarded contracts).
- e. If the TWG conducts the post-qualification, it prepares a Post-qualification Report to be submitted to the BAC. The Report shall contain, among others, the activities undertaken with regard to the post-qualification process, feedback from inquiries conducted, and the results of any tests conducted by the TWG or an accredited government testing center, where applicable. The BAC reviews the Post-qualification Report submitted by the TWG.
- The BAC determines whether the bidder with the LCB/SCB passes all the criteria for post-qualification.
- f. If the bidder with the LCB/SCB passes the post-qualification, the BAC declares it as the bidder with the Lowest Calculated and

Responsive Bid (LCRB)/Single Calculated and Responsive Bid (SCRB).

- g. If the bidder with LCB is post-disqualified, the BAC shall then proceed to initiate and complete the post-qualification of the bidder with the second LCB. This procedure is repeated until the LCRB is determined.
- h. Should the SCB or all eligible bidders fail post-qualification, the BAC must declare a failure of bidding pursuant to Section 35 of the IRR of R.A. 9184.
- i. After the BAC has determined the LCRB/SCRB, the Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the LCRB and the corresponding Notice to the said bidder informing it of its successful post-qualification.

C. Timeline

The post-qualification process must be conducted and completed **within seven (7) calendar days** from the determination of the LCB. However, in exceptional cases, the post-qualification period may be extended by the HOPE to a maximum of **thirty (30) calendar days**. (**Section 34.8, IRR of R.A. 9184**)

VII. Issuance of the Notice of Award

A. Rule on Award of the Contract

The contract shall be awarded to the bidder with the Lowest Calculated Responsive Bid (LCRB) or Single Calculated and Responsive Bid (SCRB) at its submitted bid price or its calculated bid price, whichever is lower. (**Sec. 34.4, IRR of R.A. 9184**)

The BAC shall issue a Resolution recommending to the HOPE to award the contract to the bidder with the LCRB at its submitted bid price or its calculated bid price, whichever is lower.

Prior to the expiration of the period of bid validity, the LGU should notify the successful bidder in writing that its bid has been accepted, through a NOA received personally or sent by registered mail or electronically.

B. Procedure

The following steps are followed in the awarding of a contract:

- a. The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand, and attaches the same to the BAC Resolution.
- b. The BAC Secretariat drafts the BAC Resolution recommending award.
- c. The BAC approves and signs the Resolution Recommending Award, and transmits the same to the HOPE. (**Sec. 37.1.1, IRR of RA 9184**)
- d. The HOPE acts on the recommendation for award within seven (7) calendar days from the date of determination and declaration by the BAC of the LCRB/SCRB. The HOPE should approve or disapprove the BAC recommendation for award of the contract.

- e. In case of approval of the BAC recommendation, the HOPE, through the BAC, issues the NOA to the bidder with the LCRB/SCRB.
- f. Simultaneously, the BAC, through the BAC Secretariat, shall notify all losing bidders of its decision. **(Sec. 37.1.3, IRR of RA 9184)**
- g. In case of a disapproval of the recommendation of award, the HOPE shall state the reason(s) for disapproval and instruct the BAC on the subsequent steps to be adopted.
- h. BAC, through the BAC Secretariat, shall post the NOA, within three (3) calendar days from its issuance, at the following:
 - i. PhilGEPS website;
 - ii. LGU's website, if any, and
 - iii. Any conspicuous place in the premises of the LGU. **(Sec. 37.1.6, IRR of RA 9184)**
- i. The bidder with the LCRB/SCRB accepts the NOA.

If the deadline for each activity falls on a non-working day (*i.e.* Saturday and Sunday), legal holiday, or special non-working holiday, the deadline shall be the next working day **(Sec. 38.2, IRR of R.A. 9184)**.

C. **Single Calculated and Responsive Bid**

A single calculated and responsive bid shall be considered for award if after the advertisement only one (1) submitted responsive bid.

Provided that the bid is responsive and complying to the requirement of the bidding documents, and has not exceeded the ABC.

D. **Timeline**

The HOPE should approve or disapprove the recommendation of award **within seven (7) calendar days from the date of determination and declaration by the BAC of the LCRB. (Section 37.1.2, IRR of RA 9184)**

The **NOA** shall be given to the bidder with the LCRB **immediately** after approval of the recommendation. Simultaneously, the BAC shall **notify** all losing bidders of its decision, and the award shall be posted in the website of the PhilGEPS, as well as the websites of the LGU and its electronic procurement service provider, if any. **(Section 37.1.3, IRR of RA 9184)**

E. **Legal Effects if the Bidder Having the LCRB/SCRB Fails or Refuses to Accept Award of the Contract**

E.1 **Forfeiture of Bid Security and Blacklisting**

If the bidder refuses or fails to accept the award without justifiable cause within the bid validity period, the BAC shall forfeit the bid security of the bidder. The BAC may also impose on the erring bidder the penalty 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. **(Sections 69.1 and 69.2, IRR of R.A. 9184)**

In case of imposing the administrative sanction to the erring bidder, the Uniform Guidelines for Blacklisting of Suppliers, Contractors and Consultants shall be duly considered.

E.2 Next Steps

The BAC shall then proceed to initiate and complete the post-qualification of the bidder with the second LCB. If found qualified and determined as the LCRB, said bidder shall then be recommended for award of the contract. This procedure is repeated until the LCRB is determined.

Should all eligible bidders fail post-qualification, the BAC must declare a failure of bidding pursuant to Section 35 of the IRR of R.A. 9184.

E.3 Criminal Action

If the refusal or failure to accept the NOA is without just cause or for the purpose of forcing the LGU to award the contract to another bidder, the LGU concerned may initiate a criminal action against the erring bidder as well as against its co-conspirators, including public officers, for violation of the provisions of R.A. 9184 and its IRR. If proven guilty, the bidder and its co-conspirators shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years. **(Section 65.3(d), IRR of R.A. 9184)**

F. Posting of Performance Security

A performance security is a guarantee that the winning bidder will faithfully perform its obligations under the contract prepared in accordance with the bidding documents. **(Section 39.1, IRR of RA 9184)** It must be posted in favor of the LGU, and will be forfeited in its favor in the event it is established that the winning bidder fails to perform any of its obligations under the contract.

F.1 Time for Posting the Performance Security

The winning bidder should furnish the LGU with the performance security within a maximum period of ten (10) calendar days from the receipt of the NOA from the LGU, and in all cases upon signing of the contract. **(Section 37.2.1, IRR of RA 9184)** The performance security forms part of the contract. **(Section 37.2.3, IRR of RA 9184)**

F.2 Forms and Corresponding Amounts

The Procuring Entity shall indicate in Bidding Documents at least two (2) acceptable forms of performance security taken from two (2) categories, below that bidders may use, the amount of which shall be to a percentage of the total contract price in accordance with the following schedule:⁹

| Form of Performance Security (Sec. 39.2, IRR of RA 9184) | Minimum Amount in Percentage of the Contract Price |
|---|--|
| a. Cash, or cashier's/manager's check issued by a Universal or Commercial | |

⁹ For FAPs, reference should be made to the appropriate standard bidding documents for the project in order to determine the applicable amount and form of the performance security.

| | |
|--|--|
| Bank | |
| b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. | 10% |
| c. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. | 30% |
| d. Any combination of the foregoing. | Proportionate to share a form with respect to total amount of security |

The Procuring Entity may also require bidders to submit performance security in the form of cashier's/manager's check, bank draft/guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.

The winning bidder must choose which among the preferred forms it shall submit. In no case shall the face value of the performance security be less than the minimum amount prescribed above. For example, in the procurement of goods with a contract price of Five Hundred Thousand Pesos (P 500,000.00), a manager's check of Twenty Thousand Nine Hundred Ninety Pesos (P 24,990.00) as a form of performance security furnished by the winning bidder should be rejected as it does not satisfy the minimum amount of five percent (5%) of the contract price, even if it is just deficient by Ten Pesos (P10.00).

F.3 Procedure for Posting of Performance Security

The following steps are followed in the posting of the performance security:

- a. The bidder with the LCRB/SCRB posts a performance security. In so doing, it must comply with the following conditions:
 - i. The performance security must be executed in the form prescribed by the LGU in the ITB; and
 - ii. The performance security must at least be co-terminus with the period of completion of the contract.
- b. The LGU accepts the performance security and indicates such posting and acceptance by attaching the appropriate form to the contract.

F.4 Release of Performance Security

Subject to the conditions of the contract, the LGU may release the performance security to the winning bidder after the issuance of

the Certificate of Final Acceptance, provided that there are no claims filed against the contract awardee or the surety company. However, it must ensure that the performance security is replaced by a warranty security in accordance with the provisions under Section 62.

The performance security shall cover the defects liability period. The defects liability period is one (1) year from project completion up to the issuance of the certificate of final acceptance. During the defects liability period, the contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure on account of the use of materials of inferior quality, within ninety (90) days from the time the Head of the LGU has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the LGU shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand. The LGU shall also forfeit the performance security, subject its property(ies) to attachment or garnishment proceedings, and perpetually disqualify it from participating in any public bidding. All payments of the LGU in his favor shall be offset to recover the cost.

F.5 Changes in the Amount of Performance Security

There shall be a corresponding change in the amount of the Performance Security posted by the winning bidder in the following instances:

- a. Variation Order - The winning bidder shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of any variation order. **(Section 1 Annex "E" IRR of R.A. 9184)** The percentages in the schedule above must be applied to increases in the original value of the contract. The winning bidder must also cause the extension of the validity of the performance security to cover approved contract time extensions.
- b. Partial completions of works - In case of a reduction in the contract value, or, in the case of procurement of infrastructure projects, for partially completed works under the contract which are usable and accepted by the LGU, and the use of which in the judgment of the LGU will not affect the structural integrity of the entire project, the said LGU shall allow a proportional reduction in the original Performance Security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original Performance Security. **(Section 39.6, IRR of R.A. 9184)**

VIII. Contract Signing and Approval

The winning bidder must sign the contract within ten (10) calendar days from receipt of the NOA. **(Section 37.2.1, IRR of RA 9184)**

The LGU shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.

A. Documents that Form Part of the Contract

The following documents shall form part of the contract:

- a. Contract Agreement;
- b. Bidding Documents, including Instructions to Bidders, Bid Data Sheet and Conditions of the Contract;
- c. Copy of the Invitation to Bid;
- d. Addenda and/or Supplemental/Bid Bulletins, if any;
- e. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;
- f. Performance Security;
- g. Credit line in accordance with the provisions of this IRR, if applicable;
- h. Notice of Award of Contract and the winning bidder's "Conforme" thereto; and
- i. Other contract documents that may be required by existing laws and/or the LGU concerned in the Bidding Documents
- j. For infrastructure projects, the following shall also be included to form part of the contract:
 - i. construction schedule and S-curve;
 - ii. manpower schedule;
 - iii. construction methods;
 - iv. equipment utilization schedule;
 - v. construction safety and health program approved by the Department of Labor and Employment; and
 - vi. PERT/CPM.

B. Procedure for Contract Signing and Approval

- a. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
- b. The BAC Secretariat transmits the contract and its attachments to the Budget Office (for issuance of OS) and the Chief Accountant (for issuance of CAF)
- c. The BAC Secretariat transmits the contract documents to the HOPE or appropriate signing authority for signature, together with the following documents:
 - i. Duly approved program of work and cost estimates or the PPMP;
 - ii. Abstract of Bids, as submitted and calculated;
 - iii. Resolution of the BAC recommending award;
 - iv. Approval of award by the HOPE; and

- v. Other pertinent documents that may be required by existing laws and/or the LGU.
- d. The HOPE or his/her duly authorized representative signs the contract from receipt by the winning bidder of the NOA, provided that the winning bidder has complied with all the documentary requirements, if any.

(Steps a-d shall be accomplished within ten (10) calendar days from receipt of the NOA)

- e. The HOPE or his/her duly authorized representative issues the NTP together with a copy or copies of the approved contract to the successful bidder within three (3) calendar days from the date of the approval of the contract.

Authorization from the Sanggunian is an indispensable requirement before the Local Chief Executive may enter into and sign all contracts and obligations in behalf of the Sanggunian. Such authorization may either be given through the Appropriation Ordinance or through a separate approval if the Appropriation Ordinance describes the project in generic terms (**NPM No. 017-2014 dated 5 May 2014, citing *Quisumbing v. Garcia*, G.R. No. 175527, 8 December 2008**)

IX. Issuance of Notice to Proceed

The HOPE or his/her duly authorized representative issues the Notice to Proceed (NTP) together with a copy or copies of the approved contract to the successful bidder within three (3) calendar days from the date of the approval of the contract. However, for infrastructure projects with an ABC of Fifty Million Pesos (PhP 50,000,000) and below, the maximum period is two (2) calendar days. (**Section 37.4.1, IRR of RA 9184**)

The LGU, through the BAC Secretariat, shall post a copy of the Notice to Proceed and the approved contract within fifteen (15) calendar days from its issuance in the PhilGEPS or the website of the LGU, if any. (**Section 37.4.2, IRR of RA 9184**)

A. Effectivity of the Contract

The contract effectivity date shall be provided in the Notice to Proceed by the LGU, which date shall not be later than seven (7) calendar days from its issuance. (**Section 37.4.1, IRR of RA 9184**)

B. Effect of Failure to Enter into Contract and Post Performance Security

If the bidder with the LCRB or SCRB fails, refuses or is unable to submit the documents required under Section 37.1 of the IRR or to make good its bid by entering into a contract with the LGU or post the required Performance Security within the period stipulated in the IRR of R.A. 9184 or in the Bidding Documents, the bid security shall be forfeited and the appropriate sanctions provided in this IRR and existing laws shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder. (**Section 40.1, IRR of RA 9184**)

In the case of the failure, refusal or inability of the bidder with the LCRB to submit the documents required under Section 37.1 of the IRR of R.A. 9184 or to enter into contract and post the required Performance Security, the BAC shall disqualify said bidder and shall initiate and complete the post-qualification process on the bidder with the second Lowest Calculated Bid. This procedure shall be repeated until the Lowest Calculated Responsive

Bid is determined for award. However, if no bidder passes post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into a negotiated procurement. **(Section 40.2, IRR of RA 9184)**

In the case of failure, refusal or inability of the bidder with the SCRB to submit the documents required under Section 37.1 of the IRR of R.A. 9184 or to enter into contract and post the required Performance Security, the BAC shall disqualify the said bidder, and shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Sections 21 and 25 of the IRR of RA 9184. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into negotiated procurement. **(Section 40.3, IRR of RA 9184)**

SECTION 5. Reservation Clause and Failure of Bidding

I. Reservation Clause

The Reservation Clause declares that the HOPE reserves the right to reject any and all bids, to declare a failure of bidding, or not to award the contract. **(Section 41, IRR of R.A.)**

HOPE may exercise the following:

1. Reject any and all bids

If there is *prima facie* evidence of existence of collusion

- a. between appropriate public officers or employees of the LGU, or
- b. between the BAC and any of the bidders, or
- c. between or among the bidders themselves, or
- d. between a bidder and a third party.

2. Declare a failure of bidding

If the *BAC is found to have failed*¹⁰ in following the prescribed bidding procedures; or

3. Not award the contract

For any justifiable and reasonable ground where the award of the contract **will not redound to the benefit of the government** as follows:

- a. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the HOPE;
- b. If the project is no longer necessary as determined by the HOPE; or
- c. If the source of funds for the project has been withheld or reduced through no fault of the LGU.

In the case of ***Mata v. San Diego, G.R. No. L-30447 (21 March 1975)***, the Supreme Court of the Philippines declared that a bidder is bound by the reservation clause, and the said clause vests in the authority concerned the discretion to ascertain who among the bidders is the lowest responsive bidder or the lowest and best bidder or most advantageous to the best interest of the Government. As such, a bidder has no right or cause of action to compel the BAC or agency to award the contract to it.

¹⁰ **What are the instances wherein the BAC fails to follow the prescribed procedures?**

The following are some instances when a BAC fails to follow procedures:

1. Prescribing an insufficient number of days in the posting of the IB;
2. Exceeding the required periods for eligibility screening, bid evaluation, post-qualification for each highest rated bidder or for awarding the contract without justifiable cause;
3. Conducting the pre-bid conference or issuing the bidding documents in less than the required number of days before deadline for the submission and opening of bids;
4. Requiring the bidder to submit additional documents which is tantamount to improving his bidding documents; and
5. Allowing a bidder to become eligible or pass the post-qualification with incomplete documents.

The Court further stated that this requires inquiry, investigation, comparison, deliberation and decision – a quasi-judicial function which, when honestly exercised, may not be reviewed by the courts. It should be noted, however, that Section 41 of R.A. 9184, has placed some limiting qualifiers on the possible contents of the Reservation Clause.

Practical Tip

The Reservation Clause must be exercised with Caution by the HOPE

The LGU should be prudent in the use of the reservation clause and should be strictly limited to the three (3) grounds discussed above, If the HOPE abuses his power to reject any and all bids, as provided by therein, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of the IRR of R.A. 9184, or if it is proven that he exerted undue influence or undue pressure on any member of the BAC or any officer or employee of the LGU to take such action, and the same favors or tends to favor a particular bidder, he shall be meted with the penalties provided in Section 65 of the IRR of R.A. 9184. **(Section 65.1.5, IRR of R.A. 9184)**

II. Failure of Bidding

A. Grounds; The BAC shall declare a failure of bidding in any of the following circumstances:

- a. No bids are received
- b. All prospective bidders declared ineligible
- c. All bids fail to comply with bid requirements, fail post-qualification, or no successful negotiation in case of consulting services
- d. LCRB unjustifiably refuses to accept award and award not made to next bidders. **(Section 35.1, IRR of R.A. 9184)**

B. Next Steps

In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates. **(Section 35.2, IRR of R.A. 9184)**

Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the IRR of RA 9184. **(Section 35.3, IRR of R.A. 9184)**

All bidders who have initially responded to the Invitation to Bid/Request for Expression of Interest and have been declared eligible or short listed in the previous biddings shall be allowed to submit new bids. The BAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding(s). **(Section 35.4, IRR of R.A. 9184)**

Should there occur a second failure of bidding, the LGU may resort to Negotiated Procurement, as provided for in Section 53.1 of the IRR of RA 9184.

SECTION 6: Contract Implementation

Contract implementation covers the following milestones:

- a. Contractor's performance of his contractual obligations;
- b. LGU's performance of its contractual obligations, as specified in the contract;
- c. Final acceptance or project sign-off;
- d. All other related activities; and
- e. Payment by the LGU.

I. Subcontracting

A. Extent and Limitation

Generally, a contractor may be allowed to subcontract a portion of the contract or project. The bidding documents must clearly specify the decision of the LGU whether it is allowing subcontracting arrangements. However, the contractor should not be allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed fifty percent (50%) of the total project cost. Furthermore, the bidding documents must specify what are considered as significant/material component(s) of the project. Moreover, except if otherwise provided by the contract, it should not subcontract any part of the works without the prior consent of the HOPE.

B. Liability of Contractor

Even though the LGU provided its consent on sub-contracting arrangements, this shall not relieve the principal contractor of any liability or obligation under the contract. The principal contractor will be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen as fully as if these were its own acts, defaults or neglects, or those of its agents, servants or workmen.

C. Disclosure of subcontracting arrangement

The Bidder may identify the subcontractor to whom a portion of the Works will be subcontracted at any stage of the bidding process or during contract implementation.

If the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid.

If the subcontracting arrangement is disclosed at the time of bidding, subcontractors must be identified in the bid submitted by the principal supplier. Subcontractors must comply with the eligibility criteria and the documentary requirements specified in the bidding documents. In the event that any subcontractor is found by the LGU to be ineligible, the subcontracting of such portion of the Goods shall be disallowed.

Subcontractors disclosed and identified during the bidding may be changed during the implementation of this Contract, subject to compliance with the required qualifications and the approval of the LGU.

II. Measurement of Works

The quantities set out in the Bill of Quantities are the estimated quantities for the works and can vary to up to ten percent (10%) of the contract price to account for variation orders. Measurement of the value of works actually in-place shall be the basis for the payment that will be made to the contractor in accordance with the Statement of Work Accomplished. The LGU official must, when he needs to measure any part of the works, give reasonable notice to the contractor, who must attend or send a qualified representative to assist the LGU official in making such measurement and supply all particulars required by the LGU official.

III. Impact of the Infrastructure Project on Traffic and Adjoining Properties

All operations necessary for the execution and completion of the works and the remedying of any defects therein must, so far as compliance with the requirements of the contract permits, be carried on so as not to interfere unnecessarily or improperly with:

- a. The flow of traffic;
- b. The convenience of the public; and
- c. The access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the LGU or any other person.

The contractor shall save harmless and indemnify the LGU in all claims, proceedings, damages, costs, charges and expenses arising out of, or in relation to, any such matters insofar as the contractor is responsible for them.

IV. Responsibilities of the Contractor for the Project Site

During the execution of the works, the contractor must keep the site reasonably free from all unnecessary obstruction. It must also store or dispose of any equipment and surplus materials and clear away and remove from the site any wreckage, rubbish or temporary works that are no longer required.

Upon the issue of the Taking-Over Certificate, the contractor shall remove from that part of the site to which the certificate relates, all equipment, surplus material, rubbish and temporary works of every kind. It must leave such part of the site and works clean and in a workmanlike condition to the satisfaction of the LGU's engineer. However, it is entitled to retain until the end of the defects liability period such materials, equipment and temporary works he may need to fulfill his obligations in relation to the project.

V. Turn-over of excess, used, unused and/or reusable materials

Unless otherwise provided for in the contract, the contractor must turn-over to the LGU all-excess, used, unused and/or reusable materials paid for in the contract, such as, formworks, laboratory apparatus and equipment, vehicles, field office, safety gadgets and devices, etc. Vehicles and equipment should be in operating condition when turned over.

VI. Contract Price and Payment

A. Fixed Contract Prices

Price escalation is generally not allowed¹¹. For the given scope of work in the contract as awarded, the price must be considered as a fixed price, except under extraordinary circumstances as determined by the NEDA in accordance with the Civil Code of the Philippines, upon recommendation of the LGU concerned, and upon prior approval of the GPPB, or when a Treaty or International or Executive Agreement expressly allows it pursuant to the provision of this Manual for Foreign Funded Procurement.

B. Contract Price Escalation

Any request for price escalation under extraordinary circumstances should be submitted by the concerned entity to the NEDA with the endorsement of the LGU. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

“Extraordinary circumstances” shall refer to the following Articles of the Civil Code of the Philippines:

- a. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen to which could be reasonable foreseen but are inevitable, such as, but not limited to the following: (a) typhoons; (b) thunderstorms; (c) flooding of lowly areas; and (d) vehicular accidents; provided that the following are present:
 - i. The cause of the extraordinary circumstances must independent of the will of the parties;
 - ii. The event must be either unforeseeable or unavoidable;
 - iii. The event must be such as to render it difficult but not impossible for the □supplier to fulfill his obligation in a normal manner or within the contemplation □of the parties;
 - iv. The supplier must be free from any participation in or aggravation of the □injury to the Procuring Entity; and
 - v. The allowance for price escalation, should an ordinary fortuitous event occur, □is stipulated by the parties or the nature of the obligation requires the assumption of risk.

¹¹ For FAPs, the bidding documents would have to state whether the bid prices will be fixed or whether price adjustments would be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving completion of works generally within twelve (12) months in the case of JBIC, or eighteen (18) months in the case of Asian Development Bank and World Bank-funded projects, but should be included in contracts which extend beyond eighteen (18) months. Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable), and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

- b. Article 1250, as it pertains to Extraordinary Inflation or Deflation, which may refer to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed in accordance with the Guidelines for Contract Price Escalation, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.
- c. Article 1680, as it enumerated Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following: (a) fire; (b) war; (c) pestilence; (d) unusual flood; (e) locusts; and (f) earthquake; provided that the circumstances before, during and after the event shall be taken into consideration.

Upon completion of its review, NEDA shall submit its recommendations to the GPPB for appropriate action. The GPPB shall then approve/act upon the request for price escalation during one of its meetings, to be attended by the HOPE or his duly authorized representative/s.

C. Denominations of Contract Price

All contract prices must be denominated and payable in Philippine currency, and this shall be stated in the bidding documents.

D. Method and Conditions of Payment

These shall be specified in the contract. Generally, payment for works can be made in two ways:

- a. Unit price payments = are based on the unit prices of specific items as applied to actual quantities accomplished according to the Statement of Work Accomplished.
- b. Lump-sum payments = are based on the value of actual accomplished work in proportion to total contract cost.

Any kind of payment, including advance and progress payments, must be made by the LGU as soon as possible, but in no case later than **forty-five (45) days** after the submission of an invoice or claim by the contractor, accompanied by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract. The Procuring Entity must also ensure that all accounting and auditing requirements are met prior to payment. The Procuring Entity should commence inspection within twenty- four (24) hours after delivery.

E. Advance Payment

The contractor, upon submission of a written request, can be granted an advance payment in an amount not to exceed fifteen percent (15%) of the total contract price.

It may be made only upon submission of the winning contractor, in an amount equal in value to the advance payment and acceptable to the LGU of any of the following instruments:

- a. irrevocable standby letter of credit from a commercial bank,
- b. bank guarantee or

- c. surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the LGU.

The LGU must recover the advance payment within the duration of the contract, and before full payment is made to the contractor.

F. Progress Payment

The first progress payment may be paid by the LGU to the contractor after twenty percent (20%) of the work had been accomplished. Thereafter, payments can be made once a month, provided that the latter submits a Progress Billing or a request for payment for work accomplished. Such request for payment, including the Statement of Work Accomplished by the contractor, must be verified by the LGU's representative/project engineer and certify the amount to be paid to the contractor and approved by the LGU official concerned.

Except as otherwise stipulated in the ITB, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

The LGU has the right to deduct from the contractor's progress billing such amount as may be necessary to cover third party liabilities. It must not process any progress payment unless the discovered defects are corrected.

G. Retention Money

Retention money refers to the amount equal to ten percent (10%) of the progress payments, before deductions are made, that is withheld by the LGU to cover the uncorrected discovered defects and third party liabilities. It is collected from all progress payments until works equivalent to fifty percent (50%) of the value of works, as determined by the LGU, is accomplished. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall continue to be imposed.

The total "retention money" shall be due for release after the defects liability period, upon final acceptance of the works.

The contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letter of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to LGU, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the concerned LGU shall be valid for a duration to be determined by the concerned LGU and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover the uncorrected discovered defects and third party liabilities.

H. Final Payment

The final payment will be made upon one hundred percent (100%) completion of the work. This payment will be reduced by whatever balance remains of the amount that is needed in order to return to the LGU the fifteen percent (15%) advance payment previously granted to the contractor. Ten percent (10%) of the remainder will then be retained to cover for all defects that may be detected, including maintenance costs for one year after project completion. This amount will be returned to the contractor only after the one-year defects liability period.

VII. Variation Orders

A Variation Order refers to any increase/decrease in quantities within the general scope of the project as bid and awarded, in any of the following aspects:

- a. Introduction of new work items that are not included in the original contract; or
- b. Reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the pre-construction plans used for purposes of the bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the LGU after award of the contract, or during actual construction.

A Variation Order may either be in the form of a Change Order or Extra Work Order.

A Change Order covers any increase/decrease in quantities of original work of items in the contract.

An Extra Work Order covers the introduction of new work necessary for the completion/improvement or protection of the project, which are not included as items of work in the original contract. As an example, there may be subsurface or latent physical conditions at the site that differ materially from those indicated in the contract. There might also be duly unknown physical conditions at the site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.

The addition/deletion of works should be within the general scope of the project as bid and awarded, and the deletion of the work should not affect the integrity and usefulness of the structure.

A. Conditions for the Issuance of a Variation Order

The issuance of a Variation Order must conform to the following:

- a. That there will not be any short changes in the original design;
- b. That it will not affect the structural integrity and usefulness of the structure; and
- c. That it is covered by an ObR, if necessary.

Under no circumstances can a contractor proceed to commence work under any Change Order or Extra Work Order unless the HOPE or his/her duly authorized representative has approved the order.

The LGU's representative/Project Engineer, may, subject to the availability of funds and within the limits of his delegated authority, allow the immediate start of work under any Change or Extra Work Order, subject to any of the following conditions:

- a. In the event of any emergency where the prosecution of the work is urgent to avoid any detriment to public service, or damage to life and/or property; and/or
- b. When time is of the essence;

Such approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the adjusted original contract price;

Immediately after the start of work, the corresponding Change Order or Extra Work Order shall be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after approval of the same by the Head of the Procuring Entity or his duly authorized representative.

For a Change Order or Extra Work Order involving a cumulative amount exceeding five percent (5%) of the original contract price, no work thereon may be commenced unless said Change Order or Extra Work Order has been approved by the Head of the Procuring Entity or his duly authorized representative.

B. Limitation in the Amount of Variation Order

The net cumulative amount of the Variation Order should not exceed positive ten percent (+10%) of the original project cost.

Any cumulative positive Variation Order beyond ten percent (10%) of the contract price shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the HOPE may authorize the Variation Order beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price, subject to the guidelines to be determined by the GPPB. Provided, however, that appropriate sanctions are imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).

C. Price Adjustments due to a Variation

The payment to the contractor for additional work under Variation Orders, must be derived based on the following:

- a. For additional/extra works duly covered by Change Orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items in the original contract shall be used.
- b. For additional/extra works duly covered by Extra Works Orders involving new work items that are not in the original contract, the unit prices will be based on the direct unit costs used in the original contract (*e.g.*, unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both the LGU and the contractor. The direct unit costs of new components must also be based on the contractor's estimate as validated by the LGU, in comparison with the construction price indices issued by the NSO. The LGU must validate these prices through a documented canvass among three eligible suppliers registered with the LGU concerned, the DPWH, and/or the PhilGEPS in accordance with existing rules and regulations. The direct cost of the new work item must then be combined with the mark-up factor (*i.e.* taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

The request for payment by the contractor for any extra work must be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. This request for payment must be included in the contractor's statement for progress payment.

D. Parties involved in the issuance of a Variation Order

The following parties are involved in the issuance of a Variation Order:

- a. The end-user unit;
- b. The contractor; and
- c. The HOPE or his duly authorized representative.

E. Procedure in the Issuance of a Variation Order

The following must be undertaken in issuing a Variation Order:

- a. Within seven (7) calendar days after the contractor discovers that there is a need for variation order, the said contractor must communicate the same to the LGU by giving it notice of the findings. Afterwards, the contractor has twenty-eight (28) days to submit a full documentation of the variation order. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim.
- b. If the Project Engineer finds that a Change Order or Extra Work Order is justified, he/she must prepare and submit to the HOPE the proposed order, accompanied with the following:
 - i. Notices submitted by the contractor;
 - ii. The plans to effect the adjustments;
 - iii. The contractor's computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof; and
 - iv. A detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order.
- c. The HOPE or his duly authorized representative, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the appropriate technical staff or office to conduct an on-the-spot investigation to verify the need for the work to be prosecuted and to review the proposed plan, and prices of the work involved.
- d. After being satisfied that such Change Order or Extra Work Order is justified and necessary, the HOPE shall review the estimated quantities and prices based on the report of the technical staff.
- e. If, after review of the plans, quantities and estimated unit cost of the items of the work involved, the proper office of the LGU finds that the Change Order or Extra Work Order is in order, the same shall be approved.
- f. The LGU shall notify the contractor to proceed with the work/delivery of items in accordance with the amendment.
- g. The BAC Secretariat shall post the Variation Order on the website of PhilGEPS, and the LGU, if any.
- h. The contractor shall proceed with the work/delivery of items in accordance with the amended contract.

The timeframe for the processing of Variation Orders from the preparation up to the approval by the LGU concerned should not exceed thirty (30) calendar days.

VIII. Suspension of Work

A. Grounds for the Suspension of Work by the LGU

The LGU has the authority to suspend the work wholly or partly by written order due to the following:

- a. Force majeure or any fortuitous event; or
- b. Failure on the part of the contractor to:
 - i. Correct bad conditions, which are unsafe for workers or for the general public;
 - ii. Carryout valid orders given by the LGU; or
 - iii. Perform any provisions of the contract; or
- c. Due to adjustment of plans to suit field conditions as found necessary during construction.

B. Procedure in the issuance of Suspension Order

- a. The PMO or end-user unit determines the existence of any of the grounds for suspension enumerated above.
- b. The PMO or end-user unit drafts the suspension order for the approval of the Head of the Procuring Entity.
- c. The suspension order is issued to the contractor, stating the grounds therefor.
- d. Prior to the expiration of the suspension order, the PMO or end-user unit shall determine whether or not the grounds for suspension still exist.

If such grounds continue to exist, or if it is no longer practicable to continue with the work, it shall terminate the work subject of the order or cancel the delivery of the items subject of such suspension.

If, however, the grounds for suspension no longer exist, and continuation of the work is practicable, the PMO, with the approval of the Head of the Procuring Entity or his/her duly authorized representative, shall lift the suspension order and notify the contractor to proceed with the work/delivery of items in accordance with the amended contract.

C. Grounds for the Suspension of Work by the Contractor

The contractor or its duly authorized representative has the right to suspend work operation on any or all projects/activities along the critical path of activities due to any of the following:

- a. There exist right-of-away problems, that prohibit the contractor from performing work in accordance with the approved construction schedule;

- b. Requisite construction plans, which must be furnished by the LGU, are not issued to the contractor, in the process precluding any work called by such plans.
- c. Peace and order conditions make it extremely dangerous, if not impossible, to work, such conditions having been certified in writing by the PNP station which has responsibility over the affected area and confirmed by the DILG Regional Director;
- d. There is a failure on the part of the LGU to deliver government-furnished materials and equipment as stipulated in the contract; or
- e. Delay in the payment of the contractor's claim for progress billing beyond forty-five (45) calendar days from the time the claim has been certified by the barangay's authorized representative as having been supported by complete documentation, unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

D. Suspension of Work Considered in the Extension of Time

In case of total suspension or suspension of activities along the critical path, which is not due to the fault of the contractor, the elapsed time between the effective order suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

E. Resumption of Work

Work must be resumed either upon notice from the LGU of the lifting of the suspension order or upon the expiration of the suspension order.

IX. Contract Extension

Contracts may be extended when there are additional works or other special circumstances that would affect activities that fall within the critical path of the PERT/CPM network. The contractor shall notify the LGU that the amount of additional work or the occurrence of the special circumstance merits the extension of its contract, and that it had done so before the expiration of the contract and within thirty (30) calendar days after the start of the additional work or of the special circumstance has arisen. The LGU, after due investigation and finding the request justified, determines the appropriate extension period, and approves the request of the contractor for a contract extension.

If the contractor fails to notify the LGU within the time period provided for, it waives any claims to contract extension.

A. Conditions for Contract Extension

The contracts may be extended under the following conditions:

- a. There are additional works or other special circumstances that would entitle the contractor to an extension of its contract;
- b. The affected activities fall within the critical path of the PERT/CPM network;
- c. The contractor shall have notified the LGU that the amount of additional work or the occurrence of the special circumstance merits the extension of its contract, and that it had done so before the expiration of the contract and within thirty (30) calendar days

after the start of the additional work or of the special circumstance has arisen; and

- d. The LGU, after due investigation, finds the request justified, determines the appropriate extension period, and approves the request of the contractor for a contract extension.

If the contractor fails to notify the LGU within the time period provided for, it waives any claims to contract extension.

No extension of contract time will be granted if the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents. The contract period includes a particular number of unworkable days, to cover days when unfavorable weather conditions and special circumstances not within the control of the contractor prevent any work from being done. This number of unworkable days should be consumed first before any contract extension can be considered. For example, if the total project duration is two hundred (200) calendar days inclusive of the forty-five (45) calendar days of unfavorable weather condition, the contractor cannot claim for time extension citing unfavorable weather condition if the forty-five (45) calendar days anticipated unfavorable weather condition has not been consumed.

Thus, no contract extension must be given to a contractor due to:

- a. Ordinary unfavorable weather conditions, in that such weather conditions had already been taken into consideration and anticipated in the computation of the unworkable days; and
- b. Inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials.

If the reason of unfavorable weather condition will be used for the time extension, the considerations of both nationwide and region wide conditions should be looked into, using the records from Philippine Atmospheric Geophysical and Astronomical Services Administration.

B. Procedure in Handling a Request for Extension

- a. If a contractor incurs a delay and wishes to request for an extension of the completion or construction period:
 - i. It must submit a written request to the Engineering Office/PMO or end-user unit for an extension of the completion or construction period, citing the reason/s for such delay.
 - ii. The Engineering Office/PMO or end-user unit shall either approve or disapprove the request for extension.
 - iii. If the extension is granted, the liquidated damages shall not be imposed and the contractor will be so informed in writing.
 - iv. If, however, the request for extension is denied, the Engineering Office/PMO or end-user unit shall inform the contractor in writing of such denial, and ensure that the said notice or communication is received by the latter within a reasonable time from receipt of the request for extension. The LGU then imposes the liquidated damages in accordance with the provisions of the contract and the procedures outlined below Steps 2 to 3.

- b. If the Contractor incurs a delay and there is no request for extension:
 - i. The Engineering Office/PMO or end-user unit shall, within a reasonable time from the first day of delay, inform the contractor that the LGU will impose the liquidated damages agreed upon by the parties.
 - ii. Upon contract completion, the Engineering Office/PMO or end-user unit and the Acceptance Committee shall record the delay in the inspection documents, noting therein the amount of the liquidated damages imposable on the contractor.
 - iii. The amount of liquidated damages due shall be deducted from the total amount payable to the contractor, and the same shall be reflected in the disbursement vouchers. Or, if the contract provides that the liquidated damages shall be collected from securities or warranties posted by the contractor, the Engineering Office/PMO or end-user unit shall so inform the official authorized to call on the securities or warranties about the delay and the corresponding liquidated damages imposable.

X. Delays in Work Completion

The contractor must complete the work procured within the period specified in the contract. If delays are likely to be incurred, the contractor must notify the LGU in writing, stating therein the duration and causes of the expected delay. The LGU may grant time extensions, at its discretion, if such extensions are meritorious. In all cases, the request for extension shall always be filed before the expiry of the original completion date. Maximum allowable extension shall not exceed the original construction period.

XI. Liquidated Damages

Liquidated damages are damages agreed upon by the parties to a contract, to be paid in case of breach thereof. **(Article 2226, NCC)**

When the contractor refuses or fails to satisfactorily complete the works under the contract within the specified contract duration, plus any time extension duly granted, and is thus considered in default under the contract, it will be liable for liquidated damages for the delay.

The LGU need not prove that it has incurred actual damages to be entitled to liquidated damages from the contractor, and the same shall not be by way of penalty. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or from the retention money or other securities posted by the contractor, whichever is convenient to the LGU.

The liquidated damages shall be one tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay.

If the sum of liquidated damages reaches ten percent (10%) of the contract amount, the LGU shall automatically rescind the contract.

XII. Contract Termination

A. Termination for Default

The HOPE may terminate a contract for default when any of the following conditions attend its implementation:

- a. Due to the contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with P.D. 1870;
- b. Due to the contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; or
- c. The contractor:
 - i. Abandons the contract works, refuses or fails to comply with a valid instruction of the LGU or fails to proceed expeditiously and without delay despite a written notice by the LGU;
 - ii. Does not actually have on the project site the minimum essential equipment listed on the bid necessary to prosecute the works in accordance with the approved work plan and equipment deployment schedule as required for the project;
 - iii. Does not execute the works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
 - iv. Neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
 - v. Sub-lets any part of the contract works without approval by the LGU.

The rescission of the contract shall be accompanied by the confiscation by the LGU of the contractor's performance security. The contractor will also be recommended for blacklisting.

B. Termination for Unlawful Acts

The LGU may terminate the contract in case it is determined *prima facie* that the contractor has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as but not limited to: corrupt, fraudulent, collusive and coercive practices; drawing up or using forged documents; using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and any other act analogous to the foregoing.

C. Termination for Insolvency

The HOPE shall terminate the contract if the contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. Termination will be without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the LGU and/or the contractor.

D. Termination at the Instance of the Contractor

The contractor may terminate its contract with the LGU if the works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to failure of the LGU to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of the contract; or the prosecution of the work is disrupted by the adverse peace and order situation.

The contractor must serve a written notice to the LGU of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the LGU.

The LGU shall return to the contractor its performance security and shall pay unpaid claims.

E. Termination for Convenience

The Procuring Entity may terminate the Contract, in whole or in part, at any time for its convenience. The Head of the Procuring Entity may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.

XIII. Preliminary Inspection upon Contract Completion

Once the project reaches an accomplishment level of ninety-five percent (95%) of the total contract amount, the HOPE may create an inspectorate team to make preliminary inspection and submit a punch-list to the contractor in preparation for the final turnover of the project. This punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not prejudice the LGU's claim for liquidated damages.

XIV. Dayworks

If applicable, as indicated in the contract, the dayworks rates in the contractor's bid shall be used for small additional amounts of work, only when the LGU's representative has given written instructions in advance for additional work to be paid for in that way.

All works to be paid for as dayworks shall be recorded by the contractor on forms approved by the engineer of the LGU. Each completed form shall be verified and signed by the engineer of the LGU within two (2) days of the work being done.

The contractor shall be paid for dayworks subject to obtaining signed dayworks forms.

XV. The Use of Accredited Testing Laboratories

To help ensure the quality of materials being used in infrastructure projects, the Bureau of Research and Standards (BRS) of the DPWH, Department of Science and Technology (DOST), or Department of Trade and Industry (DTI) shall accredit, in accordance with industry guidelines, the testing laboratories whose services are engaged or to be engaged in infrastructure projects. All government infrastructure

project owners must accept results of material test(s) coming only from DOST/BRS accredited laboratories.

XVI. Evaluation of Contractor's Performance

The LGU, when implementing infrastructure projects must evaluate the performance of their contractors using the NEDA-Approved CPES Guidelines for the type of project being implemented. These guidelines cover all infrastructure projects awarded by the government regardless of contract amount and funding source.

CPES evaluation must be done during construction and upon completion of the project. To ensure continuous implementation of CPES, the LGU concerned is required to include in their Projects' Engineering and Administrative Overhead Cost the budget for such system's implementation pursuant to NEDA Board Resolution No. 18 (s.2002).

However, for project types that do not have specific CPES Guidelines, the LGU concerned may formulate and adopt its own implementing guidelines specific to its needs, provided that the NEDA Infrastructure Committee poses no objections to their adoption, and that the said guidelines are made known to all prospective bidders.

A. Implementation Mechanisms for the CPES Guidelines

The LGU is required to establish or designate CPES Implementing Units (IUs) in its organization, which shall be responsible for the implementation of the CPES Implementing Guidelines, including but not limited to, the supervision of CPEs to be accredited by the CIAP. The LGU's CPES IU shall be responsible for the following: a) pre-screening of applications of CPEs; b) funding for CPEs accreditation and training, including seminars; and c) yearly evaluation of CPEs.

B. Submission and Dissemination of CPES Evaluation Results

The LGU shall submit the results of their performance evaluation to the CIAP on a monthly basis or as often as necessary. The LGU's CPES IU shall likewise develop and maintain a databank and disseminate the CPES reports to the concerned units/departments within the LGU and to other interested users.

C. Use of the CPES Evaluation Results

The CIAP shall consolidate all of the CPES evaluation results it receives and disseminate these to all Procuring Entities concerned. The CPES ratings and other information shall be used by the concerned LGU for the following purposes:

- a. Eligibility screening of constructors;
- b. Awarding of contracts;
- c. Project monitoring and control;
- d. Issuance of Certificate of Completion;
- e. Policy formulation/review;
- f. Industry planning;
- g. Granting of Incentives/Awards; and

- h. Adoption of measures to further improve performance of contractors in the prosecution of government projects.

XVII. Warranty

A warranty is required to ensure that the contractor will correct any damage or destruction of the works except those occasioned by force majeure, and be responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work from the time project construction commenced up to the final acceptance called the defects liability period.

The contractor shall also be held responsible for "Structural Defects", i.e., major faults/flaws/deficiencies in one or more key structural elements of the project which may lead to structural failure of the completed elements or structure, "Structural Failures" i.e., where one or more structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and or endangering the safety of the users or the general public within the required length of structural defects warranty period.

A. Defects Liability Period

The defects liability period for infrastructure projects shall be one year from project completion up to final acceptance by the LGU. As such, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the LGU and shall be held responsible for any damage or destruction of the works except those occasioned by force majeure.

The defects liability period shall be covered by the Performance Security of the contractor required in Section for Performance Security of this Manual, which shall guarantee that the contractor performs his contractual obligations.

Any contractor who fails to comply with the preceding paragraph shall suffer perpetual disqualification from participating in any public bidding and his property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of the LGU in his favor shall be offset to recover the costs.

a. Warranty Against Structural Defects

Upon completion of the defects liability period, the contractor shall post a warranty security in the form and amount prescribed below. In turn, the LGU will return to the contractor its Performance Security and issue the Certificate of Final Acceptance.

B. Forms of Warranty Security

The winning contractor shall be required to put up a warranty security in the form to be chosen by the LGU, and in accordance with the following schedule:

| Form of Warranty Security | Amount of Warranty Security (Equal to Percentage of the Total Contract Price) |
|---|---|
| Cash or letter of Credit issued by a Universal or Commercial Bank: Provided, however, that the LC shall be confirmed or authenticated by a Local Universal Bank, if issued by a foreign bank. | 5% |
| Bank Guarantee issued by a Universal or Commercial Bank | 10% |
| Surety Bond callable upon demand issued by GSIS or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. | 30% |

The contractor may also submit warranty securities in the form of bank guarantee or letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.

The warranty security shall be stated in Philippine Pesos, remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by the concerned LGU, and returned only after the lapse of the said one (1) year period.

C. Warranty Period

After final acceptance of the project by the LGU, the contractor shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties:

a. Permanent Structures: Fifteen (15) years

Buildings of types 4 (steel, iron, concrete, or masonry construction with walls, ceilings, and permanent partitions of incombustible fire resistance) and 5 (steel, iron, concrete, or masonry construction), steel and concrete bridges, flyovers, concrete aircraft movement areas, ports, dams, diversion tunnels, causeways, wharves, piers, dikes, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar structures;

b. Semi-Permanent Structures: Five (5) years

Buildings of types 1 (wooden), 2 (wood with 1 hour fire resistance), and 3 (masonry and wood construction), concrete roads, asphalt roads, river control, drainage, irrigation and drainage canals, municipal ports and river landing, deep wells, rock causeway, pedestrian overpass, and other similar structures; and

c. Other Structures: Two (2) years

Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.

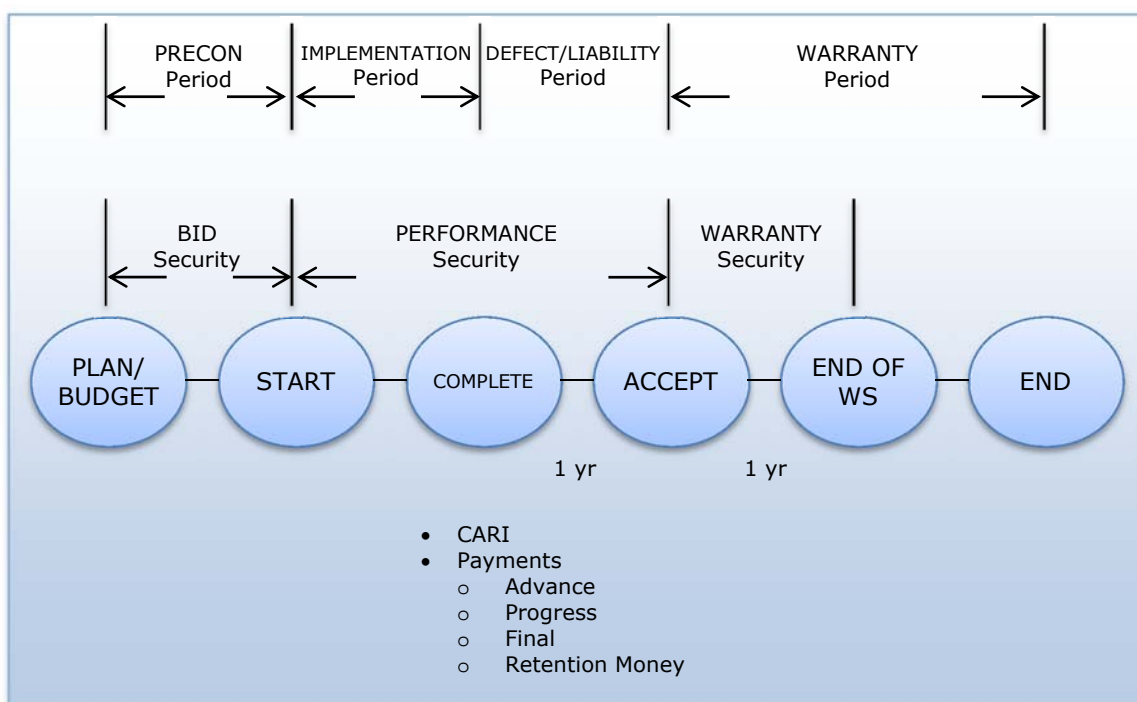
In effect, even after the defects liability period, the warranty security shall still be required during the above applicable periods, and shall be returned only after the lapse of the above applicable warranty period.

D. Accountable Parties

| Liabe Parties | Causes of Structural Defects and/or Failures |
|--|--|
| Contractor | <ul style="list-style-type: none"> ▪ improper construction ▪ use of inferior quality/substandard materials ▪ violation of the contract plans and specifications |
| Consultants | <ul style="list-style-type: none"> ▪ faulty and/or inadequate design and specifications, ▪ construction supervision |
| Users | <ul style="list-style-type: none"> ▪ non-compliance with the technical design limits and/or intended purpose, as well as abuse/misuse. |
| LGU's Representatives/ Project Manager/ Construction Managers and Supervisors Tractor | <ul style="list-style-type: none"> ▪ willful intervention in altering the designs or specifications ▪ negligence or omission in not approving or acting on proposed changes to note defects or deficiencies in the design and/or specifications; ▪ use of substandard construction materials in the project |
| Third Parties | <ul style="list-style-type: none"> ▪ leaking pipes, excavations ▪ diggings, underground cables and electrical wires, underground tunnel, mining shaft and the like ▪ construction supervision |

In case of structural defects/failures occurring during the applicable warranty period provided above, the LGU shall undertake the necessary restoration or reconstruction works and shall be entitled to full reimbursement by the parties found to be liable, of expenses incurred therein upon demand, without prejudice to the filing of appropriate administrative, civil, and/or criminal charges against the responsible persons as well as the forfeiture of warranty securities posted in favor of the LGU.

Project Cycle/Milestones



CHAPTER 6

Competitive Bidding and
Contract Implementation
Procedures for the
Procurement of Consulting
Services

SECTION 1: Scope

This Chapter seeks to provide the procurement officials of LGUs with clear, concise, and accurate information on the **public procurement of consulting services**, by discussing the steps that need to be taken as prescribed by R.A. 9184 and its IRR.

The different types of consulting services are enumerated under Annex "B" of the IRR of RA 9184 and they are categorized as follows:

I. Advisory and review services

These services consist of the review and the provision of advice on particular projects or problems. These include planning, system and implementation design, financial, fiscal, legal and other professional services, as well as management, production, inspection, testing and quality control. They also include such services as appearances before commissions, boards or other judicial bodies to give evidence or otherwise submit professional opinions.

II. Pre-investment or feasibility studies

These are the studies which normally precede decisions to go (or not to go) forward with specific projects. These studies may have as their objectives:

- a. To establish investment priorities and sector policies - Studies conducted for this objective include basic resource inventories, such as, river basin surveys, transport sector surveys, and studies of alternative development patterns and of sectors on a regional or nationwide scale;
- b. To determine the basic features and the feasibility of individual projects - Studies toward this objective include functional designs, project site selections, architectural and space programming and physical layout of specific projects, preliminary designs and cost estimates, and the economic, financial and environmental impact analyses required for project evaluation; or
- c. To define and propose changes in governmental policies, operations and institutions necessary for the successful implementation or functioning of investment projects - Studies undertaken in pursuit of this objective include analyses of project related organizations, administrative problems, planning machinery, regulatory and marketing policies, accounting and management systems, and manpower resources and training requirements.

III. Design

This type of services normally consists of three (3) phases:

- a. **Pre-Design Phase**, which establishes the general size and scope of the project and its location on the site. The consulting services under this category include reconnaissance, topographical and other engineering and land surveys, soils investigations, preparation of preliminary architectural/engineering designs, layouts, outline specifications, preliminary cost estimates, and specific recommendations prior to actual design;

- b. **Basic Design Phase**, which includes the preparation of detailed plans, designs, working drawings, specifications, detailed cost estimates and tender documents required for invitations of bids for construction works and equipment; and
- c. **Support Services During Construction**, which include assistance and advice in securing bids, tabulation and analysis of bid results, and making recommendations on the award of construction contracts, and in preparing formal contract documents; preparation of supplementary drawings required to suit actual field conditions; checking detailed construction and as-built drawings, shop and erection drawings submitted by contractors; making periodic visits to check on the general progress of work and quality of materials and workmanship; observing performance tests and start-up and making report thereon; and making a final inspection and reporting of completed project.

IV. Construction supervision

Consulting services under this category include:

- a. Inspection and expediting of the work;
- b. Verification and checking of quantities and qualities of work accomplished by the contractor as against the approved plans, specifications, and programs of work;
- c. Issuance of instructions for correcting on the work;
- d. Verification and recommendation for approval of statements of work accomplished and certificate of project completed by the contractor;
- e. Review and recommendation for approval of progress and final billings of the contractor; and
- f. Provision of record or as-built drawings of the completed projects.

The above do not mean direction, superintendence or management of construction.

V. Management and related services

The services under this category, on the other hand, include:

- a. Sector policy and regional development studies;
- b. Planning, feasibility, market, economic, financial, technical, operations and sociological studies;
- c. Project management, including procurement advisory services, impact monitoring, and post-evaluation services;
- d. Production management, inventory control, and productivity improvement;
- e. Marketing management and systems;
- f. Information and communications technology services, including but not limited to, information systems design and development, and network design and installation;
- g. Institutional strengthening, organization development, manpower requirements, training and technology transfer;

- h. General management consultancy; and
- i. Other related services

VI. Other technical services or special studies

Other technical services include:

- a. Institution building, including organization and management studies, and business process re-engineering and development;
- b. Design and execution of training programs at different levels;
- c. Provision of staff to carry out certain functions and to train their replacements; and
- d. Tasks relating to economic and financial studies such as those of tariff structures.

Special studies include the following:

- a. Soils investigation;
- b. Studies, tests and process determination performed to establish design criteria for water facilities;
- c. Detailed mill, shop, and / or laboratory inspection of materials and equipment;
- d. Land surveys, establishment of boundaries and monuments, and related office computations and drafting;
- e. Parcellary surveys;
- f. Engineering surveys (for design and construction) and photogrammetry;
- g. Assistance in litigation arising from the development or construction of projects and in hearings before various approving and regulatory agencies;
- h. Investigation involving detailed consideration of the operation, maintenance, and overhead expenses; and the preparation of rate schedules; earning and expense statements, feasibility studies, appraisals, evaluations, and material audits or inventories required for certification of force account construction performed by the agencies;
- i. Preparation of environmental statements and assistance to the agencies in public hearings;
- j. Preparation of operating instructions and manuals for facilities and training of personnel and assistance in initial operation of facilities;
- k. Designs to meet unique and / or above normal requirements brought about by severe earthquakes, tornadoes, or blasts, or satisfy unique or abnormal tolerances, safety requirements, etc.;
- l. Site and physical planning;
- m. Environmental and other aspects of planning;
- n. Housing;
- o. interior design;

- p. Studies on preservation and restoration of historical, cultural, and artworks;
- q. Landscaping;
- r. Construction management; and
- s. Defense systems design, including self-reliance defense program.

Other specialized expertise not included in the above categories and to be provided for a client in the performance of a specified task over a specified period of time may also be considered as consulting services.

A Consultant may be engaged if the services it would be providing is beyond the optimum in-house capability of the LGU, meaning the LGU lacks the expertise required or it could not dedicate sufficient time to the work due to numerous other assignments. Where applicable, consultants are expected to effect technology and knowledge transfer to their counterparts in the LGUs.

SECTION 2: Procurement Planning

I. Factors to be considered in determining the ABC

In determining the ABC, the end-user unit or PMO of the LGU, with the assistance of the TWG (when necessary), must consider the different cost components, namely:

- a. Cost or market price of the service itself;
- b. Cost of money, to account for government agencies usually buying on credit terms; and
- c. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date.
- d. Cost for securing all types and forms of securities other than cash. (*e.g. premiums for surety bond, bank fees and other charges to be incurred by the bidder in obtaining bid, performance and warranty securities*)

If the sum of the different cost components is lower than the appropriation for the procurement, then the ABC should be equal to the sum of the cost components. If the resulting sum is higher than the appropriation, it is advisable to review the terms of reference and the computation of the ABC. In any case, the ABC should not exceed the appropriation.

A. Computing the Cost of Consultancy

The cost of consultancy shall be computed on the basis of cost to the consultant of actual services to be rendered by the consultant plus a reasonable level of management fee. The amount of management fee depends on the complexity and magnitude of the project, and other direct expenses associated to the undertakings.

The cost of consultancy shall consist of the following and shall be presented in the agreement in like manner:

1. Remuneration Costs

These are the remuneration to be paid to the consultant's staff/personnel who are directly engaged in the consulting services as per agreed manning schedule. It covers the basic rates of the staff multiplied by a billing factor of the consulting firm.

The umbrella organization of consultants shall, from time to time, disseminate information on the rates or fees of consultants per expertise as guide to the BAC and end-user during financial negotiation.

a. Basic Rates

The basic rates represent the salaries actually being received by the professional staff from the consulting firms as certified by the consultant with a sworn statement to be submitted to the LGU. The basic rates of all individual members of the staff shall be clearly indicated in the contract. In determining the basic rates, the following may be considered as bases:

- i. Salary history;
- ii. Industry rates; and
- iii. Two hundred percent (200%) of the equivalent rate in the LGU as the floor.

b. Billing Factor or Multiplier

The billing factor or multiplier shall be derived from the following to be supported by audited financial statements prepared by an independent auditing/accounting firm/entity and certified by the consulting firm with a sworn statement:

i. Overhead Cost

These are incidental and general administrative and management expenses of the firm other than those directly related to the project, and are expressed in percent of the total of the basic salaries of all the personnel of the firm. Normally not exceeding one hundred twenty percent (120%) of the basic salary of the personnel, these expenses may include a combination of the following:

- Executive, administrative, accounting, and legal salaries, other than identifiable salaries included in the basic man-month salaries;
- Legal and corporate expenses including licenses, professional membership fees;
- Business costs including representation allowances, advertisements, promotions;
- Research and development activities including personnel development programs;
- Provision for office, electricity, water, and similar items for working space;
- Depreciation and amortization;
- Financial and banking costs including interest expenses and handling charges;
- Building and equipment insurance; and
- Provision for loss of productive time of technical employees between assignments, and taxes.

ii. Social Charges

These are cost items for the welfare and benefit of the consultant's staff in accordance with the policies of the consultant and of the LGU. Their totality expressed as a percentage of the basic rates of the consultant's personnel, these cost items may include any or a combination of the

following, based on audited and sworn statement to be submitted by the consultant to the LGU:

- Bonuses;
- Vacation/sick leave and paid public holidays;
- Medical Care;
- Pension plan – retirement and/or terminal pay;
- Company insurance; and
- Other benefits as required by law.

iii. Management Fee

This is the remuneration for the professional know-how and expertise of the consultant. The amount of fees shall be fixed as a percentage of the sum of the basic salary, overhead costs and social charges. Depending on the complexity of the services rendered and other considerations, this fee ought not to exceed fifteen percent (15%) of the sum of the basic salary, overhead costs and social charges.

The sum total of the basic salary, overhead, social charges and management fee as percentage of basic salary represents the billing factor or multiplier. The size of the multiplier may vary with the types of work, the organization and experience of the consultant, and the geographic area in which its office is located. The multiplier normally ranges from 2.0 to 3.0 for the technical personnel, and shall normally not exceed 1.8 for the administrative personnel directly hired for the project.

2. Reimbursable Costs

These include all other expenses associated with the execution of the services. These costs may be classified into:

a. Based on Agreed Fixed Rates

These are cost items which are payable at agreed unit rates to the staff and include the following, among others:

i. Housing Allowance

These cover housing costs, including those for power and water, for consultant's staff. It should not include food and laundry since these are basic necessities that the consultant has to spend for even without the project. In considering the housing allowance, the base of operation and the designated official station of duty of the consultant must be defined.

The base of operation is the location of the home office of the consultant while the designated official

station of duty is the location outside of the base of operation where most of the consultant's staff will be working more often continuously during the duration of the services.

For local consultants, the base of operation is usually in Metro Manila, and the designated official station of duty is the project site outside Metro Manila. Sometimes, in undertaking the services, the consultant's staff is grouped into two (2), *i.e.* those who are stationed at the base of operation and those stationed at the project site, depending on where they will be staying longer continuously during the duration of the services.

Housing allowance shall be given only for long-term consultant's staff, *i.e.* those who will be staying at the designated official station of duty continuously for more than one (1) month. The agency may also have the option to provide for housing facilities at the designated official station of duty instead of giving housing allowance. The work and manning schedules, together with the designated base of operation and the official station of duty, shall be the basis for determining the rates of housing allowance and per diem.

ii. Per Diems

These are daily allowances given to the consultant personnel while on official trips authorized by the agency and/or explicitly required in the contract as follows:

- Outside of the base of operation for consultant staff stationed there; and
- Outside of the designated official station of duty for consultant staff stationed there, except when staying at the base of operation. Per diems shall be reckoned from a 24-hour day trip of at least 50 kilometers away from the station.

iii. For foreign consultants, miscellaneous international travel expenses such as, the cost of transportation to and from the airports, airport taxes, passports, visas, travel permits and vaccinations.

b. Based on Actual Cost

These are all other reimbursable costs that must be supported with invoices and/or other supporting papers, and includes the following:

i. International Travel

This covers the cost of full fare economy class air transportation, preferably through a Filipino-owned airline, by the most direct and expeditious air routes of the consultant's expatriate staff from their point of origin. An expatriate shall be allowed

the cost of excess baggage up to 20 kilograms each per round trip.

ii. Domestic Travel

This covers the cost of full fare economy class air transportation and/or land transportation by the most direct and expeditious routes of the consultant's staff for official trips authorized by the agency and/or explicitly required in the contract.

iii. Domestic Transportation

This covers the provision of vehicles either through purchase or rental.

iv. Communication Expenses

This includes telephone, mobile, two-way radio, telegrams, Internet, parcel, freight, courier, fax and etc.

v. Cost of office/engineering supplies and cost of preparing/reproduction drawings and other documents to be submitted;

vi. Cost of field office either through rental or construction;

vii. Equipment rental and purchases whenever justifiable;

viii. Acquisition of software licenses; and

ix. Cost of other items deemed necessary for the project as certified by the agency concerned.

3. Contingency

Payments in respect of items of additional work within the general scope of services that may turn out to be necessary as the study progresses or costs that would exceed the estimates set forth may be chargeable to the contingency amounts in the respective estimates. However, these payments can be done only if such costs are approved by the agency concerned prior to its being incurred and provided, further, that they shall be used only in line with the unit rates and costs specified in the contract and in strict compliance with the project needs. Contingency amount must not exceed five percent (5%) of the amount of the contract.

Practical Tip

On determining reasonable rates

The end-user must estimate the cost of consulting services through cost research in the local market. This study ought to focus on the monthly salaries paid to the consultant's staff, per diems for hotel and living expenses for staff away from normal duty station, air or land transportation, and other out-of-pocket expenses, to obtain a good basis for the budget. For contract duration of more than one (1) year, a reasonable percentage to cover inflation may be added to the estimate.

II. Preparing the Bidding Documents

Bidding documents are documents issued by the LGU to provide the prospective bidders all the necessary information that they need to prepare their bids. These documents form part of the contract and clearly and adequately define, among others:

- a. Objectives, scope and expected outputs and/or results of the proposed contract;
- b. Expected contract duration;
- c. Obligations, duties and/or functions of the winning bidder; and
- d. Minimum eligibility requirements of bidders, such as track record to be determined by the HOPE.

A. Contents of the Bidding Documents for the Procurement of Consulting Services

The Bidding Documents shall contain the following:

Part I:

- a. REI;
- b. Eligibility Documents;
- c. Eligibility Data Sheet;

Part II:

Notice of Eligibility and Short-listing;

- a. ITB;
- b. BDS;
- c. GCC;
- d. SCC;
- e. Technical Proposal – Standard Forms;
- f. Financial Proposal – Standard Forms;
- g. Terms of Reference; and
- h. Appendices.

B. Participants in the Preparation of the Bidding Documents

The following are involved in the preparation of the bidding documents:

- a. BAC;
- b. TWG;
- c. BAC Secretariat;
- d. End-user unit or PMO; and
- e. Technical experts on the consulting services to be procured.

C. Timeline for the Preparation of the Bidding Documents

The bidding documents must be prepared in time for presentation at the pre-procurement conference. These documents must be finalized before the advertisement and/or posting of the REI.

D. Procedure for the Preparation of the Bidding Documents

The BAC Secretariat/TWG, with the assistance of end-user unit or PMO prepares the bidding documents following the standard forms and manuals

prescribed by the GPPB. The bidding documents must contain the following information:

- a. ABC and source of funds;
- b. Date, time and place of the pre-bid conference (where applicable), submission of eligibility requirements, proposals and opening of proposals;
- c. Eligibility Requirements and number of eligible bidders to be included in the shortlist together with the minimum passing score;
- d. ITB, including the type of evaluation procedure, criteria for proposal evaluation including weights, and post-qualification;
- e. TOR, which shall be crafted by the end-user, assisted by external/internal technical experts (whenever needed) and approved by the HOPE or his authorized or approving official, and which shall define the following:
 - i. The objectives, scope and expected outputs and/or results of the proposed contract;
 - ii. The expected contract duration and/or time frame;
 - iii. The obligations, duties and/or functions of the consultant and government counterparts and staff, including working arrangement between the consultant, its staff and the counterpart staff;
 - iv. The minimum qualifications of consultants, such as track record; and
 - v. The services, facilities and data, if any, to be provided to the consultants;
- f. Form of proposal and price form;
- g. Completion schedule;
- h. Form, amount and validity period of bid security, the amount being stated in Philippine peso terms;
- i. Form and amount of the performance security; and
- j. Form of contract, GCC and SCC.

The LGU may require additional document requirements or specifications where applicable and necessary for prospective bidders to prepare their respective bids. The bidding documents, as amended, shall subsequently form an integral part of the contract. Statements not made in writing at any stage of the bidding process shall not modify the bidding documents.

III. Pre-Procurement Conference

The pre-procurement conference is the forum where all officials involved in the procurement meet and discuss all aspects of a specific procurement activity, which includes, among others the:

- a. Terms of Reference/Scope of Work;
- b. ABC;

- c. Applicability and appropriateness of the recommended method of procurement and the related milestones;
- d. Bidding documents; and
- e. Availability of the pertinent budget release for the project.

This activity also helps to ensure that the procurement is in accordance with the PPMP and APP. Furthermore, it serves as the forum for all those involved in the procurement to discuss the feasibility of the procurement activity. This is also the forum where the group agrees on the proposed criteria for the following activities:

- a. Eligibility screening;
- b. Shortlisting, including the weights for each criterion, the minimum score or technical rating required, and the actual number of consultants in the short-list [three (3) to seven (7), with five (5) as preferable number]; and
- c. Proposed evaluation criteria and procedure, [*whether it be Quality-Based Evaluation (QBE) or Quality-Cost Based Evaluation (QCBE)*] including the reasonableness of the weights assigned per criterion.

A. Pre-procurement Conference as a Legal Requirement

A pre-procurement conference is conducted to determine the readiness of the LGU to procure consulting services with ABCs amounting to more than One Million Pesos (PhP 1,000,000.00), in terms of the legal, technical and financial requirements.

However, even when the ABC amounts to One Million Pesos (PhP 1,000,000.00), and below, the BAC is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the terms of reference, warrant the holding of such a conference before the LGU proceeds with the procurement.

If the BAC members fail to conduct the required Pre-procurement Conference for consulting services with an ABC of more One Million Pesos (PhP 1,000,000.00), they may be held administratively liable for neglect of duty under the Civil Service Rules (**Presidential Decree 807**) without prejudice to other civil and criminal liabilities under applicable laws.

| ABC of the Contract | When Conducted? | |
|----------------------------|-----------------|--|
| Above PhP 1,000,000.00 | Mandatory | Conducted at least seven (7) calendar days prior to the date of advertisement and/or 1 st day of posting of the REI |
| PhP 1,000,000.00 and below | Discretionary | |

B. Timeline for Pre-procurement Conference

The pre-procurement conference must be conducted always prior to the advertisement and/or posting of the REI.

It is highly advised though that LGUs should hold the pre-procurement conference at least seven (7) calendar days prior to publication or issuance of the REI to give the technical staff sufficient time to incorporate the necessary changes, amendments or revisions thereto.

C. Participants in a Pre-procurement Conference

The participants in the pre-procurement conference are:

- a. BAC;
- b. BAC Secretariat/TWG;
- c. Representatives of the end-user unit/s or PMO/s;
- d. Technical experts who assisted in the preparation of the TOR and bidding documents for the procurement at hand;
- e. Officials who reviewed the above-enumerated documents prior to final approval, if any and other officials concerned, as may be required.

D. Objectives of a Pre-procurement Conference

A pre-procurement conference should:

- a. Ensure that the procurement is in accordance with the PMP and APP;
- b. Determine the feasibility of the procurement by ascertaining, among other factors, the availability of the appropriations and programmed budget for the contract, and the adherence of the bidding documents, TOR and other related matters to relevant general procurement guidelines;
- c. Review, modify and agree on the criteria for eligibility screening, and ensure that the said criteria are fair, reasonable, and that they are of the "pass / fail" type and are written in such manner;
- d. Review, modify and agree on the criteria for short listing, including the weights for each criterion;
- e. Determine the actual number of consultants to be included in the short list. The number shall be from three (3) to seven (7) consultants, with five (5) as the preferable number, as well as the minimum score required;

Review, modify and agree on the criteria for the evaluation of proposals, and ensure that the said criteria are fair, reasonable and applicable to the procurement at hand. The pre-procurement conference should also determine whether the evaluation procedure should be quality based or quality-cost based. If the procedure will be quality-cost based, the corresponding weights for the technical and financial proposals should be agreed upon and then recommended by the BAC to the HOPE for approval. The weights of the financial proposal shall be from fifteen percent (15%) up to a maximum of forty percent (40%). When the assignment can be accomplished in a fairly limited number of ways and/or involves repetitive or standardized approaches, it is recommended that the weight of the financial proposal be closer to forty percent (40%);

- g. Finalize and approve the REI;
- h. Reiterate and emphasize the "no contact rule" from the submission and receipt of bids until the approval by the LCE of the ranking of the shortlisted bidders, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing; and
- i. Ensure that the requirements are in accordance with the ABC.

Practical Tip

Criteria for the Evaluation of Proposals of Consultants

The technical proposals of consultants shall be evaluated based on the following criteria:

1. Quality of personnel to be assigned to the project (*Recommended weight: 30%-70%*). This criterion covers suitability of key staff to perform the duties of the particular assignments and their general qualifications and competence, including education and training;
2. Experience and capability of the consultant (*Recommended weight: 10%-30%*). The consultant's experience and capability should include its record in previous engagements and the quality of its performance in similar and other projects. These also include its relationship with previous and current clients, overall current work commitments, the geographical distribution of its current/impending projects, and the level of attention it is going to give to the project in question. In rating a consultant on this criterion, the BAC ought to consider both the overall experiences of the firm and the individual experiences of the principal and key staff, including those experiences when the staff were employed by other consultants; and
3. Plan of approach and methodology in delivering the services required (*Recommended weight: 20%-40%*). This criterion should emphasize the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of the interpretation of project problems, risks and the suggested solutions.

The BAC must assign numerical weights to each of the above criteria, and these weights must be indicated in the Request for Proposals (RFP). The relative importance of the above three (3) factors will vary with the type of consulting services to be performed. In the overall rating of the proposals, the greatest weight is normally given to the qualifications of the staff to be assigned to the project. They are the most important resources for the success of the work as they are the ones analyzing the problems and proposing solutions. The above criteria can be further subdivided to appropriately consider the requirements of the project.

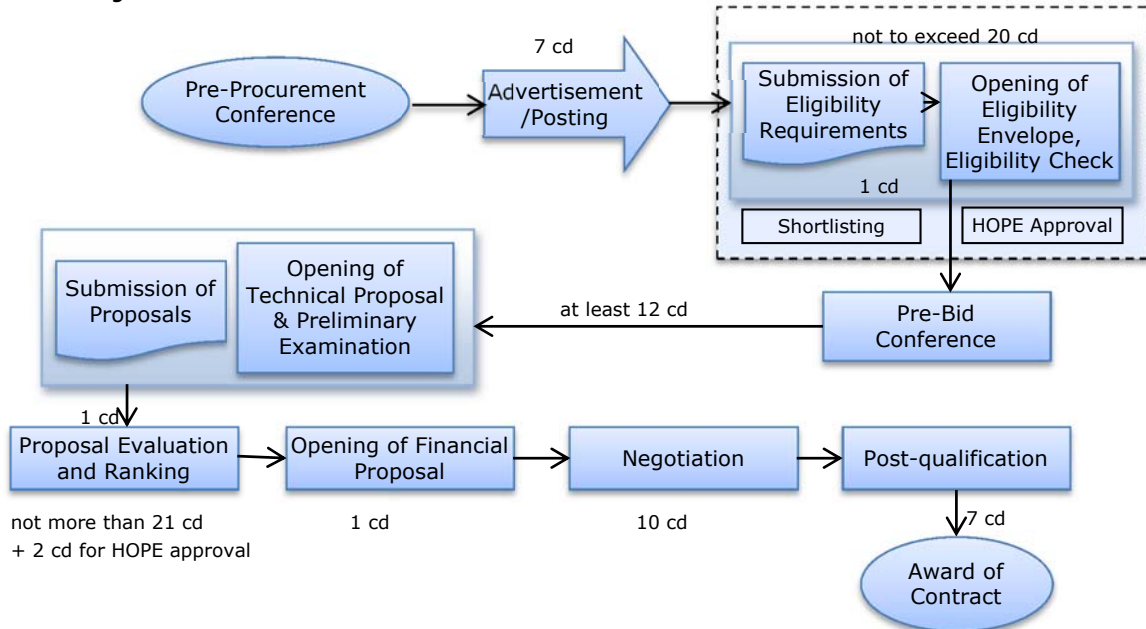
The weights for each criterion, which should have been determined during the pre-procurement conference, shall add up to one hundred percent (100%).

For complex or unique undertakings, such as those involving new concepts/technology or high level financial advisory services, participating shortlisted consultants may be required, at the option of the LGU concerned upon recommendation of the BAC, to make an oral presentation to be presented by each consultant, or its nominated Project Manager or head, in case of consultant firms, within fifteen (15) calendar days after the deadline of submission of technical proposals.

SECTION 3: Guidelines for the Conduct of Competitive Bidding for the Procurement of Consulting Services

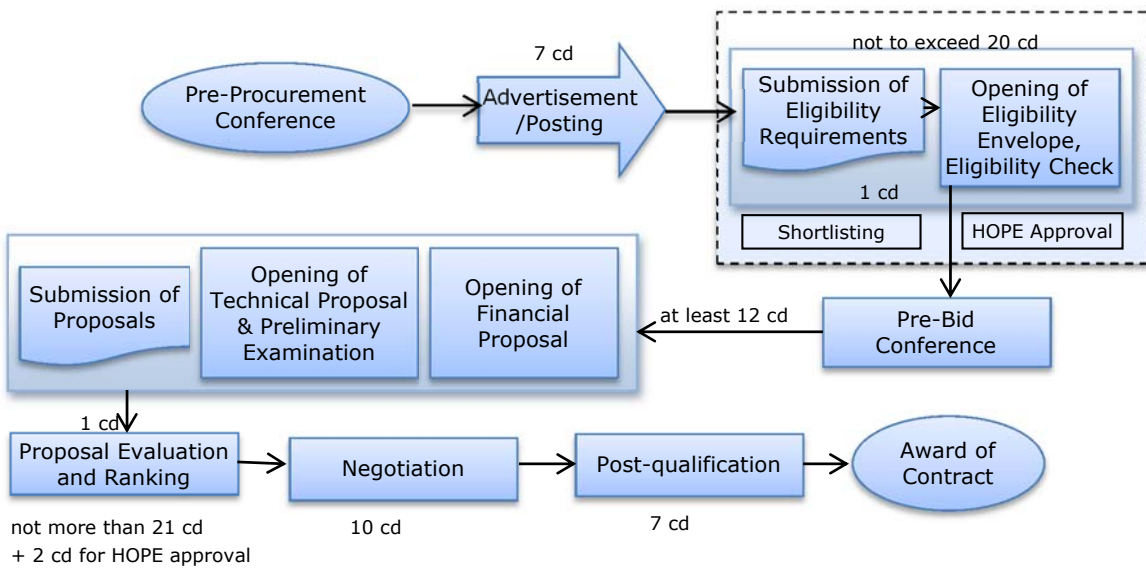
Procedural Steps for Procurement of Consulting Services

Quality-Based Evaluation



Procedural Steps for Procurement of Consulting Services

Quality-Cost-Based Evaluation



I. Advertisement and/or Posting of the Request for Expression of Interest (REI):

A. Advertisement and Posting of REI as a Legal Requirement

The posting and/or advertisement of the REI ensures transparency of the procurement process, widest possible dissemination to increase the number of prospective bidders, and intensify competition for the procurement activity or project. Intensified competition, in turn, will ensure that the LGU will get the best possible quality and cost for the consulting services sought to be procured.

| Medium | ABC < 1 Million and/or contract duration of 4 months or less | ABC > 1 Million and/or contract duration of more than 4 months | Frequency |
|---|--|--|--|
| Newspaper of general nationwide circulation | NO | YES | Once |
| PhilGEPS website | YES | YES | Continuously for seven (7) calendar days |
| LGU's Website | YES | YES | Continuously for seven (7) calendar days |
| Conspicuous places in the premises of the LGU | YES | YES | Continuously for seven (7) calendar days |

E.O. 662¹² (as amended) reiterates that LGUs shall post all their procurement opportunities, results thereof, and other related information in the PhilGEPS bulletin board, as likewise required under Sections 21.2, 37.1.6, and 37.4.2 of the revised IRR of RA 9184.

E.O. 662 expressly provides that non-compliance with posting obligations shall render the accountable officials liable for dereliction of duty and conduct grossly prejudicial to the best interest of the service, without prejudice to other charges, whether administrative, civil or criminal that may be filed under appropriate laws and regulations. **(Section 7, IRR of EO 662, as amended by EO 662-A)**

B. Contents of the REI

The REI should contain the following:

- a. Name of the contract to be bid, a general description of the project and other important or relevant information on the project;
- b. General statement on the criteria to be used by the LGU for
 - i. Eligibility check; and
 - ii. Short listing of eligible consultants;

¹² Enhancing Transparency Measures under Republic Act No. 9184 and Creating The Procurement Transparency Board. Promulgated on 20 September 2007.

- c. Nature of the evaluation process, that is, whether Quality-Based or Quality Cost-Based;
- d. Weights for the technical and financial proposals under the Quality Cost-Based Evaluation process;
- e. Number of firms to be included in the short list;
- f. Date, time and place of the:
 - i. Deadline for the submission and receipt of the eligibility and short listing requirements;
 - ii. Deadline for submission and opening of technical and financial proposals; and
 - iii. Pre-bid conference, if any;
- g. ABC;
- h. Source of funding;
- i. Period of availability of the eligibility documents, the place where the eligibility documents may be secured and, where applicable, the price of the eligibility documents;
- j. Contract duration;
- k. Name, address, telephone number, facsimile number, and e-mail and website addresses of the concerned LGU, as well as its designated contact person;
- l. Reservation Clause, which is normally located at the bottom of the notice; and
- m. Such other necessary information that are deemed relevant by the LGU.

C. Procedure for Advertisement and Posting of the REI

The following steps are followed in the advertising and posting of REIs:¹³

- a. For public bidding of contracts with an ABC costing more than One Million Pesos (Php 1,000,000.00) and those with contract duration of more than four (4) months:
 - i. The BAC Secretariat prepares the draft REI for review/approval of the BAC.
 - ii. The BAC approves the contents of the REI during the pre-procurement conference.
 - iii. The BAC Secretariat posts the REI in any conspicuous place reserved for this purpose in the premises of the LGU for the duration required; and this fact will be certified to by the head of the Secretariat.
 - iv. The BAC Secretariat advertises the REI in a newspaper of general nationwide circulation for the duration required, as prescribed above.

¹³ FAPs may have additional publication requirements. For this reason, reference should be made to the appropriate standard bidding documents for the project.

- v. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the REI in the websites of the PhilGEPS and LGU concerned, if any.
- b. For public bidding of contracts with an ABC costing One Million Pesos (Php1,000,000.00) and below, and/or those with contract duration of four (4) months of less, and for alternative methods of procurement:
 - i. The BAC Secretariat prepares the draft REI for review/approval of the BAC.
 - ii. The BAC approves the contents of the REI during the pre-procurement conference.
 - iii. The BAC Secretariat posts the REI in any conspicuous place reserved for this purpose in the premises of the LGU for the duration required; and this fact will be certified to by the head of the Secretariat.
 - iv. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the REI on the websites of the PhilGEPS and LGU concerned, if any, for the duration required.

II. Eligibility Check and Short-listing:

A. Eligibility Check

Eligibility check is a procedure to determine if a prospective bidder is eligible to participate in the bidding at hand. In determining a prospective bidder's eligibility, the BAC shall use non-discretionary "pass/fail" criteria, as stated in the REI and the bidding documents. Essentially, this means that the absence, incompleteness or insufficiency of a document shall make a prospective bidder ineligible to bid for the particular procurement.

B. Eligible Bidders in the Procurement of Consulting Services

B.1. Filipino Consultants (Section 24.3.1, IRR of RA 9184)

To be considered a Filipino consultant, one must satisfy the following requirements:

a. Individual

- i. He/she must be a citizen of the Philippines; and
- ii. When the consulting services involve professions regulated by Philippine laws, he/she must be a registered professional authorized by the appropriate regulatory body to practice those professions and allied professions.

b. Sole Proprietorship

- i. The owner of the sole proprietorship must be a citizen of the Philippines;
- ii. The sole proprietorship firm must be registered with, and authorized by, the Bureau of Domestic Trade; and

- iii. When the consulting services involve professions regulated by Philippine laws, the owner and key staff of the sole proprietorship must be registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

c. Partnership

- i. At least sixty percent (60%) of the partnership's interest must be owned by citizens of the Philippines;
- ii. The partnership firm must be registered with, and authorized to engage in the particular type of consulting service/s by, the SEC; and
- iii. When the consulting services involve professions regulated by Philippine laws, all the partners of the professional partnership firm and those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

d. Corporation

- i. At least sixty percent (60%) of the outstanding capital stock must be owned by citizens of the Philippines;
- ii. The corporation must be registered with and authorized by the SEC and whose primary purpose is to engage in the particular type of consulting service/s involved; and
- iii. When the consulting services involve the practice of professions regulated by Philippine laws, all the stockholders and directors of the corporation and those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

e. Joint Ventures (JV) are associations among Filipino consultants and among Filipino and foreign consultants who may wish to complement their respective areas of expertise. Such an association may be for the long term or for a specific assignment. All the members of the association shall sign the contract and shall be jointly and severally liable for the entire assignment.

- i. At least sixty percent (60%) of the interest must be owned by citizens of the Philippines; and
- ii. When the consulting services involve the practice of professions regulated by Philippine laws, all the stockholders and directors of the corporation and those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

Each member of the joint venture shall submit the required Class "A" Legal Eligibility Documents. The LGU before entering into a contract with a joint venture must be assured that all the members of the latter have the needed legal personality to do business in the Philippines. Thus, all the members of the joint venture should submit the required legal documents. However, since compliance with the Class "A" Eligibility Technical and Financial Eligibility Documents is treated collectively, a joint venture will be considered eligible if any of its members submits and complies with the Class "A" Technical and Financial Eligibility Documents.

Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If the LGU employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; all members of the joint venture should sign the contract and should be jointly and severally liable for the entire assignment.¹⁴

B.2. Foreign Consultants (Section 24.3.3, IRR of RA 9184)

In order to manifest trust and confidence in and promote the development of Filipino consultancy, foreign consultants may be hired in the event Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, as determined by the Head of the Procuring Entity. Foreign consultants may be eligible to participate in the procurement of consulting services, subject to the following qualifications:

- a. The foreign consultant must be registered with the SEC and/or any agency authorized by the laws of the Philippines; and
- b. When the consulting services involve the practice of regulated professions, the foreign consultant must be authorized by the appropriate Philippine government professional regulatory body to engage in the practice of those professions and allied professions. It must submit any registration, license or authority before it is awarded contract.

C. List of Eligibility Documents

Class "A" Documents

Legal Documents

- a. Registration certificate from SEC, Department of Trade and Industry (DTI) for sole proprietorship, or CDA for cooperatives, or any proof of such registration as stated in the Bidding Documents;
- b. Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located;

¹⁴ Under IFI guidelines, the Procuring Entity should not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.

- c. Tax Clearance per Executive Order 394, Series of 2005, as finally reviewed and approved by the BIR.

Technical Documents

- d. Prospective bidder's statement of all its ongoing and completed government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid, within the relevant period as provided in the Bidding Documents. The statement shall include all information required in the PBDs prescribed by the GPPB.
- e. Consultant's statement specifying its nationality and confirming that those who will actually perform the service are registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions, including their respective curriculum vitae.

Financial Document

- f. Consultant's audited financial statements, showing, among others, the values of the bidder's total and current assets and liabilities shall be based on the data submitted to the BIR, through its Electronic Filing and Payment System (EFPS).

In the case of foreign consultants, the foregoing eligibility requirements under Class "A" Documents may be substituted by the appropriate equivalent documents, if any, issued by the foreign consultant's country. The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines. **(Section 24.2, IRR of RA 9184)**

Class "B" Documents

- a. Valid joint venture agreement, in case of a joint venture or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.

D. Time of Issuance of the Eligibility Documents

Part I of the Bidding Documents, consisting of the REI, Eligibility Documents (ED) and Eligibility Data Sheet (EDS), shall be made available from the time the REI is first advertised and posted in PhilGEPS and PE's website, if available, until the deadline for the submission and receipt of the eligibility documents.

Similar to the REI, copies of the first part of the bidding documents consisting of the REI, ED and EDS shall also be posted simultaneously.

E. Maintenance of Registry of Consultants

To facilitate determination of eligibility, the BAC of an LGU may use the contents of the PhilGEPS electronic registry of contractors. **(Section 24.4.3, IRR of RA 9184)**

The PhilGEPS registry system shall contain the foregoing Class "A" documents, which should be maintained current and updated by the bidder concerned at least once a year or more frequently as may be necessary. **(Section 24.4.3.1, IRR of RA 9184)**

A bidder who maintains a current and updated file of his Class "A" Documents may submit to the procuring entity, in lieu of the said documents, the Certificate of Registration and Membership issued by PhilGEPS. **(Section 24.4.3.2, IRR of RA 9184)**

F. Time and Manner of Receipt of Eligibility Envelopes

The Eligibility envelope must be received from the prospective bidder or through its authorized representative in a sealed envelope to the BAC on or before the deadline specified in the REI. Eligibility requirements submitted after the deadline must not be accepted by the BAC.

The envelope must be marked in the following manner: "Eligibility Envelope of _____ (name of Bidder) – Public Bidding for _____ (name of the contract to be bid)". These envelopes will be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders.

A prospective bidder which had submitted "Class A" documents in written form to the registry of such documents maintained by the BAC of the LGU and had kept such documents current and updated can submit:

- a. A certification from the BAC of the LGU that it has a complete set of updated "Class A" documents on file with the BAC;
- b. Its Class "B" documents; and
- c. Its certification under oath that each of the documents submitted in satisfaction of the eligibility requirements is an authentic and original copy or a true and faithful reproduction or copy of the original, complete and that all statements and information provided therein are true and correct.

Upon receiving an eligibility envelope, the BAC Secretariat must stamp an eligibility envelope as "RECEIVED," indicating thereon the date and time of receipt, and have the stamp countersigned by an authorized representative.

G. Procedure for the Conduct of Eligibility Check

The BAC of the LGU shall observe the following procedures in the conduct of eligibility check of prospective bidders for consulting services:

- a. The BAC shall open in public the eligibility envelopes on the date specified in the REI. This will be done before the dates of pre-bid conference and bid opening to determine eligibility of prospective bidders. The BAC shall read in public the contents of the eligibility envelopes, and shall examine each prospective bidder's eligibility requirements or statements. It shall record the presence or absence of eligibility documents in a checklist.

In determining a prospective bidder's eligibility, the BAC shall use non-discretionary "pass/fail" criteria, as stated in the REI and the Instruction to Bidder. Essentially, this means that the absence, incompleteness or insufficiency of a document shall make a prospective bidder ineligible to bid for the particular procurement.

The BAC should have a secure depository of all the original copies of the Eligibility documents submitted by bidders, for which only its members and those of the BAC Secretariat have access. This will prevent the loss of any of the eligibility documents, thus sparing the BAC from liabilities in case loss.

- b. The BAC shall declare prospective bidders as either "eligible" or "ineligible", based on the findings in Item 1 above, and inform them accordingly. The Eligibility envelopes shall likewise be marked as such, and these markings shall be countersigned by the BAC chairperson or his duly designated authority. The BAC shall prepare a pro-forma Notice of Eligibility and a Notice of Ineligibility which will be duly accomplished by the BAC Secretariat and signed by the BAC members present during the Eligibility Check/Screening. In case a prospective bidder is declared ineligible, the Notice of Ineligibility shall state the reason for such ineligibility. The Notice will be received officially by the bidder's authorized representative.
- c. The BAC shall inquire from ineligible bidders who are present during the Eligibility Check whether or not they intend to file a request for reconsideration; if they signify their intention to do so upon verbal notification or written notice (in case, ineligible bidders are not present), the BAC shall keep the eligibility envelopes containing the eligibility requirements and re-seal and sign the same in the presence of all the participants. These shall be deposited in the Bid Box or any other secured place or location. The BAC may return the eligibility envelope if the ineligible bidder expressly waives his right to file a request for reconsideration. Such waiver shall be made in writing, to be executed by the authorized representative of the ineligible bidder.

Notwithstanding the eligibility of a prospective bidder, the LGU concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements.

Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the eligibility criteria, the LGU shall consider the said prospective bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract (**Section 24.7, IRR of RA 9184**). A prospective bidder found guilty of false information faces imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years. (**Section 65.3, IRR of RA 9184**)

H. Shortlisting

From the examination of the eligibility documents, the BAC shall determine a shortlist of bidders that will be invited to submit technical and financial proposals.

The BAC shall draw up the short list of consultants from those who have been determined as eligible. The number of shortlisted consultants shall consist of three (3) to seven (7) consultants, with five (5) as the preferable number. Should less than the required number apply for eligibility and short listing, pass the eligibility check, and/or pass the minimum score required in the short listing, the BAC shall consider the same. **(Section 24.5.2, IRR of RA 9184)**

H.1. Purpose of Short Listing

The process of shortlisting determines the most qualified consultants from those who have been determined as eligible to undertake the project.

If all eligible bidders are invited to submit proposals, the chance of a consultant being awarded the contract diminishes greatly. The substantial costs incurred in preparing a proposal discourages a consultant from participating in the bid. The probability of being awarded the contract, in this case, becomes less commensurate to the time and money spent in formulating the proposal. A shortlist of, say, five (5) consultants greatly increases the chances of a consultant and thus encourages it to put in more time and effort in preparing a good proposal. In the end, the LGUs, in particular, receive better proposals to choose from.

H.2. Qualified Consultants for Shortlisting

The LGU must consider for shortlisting only those consultants that:

- a. Have been declared eligible by the BAC; and
- b. Have had implemented completed contracts, as stated in their eligibility documents, that are similar in nature and complexity to the project, as described in the REI. **(Section 24.5.1, IRR of RA 9184)**

H.3. Procedure for Short Listing

In short listing the eligible consultants, the BAC, assisted by the TWG, shall:¹⁵

- a. Rate each eligible consultant based on the following set of criteria and rating system for shortlisting of consultants, as stated in the REI **(Section 24.5.3, IRR of RA 9184)**:
 - i. Applicable experience of Consultants;
 - ii. Qualification of personnel to be assigned to the job; and,
 - iii. Job capacity;
- b. Rank the eligible consultants based on the average of the rates given them by the BAC;
- c. If the number of eligible consultants that got the minimum average rating for the shortlist exceeds the predetermined number of the shortlist of consultants, those obtaining the highest ranks shall be considered. If the number of eligible consultants that got the minimum average rating required

¹⁵ As short listing methodologies may vary for specific FAPs, reference should be made to the appropriate standard bidding documents for the project.

does not exceed the desired number of the shortlist, the BAC shall consider all such consultants as being short listed. **(Section 24.5.4, IRR of RA 9184)**

- d. Recommend the shortlist of consultants to the HOPE for consideration and approval; and
- e. If the HOPE approves the recommendation, inform the shortlisted consultants about the results of the shortlisting process. If the HOPE disapproves the recommendation, he must inform the BAC of the reasons for the disapproval and instruct the BAC on the measures that ought to be adopted.

H.4. Timeline for Short Listing

The entire process of eligibility check and shortlisting must not exceed **twenty (20)** calendar days after opening the eligibility envelopes. **(Section 24.5.4, IRR of RA 9184)**

III. Issue the Bidding Documents

A. Time for the Issuance of Bidding Documents

The BAC Secretariat shall make the bidding documents available to the shortlisted consultants once the HOPE approves the shortlist of consultants. It would then ask the shortlisted consultants to pay for the bidding documents to recover the cost of development, reproduction and communication, as well as indirect costs such as overhead, supervision and administrative costs. It must then issue the bidding documents upon payment of these costs. **(Section 17.4, IRR of RA 9184)**

B. Rules for Sale of Bidding Documents

B.1 Authority that may Fix Rates for Sale Bidding Documents

Bidding Documents may be sold for a reasonable price as determined by the BAC and approved by the HOPE based on the cost of its preparation and development. **(Section 17.4, IRR of RA 9184)**

If bidding documents are sold, the BAC shall issue the Bidding Documents upon payment of the corresponding cost thereof to the collecting/disbursing officer of the LGU concerned. Prior to the issuance of the bidding documents, prospective bidders may be required to show the official receipt as proof of payment. **(Section 17.4, IRR of RA 9184)**

On the other hand, if the prospective bidder decides to secure a copy of the Bidding Documents by downloading the same from the websites of PhilGEPS and the LGU concerned, the BAC shall only accept the submitted bid envelopes, upon payment of the corresponding bid fee. The BAC of the LGU concerned may also request the prospective bidder to show first the official receipt as proof of payment before it accepts the bidder's submitted bid envelopes.

However, the BAC must issue copies of the bidding documents to the Observers free of charge.

B.2 Standard Rates for Sale of Bidding Documents

The cost of bidding documents shall correspond to the ABC range as indicated in the table below. This shall be the maximum amount of fee that procuring entities can set:

| Approved Budget for the Contract | Maximum Cost of Bidding Documents (in Philippine Peso) |
|--|--|
| 500,000 and below | 500.00 |
| More than 500,000 up to 1 Million | 1,000.00 |
| More than 1 Million up to 5 Million | 5,000.00 |
| More than 5 Million up to 10 Million | 10,000.00 |
| More than 10 Million up to 50 Million | 25,000.00 |
| More than 50 Million up to 500 Million | 50,000.00 |
| More than 500 Million | 75,000.00 |

(Guidelines on the Sale of Bidding Documents, GPPB Resolution No. 04-2012)

IV. Call a Pre-Bid Conference and, if necessary, Issue Supplemental/Bid Bulletins

A. Conduct of a Pre-Bid Conference

The pre-bid conference is the initial forum where the LGU's representatives and the prospective bidders discuss the different aspects of the procurement at hand.

A.1. Pre-Bid Conference as a Legal Requirement

At least one pre-bid conference must be held for contracts with ABCs of at least One Million Pesos (PhP 1,000,000.00). For contracts with ABCs of less than One Million Pesos (PhP 1,000,000.00), pre-bid conferences may or may not be held at the discretion of the BAC. The BAC may also decide to hold a pre-bid conference upon the written request of a prospective bidder. **(Section 22.1, IRR of R.A. 9184)**

If the BAC members fail to conduct the required Pre-bid Conference for the procurement of goods with an ABC of One Million Pesos (PhP 1,000,000.00) and above, they may be held administratively liable for neglect of duty under the Civil Service Rules **(Presidential Decree 807)** without prejudice to other civil and criminal liabilities under applicable laws.

A.2. Timeline for the Conduct of the Pre-Bid Conference

A pre-bid conference must be conducted **at least twelve (12) calendar days before the deadline for the submission and receipt of bids.**

If the LGU, however, determines that, by reason of the method, nature and complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids. **(Section 22.2, IRR of R.A. 9184)**

The timeline for the conduct of pre-bid conference is mandatory and cannot be shortened.

It is prudent for the LGU to hold the Pre-bid Conference not earlier than seven (7) calendar days after newspaper advertisement or the last day of posting the ITB. This time period will give prospective bidders reasonable time to examine, study and scrutinize the bidding documents so that they can meaningfully participate during the Pre-bid Conference and effectively clarify their concerns with respect to the legal, technical and financial components of the contract to be bid.

In summary:

| Contract Amount | When Conducted? | |
|----------------------------|-----------------|---|
| PhP 1,000,000.00 or more | Mandatory | At least twelve (12) calendar days before the deadline for the submission and receipt of bids. |
| Less than PhP 1,000,000.00 | Discretionary | If the LGU, however, determines that, by reason of the method, nature and complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids. (Section 22.2, IRR of RA 9184) |

A.3. Subject for Discussions During Pre-Bid Conference

The ground rules that will govern the procurement are discussed during the conference, more specifically:

- a. Eligibility requirements of the contract to be bid;
- b. Technical and financial components of the contract to be bid;
- c. Requirements in the ITB; and
- d. Terms and conditions of the contract.

This is also the forum where prospective bidders are given the opportunity to request for clarifications and queries about the bidding documents, as well as, raised their issues and concerns.

REMEMBER: Any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin. **(Section 22.4, IRR of R.A. 9184)**

A.4. Participants in the Pre-Bid Conference

The following shall attend the Pre-Bid Conference:

- a. BAC;

- b. Members of the BAC Secretariat;
- c. TWG members;
- d. The observers;
- e. Representatives from the end-user unit or PMO;
- f. The short-listed consultants.

Attendance of the short-listed consultants shall not be mandatory. However, at the option of the LGU, only those who have purchased the bidding documents shall be allowed to participate in the pre-bid conference and raise or submit written queries or clarifications. **(Section 22.3, IRR of R.A. 9184)**

It is also advisable that technical and knowledgeable officials attend the conference. The persons who actually formulated the scope of work, plans and technical specifications for the project should be present and among those representing the LGU. Prospective bidders, on the other hand, should be encouraged to send representatives who are legally and technically knowledgeable about the requirements of the procurement at hand. It is also important that the prospective bidders are given ample time to review the bidding documents prior to the pre-bid conference.

A.5. Procedure for the Conduct of the Pre-Bid Conference

The BAC must initiate discussions on contentious issues, most especially if the participating prospective bidders have no ready questions. It is probable that there are issues that may not be apparent in the bidding documents but are known to the representatives of the LGU. If these issues are brought out and openly discussed, prospective bidders will be able to prepare responsive bids, thus avoiding situations that may give rise to a failure of bidding due to lack of bids received or failure of bids to comply with all the bid requirements. This would also help prevent the birth of contentious issues during the bidding itself.

The manner by which the pre-bid conference is conducted depends on the discretion of the BAC. However, several events need to take place in the conference, namely:

- a. The presentation by the BAC of the eligibility requirements, as well as, the technical and financial components of the contract to be bid, the evaluation procedure, evaluation criteria, and possible causes of failure of the bidding.
- b. The BAC Chairperson shall also discuss the requirements in the ITB, the replies to the bidders' queries about the requirements, specifications and other conditions of the project, the bid evaluation of all bidders and post-qualification evaluation of the LCB. Emphasis should also be given to the warranty requirement of the project and the different offenses and penalties provided for in IRR of R.A. 9184.

The minutes of the pre-bid conference shall be recorded by the BAC Secretariat and made available to all participants not later than three (3) calendar days after the pre-bid conference. **(Section 22.4, IRR of R.A. 9184)**

B. Issuance of a Supplemental Bid Bulletin

B.1. Time of Issuance

B.1.1. If there is a request for clarifications during the pre-bid conference or thereafter:

The BAC of the LGU shall respond to the request for clarification by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairman to be made available to all those who have properly secured the bidding documents at least seven (7) calendar days before the deadline for the submission and receipt of bids. **(Section 22.5.1, IRR of RA 9184)**

B.1.2. Upon the LGU's own initiative:

The BAC of the LGU may issue Supplemental/Bid Bulletin for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the bidding documents must be identified as "AMENDMENT." **(Section 22.5.2, IRR of RA 9184)**

B.2. Posting Requirement

Any Supplemental/Bid Bulletin issued by the BAC shall be posted on the PhilGEPS and the LGU website, if available.

It will be the prospective bidders' responsibility to ask for, and secure, these bulletins. Bidders who have submitted bids before a supplemental/bid bulletin is issued have to be informed in writing and allowed to modify or withdraw their respective bids. **(Section 22.5.3, IRR of RA 9184)**

B.3. Parties Involved in the Issuance of the Supplemental/Bid Bulletin

The following are involved in the issuance of the supplemental/bid bulletin:

- a. BAC;
- b. BAC Secretariat;
- c. TWG members; and
- d. The short-listed bidders.

B.4. Procedure for the Issuance of a Supplemental/Bid Bulletin

B.4.1. If upon the initiative of the BAC:

- a. The BAC Secretariat and/or the TWG draft the Supplemental/Bid Bulletin for approval by the BAC.
- b. The BAC approves the Supplemental/Bid Bulletin and the BAC Chairperson signs it.
- c. The BAC Secretariat may send copies of the Supplemental/Bid Bulletin to all short-listed bidders who have properly secured or purchased the bidding

documents, not later than seven (7) calendar days before the deadline for the submission and receipt of bids.

- d. The BAC Secretariat posts the Supplemental/Bid Bulletin on the website of PhilGEPS and the LGU concerned, if any.

B.4.2. If in response to a request for clarification submitted by a prospective bidder:

- a. The short-listed bidder submits to the BAC, through the BAC Secretariat, a written request for clarification. The request for clarification shall be submitted anytime provided it is undertaken at least ten (10) calendar days before the deadline for the submission and receipt of bids.
- b. The BAC directs the BAC Secretariat and/or TWG to study the request for clarification.
- c. The BAC Secretariat and/or the TWG draft the Supplemental/Bid Bulletin for approval by the BAC.
- d. The BAC approves the Supplemental/Bid Bulletin and the BAC Chairperson signs it.
- e. The BAC Secretariat may send copies of the Supplemental/Bid Bulletin to all prospective bidders who have properly secured or purchased the bidding documents, not later than seven (7) calendar days before the deadline for the submission and receipt of bids
- f. The BAC Secretariat posts the Supplemental/Bid Bulletin on the website of PhilGEPS and the LGU concerned, if any.

V. Submission, Opening and Examination of Bids

A. Contents of the Technical Proposal

- a. Bid security in the prescribed form, amount and validity period;
- b. Organizational chart for the contract to be bid;
- c. List of completed and on-going projects;
- d. Approach, work plan, and schedule: Provided, however, That for architectural design, submission of architectural plans and designs shall not be required during the consultant's selection process;
- e. List of key personnel to be assigned to the contract to be bid, with their complete qualification and experience data; and
- f. Sworn statement by the prospective bidder or its duly authorized representative in the form prescribed by the GPPB as to the following:
 - i. It is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, foreign government or foreign/international financing institution whose blacklisting rules have been recognized by the GPPB;

- ii. 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;
- iii. It is authorizing the Head of the LGU or his duly authorized representative/s to verify all the documents submitted;
- iv. The signatory is the duly authorized and designated representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership or joint venture;
- v. It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of RA 3019;
- vi. It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs; and
- vii. It complies with existing labor laws and standards.
- viii. It 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 or representative of the government in relation to any procurement project or activity.

B. Contents of the Financial Proposal

- a. Financial Bid Form, which includes bid prices and the bill of quantities and the applicable Price Schedules; and
- b. Any other financial document as required in the bidding documents.

C. Bid Security

The LGU shall indicate in the Bidding Documents the acceptable bid security that bidders may opt to use, which shall include the Bid Securing Declaration provided in Section 27.5 of the IRR of R.A. 9184 and at least one other form, the amount of which shall be equal to a percentage of the ABC in accordance with the following schedule:

C.1. Forms and Corresponding Amounts

| Form of Bid Security | Amount of Bid Security (Equal to Percentage of the ABC) |
|---|--|
| 1. Cash, cashier's/manager's check, issued by a Universal or Commercial Bank. | Two percent (2%) |
| 2. Bank draft/irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. | |

| | |
|--|---|
| 3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. | Five percent (5%) |
| 4. Any combination of the items 1 to 3 above. | Proportionate to share of form with respect to total amount of security |

A Bid Securing Declaration is an undertaking which states, among others, that the bidder shall enter into contract with the Procuring Entity and furnish the performance security within ten (10) calendar days, or less as indicated in the Bidding Documents, from receipt of the Notice of Award, and committing to pay the corresponding fine, and be suspended for a period of time from being qualified to participate in any government procurement activity in the event that it violates any of the conditions stated therein as provide in the guidelines issued by the GPPB. **(Section 27.5, IRR of RA 9184)**

The prospective bidder shall be given the option to post a BSD **OR** any other form of bid security indicated by the Procuring Entity in the Bidding Documents.

To illustrate, the procuring entity shall include BSD, as one of the choices; the other form of bid security may be Cashier's Check (or Cash, Manager's Check, Bank Draft/Guarantee, Irrevocable Letter of Credit, Surety Bond, or combination of the identified forms). The prospective bidder may opt to post a BSD **OR** Cashier's Check as its bid security. Accordingly, the prospective bidder is required to post only one (1) form of bid security, in this example, it could either be a BSD **OR** Cashier's Check.

The Procuring Entity may also require bidders to submit bid securities in the form of cashier's/manager's check, bank draft guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.

It must be enclosed with every bid and must be operative on the date of bid opening, and payable to the LGU.

The Bidder's failure to enclose the required bid security in the prescribed form and amount shall be automatically disqualified by the LGU.

For instance, if the ABC is One Million Pesos (PhP. 1,000,000.00) and the bidder intends to secure its bid sixty percent (60%) by cash and the remaining forty percent (40%) by surety bond, then the amount of each form of bid security should be as follows:

$$\begin{aligned}
 \text{Amount of Cash} &= (\text{ABC} \times 2\%) \times 60\% \\
 &= (1,000,000 \times .02) \times .6 \\
 &= 20,000 \times .6 \\
 &= \text{P}12,000 \\
 \text{Amount of Surety Bond} &= (\text{ABC} \times 5\%) \times 40\% \\
 &= (1,000,000 \times .5\%) \times .4 \\
 &= 50,000 \times .4 \\
 &= 20,000
 \end{aligned}$$

In biddings with lots or items, whereby a bidder submits a bid for more than one lot or item, the bid security shall be based upon the sum of the ABC for each of the lots or items for which bids are submitted.

C.2. Period of Validity of Bids and Bid Securities

Bids and bid securities shall be valid for a reasonable period as determined by the Head of the Procuring Entity concerned, which shall be indicated in the Bidding Documents, but in no case shall the period exceed one hundred twenty (120) calendar days from the date of the opening of bids. (**Section 28.1, IRR of RA 9184**)

Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, the procuring entity concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security. (**Section 28.2, IRR of RA 9184**)

The recommended period for bid validity is ninety (90) calendar days with the corresponding bid security valid for one hundred twenty (120) calendar days to provide reasonable time thirty (30) calendar days for the BAC to act if the security is to be called.

Bidders who refuse to grant the LGU's request for an extension of the period of validity of their bid and bid security will have the same returned to them. However, they are deemed to have waived their right to further participate in the bidding.

C.3. Return of Bid Securities to Bidders

General Rule

Bid Securities shall be returned only after the bidder with the LCRB has signed the contract and furnished the Performance Security, but in no case later than the expiration of the Bid Security validity period indicated in the ITB.

Exceptions

- a. Where a short-listed bidder failed to comply with any of the requirements to be submitted in the first bid envelope (Technical Proposal) and submitted a written waiver of its right to file a motion for reconsideration and/or protest;
- b. Where a bidder was post-disqualified and submitted a written waiver of its right to file a motion for reconsideration and/or protest, as provided in the IRR.

C.4. Forfeiture of Bid Security

The bid security may be forfeited:

- a. if a Bidder:
 - i. does not accept the arithmetical correction of errors;
 - ii. fails to submit the requirements within the prescribed period or a finding against their veracity;

- iii. submission of eligibility or bidding requirements containing 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 public bidding;
- iv. allowing the use of one's name, or using the name of another for purposes of public bidding;
- v. withdrawal of a bid during the bid validity period, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Bidder had been adjudged as having submitted the Lowest Calculated and Responsive Bid;
- vi. refusal or failure to post the required performance security within the prescribed time;
- vii. 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;
- viii. any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor;
- ix. failure of the potential joint venture partners to enter into the joint venture after the bid is declared successful;
- x. all other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons; or

C.5. Penalties under Bid Securing Declaration

a. Penalty of automatic blacklisting for two (2) years in all government procurement activities;

b. Payment of fine equivalent to the amount subject to the following rules:

i) In case of multiple bidders:

Two Percent (2%) of the Approved Budget for the Contract (ABC) or the Difference between the evaluated bid prices of the bidder with the Lowest Calculated/Highest Rated Bid and the bidder with the next Lowest Calculated/Highest Rated Bid, and so on, whichever is HIGHER;

As regards the bidder with the Highest Calculated/Lowest Rated Bid, the amount shall be Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the ABC, whichever is HIGHER.

ii) In case of a single bidder:

Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the Approved Budget for the Contract, whichever is HIGHER.

- iii) Violations committed prior to opening of financial envelope:

A fix amount equivalent to two percent (2%) of the ABC.

- iv) The bidder shall pay the above-mentioned fine within fifteen (15) days from receipt of the written demand by the procuring entity as a result of the violation of the conditions in the Bid Securing Declaration.
- v) The imposition of the foregoing fine is without prejudice to other legal action the government may undertake against the erring bidder.

D. Procedure in the Receipt, Opening and Preliminary Examination of Bids

The following steps are undertaken in the receipt, opening and preliminary examination of bids:

- a. Shortlisted consultants submit their bids through their respective representatives in two (2) separate sealed bid envelopes, the first containing the technical component of the bid, and the second containing the financial component of the bid. T

All envelopes shall:

- i. contain the name of the contract to be bid in capital letters;
 - ii. bear the name and address of the Consultant in capital letters;
 - iii. be addressed to the LGU BAC
 - iv. bear the specific identification of this bidding process indicated in the REI; and
 - v. bear a warning "DO NOT OPEN BEFORE..." the date and time for the opening of bids.
- b. The BAC Secretariat receives the technical and financial envelopes at the time, date and place specified in the bidding documents. Upon receipt of technical and financial envelopes the BAC Secretariat must stamp these as "RECEIVED." Such stamp shall be countersigned by an authorized representative.
 - c. The BAC convenes on the Bid Opening Date. The presence of the majority of the BAC members shall constitute a quorum, provided that the Chairperson or the Vice-Chairperson is present.
 - d. The BAC then proceeds with the opening and preliminary examination of bids in public, following the same procedure as the eligibility check. For each bid, the BAC opens the Technical Envelopes of shortlisted consultants to determine each one's compliance with the required documents for the technical component of the bid. The BAC checks the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present in the technical envelope, using non-discretionary "pass/fail" criteria. The opening of bids must be done in public, following the same procedure as the eligibility check.

The order of opening is as follows:

- i. The letters of shortlisted consultants that decide not to participate;
 - ii. The letters of shortlisted consultants that decide to withdraw the bids that they have submitted earlier than the deadline;
 - iii. The letter of short listed consultants that decide to modify their bids which they have submitted earlier than the deadline, followed by the opening of their technical envelopes; and
 - iv. The technical envelopes of shortlisted consultants that have submitted bids on or before the deadline itself, without modification.
- e. In case one or more of the required documents is missing, incomplete, or patently insufficient, the BAC must rate the bid concerned as "failed". Otherwise, it shall rate the said first bid envelope as "passed."

A document that is not signed and/or not notarized shall be considered a patently insufficient submission. If the requirement is for the audited financial statements (AFS) or the income tax returns (ITRs) for three (3) immediately preceding years, and the bidder submits its AFS or ITR for the past two (2) years only, such shall be considered an incomplete submission.

For a document, to be deemed "complete" and "sufficient", it must be complete on its face, that is, contain all the information required, and must comply with the requirements set out in the Bidding Documents. Another example of an insufficient submission is a Bid Security in an amount below the requirement.

- f. All members of the BAC, or their duly authorized representatives who are present during bid opening, shall initial every page of the original copies of all bids received and opened. The BAC shall adopt a procedure for ensuring the integrity, security, and confidentiality of all submitted bids.
- g. The financial envelopes of all shortlisted consultants must remain sealed and secured.
- h. All technical envelopes must be resealed. Those rated "passed" will be secured in preparation for the detailed technical evaluation (which normally starts the following day). Those rated "failed" will be secured for purposes of potential filing of request for reconsideration.
- i. The BAC Secretariat shall record the proceedings using an electronic tape recorder or a video recorder. The minutes of the bid opening should be prepared within three (3) calendar days after the bid opening date, so that copies thereof could immediately be sent to the BAC members, Observers, Bidders and other interested parties. Copies of the minutes shall also be made available to the public upon written request and payment of a specified fee to recover cost of materials.

E. Modification and Withdrawal of Proposals

The bidder may modify its bid after it has been submitted; provided that the modification is received by the LGU prior to the deadline prescribed for

submission and receipt of bids. The bidder shall not be allowed to retrieve its original bid, but shall be allowed to submit another bid equally sealed, properly identified, linked to its original bid marked as "TECHNICAL MODIFICATION" or "FINANCIAL MODIFICATION" and stamped "received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened.

A bidder may, through a letter of withdrawal, withdraw its bid after it has been submitted, for valid and justifiable reason LGU Entity prior to the deadline prescribed for submission and receipt of bids.

Bids requested to be withdrawn shall be returned unopened to the bidder. A Consultant may also express its intention not to participate in the bidding through a letter, which should reach and be stamped by the BAC before the deadline for submission and receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

No bid may be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the bidder on the Financial Bid Form. Withdrawal of a bid during this interval shall result in the forfeiture of the bidder's bid security and the imposition of administrative, civil, and criminal sanctions as prescribed by R.A. 9184 and its IRR.

VI. Detailed Bid Evaluation

A. Consultant's Selection Process

As a general policy, the HOPE shall have the option to decide on the evaluation procedure to be adopted, which shall either be quality-based or quality-cost based, as well as the manner by which the actual evaluation of proposals shall be conducted. The consultant evaluation procedure adopted shall be stated in the REI and the bidding documents.

The primary purpose of conducting detailed Bid Evaluation is to determine the bidder with the Highest Rated Bid (HRB) shall be determined in two (2) steps:

- a. The detailed evaluation of the bids of the shortlisted consultants using numerical ratings based on either the Quality-Based Evaluation (QBE) procedure or the Quality-Cost Based Evaluation procedure (QCBE); and
- b. The ranking of the bidders based on the numerical ratings from the highest to the lowest.

B. Methods of Bid Evaluation

There are two methods of evaluating bids: the QBE and QCBE procedures.

- a. **QBE** considers only the Technical Proposals in the ranking of consultants. This must be applied for:
 - i. Complex or highly specialized assignments for which it is difficult to precisely define the TOR and the required inputs from the consultants; and

- ii. Where the assignment can be carried out in substantially different ways, such that the proposals are not comparable.
- b. **QCBE**, on the other hand, considers both the Technical and Financial Proposals in the ranking of consultants. This is applied in other cases.

In order to eliminate bias in evaluating the technical proposals, it is recommended that the highest and lowest scores for each consultant for each criterion shall not be considered in determining the average scores of the consultants, except when the evaluation is conducted in a collegial manner. **(Section 33.2.3, IRR of R.A. 9184)**

Whatever evaluation method is applied, bids are rated numerically. This can be done in either of two ways: individual or collegial rating.

i. Individual Evaluation Process

In the individual rating process, each BAC member participating in the evaluation assigns numerical rates to a proposal, these rates range from 1 to 100, with 100 as the highest value. These rates are tabulated, and then the highest and lowest rates are disregarded. The latter step is done to remove the possibility of one BAC member unduly influencing the results of the evaluation. The average of all remaining rates is then calculated.

The table below illustrates how the highest and lowest rates are disregarded in calculating the average rate of proposals.

| Evaluators | Firm A | Firm B | Firm C | Firm D | Firm E |
|------------|--------|--------|--------|--------|--------|
| 1 | 95 | 75 | 84 | 83 | 85 |
| 2 | 84 | 88 | 86 | 81 | 81 |
| 3 | 84 | 86 | 85 | 76 | 84 |
| 4 | 83 | 85 | 85 | 80 | 82 |
| 5 | 84 | 87 | 86 | 80 | 83 |
| Average | 84 | 86 | 85 | 80 | 83 |
| Rank | 3 | 1 | 2 | 5 | 4 |

If the highest and lowest rates were not eliminated, the example below will show that the scores of Evaluator 1, which appears to be biased for Firm A, would have unduly placed Firm A at an advantage.

| Evaluators | Firm A | Firm B | Firm C | Firm D | Firm E |
|------------|--------|--------|--------|--------|--------|
| 1 | 95 | 75 | 84 | 83 | 85 |
| 2 | 84 | 88 | 86 | 81 | 81 |
| 3 | 84 | 86 | 85 | 76 | 84 |
| 4 | 83 | 85 | 85 | 80 | 82 |
| 5 | 84 | 87 | 86 | 80 | 83 |
| Average | 86 | 84.2 | 85.2 | 80 | 83 |
| Rank | 1 | 3 | 2 | 5 | 4 |

ii. Collegial Evaluation Process

Under the Collegial Evaluation process, the BAC members evaluate the proposals, deciding as a group. The rate obtained by a proposal is the consensus of the BAC members involved in the evaluation.

C. Timeline for the Conduct of Detailed Bid Evaluation

The entire evaluation process, from proposal opening to submission of the bid evaluation results to the HOPE, should not exceed twenty-one (21) calendar days. **(Section 33.4, IRR of R.A. 9184)**

D. Procedure for Detailed Bid Evaluation**D.1. QBE**

- a. A two-stage procedure shall be adopted whereby each consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes.
- b. After receipt of bids, the technical proposals shall first be opened and evaluated, in accordance with Section 33.2.2 of the IRR of RA 9184.
- c. The BAC shall rank the consultants in descending order based on the numerical ratings of their technical proposals and identify the HRB: Provided, however, that the HRB shall pass the minimum score indicated in the Bidding Documents.
- d. BAC will now recommend the bidder with the HRB to the HOPE for its consideration and approval. The HOPE shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the BAC evaluation.
- e. After the HOPE's approval of the HRB, its financial proposal shall then be opened. The BAC shall, within three (3) calendar days, notify and invite the consultant with the HRB for the opening of financial proposal for the purpose of conducting negotiations with the said consultant. In the notification letter, the BAC shall inform the consultant of the issues in the technical proposal the BAC may wish to clarify during negotiations.
- f. Negotiations shall be in accordance with Section 33.2.5 of the IRR of R.A. 9184, provided that the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the approved budget for the contract as stated in the REI and the Bidding Documents.
- g. When negotiation with the first in rank consultant fails, the financial proposal of the second in rank consultant shall be opened for negotiations, and so on; provided that the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the approved budget for the contract as stated in the REI and the Bidding Documents.

D.2. QCBE

- a. A two-stage procedure shall be adopted whereby each consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes.

- b. After receipt of bids, the technical proposals shall first be opened and evaluated, in accordance with Section 33.2.2 of the IRR of R.A. 9184.
- c. The BAC evaluates the Technical Proposals of all shortlisted consultants that submitted bids.
- d. The BAC ranks all the Technical Proposals, noting those that have earned ratings above the minimum requirement and those that have not.
- e. The BAC sends a formal letter to all consultants whose Technical Proposals earned ratings below the minimum required rating, informing them of their failure to qualify and returning to them their Financial Proposal unopened. Both the technical and financial proposal envelopes shall only be returned after issuance of the waiver that the disqualified bidder will no longer file a request for reconsideration and/or protest.
- f. The BAC sends a formal letter to all consultants whose Technical Proposals earned at least the minimum required rating, informing them thereof and of the date, time, and venue of the opening of the Financial Proposals. The methodology to be used in the evaluation of the financial proposal shall be described in the ITB.
- g. On the date, time and venue set, the BAC opens the Financial Proposals of the qualified consultants in public, and records the proposed prices of each qualified consultant. If the proposed price exceeds the ABC, the bidder will be disqualified.
- h. The BAC reviews each Financial Proposal, checks for its completeness, corrects any arithmetical errors, and corrects the recorded proposed prices, if warranted.
- i. The BAC disqualifies a consultant if:
 - i. It provides for a required item but does not indicate a price for it and is thus deemed as non-compliant, except that if it specifies a "0" (zero) for the said item, it would be deemed as having offered the item for free to the government, and
 - ii. Its corrected price exceeds the ABC.
- j. The BAC computes the ratings of each Financial Proposal in the following manner:
 - i. The consultant with the lowest price gets 100 points.
 - ii. The scores of the other consultants will be computed using the formula:

$$Sf = 100 \times FI/F$$

In which Sf is the financial score, FI is the lowest Financial Proposal and F is the Financial Proposal under consideration.

Example:

| Firm | Cost of Financial Proposal | Financial Score |
|------|----------------------------|---|
| A | P 1,100,000 | $P 1,000,000 / P 1,100,000 = 90.9$ points |
| B | P 1,000,000 | $P 1,000,000 / P 1,000,000 = 100$ points |
| C | P 1,500,000 | $P 1,000,000 / P 1,500,000 = 66.7$ points |
| D | P 1,300,000 | $P 1,000,000 / P 1,300,000 = 76.9$ points |
| E | P 1,200,000 | $P 1,000,000 / P 1,200,000 = 83.3$ points |

- k. The BAC gives corresponding weights to the Financial and Technical Proposals of the qualified consultants, the weights having been determined during the pre-procurement conference and indicated in the REI and the bidding documents. The financial proposal may be given a weight of fifteen percent (15%) up to a maximum of forty percent (40%).
- l. The BAC adjusts the weight of the technical criteria such that their total weight in percentage terms, together with the weight given to the Financial Proposal, shall be equivalent to one hundred percent (100%).
- m. The BAC multiplies the average score of each qualified consultant's Technical Proposal with the percentage value allowed as weight for Technical Proposals. It also multiplies the rate earned by each consultant's Financial Proposal with the percentage value allowed as weight for Financial Proposals. It then adds the resulting products of both operations for each consultant. The sum becomes the total score for the consultant.

The formula is as follows:

$$S = St \times T\% + Sf \times F\%$$

Where:

S is the Total Score;
St is the Technical Score;
Sf is the Financial Score;
T is the weight given to the Technical Proposal; and
F is the weight given to the Financial Proposal.

Example:

| Firm | Technical Proposal | | | | Financial Proposal | | | | Total Score | | |
|------|--------------------|---|------------|---|--------------------|-------|---|------------|-------------|------|----------------|
| | Ave. Score | | Weight | | Weighted Score | Score | | Weight | | | Weighted Score |
| A | 86 | X | 70% or 0.7 | = | 60.2 | 90.9 | X | 30% or 0.3 | = | 27.3 | 87.5 |
| B | 84.2 | X | 70% or 0.7 | = | 58.9 | 100 | X | 30% or 0.3 | = | 30 | 88.9 |
| C | 85.2 | X | 70% or 0.7 | = | 59.6 | 66.7 | X | 30% or 0.3 | = | 20 | 79.6 |
| D | 80 | X | 70% or 0.7 | = | 56 | 76.9 | X | 30% or 0.3 | = | 23.1 | 79.1 |
| E | 83 | X | 70% or 0.7 | = | 58.1 | 83.3 | X | 30% or 0.3 | = | 25.0 | 83.1 |

- n. The BAC ranks the consultants in descending order, with the consultant obtaining the highest total score being declared as the bidder with the HRB.
- o. The BAC submits the results of its evaluation to the HOPE, identifying the consultant with the HRB, and recommending that it be authorized to negotiate with this consultant.

- p. The HOPE approves or disapproves the recommendations of the BAC within two (2) calendar days after receiving these from the BAC.
- q. If the HOPE disapproves the recommendation, s/he shall state the reason(s) for the disapproval and instruct the BAC on the subsequent steps to be adopted. If the HOPE approves the recommendations, the BAC furnishes all participating shortlisted consultants with the results of its evaluation (ranking and total scores only). The results must also be posted on the PhilGEPS and LGU's website for a period of not less than two (2) weeks, to make these results available to the GPPB and the umbrella organization of consultants.
- r. Within three (3) calendar days from the approval of its recommendations, the BAC invites the consultant with the HRB for contract negotiations. In its letter of notification, the BAC shall inform the consultant of the issues in the technical proposal the BAC may wish to be clarified on during negotiations.
- s. Negotiations shall be in accordance with Section 33.2.5 of the IRR of R.A. 9184.
- t. When negotiation with the first in rank consultant fails, the financial proposal of the second in rank consultant shall be opened for negotiations, and so on; provided that the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the approved budget for the contract as stated in the REI and the Bidding Documents.

D.3. Bid Evaluation Criteria for the Technical Proposals:

The technical proposals of consultants shall be evaluated based on the following criteria and using the corresponding numerical weights indicated in the Bidding Documents (**Section 33.2.2, IRR of RA 9184**):

- a. Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;
- b. Experience and capability of the consultant which include records of previous engagement and quality of performance in similar and in other projects; relationship with previous and current clients; and, overall work commitments, geographical distribution of current/impending projects and attention to be given by the consultant. The experience of the consultant to the project shall consider both the overall experiences of the firm and the individual experiences of the principal and key staff including the times when employed by other consultants; and
- c. Plan of approach and Procedural Requirements: with emphasis on the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality

of interpretation of project problems, risks, and suggested solutions.

VII. Negotiations

Negotiations shall cover the following:

- a. Discussion and clarification of the TOR and Scope of Services;
- b. Discussion and finalization of the Procedural Requirements: and work program proposed by the consultant;
- c. Consideration of appropriateness of qualifications and pertinent compensation, number of man-months and the personnel to be assigned to the job, taking note of over-qualified personnel, to be commensurate with the compensation of personnel with the appropriate qualifications, number of man-months and schedule of activities (manning schedule);
- d. Discussion on the services, facilities and data, if any, to be provided by LGU concerned;
- e. Discussion on the financial proposal submitted by the consultant (for QBE Method); and
- f. Provisions of the contract.

Except for meritorious reasons, negotiations with any one consultant shall be completed within ten (10) calendar days.

VIII. Post-qualification

A. Procedure for Post-qualification

The primary purpose in conducting post-qualification for the procurement of consulting services is to determine whether the Consultant that is evaluated as having submitted the Highest Rated Bid (HRB) or Single Rated Bid (SRB) complies with and is responsive to all the requirements and conditions specified in the Eligibility Documents.

The following steps are followed in the conduct of post-qualification:

- a. Within three (3) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Bid or Highest Rated Bid, the bidder shall submit the following documentary requirements to the BAC:
 - i. Latest income and business tax returns in the form specified in the BDS;
 - ii. Certificate of PhilGEPS Registration or PhilGEPS Registration Number if the procuring entity is a Philippine foreign office or post, provided that participating bidders should register with the PhilGEPS prior to bid opening; and
 - iii. Other appropriate licenses and permits required by law and stated in the Bidding Documents.

Failure to submit the above requirements on time or a finding against the veracity of such shall be ground for the forfeiture of the bid security and disqualify the bidder for award.

- b. The BAC/TWG verifies, validates, and ascertains the genuineness, validity and accuracy of the legal, technical and financial documents submitted by the bidder with the HRB, using the non-discretionary criteria as stated in the REI and ITB. These criteria shall consider, but shall not be limited to, the verification and validation of the following:
 - i. Legal Requirements. To verify, validate, and ascertain licenses, certificates, permits, and agreements submitted by the bidder, and the fact that it is not included in any "blacklist" as provided in Section 25.2 of this IRR.
 - ii. Technical Requirements. To determine compliance of consulting services offered with the requirements specified in the Bidding Documents, including, where applicable:
 - Verification and validation of the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, for the procurement of consulting services;
 - Verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts.; and
 - Ascertainment of the sufficiency of the bid security as to type, amount, form and wording, and validity period.
- c. Financial Requirements. To verify, validate and ascertain the bid price proposal of the bidder and, the bidder's audited financial statement to ensure that the bidder can sustain the operating cash flow of the transaction.
- d. The BAC/TWG conducts a site inspection of the bidder's place of business, where applicable.
- e. The BAC/TWG inquires about the bidder's performance in relation with other contracts/transactions as indicated in its eligibility statement (statement of on-going, completed or awarded contracts).
- f. If the TWG conducts the post-qualification, it prepares a Post-qualification Report to be submitted to the BAC. The Report shall contain, among others, the activities undertaken with regard to the post-qualification process, feedback from inquiries conducted, and the results of any tests conducted by the TWG or an accredited government testing center, where applicable.
- g. The BAC reviews the Post-qualification Report submitted by the TWG.
- h. The BAC determines whether the bidder with the HRB or SRB passes all the criteria for post-qualification.
- i. If the bidder with the HRB or SRB passes the post-qualification, the BAC declares it as the bidder with the Highest Rated and

Responsive Bid (SRRB) or Single Rated and Responsive Bid (SRRB).

- j. If the bidder with HRB is post-disqualified, the BAC shall then proceed to initiate and complete the post-qualification of the bidder with the second HRB. This procedure is repeated until the bidder with HRRB is determined.
- k. Should the SCB or all eligible bidders fail post-qualification, the BAC must declare a failure of bidding pursuant to Section 35 of the IRR of R.A. 9184.
- l. After the BAC has determined the HRRB or SRRB, the BAC Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the bidder with the HRRB or SRRB and the corresponding Notice to the said bidder informing it of its successful post-qualification.

B. Timeline:

The post-qualification process must be conducted and completed **within seven (7) calendar days** from the determination of the HRB. **(IRR Section 34.8)** However, in exceptional cases, the post-qualification period may be extended by the HOPE to a maximum of **thirty (30) calendar days**. **(Section 34.8 of this IRR)**

IX. Issuance of the Notice of Award

A. Rule on Award of the Contract

The BAC shall issue a Resolution recommending to the HOPE to award the contract to the bidder with the HRRB/SRRB at its submitted bid price or its calculated bid price, whichever is lower. **(Section 34.4, IRR of R.A. 9184)**

Prior to the expiration of the period of bid validity, the LGU should notify the successful bidder in writing that its bid has been accepted, through a NOA received personally or sent by registered mail or electronically.

B. Procedure

The following steps are followed in the awarding of a contract:

- a. The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand, and attaches the same to the BAC Resolution.
- b. The BAC Secretariat drafts the BAC Resolution recommending award.
- c. The BAC approves and signs the Resolution Recommending Award, and transmits the same to the HOPE. **(Sec. 37.1.1, IRR of RA 9184)**
- d. The HOPE acts on the recommendation for award within seven (7) calendar days from the date of determination and declaration by the BAC of the HRRB/SRRB. The HOPE should approve or disapprove the BAC recommendation for award of the contract.
- e. In case of approval of the BAC recommendation, the HOPE, through the BAC, issues the NOA to the bidder with the HRRB/SRRB.

- f. Simultaneously, the BAC, through the BAC Secretariat, shall notify all losing bidders of its decision. **(Sec. 37.1.3, IRR of RA 9184)**
- g. In case of a disapproval of the recommendation of award, the HOPE shall state the reason(s) for disapproval and instruct the BAC on the subsequent steps to be adopted.
- h. BAC, through the BAC Secretariat, shall post the NOA, within three (3) calendar days from its issuance, on the following:
 - i. PhilGEPS;
 - ii. LGU's website, if any, and
 - iii. Any conspicuous place in the premises of the LGU. **(Sec. 37.1.6, IRR of RA 9184)**
- i. The bidder with the HRRB/SRRB accepts the NOA.

If the deadline for each activity falls on a non-working day (*i.e.* Saturday and Sunday), legal holiday, or special non-working holiday, the deadline shall be the next working day. **(Sec. 38.2, IRR of RA 9184)**

C. Timeline

The HOPE should approve or disapprove the recommendation of award within seven (7) calendar days from the date of determination and declaration by the BAC of the HRRB.

The NOA shall be given to the bidder with the HRRB/SRRB immediately after approval of the recommendation. Simultaneously, the BAC shall notify all losing bidders of its decision, and the award shall be posted on the website of the PhilGEPS, as well as the websites of the LGU and its electronic procurement service provider, if any.

X. Contract Signing and Approval

The winning bidder and the HOPE must sign the contract within ten (10) calendar days from receipt by the winning bidder of the NOA. **(Section 37.2.1, IRR of RA 9184)**

The LGU shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.

A. Documents that Form Part of the Contract

The following documents shall form part of the contract.

- a. Contract Agreement;
- b. Bidding Documents, including Instructions to Bidders, Bid Data Sheet and Conditions of the Contract;
- c. Copy of the REI;
- d. Addenda and/or Supplemental/Bid Bulletins, if any;
- e. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;
- f. Performance Security;

- g. Credit line in accordance with the provisions of this IRR, if applicable;
- h. Notice of Award of Contract and the winning bidder's "Conforme" thereto; and
- i. Other contract documents that may be required by existing laws and/or the LGU concerned in the Bidding Documents

B. Procedure for Contract Signing and Approval

- a. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
- b. The BAC Secretariat transmits the contract and its attachments to the Budget Office (for issuance of OS) and the Chief Accountant (for issuance of CAF)
- c. The BAC Secretariat transmits the contract documents to the HOPE or appropriate signing authority for signature, together with the following documents:
 - i. Duly approved delivery schedule and cost estimates or the PMP;
 - ii. Abstract of Bids, as submitted and calculated;
 - iii. Resolution of the BAC recommending award;
 - iv. Approval of award by the HOPE; and
 - v. Other pertinent documents that may be required by existing laws and/or the LGU.
- d. The HOPE or his/her duly authorized representative signs the contract from receipt by the winning bidder of the NOA, provided that the winning bidder has complied with all the documentary requirements, if any.

(Steps a-d shall be accomplished within ten (10) calendar days from receipt of the NOA)

- e. The HOPE or his/her duly authorized representative issues the NTP together with a copy or copies of the approved contract to the successful bidder within three (3) calendar days from the date of the approval of the contract.

Authorization from the Sanggunian is an indispensable requirement before the Local Chief Executive may enter into and sign all contracts and obligations in behalf of the Sanggunian. Such authorization may either be given through the Appropriation Ordinance or through a separate approval if the Appropriation Ordinance describes the project in generic terms (**NPM No. 017-2014 dated 5 May 2014, citing *Quisumbing v. Garcia*, G.R. No. 175527, 8 December 2008**)

XI. Issuance of Notice to Proceed

The HOPE or his/her duly authorized representative issues the Notice to Proceed (NTP) together with a copy or copies of the approved contract to the successful bidder within three (3) calendar days from the date of the approval of the contract. The LGU, through the BAC Secretariat, shall post a copy of the Notice to Proceed and the approved contract within fifteen (15) calendar days from its issuance in the PhilGEPS or the website of the LGU, if any. (**Section 37.4.2, IRR of RA 9184**)

A. Effectivity of the Contract

The contract effectivity date shall be provided in the Notice to Proceed by the LGU, which date shall not be later than seven (7) calendar days from its issuance. **(Section 37.4.1, IRR of RA 9184)**

B. Effect of Failure to Enter into Contract and Post Performance Security

If the bidder with the HRRB, fails, refuses or is unable to submit the documents required under Section 37.1 of this IRR or to make good its bid by entering into a contract with the LGU or post the required Performance Security within the period stipulated in the IRR of R.A. 9184 or in the Bidding Documents, the bid security shall be forfeited and the appropriate sanctions provided in this IRR and existing laws shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder.

In the case of the failure, refusal or inability of the bidder with the HRRB to submit the documents required under Section 37.1 of the IRR of R.A. 9184 or to enter into contract and post the required Performance Security, the BAC shall disqualify said bidder and shall initiate and complete the post-qualification process on the bidder with the second HRB. This procedure shall be repeated until the Lowest Calculated Responsive Bid is determined for award. However, if no bidder passes post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into a Negotiated Procurement under Section 53.1 of the IRR of RA 9184.

In the case of failure, refusal or inability of the bidder with the SRRB to submit the documents required under Section 37.1 of the IRR of R.A. 9184 or to enter into contract and post the required Performance Security, the BAC shall disqualify the said bidder, and shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Sections 21 and 25 of this IRR. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into a Negotiated Procurement. **(Section 40.3, IRR of RA 9184)**

SECTION 4. Reservation Clause and Failure of Bidding

I. Reservation Clause

The Reservation Clause declares that the HOPE reserves the right to reject any and all bids, to declare a failure of bidding, or not to award the contract. (**Section 41, IRR of R.A.**)

HOPE may exercise the following:

1. Reject any and all bids

If there is *prima facie* evidence of existence of collusion

- a. between appropriate public officers or employees of the LGU, or
- b. between the BAC and any of the bidders, or
- c. between or among the bidders themselves, or
- d. between a bidder and a third party.

2. Declare a failure of bidding

If the *BAC is found to have failed*¹⁶ in following the prescribed bidding procedures; or

3. Not award the contract

For any justifiable and reasonable ground where the award of the contract **will not redound to the benefit of the government** as follows:

- a. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the HOPE;
- b. If the project is no longer necessary as determined by the HOPE; or
- c. If the source of funds for the project has been withheld or reduced through no fault of the LGU.

In the case of *Mata v. San Diego, G.R. No. L-30447 (21 March 1975)*, the Supreme Court of the Philippines declared that a bidder is bound by the reservation clause, and the said clause vests in the authority concerned the discretion to ascertain who among the bidders is the lowest responsive bidder or the lowest and best bidder or most advantageous to the best interest of the Government. As such, a bidder has no right or cause of action to compel the BAC or agency to award the contract to it.

¹⁶ **What are the instances wherein the BAC fails to follow the prescribed procedures?**

The following are some instances when a BAC fails to follow procedures:

1. Prescribing an insufficient number of days in the posting of the IB;
2. Exceeding the required periods for eligibility screening, bid evaluation, post-qualification for each highest rated bidder or for awarding the contract without justifiable cause;
3. Conducting the pre-bid conference or issuing the bidding documents in less than the required number of days before deadline for the submission and opening of bids;
4. Requiring the bidder to submit additional documents which is tantamount to improving his bidding documents; and
5. Allowing a bidder to become eligible or pass the post-qualification with incomplete documents.

The Court further stated that this requires inquiry, investigation, comparison, deliberation and decision – a quasi-judicial function which, when honestly exercised, may not be reviewed by the courts. It should be noted, however, that Section 41 of R.A. 9184, has placed some limiting qualifiers on the possible contents of the Reservation Clause.

Practical Tip

The Reservation Clause must be exercised with Caution by the HOPE

The LGU should be prudent in the use of the reservation clause and should be strictly limited to the three (3) grounds discussed above, If the HOPE abuses his power to reject any and all bids, as provided by therein, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of the IRR of R.A. 9184, or if it is proven that he exerted undue influence or undue pressure on any member of the BAC or any officer or employee of the LGU to take such action, and the same favors or tends to favor a particular bidder, he shall be meted with the penalties provided in Section 65 of the IRR of R.A. 9184. **(Section 65.1.5, IRR of R.A. 9184)**

II. Failure of Bidding

A. Grounds; The BAC shall declare a failure of bidding in any of the following circumstances:

- a. No bids are received
- b. All prospective bidders declared ineligible
- c. All bids fail to comply with bid requirements, fail post-qualification, or no successful negotiation in case of consulting services
- d. HRRB unjustifiably refuses to accept award and award not made to next bidders. **(Section 35.1, IRR of R.A. 9184)**

B. Next Steps

In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates. **(Section 35.2, IRR of R.A. 9184)**

Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the IRR of RA 9184. **(Section 35.3, IRR of R.A. 9184)**

All bidders who have initially responded to the Invitation to Bid/Request for Expression of Interest and have been declared eligible or short listed in the previous biddings shall be allowed to submit new bids. The BAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding(s). **(Section 35.4, IRR of R.A. 9184)**

Should there occur a second failure of bidding, the LGU may resort to Negotiated Procurement, as provided for in Section 53.1 of the IRR of RA 9184.

SECTION 5: Contract Implementation

I. Advance Payment for Mobilization

The LGU, as it considers fair and reasonable, may allow advance payment to the Consultant in the amount which shall not exceed fifteen percent (15%) of the contract amount to cover the cost of mobilization, subject to the posting of an irrevocable standby letter of credit issued by an entity acceptable to the agency and of an amount equal to the advance payment. The advance payment shall be repaid by the Consultant by deducting from his progress payments such sum as agreed upon during the contract negotiations until fully liquidated within the duration of the contract.

A. Recovery of Advance Payment

The LGU must recover the advance payment by deducting from the progress payments to the consultant such sum as agreed during contract negotiations until the advance payment shall have been fully liquidated within the duration of the contract.

The consultant, for its part, may reduce his standby letter of credit or guarantee instrument by the amounts refunded in the advance payment.

II. Replacement of Consultant and Key Personnel

A. Rule in Replacement of Key Personnel

Once the contract is effective, any change introduced in the key personnel that is not agreed to by the LGU and is not for reasons of death, illness or incapacity of the individual personnel, during the first fifty percent (50%) of the contracted inputs of the said individual, shall result in the imposition of damages. Violators will be fined an amount equal to the refund of the replaced personnel's basic rate, which should be at least fifty percent (50%) of the total basic rate for the duration of the engagement.

B. Grounds and Procedure for Replacement of Key Personnel

If the LGU finds that any of the personnel has committed serious misconduct or has been charged with having committed a criminal action under Philippine law, or has reasonable cause to be dissatisfied with the performance of any of the personnel, then the consultant must, at the LGU's written request specifying the grounds therefor, forthwith provide as replacement a person with qualifications and experience acceptable to the LGU. The replacement should have equal or better qualifications but will receive remuneration not exceeding that which would have been payable to the person replaced. The consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of staff.

III. Contract Price and Payment

A. Rule on Contract Price

Price escalation is not allowed. For the given scope of work in the contract as awarded, the price must be considered as a fixed price.¹⁷

B. Denomination of Contract Price

All contract prices must be denominated and payable in Philippine currency, and this shall be stated in the bidding documents. Should the LGU receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate officially prescribed for similar transactions as established by the BSP on the date of the bid opening.

C. Time of Payment

Any kind of payment, including advance and progress payments, must be made by the LGU as soon as possible, but in no case later than **forty-five (45) days** after the submission of a request for payment, accompanied by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract. The LGU must also ensure that all accounting and auditing requirements are met prior to payment. Only the portion of a claim that is not satisfactorily supported/accepted may be withheld from payment subject to the usual accounting and auditing rules and regulation.

The final payment must be made only after the consultant submits its final report and such report is approved as satisfactory by the LGU.

D. Currency

Payments must be made in the Philippine currency.

E. Payment Terms in Consultancy Contracts

E.1. Lump Sum Contract

Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.

E.2. Time-Based Contract

This type of contract is appropriate when it is difficult to define the scope and the length of the services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments.

¹⁷ For FAPs, to adjust the remuneration for foreign and/or local inflation, a price adjustment provision should be included in the contract if its duration is expected to exceed eighteen (18) months. Contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.

Payments are based on agreed hourly, daily, weekly or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract should include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate.

E.3. Retainer and/or Contingency (Success) Fee Contract

Retainer and contingency fee contracts are widely used when consultants are preparing companies for sales or mergers of firms, notably in privatization operations. The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

E.4. Percentage Contract

These contracts are commonly used for architectural services. They may be also used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision).

E.5. Indefinite Delivery Contract (Price Agreement)

These contracts are used when Procuring Entities need to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain "advisers" for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The LGU and the firm agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

F. Liquidated Damages

When the consultant fails to satisfactorily complete the services required under the contract within the specified period, inclusive of duly granted time extensions, if any, the consultant shall be liable for damages for the delay. Consequently, it will have to pay the LGU liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of unperformed portion for every day of delay.

In no case shall the sum of liquidated damages reach ten percent (10%) of the contract amount. If it does, the contract shall automatically be rescinded by the LGU, without prejudice to other courses of action and remedies open to it. The LGU may also take over the contract or award

the same to a qualified consultant through negotiation. In addition to the liquidated damages, the erring consultant's performance security shall also be forfeited.

In case the delay in the completion of the services exceeds ten percent (10%) of the specified contract time plus any time extension duly granted to the consultant, the LGU may rescind the contract. It then forfeits the consultant's performance security and takes over the prosecution of the contract or award the same to a qualified consultant through negotiated procurement.

G. Incentive Bonus

No incentive bonus, in whatever form or for whatever purpose, shall be allowed.

H. Subcontracting

The consultant may subcontract work relating to the project to an extent and with such specialists and entities as may be approved in advance by the LGU, provided that it submits to the LGU for prior approval the text of any proposed subcontract and any amendments thereto which may subsequently be proposed. It is suggested that the work subcontracted should not be a material or significant portion of the project, or should not exceed twenty percent (20%) of the total project cost. Notwithstanding the approval of the subcontract, the consultant should retain full responsibility for the project and for the content of all reports required therefor. In the event that any subcontractor is found by the LGU to be incompetent or incapable in discharging assigned duties, the LGU may request the consultant to provide a replacement, with qualifications and experience acceptable to the LGU, or to resume the performance of the work itself.

All subcontracting arrangements should be disclosed at the time of bidding, and subcontractors shall be identified in the bid submitted by the bidder. For them to be allowed to do so, subcontractors should also pass the eligibility check for the portions of the contract that they will undertake.

I. Suspension of Work

The LGU may, by written notice of suspension to the consultant, suspend all payments to the consultant if the consultant fails to perform any of its obligations due to its own fault or due to *force majeure* or other circumstances beyond the control of either party, *e.g.* suspension of civil works being supervised by the consultant under the contract, including the carrying out of the services, provided that such notice of suspension:

- a. Shall specify the nature of the failure; and
- b. Shall request the consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the consultant of such notice of suspension.

I.1. Procedure for Issuance of Suspension Order

The following steps are undertaken in the issuance of a suspension order by the LGU:

- a. The end-user unit determines the existence of any of the grounds for suspension enumerated above.

- b. The end-user unit drafts the suspension order for the approval of the HOPE.
- c. The suspension order is issued to the consultant, stating the grounds therefor.
- d. Prior to the expiration of the suspension order, end-user unit shall determine whether or not the grounds for suspension still exist.
- e. If such grounds continue to exist, or if it is no longer practicable to continue with the work, it shall terminate the work subject of the order or cancel the delivery of the items subject of such suspension.
- f. If, however, the grounds for suspension no longer exist, and continuation of the work is practicable, the end-user unit, with the approval of the HOPE or his/her duly authorized representative, shall lift the suspension order and notify the consultant to proceed with the work/delivery of items in accordance with the amended contract.

I.2. Suspension of Work by Consultant

The consultant may, by written notice of suspension, suspend work on any or all activities affected by the following:

- a. Failure on the part of the LGU to deliver government-furnished equipment, resources, reports or data as stipulated in the contract;
- b. Peace and order conditions that make it extremely dangerous, if not impossible, to work, provided that the consultant secures a written certification from the Philippine National Police station that has responsibility over the affected area, as confirmed by the Department of the Interior and Local Government Regional Director, that such conditions exist; or
- c. Delay in the payment of consultant's claim for progress billing beyond forty five (45) calendar days from the time the consultant's claim has been certified by the LGU as being supported by complete documentation and a notice from the consultant has been received by the LGU that such payment is overdue, unless there are justifiable reasons which shall be communicated in writing to the consultants.

I.3. Resumption of Work

The LGU can order the resumption of work if the grounds for work suspension no longer exist and the continuation of the work is practicable.

I.4. Extension of Contract Time

Extension of Contract time is allowed when the total suspension or the suspension of activities along the critical path is not due to the fault of the consultant. In such cases, the elapsed time between the effective order suspending operation and the order to resume

work shall be considered in the adjustment/extension of contract time.

J. Contract Termination for Default, Unlawful Acts or Insolvency

J.1. Contract Termination for Default

The HOPE may terminate a contract for default when any of the following conditions attend its implementation:

- a. Outside of *force majeure*, the consultant fails to deliver or perform the outputs and deliverables within the period/s specified in the contract, or within any extension thereof granted by the LGU pursuant to a request made by the consultant prior to the delay;
- b. As a result of *force majeure*, the consultant is unable to deliver or perform a material portion of the outputs and deliverables for a period of not less than sixty (60) calendar days after the consultant's receipt of the notice from the LGU stating that the circumstance of *force majeure* is deemed to have ceased; or
- c. The consultant fails to perform any other obligation under the contract.
- d. The rescission of the contract shall be accompanied by the confiscation by the LGU of the consultant's performance security. The consultant will also be recommended for blacklisting. The consultant shall be paid on a *quantum meruit* basis.

J.2. Contract Termination for Unlawful Acts

The LGU may terminate the contract in case it is determined *prima facie* that the consultant has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- a. Corrupt, fraudulent, collusive and coercive practices;
- b. Drawing up or using forged documents;
- c. Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- d. Any other act analogous to the foregoing.

The consultant shall be paid on a *quantum meruit* basis.

J.3. Contract Termination for Insolvency

The LGU should terminate the contract if the consultant is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the LGU and/or the consultant.

J.4. Contract Termination by the Consultant

The consultant may terminate its agreement with the LGU if the latter is in material breach of its obligations pursuant to the contract and has not remedied the same within sixty (60) calendar days following its receipt of the consultant's notice specifying such breach.

The consultant must serve a written notice to LGU of its intention to terminate the contract at least thirty (30) calendar days before its intended termination.

In cases of termination, the LGU shall return to the consultant its performance security and unpaid claims.

J.5. Contract Termination for Convenience

Any of the following circumstances may constitute sufficient grounds to terminate a contract for convenience:

- a. If physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible, as determined by the HOPE;
- b. The HOPE has determined the existence of conditions that make project implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies;
- c. Funding for the project has been withheld or reduced by higher authorities through no fault of the LGU; or
- d. Any circumstance analogous to the foregoing.
- e. Also see the Guidelines on Termination of Contracts approved by the GPPB in Resolution 018-2004, dated December 22, 2004.

CHAPTER 7

**Criminal, Civil, and
Administrative Offenses,
Sanctions, and Remedies**

SECTION 1: Standard of Ethics

I. Definition of Corrupt, Fraudulent, Collusive, and Coercive Practices

LGUs 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, coercive or obstructive practices by the government will not be eligible to bid in its projects.

For this purpose:

- a. 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 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 contract 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 RA 3019.
- b. Fraudulent practice means misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, which includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial and non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
- c. Collusive practices means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial and non-competitive levels.
- d. Coercive practices 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;
- e. Obstructive practice is
 - i. deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceeding 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
 - ii. 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 (**R.A. 3019**) shall also be applied in determining the existence of "corrupt or fraudulent practice".

SECTION 2: Conflict of Interest

I. 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 6 below:

A. Conflict of Interest with another Bidder:

- a. 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;
- b. A bidder receives or has received any direct or indirect subsidy from another bidder;
- c. A bidder has the same legal representative as any other bidder for purposes of the bidding at hand.

B. General Conflict of Interest:

- a. 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 LGU 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;
- b. 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; or
- c. 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.

II. Disclosure of Relations

In accordance with Section 47 of the IRR of R.A. 9184, all Bidding Documents shall be accompanied by a sworn affidavit of the Bidder that it is not related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), members of the Technical Working Group (TWG), members of the BAC Secretariat, the head of the Project Management Office (PMO) or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree.

On the part of the Bidder, it shall apply to the following persons:

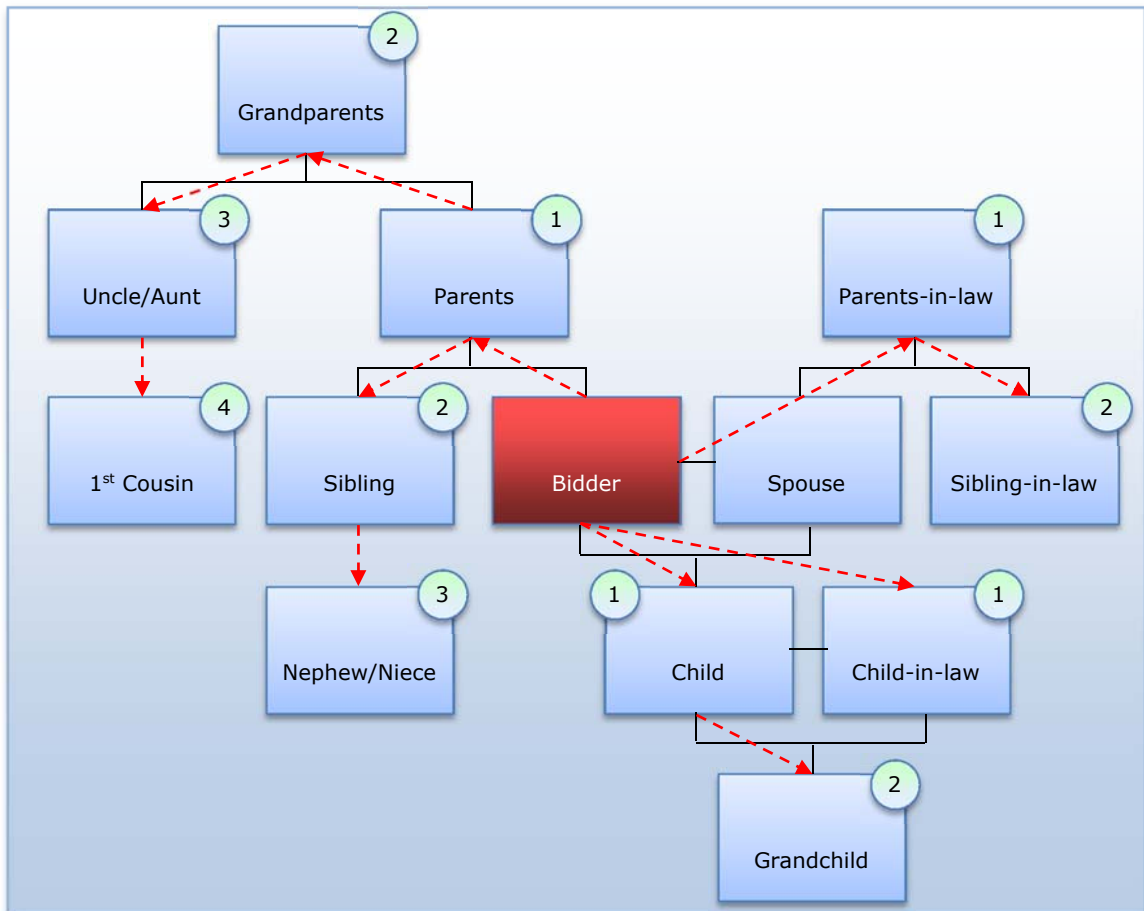
- a. If the Bidder is an individual or a sole proprietorship, to the Bidder himself;
- b. If the Bidder is a partnership, to all its officers and members;
- c. If the Bidder is a corporation, to all its officers, directors, and controlling stockholders; and
- d. If the Bidder is a joint venture (JV), the provisions of items (a), (b), or (c) of this Clause shall correspondingly apply to each of the members of the said JV, 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 contain the statement of disclosure to that effect found in the Omnibus Sworn Statement. **(Sections 47 and 25.2, IRR of R.A. 9184)**

Relationship of the nature described above or failure to comply with the above-mentioned prohibition will result in the automatic disqualification of a Bidder.

Diagram:

The Diagram identifies the persons to which a Bidder is related by consanguinity or affinity up to the third civil degree. The bidder should not be related to the HOPE, BAC, BAC Secretariat, TWG or any of the LGU’s officers or employees with information that may affect the bidding, in the manner and degree described below.



SECTION 3: Offenses and Sanctions

I. Criminal Offense and Sanctions

A. Public Officers

A.1. Criminal Offense

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:

- a. **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.
- b. **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 IRR.
- c. **Unduly influencing or exerting undue pressure on any member of the BAC** or any officer or employee of the LGU to take a particular action which favors, or tends to favor a particular bidder.
- d. **Splitting of contracts** which exceed procedural purchase limits to avoid competitive bidding or to circumvent the limits of approving or procurement authority.
- e. **Abuse by the HOPE of his power** to reject any and all bids as mentioned under Section 41 of R.A. 9184 and its IRR, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of R.A. 9184 and its 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.

A.2. Penal Sanctions

a. Imprisonment.

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. For public officials, the penal sanction is without prejudice to the provisions of R.A. 3019 and other penal laws.

b. Disqualification.

In addition, the public officer shall also suffer the penalty of **temporary** disqualification from public office.

Any private individual found to have colluded with him shall be **permanently** disqualified from transacting business with the government.

B. Private Individuals

B.1. Criminal Offense

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

- a. When two (2) 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.
- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. Participating in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.
- h. 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 LGU 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.

B.2. Penal Sanctions

a. Imprisonment

Private individuals who commit any of the foregoing 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.

When any of the foregoing acts is done in conspiracy with a public officer, the public officer, shall upon conviction, suffer the same penalty of imprisonment.

b. Disqualification

Private individuals committing acts specified in **a** to **d** shall be **permanently** disqualified from transacting business with the Government.

Public officers involved in the offense shall also suffer the penalty of **temporary** or **perpetual** disqualification from public office.

- ✓ 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 this Act and this 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.

II. Civil Liability and Liquidated Damages

A. 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 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.

B. Liquidated Damages

All contracts executed in accordance with R.A. 9184 and its IRR shall contain a provision on liquidated damages which shall be payable in case of breach thereof. The amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.1%) of the cost of the unperformed portion for every day of delay. The maximum deduction shall be ten percent (10%) of the amount of contract. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, LGU shall rescind the contract, without prejudice to other courses of action and remedies open to it.

III. Administrative Offenses and Sanctions

A. Administrative Offenses

The following violations shall warrant administrative sanctions:

- a. Submission of the following:
 - i. Eligibility requirements containing false information or falsified documents.
 - ii. 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 public bidding.
- b. Allowing the use of one's name, or using the name of another for purposes of public bidding.
- c. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the LGU concerned without justifiable cause, after he had been adjudged as having submitted the LCRB or HRRB.
- d. Refusal or failure to post the required performance security within the prescribed time.
- e. Termination of the contract due to the default of the bidder.
- f. 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.
- g. Any documented, unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.
- h. All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late bids or patently insufficient bids for at least three (3) times within a year, except for valid reasons.

The presumption of habituality sets in when an act that tends to defeat the purpose of competitive bidding has been committed at least three times within a year.

B. Administrative Sanctions

B.1. Bidders or Prospective Bidders

a. *Suspension and Forfeiture*

Without prejudice to the imposition of criminal sanctions or the effects of civil liability, the HOPE 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 LGU 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 HOPE may delegate to the BAC the authority to impose the administrative penalties.

Pursuant to **Section 69.4 of IRR, R.A. 9184**, the procedures for the suspension or blacklisting of suppliers, contractors, or consultants for GOP projects shall be undertaken in accordance with the guidelines issued by the GPPB.

The GPPB issued **Resolution 09-2004, dated 20 August 2004**, on the Guidelines on blacklisting of manufacturers, suppliers, distributors, contractors and consultants involved in government procurement for offenses or violations committed during competitive bidding and contract implementation.

b. Blacklisting Guidelines

1. Prohibition on Blacklisted Persons/ Entities to participate in Public Bidding

The following table shows the persons/entities who may be blacklisted and to whom such blacklisting may extend to:

| Blacklisted | Extension |
|---|--|
| Person (Individual) | a. Entity, if the person is: <ul style="list-style-type: none"> i. Chairperson; ii. President; or iii. Stockholder of at least 20% <ul style="list-style-type: none"> • Includes relatives up to 3rd civil degree and their assignees b. JV where the person is a member |
| Entity (Corporation, Partnership, or Cooperative) | a. Person who is: <ul style="list-style-type: none"> i. Chairperson; ii. President; or iii. Stockholder of at least 20% <ul style="list-style-type: none"> • Includes relatives up to 3rd civil degree and their assignees b. JV where it is a member |
| Joint Venture / Consortium | a. Members who may either be: <ul style="list-style-type: none"> i. Person; or ii. Entity |

2. Grounds and Sanctions for Blacklisting

Violations during Competitive Bidding Stage

- i. Submission of eligibility documents and/or bids containing false information, falsified documents or concealment of such

- information in order to influence the outcome of any stage of the public bidding;
- ii. Allowing the use of one's name or using the name of another bidder;
 - iii. Withdrawal of bid, or refusal to accept an award, or enter into contract without justifiable cause, after being adjudged as the LCRB;
 - iv. Refusal or failure to post performance security within the prescribed time;
 - v. Termination of contract due to default;
 - vi. Refusal to clarify or validate in writing its bid during post qualification within a period of 7 calendar days from receipt of the request for clarification;
 - vii. Any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor; or
 - viii. All other acts that tend to defeat the purpose of the competitive bidding, such as but not limited to the following:
 - i. Habitually withdrawing from bidding; or
 - ii. Submitting late or patently insufficient bids for at least 3 times within a year, except for valid reasons.

Violations during the Contract Implementation Stage

- a. Contractor's failure to:
 - i. to mobilize and start work/performance within the specified period in the NTP, due solely to its fault or negligence;
 - ii. faithfully comply with its contractual obligations or any written lawful instruction pursuant to contract implementation without valid cause;
- b. 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 PE;
- c. Unsatisfactory progress in the delivery arising from his fault or negligence and/or unsatisfactory or inferior quality of goods;

- d. Poor performance by the consultant of his services arising from his fault or negligence;
- e. Poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the CPES rating sheet or, in its absence, the existing performance monitoring system of the PE; or
- f. Willful or deliberate abandonment or non-performance of the project or contract resulting to substantial breach without lawful and/or just cause.

Sanctions

- a. During the competitive bidding stage, the LGU 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 LGU may provide and/or further criminal prosecution, as provided by applicable laws. **(Section 69 of RA 9184 and its IRR)**
- b. For violations committed during the contract implementation stage, the LGU 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**, without prejudice to the imposition of additional administrative sanctions as the internal rules of the LGU may provide and/or further criminal prosecution, as provided by applicable laws. **(Section 69(6) of RA 9184 and its IRR)**
- c. The **bid security** posted by the concerned bidder or prospective bidder shall also be **forfeited** for violations committed during the competitive bidding stage while the **performance security** by the contractor shall also be **forfeited** for violations committed during the contract implementation stage.

3. Procedure

Blacklisting is conducted by the BAC using the following process:

- a. **Initiation.** The BAC receives or initiates *motu proprio* a complaint for blacklisting.

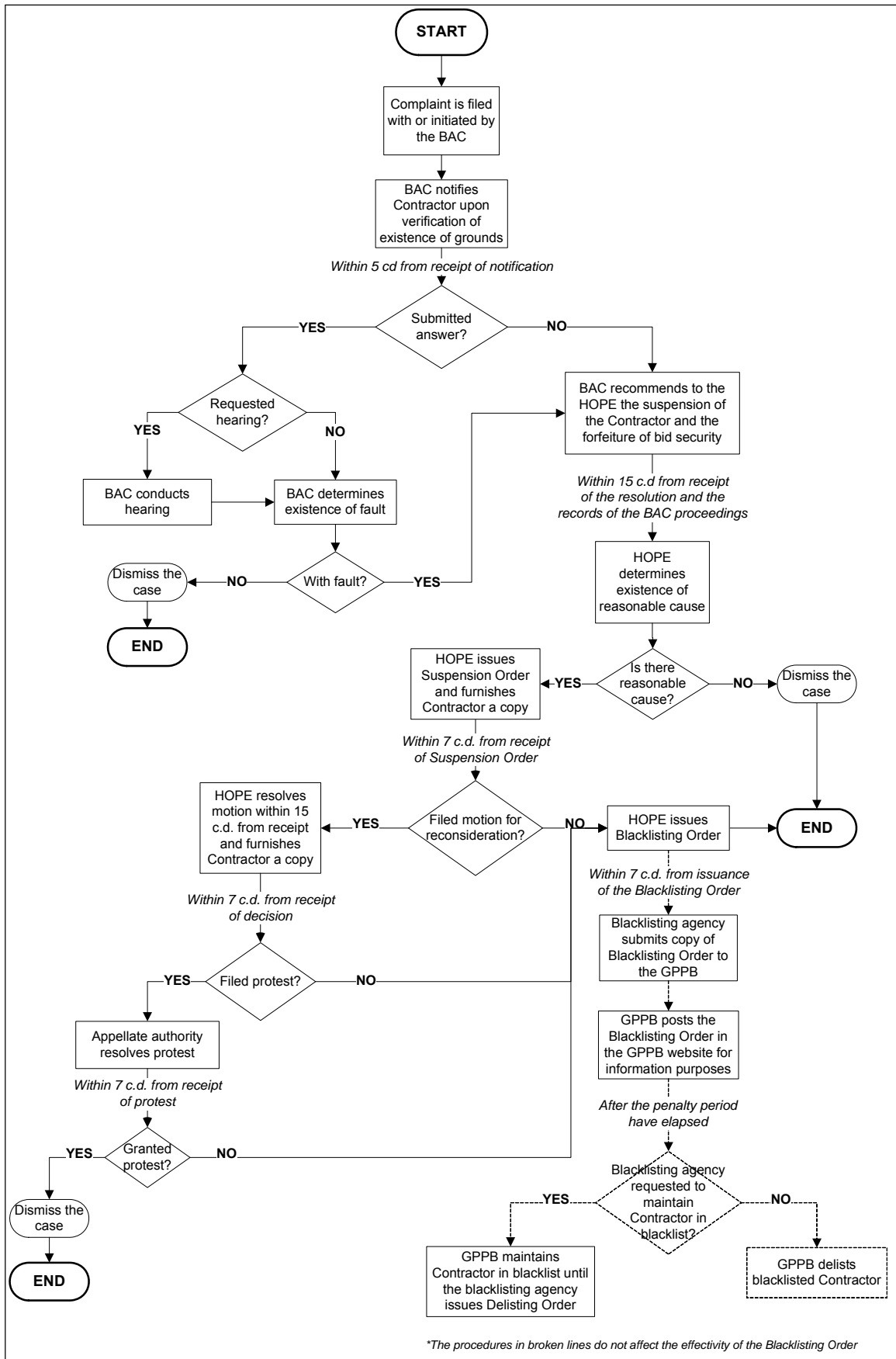
The complaint should contain the ground for blacklisting and the facts and documents supporting the allegation. Upon verification of the existence of the grounds, the BAC notifies the Contractor in writing.

- b. **Answer.** The bidder has five (5) calendar days to submit an **answer** and request for a hearing. Otherwise, the BAC issues a resolution recommending to HOPE the immediate suspension of the bidder if the circumstances warrant. If an answer is submitted and a hearing is requested, the BAC conducts a hearing in a non-litigious manner within five (5) days.
- c. **Decision.** The HOPE decides within fifteen (15) calendar days from receipt of the resolution and the records of BAC proceedings whether reasonable cause exists for the suspension of the Contractor and the forfeiture of its bid security.

If reasonable cause exists, the HOPE issues the Suspension Order barring the Contractor from participating in any bidding activity of the Procuring Entity and declaring that the bid security be forfeited.

- d. **Reconsideration and Protest.** The bidder has three (3) calendar days to file a request for a reconsideration of the Suspension Order and another seven (7) calendar days to protest the denial of the motion for reconsideration. The HOPE is given seven (7) calendar days to resolve the motion for reconsideration while the appellate authority is given seven (7) calendar days to decide the protest.
- e. **Finality.** Seven (7) calendar days from receipt of the Suspension Order, the denial of the motion for reconsideration, or the denial of the protest, the decision becomes final and executory and the Head of the Procuring Entity issues the corresponding Blacklisting Order. (See figure below).

The Figure below shows the process flow of a blacklisting procedure:



B.2. Local Officials and Employees

a. *Administrative Discipline*

The HOPE may impose the penalty of removal from service, demotion in rank, suspension for not more than one (1) year without pay, fine in an amount not exceeding six (6) months' salary, or reprimand and otherwise discipline a member of the BAC, the BAC Secretariat or the TWG who may be found guilty of violating the mandatory provisions of R.A. 9184 and its IRR that also constitutes violation of the civil service law,¹⁸ such as dishonesty, neglect of duty, misconduct, or inefficiency and incompetence, among others, in the performance of their official duties as such. Investigation and adjudication of administrative complaints against such procurement officials as well as their suspension and removal shall be in accordance with the civil service law and rules and other pertinent laws. The results of such administrative investigations shall be reported to the CSC. **(Section 87, R.A. 7160)**

Administrative complaints against erring procurement officials may also be filed directly before the CSC which has the authority to hear and decide administrative disciplinary cases.

b. *Preventive Suspension*

The HOPE may preventively suspend any member of the TWG or the Secretariat, or the BAC, if there are strong reasons or *prima facie* evidence showing that the officials or employees concerned are guilty of the charges filed against them under Rules XI and XII of IRR, or for dishonesty as defined by the Civil Service Laws. In all cases, due process as mandated by the Constitution and Civil Service laws, rules and regulations, shall be strictly observed. **(Section 70, R.A. 9184 and its IRR)**

Likewise, the HOPE may preventively suspend any member of the BAC, the BAC Secretariat, or the TWG for a period not exceeding sixty (60) days pending investigation if the charge against such official or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty, or if there is reason to believe that the respondent is guilty of the charges which would warrant his removal from the service.

Upon expiration of the preventive suspension, the suspended official or employee shall be automatically reinstated in office without prejudice to the continuation of the administrative proceedings against him until its termination. If the delay in the proceedings of the case is due to the fault, neglect or request of the respondent, the time of the delay shall not be counted in computing the period of suspension. **(Section 87, R.A. 7160)**

c. *Lifting of Suspension and Removal of Administrative Disabilities*

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. **(Section 71, RA 9184 and its IRR)**

¹⁸ Presidential Decree 807

SECTION 4: Administrative Remedies and Court Actions

I. Protest Mechanism

- a. Any adverse action or decision of the BAC may be questioned at any stage by filing a **Request for Reconsideration**, within three (3) calendar days, upon written or verbal notice. The BAC should decide within seven (7) calendar days from receipt of the notice.

NOTE: If a bidder files a waiver, it can no longer file a request for reconsideration. It can however retrieve bid security and other documents in the bid envelope.

- b. If the **Request for Reconsideration** filed to the BAC is **DENIED**, BAC decisions maybe protested to the HOPE in writing by filing a **verified position paper** and a **non-refundable protest fee**.
- c. The verified position paper filed as a Protest must always be accompanied by a non-refundable Protest Fee, which both have to be submitted with a period of seven (7) calendar days from receipt of the BAC notice denying the request for reconsideration. The BAC notice denying the request for reconsideration shall either be in a form of a BAC resolution or a letter. The non-refundable protest fee shall be as follows:

| ABC RANGE | PROTEST FEE |
|--|------------------|
| 50 million pesos and below | 0.75% of the ABC |
| More than 50 million pesos to 100 million pesos | PhP 500,000.00 |
| More than 100 million pesos to 500 million pesos | 0.5% of the ABC |
| More than 500 million pesos to 1 billion pesos | PhP 2,500,000.00 |
| More than 1 billion pesos to 2 billion pesos | 0.25% of the ABC |
| More than 2 billion pesos to 5 billion pesos | PhP 5,000,000.00 |
| More than 5 billion pesos | 0.1% of the ABC |

- d. The position paper is verified by an affidavit that the affiant has read and understood the contents and that the allegations are true and correct of the affiant's personal knowledge or based on authentic records. An unverified position paper will be outright dismissed by the HOPE.

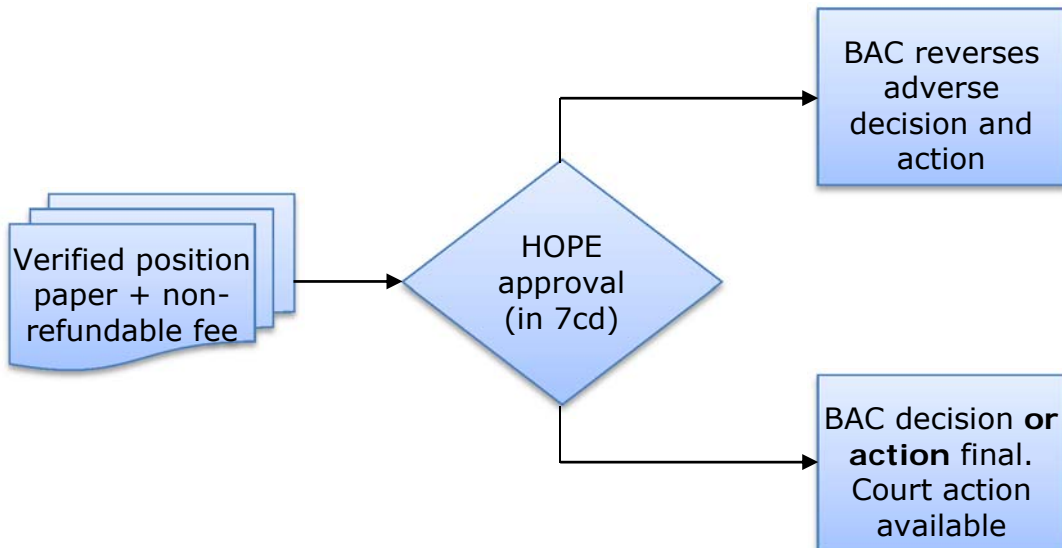
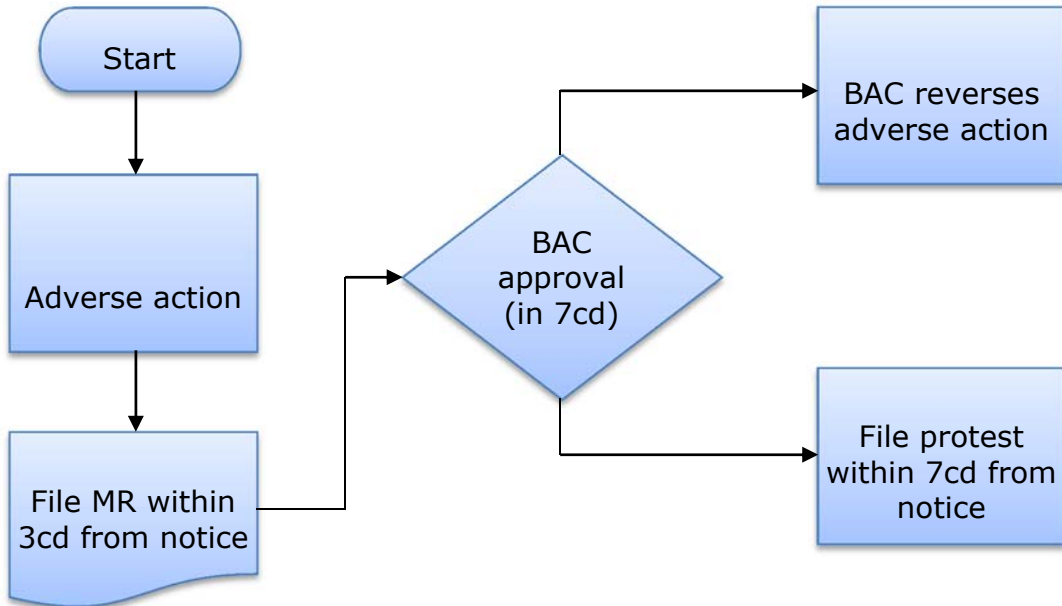
The bidder shall likewise certify under oath that:

- i. He has not therefore 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 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;
- iii. If he should thereafter learn that the same or similar action or claim has been filed or 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 shall not be curable by mere amendment of the verified position paper.

- e. Protest shall be made by filing a Verified Position Paper containing the following:
 - i. Name of Bidder;
 - ii. Office Address;
 - iii. Name of Project/Contract;
 - iv. Implementing Agency;
 - v. Brief Statement of Facts;
 - vi. Issue(s) to be resolved; and
 - vii. Other matters pertinent to the protest.
- f. The decision of the LCE shall be final.
- g. The BAC Chairman shall furnish the GPPB a copy of the decision resolving the protest within seven (7) calendar days from receipt thereof.

The filing of the protest shall **NOT STAY or DELAY** the bidding process but the protest must first be resolved before any award is made.



II. Court Actions

- a. Court Action may be resorted to only after the protest shall have been resolved with finality. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.
- b. The Regional Trial court shall have jurisdiction over final decisions of the HOPE.
- c. The provisions on court actions are without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders (TROs) and injunctions relating to GOP infrastructure projects.
- d. The BAC Secretariat Head of the concerned LGU shall ensure that the GPPB is furnished a copy of the cases filed in accordance with Section 58 of RA 9184 and its IRR.

III. Arbitration

- a. The parties shall make every effort to resolve amicably by mutual consultation any dispute or difference arising between the parties in connection with the implementation of the contract covered by RA 9184 and its IRR.
- b. Any and all disputes arising from the implementation of a contract covered by the Act and this IRR shall be submitted to arbitration in the Philippine according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" and Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004".
- c. Disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto.
- d. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of RA 9184 and its IRR.
- e. The parties may also agree in writing to resort to other alternative modes of dispute resolution.

Arbitral awards and any decision rendered in accordance with Section 59 of R.A. 9184 and its IRR shall be appealable by way of a petition for review to the Court of Appeals, raising pure questions of law and governed by the Rules of Court.