

THE IMPLEMENTING RULES AND REGULATIONS
OF REPUBLIC ACT NO. 12009
OR THE NEW GOVERNMENT PROCUREMENT ACT

RULE I
GENERAL PROVISIONS

Section 1. Short Title and Purpose

This Implementing Rules and Regulations, hereinafter called the IRR, is issued pursuant to Section 112 of Republic Act (RA) No. 12009, otherwise known as the “New Government Procurement Act”, for the purpose of prescribing the necessary rules and regulations for the procurement activities of the Government of the Philippines (GoP), in accordance with the state policy declared under the Act.

This IRR is formulated to assist Procuring Entities in the conduct of procurement planning up to contract implementation to facilitate government procurement and delivery of public service.

Section 2. Declaration of Policy

The provisions of this IRR are in line with the commitment of the GoP to promote the ideals of good governance with a view towards transparency, competitiveness, efficiency, proportionality, accountability, public monitoring, procurement professionalization, and sustainability in government procurement.

The State aims to achieve value for money in government procurement to ensure that public funds are utilized effectively and responsibly.

Section 3. Governing Principles on Government Procurement

Procurements by all branches and instrumentalities of the national government, its departments, bureaus, offices, and agencies, including state universities and colleges (SUCs), government-owned and/or -controlled corporations (GOCCs), government financial institutions (GFIs), and local government units (LGUs), shall, in all cases, be governed by these principles:

- a) Transparency in the procurement process by providing access to all related information in accordance with open contracting practices and standards that enable disclosure of data and facilitates information sharing related to all stages of procurement, as the case may be, to

foster public trust by ensuring that all stakeholders have access to procurement information;

b) Competitiveness through ensuring equal opportunity for all eligible and qualified suppliers, manufacturers, distributors, contractors, consultants, and service providers, whether public or private;

c) Efficiency by implementing an organized, uniform, and straightforward government procurement process through the use of emerging technologies and innovative solutions to attract a broader range of bidders and improve quality and cost-effectiveness of procurement;

d) Proportionality by ensuring that the conditions and parameters in the development of requirements, choice of procurement mode, and implementation of contracts shall be reasonably proportional to the needs of the Procuring Entity and the nature of the contract or project to be procured;

e) Accountability where public officials and personnel take responsibility for their actions, decisions, and performance in the use of public resources and adhere to ethical standards, and when warranted by circumstances, public officials and personnel directly or indirectly involved in the procurement process and in the implementation of contracts are investigated and held accountable for their actions, in accordance with applicable laws, rules, and regulations;

f) Participatory procurement through public monitoring of the procurement process and the implementation of contracts to guarantee that every step is in accordance with the provisions of the Act and this IRR, and to ensure prudent and judicious use of government resources;

g) Sustainability in the procurement process which covers the whole lifecycle of a property, ensures value for money and maximum benefits to society and the economy, and engenders minimal impact to the environment; and

h) Professionalism in procurement through the development of qualification standards, and competency and certification framework for procurement practitioners, and the adoption of a code of ethics that shall be observed by public procurement professionals.

Section 4. Scope and Application

4.1 This IRR shall apply to all procurement by any branch, agency, department, bureau, office, or instrumentality of the GoP, including GOCCs, GFIs, SUCs, and LGUs.

4.2 Any treaty or international or executive agreement to which the GoP is a signatory affecting the subject matter of the Act and this IRR shall be observed. In case of conflict between the terms of the treaty or international or executive agreement and this IRR, the former shall prevail.

4.3 Unless the treaty or international or executive agreement expressly provides another or different procurement procedures and guidelines, RA No. 12009 and this IRR shall apply to foreign-funded procurement of Goods, Infrastructure Projects, and Consulting Services by the GoP.

The GoP negotiating panels shall, as its default position, adhere to RA No. 12009 and this IRR, in all foreign-funded procurement. If the treaty or international or executive agreement states otherwise, then the negotiating panel shall ensure that the reasons for the adoption of a different rule or mode of procurement are clearly reflected in the records of discussion.

4.4 This IRR shall not apply to the following activities:

a) Procurement of Goods, Infrastructure Projects and Consulting Services funded from foreign grants covered by RA No. 8182, as amended by RA No. 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 RA 4860, as amended," unless the GoP and the foreign grantor, or foreign or international financing institution agree otherwise;

b) Acquisition of real property which shall be governed by RA No. 10752, entitled "An Act Facilitating the Acquisition of Right-Of-Way Site or Location for National Government Infrastructure Projects," and other applicable laws, rules, and regulations; and

c) Public-private sector infrastructure or development projects and other procurement covered by RA No. 11966; Provided, however, That for the portions financed by the GoP, in whole or in part, the provisions of the Act and this IRR shall apply.

4.5 The following are not procurement activities under the Act and this IRR:

- a) Direct financial or material assistance given to beneficiaries in accordance with the existing laws, rules, and regulations;
- b) Participation in local or foreign scholarships, trainings, continuing education, conferences, seminars or similar activities, including regular assessment or review programs and strategic planning sessions to meet agency performance targets, that shall be governed by applicable Commission on Audit (COA), Civil Service Commission (CSC), and Department of Budget and Management (DBM) rules and regulations;
- c) Lease of government-owned property as lessor for private use;
- d) Engagement of Contract of Service and Job Order worker;
- e) Disposal of property and other assets of the Government, unless specified in the Bidding Documents or Requests for Quotation or Proposals, as the case may be; and
- f) Consignment arrangement as defined in Section 40 of this IRR.

Section 5. Definition of Terms

For purposes of this IRR, the following terms or words and phrases shall mean or be understood as follows.

- a) Approved Budget for the Contract (ABC) refers to the budget for the contract duly approved by the Head of the Procuring Entity, within the authorized amount in the General Appropriations Act (GAA), continuing, and automatic appropriations, or other authorized source of funds, in the case of National Government Agencies (NGAs); the corporate operating budget for the contract approved by the governing Boards, pursuant to Executive Order (EO) No. 518, s. 1979, in the case of GOCCs, GFIs, and RA No. 8292, or the "Higher Education Modernization Act of 1997", in the case of SUCs; and the budget for the contract approved by the Sanggunian through an appropriation ordinance in the case of LGUs. For multi-year contracts, for which a Multi-Year Contractual Authority (MYCA) or an equivalent document is required, the ABC shall be the total project cost reflected in the MYCA or equivalent document.

For foreign-funded procurement, the ABC refers to the cost estimate prepared by the Procuring Entity and approved by the foreign

government, or foreign or international financing institution as specified in the treaty or international or executive agreement.

b) Beneficial Owner refers to a natural person who: (1) ultimately owns or dominantly influences the management or policies of the juridical entity; or (2) exercises ultimate effective control over the juridical entity. The determination of beneficial ownership shall be in accordance with Section 82 of this IRR;

c) Bid refers to a signed offer, proposal, or quotation submitted by a supplier, manufacturer, distributor, contractor, consultant, and service provider in response to the Bidding Documents;

d) Bidder refers to a supplier, manufacturer, distributor, contractor, consultant, and service provider, whether public or private, who submits a Bid in response to the requirements of the Bidding Documents;

e) Bidding Documents refer to documents issued by the Procuring Entity as the basis for Bids, furnishing all information necessary for a prospective bidder to prepare a Bid for the Goods, Infrastructure Projects, and Consulting Services required by the Procuring Entity;

f) Bids and Awards Committee (BAC) refers to the Committee established in accordance with Rule V of this IRR;

g) Blacklisting refers to an administrative penalty imposed by the Head of the Procuring Entity which prohibits a person or an entity including its affiliates from participating in all government procurement activities. The rules on blacklisting are included in Rule XXI of this IRR;

h) Common-Use Supplies and Equipment (CSE) refer to Goods, materials, and equipment that are used repetitively in the day-to-day operations of Procuring Entities in the performance of their functions. CSE shall be those included in the Electronic Catalogue of the Philippine Government Electronic Procurement System (PhilGEPS);

i) Consulting Services refer to services for Infrastructure Projects and other types of projects or activities of the government requiring adequate external technical and professional expertise that are beyond the capability or capacity of the government to undertake, such as, but not limited to: (1) advisory and review services; (2) pre-investment or feasibility studies; (3) design; (4) construction

215 supervision; (5) management and related services; and (6) other
216 technical services or special studies;

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218 j) End-User or Implementing Unit refers to the employee or organic
219 office within the organization of the Procuring Entity that identifies,
220 plans, prepares, designs, and implements the procurement project
221 based on the requirements or needs of the agency in accordance with
222 its mandate;

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224 k) Environmental Impact refers to the direct and indirect
225 consequences that a product, service, or activity has on human
226 welfare, as well as on ecological and environmental integrity. This
227 includes implications such as air and water pollution, climate change,
228 waste disposal, and resource depletion;

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230 l) Financial Eligibility refers to having the financial capacity to
231 manufacture, distribute, or deliver the Goods, Infrastructure Projects,
232 and Consulting Services being procured;

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234 m) Fit-for-Purpose refers to an approach to procurement that applies
235 the most suitable strategy designed to address the specific needs of
236 each project, while promoting flexibility and responsiveness to
237 different scenarios in the procurement of projects, based on factors,
238 such as complexity, market conditions, urgency or risks, to ensure
239 value for money;

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241 n) Goods refer to all items, supplies, materials, and general
242 support services which pertain to all types of services except
243 Consulting Services and Infrastructure Projects, needed in the
244 transaction of public businesses or in the pursuit of any government
245 undertaking, project or activity, whether in the nature of equipment,
246 furniture, stationery, materials for construction, or personal property of
247 any kind, including non-personal or contractual services such as the
248 repair and maintenance of equipment and furniture, as well as
249 trucking, hauling, janitorial, security, and related or analogous
250 services, as well as procurement of materials and supplies provided
251 by the Procuring Entity for such services;

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253 o) Green Criteria refers to a set of standards and specifications that
254 prioritizes environmental sustainability and is designed to assess and
255 select goods and services based on their environmental impact
256 throughout their lifecycle;

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p) GPPB refers to the Government Procurement Policy Board established in accordance with Rule XIX of this IRR;

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

r) Infrastructure Projects include the construction, improvement, rehabilitation, demolition, repair, restoration, or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy or power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. For purposes of, and throughout this IRR, the term "Infrastructure Projects" shall have the same meaning as, and shall be used interchangeably with, "civil works" or "works."

s) Jury Duty refers to a responsibility in which the BAC, Technical Working Group (TWG), and Secretariat members, including End-Users or Implementing Units, give utmost priority to procurement assignments over all the other duties and responsibilities until the requirements for the procurement at hand are completed;

t) Legal Eligibility refers to having the legal capacity to act as an entity as evidenced by permits, licenses, or registrations required by law to engage in the business of manufacturing, distributing, or delivering the Goods, Infrastructure Projects, and Consulting Services being procured;

u) Lifecycle Cost refers to the total cost of ownership over the entire life span of an asset from its acquisition, operation, maintenance, and disposal;

v) Multi-Year Contractual Authority (MYCA) refers to the authority given to the Procuring Entity to procure multi-year projects in accordance with the form and conditions set by the DBM;

w) Philippine Government Electronic Procurement System (PhilGEPS) refers to the single electronic procurement portal managed by the Procurement Service-DBM (PS-DBM) as provided in Section 20 of this IRR.

x) Philippine Products and Services refer to local goods, articles, materials, supplies, services, and intangible products which may be:

i) Unmanufactured goods, articles, materials, or supplies wholly obtained or produced in the Philippines;

ii) Any good, article, material, and supplies produced, manufactured, or assembled in the Philippines which has a minimum local content as may be determined by the Department of Trade and Industry (DTI);

iii) Services, which refer to the delivery of value or intangible acts or uses through high-level skills, expertise, labor, or some form of knowledge, technology, or process-intensive activities; or

iv) Intangible products, which refer to properties without physical existence including, but not limited to, computer software and products of the creative industry.

The determination of Philippine Products and Services shall be in accordance with Section 79 of this IRR.

y) Portal refers to a website that integrates a wide variety of contents for the purpose of attracting and aggregating multiple users together in a central virtual space;

z) Procurement refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. In case of projects involving mixed procurements, the nature of the procurement, i.e., Goods, Infrastructure Projects or Consulting Services, shall be determined based on the primary purpose of the contract. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the

provisions of RA No. 10752 and other applicable laws, rules, and regulations.

aa) Procuring Entity refers to any branch, department, bureau, office, agency, or instrumentality of the government, including SUCs, GOCCs, GFIs, and LGUs procuring Goods, Infrastructure Projects, and Consulting Services.

bb) Technical Eligibility refers to having the experience or expertise to undertake the services, manufacturing, distribution, or delivery of the Goods, Infrastructure Projects, and Consulting Services being procured.

cc) Value for Money refers to the optimum combination of quality and cost to meet the requirements and objectives of the End-User or Implementing Unit.

Section 6. Standardization of Procurement Process and Forms

6.1 To systematize the procurement process, avoid confusion, and ensure transparency, the procurement process, including the forms to be used, shall be standardized insofar as practicable.

6.2 For this purpose, the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which, once issued shall be mandatory upon all Procuring Entities. However, whenever necessary, to suit the particular needs of the Procuring Entity, modifications may be made particularly for major and specialized procurement, subject to the approval of the GPPB. As required by the Act, a decision-tree that shall guide Procuring Entities on which mode of procurement is the most fit for their desired purpose is attached herein as Annex "A" of this IRR.

RULE II

STRATEGIC PROCUREMENT PLANNING

Section 7. Strategic Procurement Planning and Budgeting Linkage

7.1 All procurement shall be undertaken with proper and sufficient planning and preparation to ensure sound procurement decisions. This includes the conduct by the End-User or Implementing Unit of relevant market scoping as provided under Section 10 of this IRR, supply positioning based on necessity, relevance, value, and associated risks, analysis of available modes of procurement as provided under Rule IV of this IRR, risk management that

will proactively address financial, operational, and social issues, and incorporate disposal procedures as may be applicable in the project design constituting the Technical Specifications, Scope of Work, and Terms of Reference, as the case may be, subject to relevant laws and issuances for disposing of inefficient or obsolete assets of the government.

7.2 Procuring Entities shall likewise implement a procurement strategy that includes Fit-for-Purpose and Proportional approaches, such that the conditions and parameters in the development of requirements, choice of procurement mode, and implementation of contracts shall be reasonably proportional to the needs of the Procuring Entity and the nature of the contract or project to be procured. Such strategy adopted shall also consider the whole lifecycle of a procurement project, including its environmental impact, and aim to achieve value for money.

7.3 During planning stage, the Procuring Entity shall take into account the following considerations, among others, as may be applicable:

- a) Lifecycle Assessment and Lifecycle Cost Analysis;
- b) Subcontracting;
- c) Multi-year Contracting;
- d) Early Procurement Activities;
- e) Design and Build Scheme for Infrastructure Projects;
- f) Engagement of a Procurement Agent;
- g) Use of Framework Agreement;
- h) Pooled Procurement;
- i) Renewal of Regular and Recurring Services; or
- j) Warehousing and Inventory Activities.

7.4 The Procuring Entity shall ensure that the project has minimal economic, social, and environmental risks or negative impact throughout its lifecycle, consistent with Sections 13, 72, and 73 of this IRR, and that the Goods and Services are procured with due consideration for responsible and sustainable consumption and production practices, as well as national policies.

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430 Measures, such as but not limited to, rehabilitation of properties,
431 condemnation or destruction of properties, transfer of properties to other
432 government agencies, barter, donation, return to supplier or vendor, trade-
433 in, sale to government officials or employees of the agency, public auction,
434 negotiated sale, sale of junk or scrap or recycling, and direct negotiation,
435 shall be considered by the Procuring Entity in the development of its
436 requirements for purposes of disposal at the end of the useful life of the
437 property, consistent with the applicable laws, rules, and regulations on
438 disposal of properties.

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440 7.5 For subcontracting arrangements, the following rules shall apply to
441 locally-funded projects and to projects financed through Official Development
442 Assistance, except those covered by treaty, or international or executive
443 agreements:

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445 7.5.1 Upon recommendation by the End-User or Implementing Unit, the
446 HoPE must provide prior approval to subcontracting. The approval shall
447 include the determination of whether the eligibility documents of the
448 subcontractor shall be required as part of the Bid or submitted before
449 the issuance of the Notice of Award;

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451 7.5.1.1 The subcontracted portions of the contract to the extent
452 allowed by the Procuring Entity as stated in the Bidding
453 Documents but shall not exceed twenty percent (20%) for
454 Goods or fifty percent (50%) for Infrastructure Projects, or a
455 specified percentage as approved by the GPPB, and shall be
456 limited to components that are not deemed "significant or
457 material" to the project, as determined by the Procuring Entity.

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459 7.5.2 All subcontracting arrangements must be disclosed at the time of
460 submission of Bids, and subcontractors must be identified in the Bid.

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462 7.5.3 Subcontractors must meet the eligibility criteria and shall submit
463 the same eligibility documents as the general contractor.

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465 7.5.4 The general contractor shall remain liable for the subcontractor's
466 actions, defaults, delays, and negligence;

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468 7.5.5 The general contractor and the subcontractor are obliged to
469 comply with the provisions of the contract and shall share liability,
470 jointly and severally, in cases of breach thereof, or violation of safety

standards or other labor standards insofar as the subcontracted portion is concerned; and

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7.5.6 For the purpose of post-qualification in accordance with Section 63 of this IRR, the value of the entire completed and accepted project, including the subcontracted portion, shall be recorded as experience of the general contractor, in particular:

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7.5.6.1 The subcontractor shall get credit for one hundred percent (100%) of the value of the subcontracted portion of the project;

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7.5.6.2 Subcontractors shall be eligible to concessional windows of GFIs that treat receivables from the government as loan security; the receivables of subcontractors due from their general contractor shall similarly be accepted as loan security by GFIs; and

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7.5.6.3 Contract performance monitoring, such as the use of Constructors Performance Evaluation System (CPES), among others, shall also be mandatorily applied to the work of subcontractors.

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7.6 To guarantee the usefulness throughout the whole lifecycle of goods to be procured, the Procuring Entity shall ensure that goods to be procured are brand new; Provided, That the procurement of second-hand, refurbished, or reconditioned goods, such as military, defense, or law enforcement equipment or materiel, may be considered to secure a contract that is most advantageous to the government, subject to the guidelines to be issued by the DBM and subject to compliance with relevant criteria, such as durability, remaining useful life, sustainability, maintenance cost, and warranty.

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7.7 All procurement should be within the ABC of the Procuring Entity. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan (APP).

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7.7.1 In the preparation of the indicative APP to support the budget proposal of the Procuring Entity, the End-User or Implementing Unit of Procuring Entities shall formulate their respective Project Procurement Management Plans (PPMPs) for their different programs, activities, and projects (PAPs). The PPMP shall include:

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- 514 a) Information on whether PAPs will be contracted out, or
515 implemented by administration in accordance with the
516 guidelines to be issued by the GPPB;
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- 518 b) the type and objective of the project to be procured;
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- 520 c) the extent or size of contract scopes or packages;
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- 522 d) the procurement modes to be adopted;
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- 524 e) the time schedule for each procurement activity;
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- 526 f) the estimated budget for the contract; and
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- 528 g) Technical Specifications, Scope of Work, or Terms of
529 Reference for each Item or Project being proposed shall be
530 submitted as part of the PPMP.
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- 532 7.7.2 The PPMPs shall then be submitted to the Procuring Entity's
533 Budget Office for evaluation in order to ensure consistency with its
534 budget proposal and compliance with existing budgeting rules.
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- 536 7.7.3 The PPMPs included in the budget proposal shall be forwarded
537 to the BAC Secretariat for consolidation into an indicative APP, and to
538 the BAC for final recommendation of the appropriate procurement
539 mode. For this purpose, the indicative APP shall include the following:
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- 541 a) Name of project or procurement;
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- 543 b) Procurement Management Office (PMO) or End-User or
544 Implementing Unit;
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- 546 c) General description of the project or procurement;
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- 548 d) Procurement modes to be adopted and indicating if the
549 procurement tasks are to be outsourced;
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- 551 e) Criteria for bid evaluation;
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- 553 f) Time Schedule of identified procurement activities as reflected
554 in the APP form approved by the GPPB;
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- 556 g) Source of funds;

h) Approved Budget for the Contract;

i) Indicate whether the project shall be undertaken through Early Procurement Activity; and

j) Other relevant descriptions of the project, if applicable.

7.7.4 The indicative APP and budget proposal shall be simultaneously submitted to the HoPE and other oversight bodies, as may be applicable, for approval.

7.7.5 Upon submission of the National Expenditure Program (NEP) or proposed Corporate Operating Budget or Local Expenditure Program, to Congress, governing board, or local *Sanggunian*, respectively, the End-User or Implementing Unit shall revise the PPMPs to reflect the budgetary allocation for their respective PAPs as indicated therein.

7.7.6 The revised PPMPs shall be consolidated into an updated indicative APP which shall be posted on the website of the Procuring Entity.

7.7.7 As soon as the GAA, corporate operating budget, or appropriation ordinance, as the case may be, becomes final, the End-User or Implementing Unit shall finalize the PPMPs to reflect the authorized budgetary allocation for their respective PAPs. The finalized PPMPs shall be submitted to the BAC for consolidation into the final APP, which shall be posted on the website of the Procuring Entity. The final APP shall be submitted to the GPPB on or before the end of January of the budget year.

Changes to the individual PPMPs and the APP may be undertaken when necessary, as may be determined by the HoPE. The respective End-User or Implementing Unit of the Procuring Entity shall be responsible for the changes to the PPMPs, while the BAC shall be responsible for the consolidation of these PPMPs into an APP, which shall be subject to the approval of the HoPE. Changes in the APP, if any, for the budget year shall be submitted to the GPPB in July of the current budget year, and in January of the following budget year.

7.8 No government procurement shall be undertaken unless it is in accordance with the approved APP or Indicative APP of the Procuring Entity, as the case may be. The APP shall be approved by the HoPE, and must be

consistent with its duly approved yearly budget or proposed budget in the case of the Indicative APP. The APP shall be formulated and revised only in accordance with the guidelines set forth in this IRR.

Section 8. Detailed Engineering for the Procurement of Infrastructure Projects

8.1 With the exception of an Infrastructure Project under a design-and-build scheme, no bidding and award of contract for Infrastructure Projects shall be made unless the detailed engineering investigations, surveys, and designs for the project which shall consider among others, the impact on the environment, have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the HoPE concerned or the duly authorized representative, pursuant to the recommendation of the End-User or Implementing Unit, and the acquisition of the required right-of-way for the project pursuant to R.A No. 10752 has been accomplished.

8.1.1 In case of projects with pending acquisition of right-of-way, site or location, the procurement process may commence, but no award of contract shall be made until an authority or permit to enter is issued by the property owner; or a notarized deed of sale or deed of donation is executed in favor of the government; or a writ of possession is issued by a court of competent jurisdiction, as the case may be.

8.2 Detailed engineering shall proceed only on the basis of the feasibility or preliminary engineering study made which establishes the technical viability of the project and conformance to land use and zoning guidelines prescribed by existing laws. The findings contained in the feasibility study, if undertaken for the project, shall 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 shall be supported by detailed justifications, including their effects on the cost, and the economic justification, if necessary.

8.2.1 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;

- f) Preparation of Technical Specifications;
- g) Preparation of Quantity and Cost Estimates;
- h) Preparation of Scope 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, as defined by the Department of Environment and Natural Resources (DENR);
- n) Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered;
- o) Value Engineering Studies; and
- p) Preparation of Bidding Documents.

8.3 Work under detailed architectural and engineering design shall include the following, among others:

- a) Design Standards which shall be in accordance with appropriate laws, rules, regulations, and accepted detailed engineering practices adopted by the Procuring Entity. Design standards for structures shall take into account, among others, geological hazards, seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage, and the vulnerability of the area to natural disasters.
- b) Field Surveys and Investigations which may include aerial, geotechnical, hydrographic, topographic, hydrologic, sub-surface, remote-sensing, monumenting, and other surveys shall be carried out in accordance with the design guidelines, criteria, and standards adopted by the Procuring Entity. All survey and investigation works shall be prepared in a manner satisfactory to carry out accurate design and production of plans that will permit quantity estimates to be made within plus or minus ten percent (+/-10%) of the final quantities of the completed structure. Survey must follow standards set by relevant government agencies.
- c) Contract Plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the Procuring Entity, incorporating at least the following:

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- 687 i) Site development plan;
- 688 ii) Plans and profile sheet;
- 689 iii) Typical Sections and details;
- 690 iv) Drainage details where applicable;
- 691 v) Structural plans at appropriate scales indicating all details
- 692 necessary in order that the complete structure can be set out and
- 693 constructed; and
- 694 vi) Other details which may be required by the HoPE.
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- 696 d) All construction quantities shall be computed to a reasonable
- 697 accuracy of not more than plus or minus ten percent (+/-10%) of the
- 698 final quantities of the as-built structure.
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- 700 e) Special Provisions shall be prepared to cover specifications for terms
- 701 of work or methods of construction, measurement and payment under
- 702 each contract which are not covered by Standard Construction and
- 703 Material Specifications adopted by the Procuring Entity.
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- 705 f) Unit Prices shall be prepared for each contract using costs based on
- 706 reasonable approved current prices as projected over the proposed
- 707 construction period, divided into local and foreign exchange costs, as
- 708 the case may be.
- 709
- 710 g) Approved Budget for the Contract as determined in accordance with
- 711 this IRR.
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- 713 h) Bidding Documents prepared in accordance with this IRR.
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- 715 i) Before implementing any project, the necessary Scope of Work shall
- 716 be prepared and submitted for approval. In no case shall construction
- 717 funds be remitted to field offices or construction work on a project be
- 718 started before the Scope of Work is approved, in accordance with
- 719 existing laws.
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- 721 No Scope of Work for any project shall be approved without detailed
- 722 architectural and engineering design. The Scope of Work shall
- 723 include, among others, estimates of the work, items, quantities, and
- 724 costs and a Program Evaluation and Review Technique (PERT) and
- 725 Critical Path Method (CPM), Precedence Diagram Method (PDM) or
- 726 any other project management tool to monitor and supervise the
- 727 project activities. The Scope of Work shall cover at least a usable
- 728 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 which case continuity of construction up to the completion of a usable portion must be assured.

j) In the preparation of the Bidding Documents, the Procuring Entity shall make an estimate of the actual number of working days required to complete the project through PERT and CPM or PDM analysis of the project activities and corrected for holidays and weekends. Likewise, the Procuring Entity shall make an estimate of the number of rainy or unworkable days considered unfavorable for the prosecution of the works at the site, based on the records of the Philippine Atmospheric, Geophysical and Astronomical Services Administration, and incorporate the same in the corrected actual number of working days determined above, which shall be made the basis of the total contract time. The estimated number of rainy or unworkable days considered unfavorable for the prosecution of the works at the site shall be made known before the date of bidding through the Instructions to Bidders for the purpose of guiding the contractor in preparing its bid and as reference to both the GoP and winning contractors taking action on the requests for time extensions. Without the estimated number of rainy or unworkable days established before the bidding date and made known to all participating bidders, the contract time is presumed to have excluded the unfavorable conditions.

k) The warranty period, as required by the Procuring Entity for the type of project, shall be specified in the Bidding Documents.

l) For major projects, as specified by the Procuring Entity, value engineering shall be conducted according to accepted standards and practices. Value engineering shall analyze alternative schemes of achieving the project objectives in order to delete or reduce non-essential features and lessen the life cycle costs of the projects without sacrificing the quality and integrity of the structure while maintaining its essential function, performance, and safety.

m) Site or Right-of-Way Acquisition Plans and Resettlement Action Plans shall be prepared based on parcellary surveys and socio-economic surveys of households affected by the project.

8.4 Since the contracts are fixed price contracts, the ABC to be bid shall provide for the projected movements of construction costs over the construction period considering the projected inflation and foreign exchange rates as approved by

the Development Budget Coordination Committee. It shall also show the local and foreign currency requirements, as the case may be.

8.5 For projects to be implemented in phases, the Procuring Entity shall ensure that there is a clear delineation of work for each phase, which must be usable, and structurally sound. It shall also ensure the conduct of the detailed engineering activities for each phase, as provided by this IRR.

8.6 As a requirement for the procurement of Infrastructure Projects, the concerned End-User or Implementing Unit or consultants who prepared and approved, as the case may be, the detailed architecture and engineering design shall issue a certification that the detailed architecture and engineering surveys and designs have been conducted according to the prescribed agency standards and specifications in conformance with the provisions of this IRR and that the detailed architecture and engineering design outputs are adequate for the procurement at hand. The approval by the authorized government officials of detailed architecture and engineering surveys and designs undertaken by the End-User or Implementing Unit or consultants neither diminishes the responsibility of the latter for the technical integrity of the surveys and designs nor transfers any part of that responsibility to the approving officials.

8.7 The above rules shall apply to the implementation of Infrastructure Projects under normal or ordinary conditions. However, under emergency or extraordinary cases involving calamities and disasters as declared by the President or as may also be issued by the local *Sanggunian* upon the recommendation of the Local Disaster Risk Reduction and Management Office, 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, as the case may be, and approved by the Infrastructure Committee of the National Economic and Development Authority (NEDA) Board, to enable quick response to said cases, while maintaining the safety and integrity of the structure.

8.8 Procuring Entities may consider an architectural design that is well-curated and aesthetically pleasing to ensure that the Infrastructure Project not only meets functional requirements but also contributes to its overall appeal and architectural integrity.

Section 9. Multi-Year Contracting

813 9.1 The issuance of a MYCA or similar documents shall be required before
814 Procuring Entities commence any procurement activity covering locally-
815 funded multi-year contracts, subject to the guidelines issued by the DBM.

816

817 9.1.1 NGAs implementing multi-year PAPs shall request the DBM for
818 the issuance of a MYCA prior to the commencement of any
819 procurement activity for multi-year PAPs.

820

821 9.1.2 SUCs implementing multi-year PAPs, regardless of fund source,
822 including those funded from their internally generated income, shall
823 first secure prior authority from their governing board before starting
824 any procurement activity covering the full contract cost.

825

826 9.1.3 GOCCs and GFIs implementing multi-year PAPs, regardless of
827 fund source, shall first secure prior authority from their respective
828 governing boards before commencing procurement activities for multi-
829 year PAPs covering the full contract cost.

830

831 9.1.4 LGUs shall secure any equivalent document issued by their
832 respective Sanggunian authorizing them to enter into multi-year
833 contracts.

834

835 9.2 MYCA shall be issued by DBM, for multi-year locally-funded projects, in
836 order to authorize the Procuring Entity to enter into multi-year contracts for
837 the full project cost of multi-year PAPs.

838

839 9.3 The total project cost reflected in the MYCA or its equivalent document
840 shall be the basis or reference for the ABC of the procurement contract.

841

842 **Section 10. Market Scoping**

843

844 10.1 To ensure proper and strategic procurement planning, a Procuring
845 Entity shall conduct market scoping as a preliminary undertaking in preparing
846 its PPMP, which covers the proper cost estimation, project design and
847 specifications, technical and selection criteria, delivery lead time, storage or
848 warehousing requirements, related industry practices, and other relevant
849 market information.

850

851 10.2 Market scoping may include the following activities:

852

853 a) Consultations with suppliers, contractors, consultants, or professional
854 associations or groups;

855

- 856 b) Participation in summits, fora, or conferences;
857
858 c) Evaluation of market reviews;
859
860 d) Review of product or service brochures and marketing materials,
861 industry journals and publications, or other related materials and
862 publications;
863
864 e) Price sourcing for quotations or cost estimates from suppliers,
865 contractors, or consultants;
866
867 f) Use of relevant data from the PhilGEPS or agency websites to serve
868 as a guide or reference; or
869
870 g) Any analogous activity for the purpose of gathering relevant market
871 information.
872

873 10.3 Market Scoping is a process wherein the Procuring Entity collects
874 relevant market information to understand the supply environment,
875 identify potential suppliers, evaluate available products or services,
876 and assess relevant market trends in order to develop a
877 comprehensive and realistic PPMP, and to ensure that the Procuring
878 Entity clearly understands the market conditions, supplier capabilities,
879 pricing trends, and any potential risks that may affect procurement
880 decisions.
881

882 The conduct of Market Scoping shall observe the principle of
883 Proportionality.
884

885 10.4 To guarantee proper and strategic procurement planning, the Procuring
886 Entity shall conduct market scoping as a preliminary undertaking in preparing
887 its PPMP, which covers the following:
888

889 10.4.1 Proper cost estimates involve factors such as direct and
890 indirect costs, contingencies and other associated costs, while
891 factoring in cost trends, inflation, lifecycle cost, and procurement
892 modes.
893

894 10.4.2 Project Design and Specifications, in relation to Section 11 of
895 this IRR, must align with relevant characteristics, performance or
896 functionality requirements, or product or service standards specified
897 by appropriate government entities or similar international bodies.
898 Industry standards and best practices may be considered to ensure

899 compatibility with market capabilities, including environmental and
900 climate risk factors, to address the needs of the Procuring Entity.
901

902 10.4.3 Technical and selection criteria for evaluating suppliers,
903 contractors or consultants based on performance, safety, quality,
904 expertise, financial stability, and past performance. It may also include
905 scoring for climate resilience and environmental performance.
906

907 10.4.4 Delivery lead time involves assessing supply chain, market
908 availability and capability, including logistics systems to ensure timely
909 delivery and readiness to meet the specific needs and requirements
910 of the Procuring Entity.
911

912 10.4.5 Storage or warehousing requirements, in relation to Section 19 of
913 this IRR, involve identifying the specific needs of the Procuring Entity,
914 market options for warehousing, logistics and security, while considering
915 specific conditions like temperature, humidity, and handling needs.
916

917 10.5 The End-User or Implementing Unit of the Procuring Entity shall
918 maintain a record of the market scoping results to guide in the project review
919 and future procurement planning of the Procuring Entity.
920

921 **Section 11. Specifications**

922

923 11.1 Specifications to be developed by the End-User or Implementing Unit
924 for the procurement of Goods, as well as the goods component of
925 Infrastructure Projects and Consulting Services, shall be based on any or a
926 combination of the following, giving due consideration to sustainable public
927 procurement: relevant characteristics; performance or functionality
928 requirements; or product or service standards specified by appropriate
929 government entities or similar international bodies; or industry standards and
930 best practices.
931

932 11.2 Reference to brand name shall not be allowed except for reasons of
933 technical compatibility, interoperability, servicing, maintenance, or
934 preservation of supplier warranty in order to keep the performance,
935 functionality, and useful life of the equipment, in which case, the Procuring
936 Entity shall indicate the reasons or justifications for availing of the exception
937 as part of the Technical Specifications, Scope of Work, or Terms of
938 Reference, as the case may be.
939

940 **Section 12. Early Procurement Activities**

941

12.1 For Goods to be delivered, Infrastructure Projects to be implemented, and Consulting Services to be rendered in the following fiscal year, Procuring Entities are authorized to undertake early procurement activities, short of award, as soon as the NEP, Local Expenditure Program, or proposed Corporate Operating Budget is submitted to the Congress, Sanggunian, or Governing Board, respectively, pending the approval of the funding thereof under the GAA, corporate operating budget, appropriation ordinance or loan agreements in the case of FAPs, as the case may be, subject to guidelines issued for the purpose.

12.2 The conduct of early procurement activities shall be made only upon approval of the Indicative APP by the HoPE.

12.3 For EPA, the ABC shall not exceed the amount specified in the approved indicative APP prepared in accordance with Section 7 of this IRR.

12.4 No award of contract shall be made until the approval and effectivity of the appropriate funding, under the GAA, corporate operating budget, appropriation ordinance, or loan agreement, as the case may be, and approval of the final APP by the HoPE.

12.5 In case of projects requiring acquisition of right-of-way, no award of contract shall likewise be made until an authority or permit to enter is issued by the property owner; or a notarized deed of sale or deed of donation is executed in favor of the government; or a writ of possession is issued by a court of competent jurisdiction, as the case may be.

Section 13. Lifecycle Assessment and Lifecycle Cost Analysis

13.1 To further support strategic procurement management and ensure smart and prudent use of government resources, Procuring Entities shall apply Lifecycle Assessment (LCA) and Lifecycle Cost Analysis (LCCA) in project planning, eligibility and selection criteria, or contract implementation; Provided, That the implementation of the LCCA and LCA shall be subject to guidelines issued by the GPPB.

13.2 The LCA is applied to evaluate the environmental impact of a procurement project over its whole lifecycle, while LCCA is used to calculate the total cost of acquisition, operation, maintenance, and disposal of a procurement project. Both tools are utilized to determine the most economically and environmentally sustainable approach or strategy in the procurement, management, implementation, and disposal of a procurement project.

985
986 13.3 Both LCA and LCCA are to be utilized by Procuring Entities to ensure
987 that their procurement decisions are consistent with the sustainable
988 consumption and production objectives, as well as fiscal policies of the
989 GoP. To operationalize these tools effectively, Procuring Entities shall
990 undertake the following:

991
992 13.3.1 Apply LCA to evaluate the environmental impacts of a specific
993 procurement project over its entire lifecycle, which consider key
994 factors such as greenhouse gas emissions, resource consumption, air
995 or water pollution, and waste generation and management. The LCA
996 shall guide the Procuring Entity to minimize environmental hazard
997 throughout the project's lifecycle; and

998
999 13.3.2 Utilize LCCA to identify the evaluation criteria and compute the
1000 total cost associated with acquiring, operating, maintaining and
1001 disposing of the project or asset to enable Procuring Entities to
1002 determine long-term financial implications of their procurement
1003 projects, allowing them to select the most cost-effective approach that
1004 results in savings and financial sustainability of projects.

1005 1006 **Section 14. Design-and-Build Scheme for Infrastructure Projects**

1007
1008 14.1 In preparing for a procurement project, Procuring Entities may consider
1009 employing the design-and-build scheme as a procurement approach
1010 whereby a single contractor is responsible for both design and construction
1011 of the government building or Infrastructure, which allows quality assurance
1012 and effective cost and schedule management.

1013
1014 The Procuring Entity shall provide a mechanism to assess the suitability of
1015 the design-and-build scheme; ensure the proper preparation of the
1016 conceptual design, performance specifications and parameters; conduct
1017 review of detailed architectural and engineering design; and undertake
1018 oversight and monitoring of project planning and contract implementation.

1019 1020 **Section 15. Engagement of a Procurement Agent**

1021
1022 15.1 As part of strategic procurement planning, the HoPE may authorize the
1023 engagement of a government procurement agent, which shall undertake the
1024 functions of the BAC, if the Procuring Entity does not have the capability or
1025 proficiency to undertake a particular procurement; Provided, That the
1026 Procuring Entity cannot delegate the issuance of the notice of award and the
1027 award of contract to the procurement agent; and there shall be no transfer of

1028 funds to the procurement agent, except for the payment of service fee for
1029 services rendered as procurement agent, if applicable.

1030

1031 15.2 The engagement of a procurement agent shall be further subject to the
1032 following mandatory conditions:

1033

1034 a) Made on a per procurement project basis;

1035

1036 b) Limited to procurement undertaken through competitive bidding;
1037 Provided, That in instances where the Procuring Entity lacks sufficient
1038 qualified personnel to constitute its own BAC, the Procuring Entity may
1039 engage a procurement agent to undertake other modes of
1040 procurement;

1041

1042 c) The procurement agent should be another government agency
1043 expert in the field which is the subject of procurement. This shall be
1044 expressly provided in the Memorandum of Agreement (MOA) with the
1045 Procuring Entity;

1046

1047 d) Have at least one (1) representative from the Procuring Entity to be
1048 designated as a member of the TWG of the procurement agent to
1049 ensure that technical specifications or terms of reference of the
1050 Procuring Entity are properly reflected in the bidding documents;

1051

1052 e) Have a representative from the Procuring Entity designated as a
1053 provisional member of the BAC of the procurement agent; and

1054

1055 f) Covered by a MOA that is executed between the Procuring Entity
1056 and the procurement agent providing the details of the project to be
1057 procured; the accountabilities and obligations of the two (2) parties;
1058 the ABC; services fees, if applicable; and such other details as may
1059 be necessary. The MOA shall be in effect at least six (6) months
1060 before the end of the validity of the relevant appropriations as
1061 authorized in the relevant appropriations law, or in the corporate
1062 operating budgets or appropriations ordinances, in the case of
1063 GOCCs, GFIs, and LGUs respectively. In no case shall the
1064 undertakings of the MOA contravene the provisions of this Section.

1065

1066 15.3 The Procurement Agent engaged by the Procuring Entity must have a
1067 proven track record of successfully awarding at least two (2) similar
1068 contracts, each valued at no less than fifty percent (50%) of the ABC of the
1069 current procurement project. Alternatively, the subject matter of the

1070 procurement must be directly related to the core mandate of the agency
1071 seeking to engage the Procurement Agent.

1072

1073 15.4 Procuring Entities with existing MOAs with a procurement agent which
1074 have not yet been implemented upon the effectivity of the Act are encouraged
1075 to revisit the same and amend as may be necessary to conform with this
1076 Section.

1077

1078 **Section 16. Use of Framework Agreement**

1079

1080 16.1 Procuring Entities may use a framework agreement as a procurement
1081 strategy to expand the pool of prospective bidders, take advantage of
1082 economies of scale, minimize the administrative burden of conducting
1083 separate procurement activities, and generate time and money savings.

1084

1085 16.2 The framework agreement shall be in the nature of an option contract
1086 between the Procuring Entity and the bidder that stipulates the terms and
1087 conditions that would be applied in subsequent contracts for the procurement
1088 of Goods, Infrastructure Projects, and Consulting Services with a single or
1089 multiple contractor, manufacturer, supplier, distributor, consultant, and
1090 service provider, subject to the guidelines to be issued by GPPB.

1091

1092 **Section 17. Pooled Procurement**

1093

1094 17.1 Procuring Entities shall consider the advantages of a pooled
1095 procurement mechanism, as a procurement strategy, by collaborating or
1096 consolidating their requirements in a single, joint, bulk, or group procurement
1097 in order to achieve greater value for money and procurement efficiency
1098 through demand aggregation, improve quality standards by combining
1099 technical capacity, and to increase availability and secure sustainability of
1100 supplies.

1101

1102 **Section 18. Renewal of Regular and Recurring Services**

1103

1104 18.1 The Procuring Entity may consider undertaking renewal of regular and
1105 recurring services to facilitate the continuity and immediate implementation
1106 of procurement projects. The duration for each renewal contract shall not
1107 exceed one (1) year.

1108

1109 18.2 The renewal of contracts for Regular and Recurring Services shall
1110 comply with the following:

1111

1112 18.2.1 For this purpose, Regular and Recurring Services refer to those

1113 which by their nature are necessary to the day-to-day operations of
1114 the Procuring Entity (PE) such as (i) janitorial services; (ii) security
1115 services; (iii) telecommunication requirements; (iv) supply of drinking
1116 water; and (v) rental of office space, or lease of venue, and equipment;
1117

1118 18.2.2 Prior to each renewal of a regular and recurring service, the
1119 following shall be conducted by the End-User or Implementing Unit:
1120

1121 a) An assessment to justify the suitability of renewal over the conduct
1122 of another procurement;
1123

1124 b) A performance evaluation conducted by the End-User showing
1125 Satisfactory performance by the service provider; and
1126

1127 18.2.3 Submission of updated documentary requirements and
1128 performance security by the service provider.
1129

1130 18.3 Additionally, the Procuring Entity shall ensure the following:
1131

1132 18.3.1 The original contract covering the Regular and Recurring
1133 Services was awarded in accordance with RA No. 12009 and its IRR,
1134 and other associated issuances;
1135

1136 18.3.2 A performance evaluation conducted by the End-User or
1137 Implementing Unit showing Satisfactory performance by the service
1138 provider and submission of updated documentary requirements and
1139 performance security by the service provider;
1140

1141 18.3.3 The duration for each renewal contract shall not exceed one
1142 (1) year;
1143

1144 18.3.4 The service provider must not be a Blacklisted Entity at the time
1145 of the conduct of the performance evaluation until the signing of the
1146 renewal contract; and
1147

1148 18.3.5 Funds are available for the renewal of contracts in accordance
1149 with existing budgeting, accounting, and auditing rules.
1150

1151 **Section 19. Warehousing and Inventory System** 1152

1153 19.1 For efficient planning for the storage and tracking of procured Goods,
1154 Procuring Entities may adopt a general system of warehousing and cloud-
1155 based inventory of procured Goods, as may be necessary depending on the

1156 type, nature, and volume of procurement undertaken by the Procuring Entity
1157 and subject to the availability of funds in accordance with applicable budgeting,
1158 accounting, and auditing rules and regulations.

1159

1160 19.2 The Procuring Entity, whenever applicable, shall develop guidelines for
1161 its warehousing functions ensuring auditable systems that promote integrity
1162 and efficiency, and shall establish a compliance framework mandating
1163 training, audits, and transparent reporting. These guidelines shall set
1164 standards and provisions to protect and safeguard all acquired properties
1165 whether through procurement, transfer, or any other mode of acquisition
1166 being stored in the warehouse facilities in order to:

1167

1168 19.2.1 Ensure proper tracking, storage, and management of procured
1169 Goods;

1170

1171 19.2.2 Verify the accuracy and integrity of inventory records; and

1172

1173 19.2.3 Promote transparent reporting on warehousing and inventory
1174 activities.

1175

1176 19.3 The adoption of cloud-based inventory by NGAs, GOCCs, GFIs, SUCs,
1177 and LGUs shall be done in consultation with the Department of Information
1178 and Communications Technology (DICT) to ensure that the risks and
1179 vulnerabilities associated with data storage are adequately addressed
1180 through proper and effective security protocols.

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Section 20. Procurement by Electronic Means

20.1 The Philippine Government Electronic Procurement System (PhilGEPS)

20.1.1 To promote greater transparency, accountability, operational efficiency, and value for money, the PhilGEPS shall be the single electronic procurement portal that shall serve as the primary source of information and channel in the conduct of all procurement activities of the government. The PhilGEPS shall maintain an integrated system that covers procurement planning until payment. The PhilGEPS shall be managed by the PS-DBM.

20.1.2 To take advantage of the significant built-in efficiencies of the PhilGEPS and the volume discounts inherent in bulk purchasing,

1199 through the centralized procurement undertaken by the PS-DBM, all
1200 Procuring Entities shall utilize the PhilGEPS for the procurement of
1201 CSE.

1202

1203 20.1.3 The PhilGEPS shall continuously adopt emerging technologies
1204 and innovative solutions.

1205

1206 20.2 Features of the PhilGEPS

1207

1208 To standardize and ease the process of government procurement and
1209 to take advantage of the significant built-in efficiencies of the
1210 PhilGEPS, the system shall include the following features:

1211

1212 20.2.1 Electronic Bulletin Board

1213

1214 a) The Electronic Bulletin Board allows Procuring Entities to
1215 post procurement opportunities, notices, bidding results,
1216 awards, and related information;

1217

1218 b) Procuring Entities shall post the Invitation to Bid for the
1219 procurement of Goods and Infrastructure Projects or the
1220 Request for Expression of Interest for Consulting Services in
1221 the Electronic Bulletin Board in accordance with Section 50 of
1222 this IRR.

1223

1224 20.2.2 Electronic Catalogue

1225

1226 This is the electronic listing or database containing the CSE
1227 that can be procured from PS-DBM. The technical specification
1228 for each CSE can be accessed in the same database.

1229

1230 20.2.3 Virtual Store

1231

1232 This feature allows Procuring Entities registered with the
1233 PhilGEPS to procure CSE online from PS-DBM.

1234

1235 20.2.4 Electronic Marketplace

1236

1237 a) The Electronic Marketplace is a feature that allows Procuring
1238 Entities registered with the PhilGEPS to search, view,
1239 compare, select, and procure Goods and Services online from
1240 legally, technically and financially capable merchants.

1241

b) The Electronic Marketplace allows registered and qualified merchants to present their goods in the platform, whether as a result of a procurement activity, consignment, or any appropriate contractual arrangement, from which Procuring Entities may choose based on their needs and requirements and within their ABC.

20.2.5 Electronic Reverse Auction

This refers to an auction feature where a Procuring Entity registered with the PhilGEPS can issue an invitation to suppliers to submit bids on a specific date and time duration, relative to specific goods and services, based on defined specifications for design, quantity, quality, delivery, and related terms and conditions, and compete by outbidding each other through lower offers or amounts they are willing to accept. At the close of the reverse auction duration, to be defined by the Procuring Entity, the procurement contract shall be awarded to the lowest complying bid;

20.2.6 Electronic Small Value Procurement refers to a facility that allows Procuring Entities to resort to small value procurement electronically, subject to the guidelines provided for in Section 34 of this IRR.

20.2.7 Electronic Payment for CSE

a) The PhilGEPS shall utilize an inclusive digital payment system, offering various methods using electronic channels, such as stored money credits in an electronic wallet and direct electronic payment and the use of credit card for government purchases of CSE.

b) The system shall have a feature that allows the processing and approval of requests for payment upon delivery of goods or services, and shall have the ability to interface with the designated bank of the Procuring Entity and merchants to support the electronic transfer of funds.

20.2.8 Electronic Bidding

The Electronic Bidding facility shall cover the entire procurement process including procurement planning, posting

of bid opportunities and bidding documents, pre-bid conference, receipt and opening of bids, evaluation of bids, post-qualification, recommendation and award of contract, contract management and implementation, and payment, which shall be applicable to Goods, Infrastructure Projects and Consulting Services, in accordance with the guidelines issued by the GPPB.

20.2.9 Registry of Suppliers, Manufacturers, Distributors, Contractors, Consultants, and Service Providers.

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

b) Registration shall entail the submission of the requirements specified by the PS-DBM. Submission of these requirements shall be done online at the PhilGEPS website. The PhilGEPS Certificate of Registration (Platinum Membership) shall be effective for one year and may be either renewed, in case of expiration, or updated within the period of its validity; provided that the manufacturer, supplier, distributor, contractor, consultant, or service provider concerned maintains its records registration current and updated at least once a year, or more frequently as may be necessary.

c) The PhilGEPS shall deny registration to or exclude from the registry any party that is found to have willfully misrepresented any of the information provided in the application for registration or that has been imposed with the penalty of blacklisting in accordance with Sections 100 and 101 of this IRR, including foreign government or, foreign or international financing institution whose blacklisting rules have been recognized by the GPPB.

d) A manufacturer, supplier, distributor, contractor, consultant, or service provider applying for registration shall be required to provide an email address to which all communications from the BAC and the Procuring Entity shall be sent. The email address provided shall be considered as such applicant's recorded contact information.

e) A manufacturer, supplier, distributor, contractor, consultant, or service provider duly registered with the PhilGEPS may participate in a procurement activity undertaken by any Procuring Entity; provided that it is the obligation of the said manufacturer, supplier, distributor, contractor, consultant, or service provider to maintain its registration valid and updated in accordance with the provisions of this IRR, and its registration type is appropriate and relevant to the particular type of procurement.

20.2.9.1 All manufacturers, suppliers, distributors, contractors, consultants, and service providers shall upload and maintain in PhilGEPS a valid and updated file of the following Class "A" eligibility documents under Section 52.1(a)(i):

a) Registration certificate from the Securities and Exchange Commission (SEC) for corporations and partnerships, the Department of Trade and Industry (DTI) for sole proprietorships, or the Cooperative Development Authority (CDA) for cooperatives;

b) Mayor's Permit or Business Permit or its Equivalent Document;

c) Tax clearance, as finally reviewed and approved by the Bureau of Internal Revenue (BIR);

d) Philippine Contractors Accreditation Board (PCAB) License and Registration of contractors; and

e) Audited Financial Statements (AFS), stamped "Received" by the BIR or its duly accredited and authorized institutions for Manual submission. For online submission, an email confirmation from the BIR in lieu of the manual "Received" stamping under Revenue Memorandum Circular No. 49-2020

20.2.9.2 For Foreign Bidders, the foregoing documents may be substituted by the appropriate equivalent documents in English, if any, issued by the country of the bidder concerned. Otherwise, it must be accompanied by a translation of the documents in English issued 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 or post, or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines.

However, for Contracting Parties to the Apostille Convention, the documents shall be authenticated through an apostille by the Competent Authority, except for countries identified by the Department of Foreign Affairs (DFA) that will still require legalization (red ribbon) by the relevant Embassy or Consulate.

A Competent Authority refers to the authority designated by a Contracting Party that can issue an apostille. A Contracting Party may designate one or more Competent Authorities and may designate Competent Authorities that can issue an apostille for certain categories of public documents. Information about designated Competent Authorities may be found on the Apostille Section of the Hague Conference website under "Competent Authorities".

These documents shall be accompanied by a Sworn Declaration of Compliance stating that the documents submitted are complete and authentic copies of the original, and all statements and information provided therein are true and correct. The PhilGEPS shall process the same in accordance with the guidelines of the Government of the Philippines – Official Merchants Registry (GoP-OMR) and shall issue a Certificate of Registration (Platinum Membership) within seven (7) calendar days from receipt of the application and complete supporting documents. The said Certificate shall include the following declarations by the bidder:

- a) the authenticity, genuineness, validity, and completeness of the copy;
- b) the veracity of the statements and information contained therein;

1414 c) that the Certificate is neither a guarantee that the named
1415 registrant will be declared eligible without first being
1416 determined to be such, nor is it evidence that the
1417 registrant has passed the bid evaluation and post-
1418 qualification stages; and

1419
1420 d) that any finding of concealment, falsification, or
1421 misrepresentation of any of the eligibility documents submitted,
1422 or the contents thereof shall be a ground for disqualification of
1423 the Bidder to further participate in the bidding process, without
1424 prejudice to the imposition of appropriate administrative, civil
1425 and criminal penalty in accordance with law.

1426
1427 For the purpose of maintaining the validity of the Certificate of
1428 Registration and Membership, bidders shall ensure that all their
1429 Class "A" eligibility documents mentioned in this Section are
1430 current and updated. Failure by the prospective bidder to
1431 update its Class "A" eligibility documents shall result in the
1432 automatic suspension of its Certificate until such time that all of
1433 the expired Class "A" eligibility documents have been updated.

1434

1435 20.3 Use of the PhilGEPS

1436

1437 20.3.1 All Procuring Entities are mandated to fully use the PhilGEPS
1438 and its features in accordance with the policies, rules, regulations, and
1439 procedures adopted by the GPPB and embodied in this IRR. All
1440 Procuring Entities shall register with the PhilGEPS and shall
1441 undertake measures to ensure their access to an online network to
1442 facilitate the open, speedy and efficient online transmission,
1443 conveyance and use of electronic data messages or electronic
1444 documents.

1445

1446 20.3.2 In case of silence or ambiguity of the provision embodied in this
1447 Section, the manual procedures and processes of procurement
1448 contained in the Act and this IRR shall apply.

1449

1450 20.3.3 The PhilGEPS shall allow Observers, duly authorized by the
1451 BAC, to monitor the procurement proceedings online; Provided, That
1452 such Observers do not have any direct or indirect interest in the
1453 contract to be bid as prescribed in Section 43 of this IRR.

1454

1455 Section 21. Electronic Payment

1456

1457 The electronic and uniform payment system to be used by the Procuring
1458 Entity and suppliers, manufacturers, distributors, contractors, consultants,
1459 and service providers shall be defined in the context of the Integrated
1460 Financial Management Information System to be developed by the DBM,
1461 Commission on Audit (COA), and Department of Finance (DOF).

1462

1463 **Section 22. Security, Integrity, and Confidentiality**

1464

1465 22.1 The PhilGEPS shall ensure the security, integrity, and confidentiality of
1466 documents submitted, stored, and managed through the system. It shall
1467 include features that provide for an audit trail of electronic transactions and
1468 allow the COA to verify the security and integrity of the system at any time.

1469

1470 22.2 The PhilGEPS shall incorporate the following features, that will provide
1471 and audit trail of electronic transactions of the Procuring Entities which shall
1472 be periodically upgraded to keep abreast with developments in technology:

1473

1474 22.2.1 The PhilGEPS shall include a feature that provides for an audit
1475 trail for online transactions and allows the COA to verify the security
1476 and integrity of the system at any time.

1477

1478 22.2.2 The performance of manufacturers, suppliers, distributors,
1479 contractors and consultants shall be tracked to monitor compliance
1480 with delivery schedules and other performance indicators. Similarly,
1481 the performance of Procuring Entities shall be tracked to monitor the
1482 settlement of their obligations to manufacturers, suppliers,
1483 distributors, contractors and consultants.

1484

1485 **Section 23. Interconnectivity Systems between Government Agencies**

1486

1487 Notwithstanding the provisions of Republic Act No. 10173, the GPPB is
1488 hereby authorized to promulgate rules to ensure the interconnectivity of the
1489 following government databases:

1490

1491 a) PhilGEPS in relation to the Government of the Philippines Official
1492 Merchants Registry (GoP-OMR);

1493

1494 b) DTI on its database relating to business registration, list of all
1495 ongoing projects in public and private sector, and records of priority
1496 domestic goods and services;

1497

- 1498 c) Construction Industry Authority of the Philippines (CIAP) on the
1499 CPES and the Philippine Contractors' Assessment Board (PCAB) on
1500 the licensing of contractors;
1501
1502 d) All LGUs on their issuance of permits and licenses;
1503
1504 e) Bureau of Internal Revenue (BIR) on tax returns and clearance;
1505
1506 f) SEC and CDA on mandatory submissions of all registered
1507 enterprises and beneficial ownership information;
1508
1509 g) Insurance Commission (IC) on the list of identified surety
1510 companies providing callable-on-demand surety contracts;
1511
1512 h) Procuring Entities with established electronic procurement systems
1513 and websites on the status of projects, contracts, and performance of
1514 its respective winning bidders; and
1515
1516 i) Other relevant government agencies, as may be determined by the
1517 GPPB.
1518
1519 Provided, That the GPPB shall coordinate with the DICT, PS-DBM,
1520 DTI, CIAP, LGUs, BIR, SEC, CDA, IC, and other relevant government
1521 agencies to ensure the implementation of this Section; Provided,
1522 further, That at all times, the sharing of information between and
1523 among government agencies and instrumentalities shall protect trade
1524 secrets and promote competition.
1525

1526 **Section 24. Procurement Data Analytics**

- 1527
1528 The GPPB, through its Technical Support Office (TSO), shall analyze the
1529 data obtained from the PhilGEPS and submitted procurement reports to
1530 ensure disclosure of information related to the procurement process. The
1531 GPPB shall publish an annual report on its website for the following
1532 purposes:
1533
1534 a) Assist Procuring Entities in the strategic planning of their
1535 procurement projects;
1536
1537 b) Assist oversight bodies in formulating and implementing data-
1538 driven effective procurement policies and rules pursuant to the State
1539 policy under Section 2 of this Act;
1540

1541 c) Assist government agencies in identifying and detecting patterns
1542 that could help deter or mitigate fraud and non-competitive practices;
1543 and
1544

1545 d) Facilitate public awareness, active participation, and monitoring of
1546 government procurement processes.
1547

1548 24.1 A quarterly report, including the following data from the PhilGEPS, shall
1549 be submitted to the GPPB through its TSO:
1550

- 1551 a) Total number of procurement notices posted;
1552 b) Total number of contracts awarded for all types of procurement;
1553 c) Number of procurements using framework agreement strategy;
1554 d) Number of registered suppliers by region;
1555 e) Number of procurements with green specifications;
1556 f) List of suppliers offering materials and supplies produced and
1557 manufactured in the Philippines; and
1558 g) Contract awarded to MSMEs, women owned enterprise.
1559

1560 **Section 25. Maintenance, Update, and Backup**
1561

1562 25.1 The PhilGEPS shall undertake periodic maintenance and upgrading of
1563 all its systems. It shall formulate a business continuity plan which shall
1564 include features such as, but not limited to, the establishment of backup sites,
1565 and regular backup of all information to maintain the integrity of the system
1566 and minimize risks of halts or interruptions in operation.
1567

1568 25.2 The PhilGEPS shall ensure that all data is protected and prevent
1569 interruptions in the operations. Preventive maintenance shall be done on a
1570 regular basis to maintain accessibility at all times. An advisory shall be issued
1571 to notify the PE, merchants, and other stakeholders in advance prior to the
1572 scheduled maintenance.
1573

1574 25.3 The PhilGEPS shall adopt the latest technologies and innovations for
1575 better optimization of the system.
1576

1577 25.4 The PS-DBM shall establish and implement backup and retention
1578 policies for PhilGEPS, including all its features and modules, to ensure a
1579 more stable system.
1580

1581 **RULE IV**
1582 **MODES OF PROCUREMENT**
1583

Section 26. Modes of Procurement

26.1 The Procuring Entity shall adopt any of the following modes of procurement consistent with the Fit-for-Purpose procurement approach:

- a) Competitive Bidding;
- b) Limited Source Bidding;
- c) Competitive Dialogue;
- d) Unsolicited Offer with Bid Matching;
- e) Direct Contracting;
- f) Direct Acquisition;
- g) Repeat Order;
- h) Small Value Procurement;
- i) Negotiated Procurement;
- j) Direct Sales; and
- k) Direct Procurement for Science, Technology and Innovation.

26.2 In addition to the specific terms and conditions for the application of each mode of procurement provided hereunder, the detailed procedure for each mode of procurement shall be provided in the Manual to be issued by the GPPB.

26.3 The GPPB is authorized to approve changes in the procurement process to adapt to improvements in modern and emerging technologies; Provided, That such modifications are consistent with the provisions of Section 3 of this IRR.

Section 27. Competitive Bidding

27.1 Competitive Bidding is mode of procurement which is open to participation by any eligible bidder, and which consists of the following processes:

- a) Publication;
- b) Pre-bid conference;
- c) Eligibility screening of prospective bidders;
- d) Receipt and opening of bids;
- e) Evaluation of bids;
- f) Post-qualification; and
- g) Award of contract.

1625 Notwithstanding the applicability of the other modes of procurement defined
1626 herein, the Procuring Entity may adopt Competitive Bidding in its
1627 procurement activity.

1628

1629 Competitive Bidding shall be subject to the provisions of Rules VI to XI of this
1630 IRR.

1631

1632 **Section 28. Limited Source Bidding**

1633

1634 28.1 Limited Source Bidding is a mode of procurement that involves direct
1635 invitation to bid by the Procuring Entity to a set of pre-selected suppliers,
1636 contractors, or consultants with known experience and proven capability
1637 relative to the requirements of a particular contract.

1638

1639 For this mode of procurement, the Procuring Entity shall adopt the rules on
1640 Competitive Bidding as prescribed in this IRR, except for the publication
1641 requirement under Section 50 hereof.

1642

1643 28.2 Limited Source Bidding may only be resorted to under any of the
1644 following conditions:

1645

1646 a) Procurement of highly specialized or complex types of Goods, such
1647 as sophisticated defense equipment, air navigation systems, coal, and
1648 Consulting Services which are known to be obtainable only from a
1649 limited number of sources;

1650

1651 b) Procurement of major plant components where it is deemed
1652 advantageous to limit the bidding to known eligible bidders in order to
1653 maintain an optimum and uniform level of quality and performance of
1654 the plant as a whole; or

1655

1656 c) Procurement of highly specialized infrastructure projects involving
1657 and affecting national security.

1658

1659 Infrastructure projects involving and affecting national security shall
1660 refer to construction, rehabilitation, maintenance, or development
1661 projects critical to the defense, security, and protection of the state, its
1662 citizens, and its strategic interests, as approved by the Head of the
1663 Procuring Entity of the Department of National Defense or the law
1664 enforcement agencies, particularly the Philippine National Police
1665 (PNP), including the PNP Maritime Group (PNP-MG) and the PNP
1666 Aviation Security Group (PNP-AVSEGROUP); Philippine Drug
1667 Enforcement Agency (PDEA); Bureau of Immigration (BI); Office for

1668 Transportation Security (OTS); Bureau of Fire Protection (BFP);
1669 National Bureau of Investigation (NBI); Presidential Security Group
1670 (PSG); National Police Commission (NAPOLCOM); Bureau of Jail
1671 Management and Penology (BJMP) Bureau of Corrections (BuCor);
1672 and Philippine Coast Guard (PCG), as the case may be.

1673

1674 These projects typically involve the establishment or enhancement of
1675 physical, technological, and communication structures essential to
1676 national defense, intelligence operations, disaster response, and
1677 public safety. These may include, but are not limited to:

1678

1679 a) Projects related to the construction or maintenance of
1680 military bases, defense facilities, arsenals, radar stations, and
1681 training centers;

1682

1683 b) Development of structures and systems designed to protect
1684 and monitor national borders and territorial waters, including
1685 fortifications, fences, and sensor-based surveillance systems;
1686 or

1687

1688 c) Infrastructure essential for secure communication networks
1689 used by the military, law enforcement, intelligence agencies,
1690 and disaster management authorities.

1691

1692 28.3 The pre-selected suppliers, contractors or consultants shall be those
1693 appearing in a list maintained by the relevant government authority that has
1694 expertise in the type of procurement concerned. The list of pre-selected
1695 suppliers, contractors, or consultants shall be updated periodically. A copy
1696 of such list or any amendment thereto shall be submitted to the GPPB.

1697

1698 In the event that no relevant government authority exists, or in case the
1699 Procuring Entity represents that it is the relevant government authority, the
1700 Procuring Entity may prepare a self-generated list of pre-selected suppliers,
1701 contractors, or consultants; Provided, That the Procuring Entity establishes,
1702 attests to such fact, and confirms that it has the expertise on the subject
1703 matter of procurement by virtue of its mandate and nature of its functions and
1704 operations.

1705

1706 28.4 If the Procuring Entity cannot establish its expertise on the subject
1707 matter of procurement within the purview of this Section, it shall directly resort
1708 to competitive bidding in its selection of suppliers, contractors, or consultants.

1709

1710 28.5 The pre-selection shall be based on the following characteristics of the
1711 suppliers, contractors, or consultants:

1712

1713 a) Capability and resources of the bidders to perform the contract,
1714 taking into account their experience and past performance on similar
1715 contracts;

1716

1717 b) Capabilities with respect to personnel equipment or manufacturing
1718 facilities;

1719

1720 c) Financial position; and

1721

1722 d) Good standing with respect to its affiliation, and must not be related
1723 to any adverse groups, local or international, nor involved in any
1724 criminal activities which may affect its legal, financial, or technical
1725 capacity to undertake the project, as determined by the Procuring
1726 Entity.

1727

1728 Except for the publication requirement under Section 50, the Procuring Entity
1729 shall adopt the rules on competitive bidding as prescribed in this IRR.

1730

1731 **Section 29. Competitive Dialogue**

1732

1733 29.1 Competitive Dialogue is a mode of procurement that employs a two-
1734 stage bidding process where the Procuring Entity invites suppliers,
1735 manufacturers, distributors, contractors, consultants, and service providers
1736 to a dialogue to propose solutions to address its needs and requirements.

1737

1738 29.2 Competitive Dialogue may be resorted to if any of the following
1739 conditions are present:

1740

1741 a) The procurement includes innovative design or solutions involving
1742 procurement of complex purchases such as but not limited to,
1743 sophisticated products, intellectual services, or major information and
1744 communications technology projects;

1745

1746 b) The contract requires prior negotiations with the suppliers,
1747 manufacturers, distributors, contractors, consultants, and service
1748 providers because of specific circumstances related to the nature,
1749 complexity, legal and financial issues, or risks attached to the
1750 procurement; or

1751

1752 c) The Technical Specifications cannot be sufficiently established or
1753 precisely defined by the Procuring Entity.
1754

1755 29.3 Apart from the mandatory contents prescribed in Section 50, the
1756 Procuring Entity that resorts to Competitive Dialogue shall provide the
1757 following information in the Invitation to Bid or Request for Expression of
1758 Interest:
1759

1760 a) The general technical specifications of the project with minimum
1761 requirements, which may be in the form of relevant characteristics, or
1762 performance or functionality requirements; and
1763

1764 b) The award criterion to be used in the second stage, that is, the
1765 Lowest Calculated Responsive Bid (LCRB), Most Economically
1766 Advantageous Responsive Bid (MEARB), or Most Advantageous
1767 Responsive Bid (MARB) for Goods and Infrastructure Projects
1768 including the quality-price ratio for MEARB, or Highest Rated
1769 Responsive Bid (HRRB) for Consulting Services.
1770

1771 The foregoing requirements cannot be modified by the Procuring
1772 Entity at any stage of the procurement process, unless otherwise
1773 specified in this IRR.
1774

1775 29.4 Competitive Dialogue has two distinct stages:
1776

1777 29.4.1 The first stage where the eligibility requirements and initial
1778 technical proposals of interested suppliers, contractors, or consultants
1779 are evaluated, followed by the dialogue proper. The first stage shall
1780 involve the following activities:
1781

1782 a) Prospective bidders shall submit their initial technical
1783 proposals, as well as their legal, technical, and financial
1784 eligibility requirements, within the deadline prescribed in the
1785 bidding documents not exceeding the following maximum
1786 periods counted from the last day of posting of the Invitation to
1787 Bid or Request for Expression of Interest:
1788

1789 i) For Goods, forty-five (45) calendar days.
1790

1791 ii) For Infrastructure Projects, sixty-five (65) calendar
1792 days.
1793

1794 iii) For Consulting Services, seventy-five (75) calendar
1795 days.

1796

1797 The BAC shall first determine the eligibility of the prospective
1798 bidders in accordance with Section 52 of this IRR, and the initial
1799 technical proposals shall be evaluated using a “pass or fail”
1800 criterion to determine whether the same meet the minimum
1801 technical requirements of the Procuring Entity. Eligible bidders
1802 whose technical proposals meet the required minimum
1803 standards shall then be invited to participate in the dialogue.

1804

1805 b) For the procurement of Consulting Services, the short-listing
1806 procedure under Section 53 of this IRR shall be conducted
1807 during the first stage as described in the preceding paragraph;
1808

1809

1810 c) The Procuring Entity shall conduct a dialogue to determine,
1811 define, or finalize any particular component of the project,
1812 terms and conditions of the contract, or any other aspect of the
1813 procurement or contract that are not required to be defined in
1814 the Invitation to Bid or Request for Expression of Interest;

1815

1816 d) The dialogue may be conducted jointly or separately among
1817 participants to develop and finalize the technical specifications,
1818 scope of work or terms of reference, as the case may be; and

1819

1820 e) The Procuring Entity shall ensure that all bidders
1821 participating in the dialogue are treated equally and fairly, and
1822 it shall not provide information in a manner which may
1823 discriminate, give undue advantage to, or otherwise favor some
1824 participating bidders over others. The Procuring Entity shall not
1825 reveal or disclose any confidential information received during
1826 the course of the dialogue to any participating bidder unless
1827 with the express consent of the owner of the confidential
1828 information. Such consent or agreement to disclose
1829 confidential information shall be limited to the communication
1830 of specific information and shall not take the form of a general
1831 waiver.

1832

1833 29.4.2 The second stage where the final technical and financial
1834 proposals of the remaining participants are submitted and evaluated
1835 under a competitive bidding procedure using LCRB, MEARB, MARB
1836 or HRRB. The second stage shall involve the following activities:

1836

- 1837 a) Within ten (10) calendar days from finalization of the
1838 Technical specifications, Scope of Work or Terms of
1839 Reference, as the case may be, under the first stage, copies of
1840 the same, as well as the criteria for qualitative rating if
1841 applicable, shall be issued to all bidders that participated in the
1842 dialogue; and
1843
1844 b) Bidders shall submit their revised technical proposals as well
1845 as their financial proposals in two (2) separate sealed
1846 envelopes within a period not exceeding twenty (20) calendar
1847 days from issuance of the finalized Technical Specifications,
1848 Scope of Work or Terms of Reference, as the case may be.
1849 The contract shall be awarded to the bidder declared as the
1850 LCRB, MEARB, MARB or HRRB, following the applicable bid
1851 evaluation and post-qualification procedures under Sections
1852 61, 62, and 63 of this IRR.
1853

1854 **Section 30. Unsolicited Offer with Bid Matching**
1855

1856 30.1 Unsolicited Offer with Bid Matching is a mode of procurement wherein
1857 the Procuring Entity may consider unsolicited offers from original offeror on
1858 a negotiated basis for Goods and Consulting Services.
1859

1860 Original offeror refers to the person who initially submitted the unsolicited
1861 offer determined by the Procuring Entity as a new concept or technology,
1862 after due evaluation and negotiation.
1863

1864 30.2 Unsolicited offer with bid matching may be resorted to when the
1865 following conditions are met:
1866

1867 a) The procurement involves a new concept or technology as
1868 determined by the HoPE; and
1869

1870 b) The Procuring Entity has invited comparative or competitive bids.
1871 Comparative bids are offers submitted by the bidders through
1872 Competitive Bidding in response to a call for offers by way of Invitation
1873 to Bid or Request for Expression of Interest.
1874

1875 30.3 For the unsolicited offer to be considered for evaluation by the
1876 Procuring Entity, the manufacturer, distributor, supplier, or consultant shall
1877 submit the following:
1878

1879 a) Basic information on the unsolicited offer which shall include,
1880 among others, details of the new concept or technology, expected
1881 output or outcome, cost-benefit analysis comparing the new concept
1882 or technology with the existing ones, and the proposed contract cost;

1883

1884 b) Proof of Concept, if applicable;

1885 i) Eligibility requirements in accordance with Section 52 of this
1886 IRR; and

1887 ii) Proposed terms and conditions of the offer.

1888

1889 30.4 Until the Procuring Entity acts upon the offer of the initial offeror or
1890 conducts the assessment therein, the said offeror may still withdraw its
1891 unsolicited offer. Otherwise, the same shall be subject to the assessment of
1892 the Procuring Entity and may no longer be withdrawn.

1893

1894 Upon receipt of the offer, the Procuring Entity shall notify the offeror within
1895 five (5) calendar days.

1896

1897 30.5 Evaluation of the Unsolicited Offer. Within fifteen (15) calendar days
1898 from receipt of the unsolicited offer, the Procuring Entity, through the End-
1899 User or Implementing Unit, shall conduct a preliminary assessment of the
1900 submitted requirements and determine if the project being offered is
1901 necessary pursuant to the nature, function and responsibilities of the
1902 Procuring Entity. Should there be no need for the project, the unsolicited
1903 offer shall be rejected.

1904

1905 If the need is determined, the Procuring Entity shall assess the completeness
1906 of the requirements. In case of incomplete submission of the requirements,
1907 the Procuring Entity shall send a written notice to inform the original offeror
1908 of the lacking requirement and shall request for a resubmission of the offer
1909 which shall be considered as new submission, subject to the first in time,
1910 stronger in right approach, as provided in the succeeding sub-section.

1911

1912 Should the Procuring Entity find the project necessary and establish the
1913 completeness of the requirements, it shall proceed to evaluate if the project
1914 is a new concept or technology. The project shall be considered as new
1915 concept or technology if it incorporates green, smart, emerging, or state-of-
1916 the-art technology, and has a positive impact in the implementation or
1917 operations of the Procuring Entity's needs. The Procuring Entity may also
1918 secure a certification from relevant agencies with knowledge and expertise
1919 on the proposed new concept or technology.

1920

1921 Upon compliance with the foregoing, the proponent shall be declared as the
1922 original offeror by the Procuring Entity.

1923

1924 30.6 Treatment of More than One Unsolicited Offer with the Same or Similar
1925 New Concept or Technology. In case the Procuring Entity receives more
1926 than one unsolicited offer involving the same or similar new concept or
1927 technology, the first in time, stronger in right approach shall be applied in
1928 determining the original offeror. All other offers shall be rejected without
1929 prejudice to the participation by the other offerors in the Competitive Bidding
1930 under this mode.

1931

1932 30.7 Negotiation. Within three (3) calendar days after the assessment under
1933 Section 30.4, the Procuring Entity shall commence negotiation with the
1934 proponent. The negotiation shall be concluded within fifteen (15) calendar
1935 days from the commencement thereof.

1936

1937 In the event that differences persist at the end of the negotiation period, the
1938 Procuring Entity shall declare failure of negotiation. In case of failure of
1939 negotiation, the Procuring Entity shall reject the offer.

1940

1941 If the negotiation is successful, the Procuring Entity shall issue a certification
1942 declaring the proponent as the original offeror in view of the successful
1943 negotiation.

1944

1945 30.8 For purposes of this mode of procurement, and when the innovation, or
1946 a new concept or technology is acceptable, the Procuring Entity may secure
1947 funds from available sources, subject to government budgeting, accounting,
1948 and auditing rules and regulations. After appropriate funds are secured for
1949 the purpose, the Procuring Entity shall ensure that the particular Goods or
1950 Consulting Services are included in the APP before proceeding further in this
1951 mode of procurement.

1952

1953 30.9 The Procuring Entity shall invite comparative bids against the original
1954 offer following a competitive selection process to determine the most
1955 responsive offer with the lowest price in accordance with competitive bidding
1956 procedure and evaluated through LCRB, MEARB, or MARB.

1957

1958 The contract shall be awarded to the original offeror if:

1959

1960 a) No comparative or competitive bid is received within the period
1961 prescribed in the IRR;

1962

1963 b) The bids submitted by the comparative offerors failed at bid opening; or

1964

1965 c) The original offeror matched or submits a lower price proposal against
1966 the comparative or competitive bid.

1967

1968 **Section 31. Direct Contracting**

1969

1970 31.1 Direct Contracting is a mode of procurement of Goods that does not
1971 require elaborate Bidding Documents, and the supplier is only required to
1972 submit at a price quotation or a pro-forma invoice together with the conditions
1973 of sale, which may be accepted immediately or after some negotiations.

1974

1975 31.2 Direct contracting may only be resorted to in any of the following
1976 conditions:

1977

1978 a) When the goods are proprietary in nature, which can only be
1979 obtained from the proprietary source; or when patents, trade secrets,
1980 and copyrights prohibit others from manufacturing the same item, as
1981 supported by relevant documentary evidence issued by competent
1982 authority;

1983

1984 b) When the procurement of critical components from a specific
1985 manufacturer, supplier, distributor is a condition precedent to hold a
1986 service provider to guarantee its project performance, in accordance
1987 with the provisions of the contract, as certified by the End-User or
1988 Implementing Unit, or

1989

1990 c) When it is sold by an exclusive dealer or manufacturer which does
1991 not have foreign distributors, and local sub-dealers selling at lower
1992 prices and for which no suitable substitute can be obtained at more
1993 advantageous terms to the government, as certified by the dealer or
1994 manufacturer.

1995

1996 31.3 Under this mode of procurement, the following procedure shall be
1997 observed:

1998

1999 a) The BAC shall prepare the RFQ or pro-forma invoice together with
2000 the terms and conditions of sale and shall send the same to the
2001 identified direct supplier.

2002

2003 b) Simplified negotiations on the terms and conditions of the contract
2004 may, at the option of the Procuring Entity, be conducted by the BAC
2005 to ensure that the supplier is technically, legally and financially

2006 capable to deliver the goods at the most advantageous price and
2007 contract for the Government.

2008

2009 c) The BAC shall recommend to the HoPE the award of contract in
2010 favor of the supplier. The award of contract shall be made in
2011 accordance with Section 66 of this IRR.

2012

2013 **Section 32. Direct Acquisition**

2014

2015 32.1 Direct Acquisition is a mode of procurement of CSEs not available in
2016 PS-DBM, non-CSEs and services, with ABC not exceeding Two Hundred
2017 Thousand Pesos (₱200,000.00), where the Procuring Entity, without need
2018 to conduct a canvass or request for quotations, may procure directly from
2019 any known and reputable source such as but not limited to, department store,
2020 depot, fast food chain, grocery and supermarket, wholesale and retail store,
2021 convenience store, clothing and apparel store, bookstore, drugstore and
2022 pharmacy, hotel and restaurant, furniture and appliance store, automotive
2023 parts and accessories store, construction and hardware store, home
2024 improvement, including online stores in eCommerce platforms: Provided,
2025 That Procuring Entities shall procure only from sources that comply with the
2026 legal, technical, financial and the nationality requirement under this IRR.

2027

2028 32.2 Procurement of Goods through Direct Acquisition shall be itemized in
2029 the APP, as far as practicable. However, those covered by petty cash
2030 purchases, including foreseeable emergencies, shall be reflected under a
2031 Miscellaneous Items category in the APP.

2032

2033 32.3 The HoPE may authorize the End-User or Implementing Unit directly
2034 purchase from any known and reputable source with legal, technical, and
2035 financial capacity, established based on any of the following:

2036

2037 a) The Suppliers are registered with the PhilGEPS as verified from the
2038 PhilGEPS website;

2039

2040 b) The Goods are available in eCommerce Platforms for delivery or
2041 pick up at such date and time identified by the Procuring Entity; or

2042

2043 c) The Goods are readily available off-the-shelf and can be delivered
2044 immediately.

2045

2046 **Section 33. Repeat Order**

2047

2048 33.1 Repeat Order is a mode of procurement wherein the Procuring Entity may
2049 procure Goods from the previous winning bidder whenever there arises a need
2050 to replenish the Goods procured under a contract previously awarded through
2051 bidding, particularly Competitive Bidding, Limited Source Bidding, Competitive
2052 Dialogue, or Unsolicited Offer with Bid Matching.

2053

2054 33.2 Repeat Order shall be subject to the post-qualification process prescribed
2055 in the Bidding Documents and the following conditions:

2056

2057 a) The unit price must be equal to or lower than that provided in the
2058 original contract and the prevailing market price;

2059

2060 b) The Repeat Order shall be availed of only within six (6) months from
2061 the date of the notice to proceed arising from the original contract, except
2062 in cases duly approved by the GPPB; and

2063

2064 c) The Repeat Order shall not exceed twenty-five percent (25%) of the
2065 quantity of each item in the original contract. In order to comply with this
2066 requirement, the goods procured under the original contract must be:

2067

2068 i) Quantifiable;

2069 ii) Divisible; and

2070 iii) Consisting of at least four (4) units per item.

2071

2072 Under this mode of procurement, the following procedure shall be observed:

2073

2074 a) Upon determination of the need to replenish the Goods earlier
2075 procured through Competitive Bidding, Limited Source Bidding,
2076 Competitive Dialogue, or Unsolicited Offer with Bid matching, the End-
2077 User or Implementing Unit shall prepare the necessary Purchase
2078 Request for the procurement of additional Goods, upon confirmation
2079 of the following:

2080

2081 i) The unit price of the Goods to be reordered must be equal or
2082 lower than that provided in the original contract; and

2083

2084 ii) The unit price of the goods to be reordered is lower than the
2085 prevailing market price.

2086

2087 b) When all the conditions are present, the BAC shall recommend to
2088 the HoPE the award of contract through Repeat Order.

Section 34. Small Value Procurement

34.1 Small Value Procurement (SVP) is a mode of procurement whereby the Procuring Entity requests for the submission of at least three (3) price quotations for Goods not available in PS-DBM, Infrastructure Projects, and Consulting Services.

The receipt of one (1) quotation is sufficient to proceed with the evaluation of bidders: Provided, That, the amount involved does not exceed Two Million Pesos (₱2,000,000.00) subject to the periodic review of the threshold amount and adjustments as may be deemed appropriate by the GPPB.

34.2 In case of LGUs, the current threshold amount shall be as follows:

CLASSIFICATION OF LGUs	MAXIMUM AMOUNT (in Philippine Peso)		
	Province	City	Municipality
1 st Class	2,000,000	2,000,000	400,000
2 nd Class	2,000,000	2,000,000	400,000
3 rd Class	2,000,000	1,600,000	400,000
4 th Class	1,600,000	1,200,000	200,000
5 th Class	1,200,000	800,000	200,000

For Barangays ₱100,000

The GPPB is authorized to adjust the threshold amount based on the LGU income classification.

The threshold amount shall be applicable in the procurement of Goods, Infrastructure Projects, and Consulting Services.

Under this mode of procurement, the following procedure shall be observed:

- a) The End-User or Implementing Unit shall submit a request for SVP to the BAC. The request shall indicate the Technical Specifications, Scope of Work, Terms of Reference, as the case may be, ABC and other terms and conditions.
- b) Except for those with ABCs equal to One Hundred Thousand Pesos (₱100,000.00) and below which shall not require posting, Request for Quotation (RFQ) or Request for Proposal (RFP) shall be posted for a period of three (3) calendar days on the PhilGEPS website, website of the Procuring Entity, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity.

2125

2126 c) The BAC shall prepare and send the RFQs or RFPs to at least three
2127 (3) suppliers, contractors or consultants of known qualifications, as the
2128 case may be. Apart from the intended recipients of the RFQs or RFPs,
2129 those who responded to any of the required postings shall be allowed
2130 to participate. Receipt of at least one (1) quotation is sufficient to
2131 proceed with the evaluation thereof.

2132

2133 d) In case no price quotation is received from the suppliers, the Procuring
2134 Entity shall extend the deadline for submission of price quotation until
2135 receipt of at least a single price quotation is obtained; but the
2136 extension shall not go beyond the validity of the corresponding
2137 appropriations.

2138

2139 e) Pre-bid conference may be conducted at the discretion of the BAC in
2140 order to explain the requirements, terms, and conditions stipulated in
2141 the RFQ or RFP.

2142

2143 f) After the deadline for submission of quotations or proposals, an
2144 Abstract of Quotations or Ratings shall be prepared setting forth the
2145 names of those who responded to the RFQ or RFP, and their
2146 corresponding price quotations or ratings.

2147

2148 g) The BAC shall recommend to the HOPE the award of contract in favor
2149 of the supplier, contractor, or consultant with the LCRB, MEARB,
2150 MARB or HRRB. In case of approval, the HOPE shall immediately
2151 enter into contract with the said supplier, contractor, or consultant.

2152

2153 **Section 35. Negotiated Procurement**

2154

2155 Negotiated Procurement is a mode of procurement of Goods, Infrastructure
2156 Projects and Consulting services, whereby the Procuring Entity directly
2157 negotiates a contract with a technically, legally and financially capable
2158 supplier, contractor or consultant.

2159

2160 Negotiated Procurement shall be allowed only in the following instances:

2161

2162 **35.1 Two Failed Biddings.** Where there has been two (2) failure of biddings
2163 in the case of Competitive Bidding, Limited Source Bidding or Competitive
2164 Dialogue for the second time, as provided in Section 64 of this IRR.

2165

2166 35.1.1 Under this mode of procurement, the following shall be
2167 observed:

2168
2169 a) The BAC shall conduct mandatory review of the terms,
2170 conditions, specifications, and cost estimates. Thereafter, the
2171 BAC, based on its findings, as assisted by its Secretariat, TWG
2172 and End-User or Implementing Unit may revise and agree on
2173 the technical, legal and financial eligibility requirements and
2174 technical specifications or terms of reference, and if necessary,
2175 adjust the ABC, subject to the required approvals. However,
2176 the ABC cannot be increased by more than twenty percent
2177 (20%) of the ABC for the last failed bidding. In case no revision
2178 of the Class "A" Eligibility Document covered by Section 52 of
2179 this IRR is found necessary by the BAC after the conduct of the
2180 mandatory review, the submission of the PhilGEPS Certificate
2181 of Registration and Membership in accordance with Section 52
2182 of this IRR shall likewise be mandatory;
2183
2184 b) The BAC shall invite at least three (3) suppliers, contractors
2185 or consultants, including those disqualified in previous biddings
2186 for the project, for negotiations to ensure effective competition.
2187 This, notwithstanding, those who responded through any of the
2188 required postings shall be allowed to participate. Even if only
2189 one (1) bidder responds to such invitation or posting, the BAC
2190 shall proceed with the negotiation subject to the rules
2191 prescribed hereunder;
2192
2193 c) Any requirements, guidelines, documents, clarifications, or
2194 other information relative to the negotiations that are
2195 communicated by the BAC to a supplier, contractor, or
2196 consultant shall be communicated on an equal basis to all other
2197 suppliers, contractors, or consultants engaging in negotiations
2198 with the BAC relative to the procurement. The prospective
2199 bidders shall be given equal time and opportunity to negotiate
2200 and discuss the technical and financial requirements of the
2201 project to be able to submit a responsive quotation or proposal;
2202
2203 d) Following completion of the negotiations, the BAC shall
2204 request all suppliers, contractors, or consultants in the
2205 proceedings to submit, on a specified date, a best offer based
2206 on the final technical and financial requirements; and
2207
2208 e) The BAC shall recommend award of contract to the HoPE in
2209 favor of the supplier, contractor or consultant determined to
2210 have the Single or Lowest Calculated (S/LC) and Responsive

2211 or Most Economically Advantageous and Responsive
2212 Quotation (MEARQ) for Goods and Infrastructure Projects or
2213 Single or Highest Rated and Responsive Proposal (S/HRRP)
2214 for Consulting Services. The award of contract shall be made
2215 in accordance with Section 66 of this IRR.
2216

2217 **35.2 Emergency Cases.** This mode of Negotiated Procurement may be
2218 resorted to in any of the following cases:

- 2219
- 2220 a) Imminent danger to life or property during a state of calamity;
- 2221
- 2222 b) When time is of the essence arising from natural or man-made
2223 calamities; or
2224
- 2225 c) Other causes where immediate action is necessary:
- 2226
- 2227 i) To prevent damage to or loss of life or property, or
2228
- 2229 ii) To restore vital public services, infrastructure facilities and
2230 other public utilities.

2231

2232 35.2.1 The instances or situations where the foregoing conditions may
2233 be applied include the provision of immediate response and initial
2234 recovery steps to avoid loss of life, injury, disease and other negative
2235 effects on human, physical, mental and social well-being, together
2236 with damage to property, destruction of assets, loss of services, social
2237 and economic disruption and environmental degradation.
2238

2239 35.2.2 In this mode of Negotiated Procurement, the documentary
2240 requirements such as expired Mayor's permit with Official Receipt for
2241 the renewal application and Unnotarized Omnibus Sworn Statement
2242 are accepted as basis for award, and subject to the submission after
2243 the award of the Contract, but before payment.
2244

2245 35.2.3 In the case of Infrastructure Projects, the Procuring Entity has
2246 the option to undertake the project through negotiated procurement or
2247 by administration or, in high security risk areas, through the AFP.
2248

2249 35.2.4 Under this mode of procurement, the following procedure shall
2250 be observed:

- 2251
- 2252 a) The HoPE may delegate to either the BAC or the End-user
2253 or Implementing Unit or any other appropriate bureau,

committee, support or procuring unit the authority to directly negotiate with a legally, technically, and financially capable supplier, contractor, or consultant for procurement undertaken through any of the allowable instances of Negotiated Procurement - Emergency Cases under this Section.

b) The End-User or Implementing Unit or the duly authorized official or personnel shall submit a request to the BAC or the HoPE, as the case may be, accompanied by appropriate supporting documents identifying the emergency sought to be addressed, and the necessary Goods, Infrastructure Projects or Consulting Services (e.g. Technical Specifications, Scope of Work or Terms of Reference) that have to be procured to address the emergency.

c) The BAC or the End-User or Implementing Unit or any other appropriate bureau, committee, support or procuring unit shall recommend to the HoPE the necessary revisions of the APP to cover the Procurement Project that will be subject to Negotiated Procurement (Emergency Cases) under this Section subject to the validation by the appropriate office in the Procuring Entity that there are funds in the budget to cover for the same.

d) After conducting the negotiations with a legally, technically and financially capable supplier, contractor, or consultant, the HoPE, upon recommendation of the BAC or the End-User or Implementing Unit or any other appropriate bureau, committee, support or procuring unit, authorized for the purpose shall immediately award the contract to the Supplier, Contractor or Consultant.

35.3 Take-over of Contracts. 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;

35.3.1 Instances when this mode of Negotiated Procurement may be resorted to:

a) The contract, previously awarded through Competitive Bidding Competitive Dialogue, or Limited Source Bidding, has been

2297 rescinded or terminated for causes provided for in the contract
2298 and existing laws; and
2299

2300 b) Where immediate action is necessary:

2301

2302 i) To prevent damage to or loss of life or property, or

2303 ii) To restore vital public services, infrastructure facilities and
2304 other utilities
2305

2306 35.3.2 Under this mode of procurement, the following procedure shall
2307 be observed:
2308

2309 a) The BAC shall post-qualify and negotiate with the second
2310 lowest calculated/Most Economically Advantageous
2311 (MEA)/Highest Rated Bidder (HRB) for the project under
2312 consideration at the said bidder's own original bid price,
2313 applicable to the remaining works to be done. Authority to
2314 negotiate contracts for projects under the foregoing exceptional
2315 cases shall be subject to prior approval by the HoPE
2316 concerned, within their respective limits of approving authority.
2317

2318 b) If negotiation fails, then the BAC shall post-qualify and
2319 negotiate with the next Lowest Calculated or MEA or HRB at
2320 the said bidder's own original bid price.
2321

2322 c) If the negotiation fails another time, the process is repeated
2323 until all the bidders from the previous bidding have been
2324 considered.
2325

2326 d) If the negotiation fails and there is no bidder left from the
2327 previous bidding or if the original awardee is a Single
2328 Calculated Responsive Bidder (SCRB) or Single Rated
2329 Responsive Bidder (SRRB), the BAC may either invite at least
2330 three (3) suppliers, contractors or consultants to submit their
2331 bids, or resort to any other appropriate mode of procurement.
2332

2333 e) In case of successful post-qualification and negotiation, the
2334 BAC shall recommend to the HoPE the award of contract with
2335 the said supplier, contractor or consultant. The award of
2336 contract shall be made in accordance with Section 66 of this
2337 IRR.
2338

2339 **35.4. Adjacent or Contiguous.** Where the subject contract is adjacent or
2340 contiguous to an ongoing Infrastructure Project, or Consulting Service where
2341 the consultants have unique experience and expertise to deliver the required
2342 service, provided the following conditions are present:

2343

2344 a) That the original contract is the result of a Competitive Bidding,
2345 Competitive Dialogue, and Limited Source Bidding;

2346

2347 b) The subject contract to be negotiated has similar or related Scope of
2348 Work or Terms of Reference;

2349

2350 c) It is within the contracting capacity of the contractor or consultant;

2351

2352 d) For Infrastructure Projects, in determining the SLCC, Net Financial
2353 Contracting Capacity (NFCC), and PCAB license, the sum of the value
2354 of the remaining works for the existing contract and the ABC of the
2355 contiguous or adjacent work shall be considered;

2356

2357 e) The contractor or consultant uses the same prices or lower unit prices
2358 as in the original contract less mobilization cost;

2359

2360 f) The amount involved does not exceed the amount of the ongoing
2361 project;

2362

2363 g) The contractor or consultant has no negative slippage or delay in the
2364 original contract; and

2365

2366 h) The negotiations for the procurement are commenced before the
2367 expiry of the original contract.

2368

2369 35.4.1 In Infrastructure Projects, the phrase adjacent or contiguous
2370 refers to projects that are in actual physical contact with each other or
2371 in the immediate vicinity such that the required equipment and other
2372 resources can easily be mobilized; while in Consulting Services, it
2373 pertains to the linkage or relationship of the subject matters, outputs
2374 or deliverables required.

2375

2376 If there is a necessity to introduce new items which are related to the
2377 scope of work of the original contract, the Procuring Entity shall ensure
2378 that the unit prices of the new items are equal to or lower than the
2379 prevailing market prices.

2380

2381 **35.5 Agency-to-Agency.** Procurement of Goods, Infrastructure Projects,
2382 and Consulting Services from another agency of the government which has
2383 the mandate and absorptive capacity to undertake the project, subject to the
2384 following conditions:

2385

2386 a) The Servicing Agency has certified that it has the mandate and
2387 absorptive capacity to undertake the project, and the Procuring
2388 Entity has validated the same;

2389

2390 b) The Servicing Agency owns or has access to the necessary tools
2391 and equipment required for the project;

2392

2393 c) Sub-contracting is not allowed. However, the Servicing Agency
2394 may implement the Infrastructure Project in-house, by job-order, or
2395 through the pakyaw contracting system; and

2396

2397 d) For procurement of Infrastructure Projects, the Servicing Agency
2398 must have a track record of having completed, or supervised a
2399 project, by administration or by contract, similar to and with a cost
2400 of at least fifty percent (50%) of the project at hand.

2401

2402 35.5.1 Under this mode of procurement, the following shall be observed
2403 by the Procuring Entity:

2404

2405 a) It shall secure a certificate from the relevant officer of the
2406 Servicing Agency that the latter complies with all the foregoing
2407 conditions.

2408

2409 b) Based on the assessment and recommendation of the End-
2410 User or Implementing Unit, the BAC shall issue a Resolution
2411 recommending the use of Agency-to-Agency Agreement to the
2412 HoPE.

2413

2414 c) In case of approval, the HoPE shall enter into a MOA with the
2415 Servicing Agency.

2416

2417 35.5.2 The following Agency-to-Agency procurement shall be
2418 excluded from the application of the provisions under this Section, and
2419 shall be governed by the following laws and issuances:

2420

2421 a) Infrastructure Projects undertaken through the Armed Forces
2422 of the Philippines Corps of Engineers (AFPCOE) which shall
2423 continue to be governed by the Guidelines on implementation

2424 of Infrastructure Projects undertaken by the AFP Corps of
2425 Engineers;

2426

2427 b) Procurement of Printing Services from recognized government
2428 printers shall be governed by their respective charter; and

2429

2430 c) Procurement of Goods from the PS-DBM which is tasked with
2431 a centralized procurement of commonly used Goods for the
2432 government in accordance with Section 40 of this IRR.

2433

2434 **35.6 Scientific, Scholarly or Artistic Work, Exclusive Technology and**
2435 **Media Services.** Where Goods, Infrastructure Projects and Consulting
2436 Services can be contracted to a particular supplier, contractor or consultant
2437 and as determined by the HoPE, for any of the following:

2438

2439 a) Work of art; commissioned work or services for creative design or
2440 a specific artist skill (e.g. Singer, performer, Poet, writer, painter,
2441 sculptor, etc.);

2442

2443 b) Restorative works for the conservation of historical and culturally
2444 significant structures and artworks;

2445

2446 c) Scientific, academic, scholarly work or research, or legal services;

2447

2448 d) Highly-specialized life-saving medical and biotech equipment and
2449 devices, medicine, supplies, materials, tools and consumables, as
2450 certified by the Department of Health (DOH);

2451

2452 e) Scientific, technical, economic, business, trade or legal journal,
2453 magazine, paper, subscription, or other exclusive statistical
2454 publications and references; or

2455

2456 f) Media documentation, advertisement, or announcement through
2457 television, radio, newspaper, internet, and other communication
2458 media;

2459

2460 35.6.1 Due to the nature of the information to be disseminated,
2461 alongside principles of transparency, efficiency and economy, award
2462 to more than one (1) supplier may be made by the Procuring Entity.

2463

2464 35.6.2 Under this mode of procurement, the following procedure shall
2465 be observed:

2466

- 2467 a) The BAC shall undertake the negotiation with a technically,
2468 legally and financially capable supplier, contractor or consultant
2469 based on the Technical Specifications, Scope of Work or
2470 Terms of Reference prepared by the End-User or Implementing
2471 Unit.
2472
2473 b) Upon successful negotiation, the BAC shall recommend the
2474 award of contract to the HoPE in accordance with Section 66 of
2475 this IRR.
2476

2477 **35.7 Highly Technical Consultants.** In the case of individual consultants
2478 hired to do work that is (i) highly technical or proprietary; or (ii) primarily
2479 confidential or policy determining: Provided, That in both instances, trust and
2480 confidence are the primary considerations for the hiring of the consultant:
2481 Provided, however, That the term of the individual consultant shall, at the
2482 most, be on a yearly basis, renewable at the option of the appointing HoPE,
2483 but in no case shall exceed the term of the latter;
2484

2485 35.7.1 Under this mode of procurement, the following procedure shall
2486 be observed:
2487

2488 a) The BAC shall undertake the negotiation with the individual
2489 consultant based on the Terms of Reference prepared by the
2490 End-User or Implementing Unit. Considering the nature of the
2491 consultancy work, the negotiations need not be elaborate, it is
2492 enough that the BAC has validated that the individual is legally,
2493 technically and financially capable to undertake and fulfill the
2494 consultancy work based on the Terms of Reference.
2495

2496 b) The BAC shall recommend to the HoPE the award of contract
2497 to the individual consultant. The award of contract shall be
2498 made in accordance with Section 66 of this IRR.
2499

2500 **35.8 Defense Cooperation Agreements and Inventory-Based Items.** The
2501 Secretary of National Defense may directly negotiate with an agency or
2502 instrumentality of another country with which the Philippines has entered into
2503 a defense cooperation agreement or otherwise maintains diplomatic relations
2504 when the procurement involves major defense equipment or materiel or
2505 defense-related consultancy services, subject to the following conditions:
2506

2507 a) The Secretary of National Defense has deemed it necessary in order
2508 to protect the interest of the country;
2509

- 2510 b) The expertise or capability required is not locally available; and
2511
2512 c) The defense equipment or materiel or defense related consultancy
2513 services to be procured under these modes included in the AFP
2514 Modernization Program previously approved by the President of the
2515 Philippines.
2516
2517 35.8.1 In the interest of national security, the Secretary of National
2518 Defense, or any of his authorized representative may also directly
2519 negotiate with a supplier or manufacturer in procuring inventory-based
2520 items, pertaining to major defense equipment or material, which are
2521 not necessarily limited to those under the AFP Modernization
2522 Program, subject to the following conditions:
2523
2524 a) Direct negotiation will address compatibility, interoperability, and
2525 sustainability;
2526
2527 b) The supplier or manufacturer has fully and satisfactorily
2528 implemented a contract of the same item with the Department of
2529 National Defense (DND), any of its bureaus or attached agencies,
2530 or law enforcement agencies; and
2531
2532 c) The supplier or manufacturer shall provide performance security in
2533 accordance with the Act.
2534
2535 35.8.2 Law enforcement agencies (LEA) may utilize this mode when
2536 the aforementioned conditions are met.
2537
2538 The LEAs are as follows:
2539
2540 a) Philippine National Police (PNP), including the PNP Maritime
2541 Group (PNP-MG) and the PNP Aviation Security Group (PNP-
2542 AVSEGROUP);
2543 b) Philippine Drug Enforcement Agency (PDEA);
2544 c) Bureau of Immigration (BI);
2545 d) Office for Transportation Security (OTS);
2546 e) Bureau of Fire Protection (BFP);
2547 f) National Bureau of Investigation (NBI);
2548 g) Presidential Security Group (PSG);
2549 h) National Police Commission (NAPOLCOM);
2550 i) Bureau of Jail Management and Penology (BJMP);
2551 j) Bureau of Corrections (BuCor); and
2552 k) Philippine Coast Guard (PCG)

2553

2554 35.8.3 Under this mode of procurement, the following procedure shall
2555 be observed:

2556

2557 a) Initiate negotiation with agency or instrumentality of a
2558 cooperating country.

2559

2560 b) Ensure capability and expertise are indeed unavailable locally.

2561

2562 c) Validate item's inclusion in the AFP Modernization Program.

2563

2564 d) Conduct direct negotiation with the supplier or manufacturer.

2565

2566 e) Ensure direct negotiation addresses compatibility and
2567 interoperability.

2568

2569 f) Verify satisfactory implementation of a prior contract for the
2570 same item.

2571

2572 g) Require manufacturer, supplier or distributor to provide
2573 performance security as per Section 39.

2574

2575 **35.9 Lease of Real Property and Venue.** For the lease of real property and
2576 venue for official use, it is preferred that government agencies lease publicly
2577 owned real property or venue from other government agencies. If there is an
2578 available publicly owned real property or venue that complies with the
2579 requirements of the Procuring Entity, it may enter into a contract of lease with
2580 the government-agency owner. In the event that the Procuring Entity would
2581 resort to privately owned real property or venue, the End-User or
2582 Implementing Unit shall justify that the same is more efficient and economical
2583 to the government;

2584

2585 For purposes of this type of Negotiated Procurement, the following terms are
2586 defined as:

2587

2588 a) Real Property refers to land and buildings (office spaces or units)
2589 and constructions of all kinds adhered to the soil.

2590

2591 b) Venue refers to training centers, convention halls, hotels, and
2592 similar establishments catering to trainings, seminars,
2593 conferences, conventions, symposia and similar gatherings
2594 requiring the official participation of government officials and

2595 employees. This may include meals and accommodation
2596 depending on the requirements of the Procuring Entity.

2597

2598 c) Lessee refers to any government agency temporarily occupying
2599 real property on the basis of a contract executed with the private
2600 individual, partnership, cooperative, association, or corporation
2601 having absolute ownership over such real property.

2602

2603 d) Lessor refers to any government agency or private individual,
2604 partnership, cooperative, association, or corporation having
2605 absolute ownership over the real property or venue to be leased.

2606

2607 35.9.1 Under this mode of Negotiated Procurement, the following
2608 conditions must be present:

2609

2610 a) The location of the real property or venue to be leased
2611 should have been meticulously selected by the Procuring
2612 Entity after taking consideration, among others, the need for
2613 prudence and economy in government service and the
2614 suitability of the area in relation to the mandate of the office,
2615 and its accessibility to its stakeholders. For lease of venue,
2616 other factors such as the nature of the event or the level of
2617 security in the proposed location may also be taken into
2618 account.

2619

2620 b) The ABC shall be supported by a market study, based on
2621 either the average or the midpoint of the prevailing lease
2622 rates for real property or venue, from at least three (3)
2623 lessors within the vicinity of the selected location complying
2624 with the minimum criteria and technical requirements of the
2625 End-User or Implementing Unit. In no case shall the rental
2626 rates, including additional expenses, such as but not limited
2627 to association dues in the case of lease of real property,
2628 exceed the ABC.

2629

2630 c) As a general rule, rental rates are considered reasonable
2631 when they represent or approximate the value of what the
2632 lessee gets in terms of accommodation, facility, amenities,
2633 and convenience from the leased real property or venue,
2634 and the lessor gets an equitable return of capital or
2635 investment.

2636

- 2637 d) The technical requirements shall be prepared by the End-
2638 User or Implementing Unit taking into consideration the
2639 rating factors to be issued by the GPPB.
2640
- 2641 e) Pursuant to Annex “E” of COA Circular No. 2012-003, lease
2642 of expensive or luxury venues for meetings or seminars and
2643 other official functions shall not be allowed unless such will
2644 be used for government-sponsored international
2645 conventions, meetings and the like. Relative to this, holding
2646 of activities in a four (4) or five (5)-star hotel or venue must
2647 be supported by justification in accordance with the said
2648 COA Circular, or future updates therewith.
2649
- 2650 f) The End-User or Implementing Unit shall submit a
2651 Purchase Request including supporting documents such as
2652 but not limited to the market study and technical
2653 requirements of the project to the BAC or Procurement Unit,
2654 as applicable. The submission of the request to procure
2655 must consider the sufficiency of the period to undertake the
2656 procurement process vis-a-vis the delivery period.
2657
- 2658 35.9.2 Under this mode of procurement, the following procedure shall
2659 be observed:
2660
- 2661 a) For Real Property:
2662
- 2663 i) The BAC shall invite at least three (3) prospective lessors to
2664 submit sealed price quotations or password-protected price
2665 quotations in compressed archive folders, in case of electronic
2666 submission of price quotations.
2667
- 2668 ii) The deadline for the submission of quotations may be
2669 extended until the BAC or Procurement Unit determines that
2670 quotation/s received is/are compliant with the requirements of
2671 the project.
2672
- 2673 iii) The price quotations shall be opened immediately after the
2674 deadline for submission of quotations to determine the LC or
2675 MEAQ. Receipt of at least one (1) quotation is sufficient to
2676 proceed with the evaluation thereof.
2677
- 2678 iv) For electronic submission of price quotations, the
2679 passwords for accessing the same will be disclosed by the

prospective Lessors on a specified date which may be done in person or face-to-face through videoconferencing, webcasting or similar technology.

v) The real property being offered by the Lessor with the S/LC or MEAQ shall be rated in accordance with the technical specifications and the reasonableness of its price quotation shall be determined in accordance with the methodology prescribed in the Guidelines.

vi) Upon determination of the responsiveness and reasonableness of the quotation, the BAC shall recommend to the HOPE the award of contract in favor of the lessor with the S/LC or MEARQ. The award of contract shall be made in accordance with Section 66 of this IRR.

b) For Venue:

i) The BAC shall send the RFQ to at least three (3) venues within the vicinity of the selected location. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.

ii) The deadline for the submission of quotations may be extended until the BAC or Procurement Unit determines that quotation/s received is/are compliant with the requirements of the project.

iii) The venue being offered by the lessor with the LCQ shall then be rated in accordance with the technical specifications prepared pursuant to the Guidelines. Compliance rating with technical specifications may be conducted through ocular inspection, interviews, or other forms of due diligence.

iv) Upon determination of the responsiveness of the quotation, the BAC shall recommend to the HOPE the award of contract in favor of the lessor with the S/LCRQ. The award of contract shall be made in accordance with Section 66 of this IRR.

35.10 Non-Government Organization (NGO) Participation. When an appropriation law or ordinance earmarks an amount to be specifically contracted out to NGOs, the Procuring Entity may enter into a Memorandum

2722 of Agreement with an NGO, subject to the guidelines to be issued by the
2723 GPPB for the purpose.

2724

2725 For the purpose of this type of Negotiated Procurement, the following general
2726 guidelines shall apply:

2727

2728 a) NGO refers to a non-stock, non-profit domestic corporation duly
2729 registered with the Securities and Exchange Commission (SEC) or
2730 a cooperative duly registered with the Cooperative Development
2731 Authority (CDA) committed to the task of socio-economic
2732 development and established primarily for providing goods and
2733 services to the public.

2734

2735 b) The selected NGO shall keep and maintain separate savings
2736 account and accounting records in accordance with generally
2737 accepted accounting rules and principles, subject to visitorial audit
2738 and examination by the Procuring Entity or the COA.

2739

2740 35.10.1 Under this type of Negotiated Procurement, the following
2741 procedure shall be observed:

2742

2743 a) To ensure transparency in the selection of NGO through
2744 Negotiated Procurement, posting shall be done in accordance
2745 with Section 50 of this IRR.

2746

2747 b) After the required posting period, the Procuring Entity shall
2748 invite at least three (3) prospective NGOs to submit sealed
2749 price quotations or password-protected price quotations in
2750 compressed archive folders, in case of electronic submission
2751 of price quotations.

2752

2753 c) The Procuring Entity shall likewise require submission of the
2754 complete project proposal together with designs, plans,
2755 blueprints, budgets and charts, if necessary.

2756

2757 d) On the date specified in the notice, the Procuring Entity shall
2758 open the price quotations and determine the Single or Lowest
2759 Calculated Quotation (S/LCQ) or MEAQ. For electronic
2760 submission of price quotations, the passwords for accessing
2761 the same shall be disclosed on a specified date by the NGOs
2762 to the Procuring Entity either in person or online through
2763 videoconferencing, webcasting or similar technology.
2764 Consistent with the nature of an NGO, no profit should be

included in its bid. Thus, the procuring entity shall ensure that the LCQ or MEAQ does not include any profit margin or mark-up.

- e) After determination of the responsiveness to the technical requirements, the BAC shall recommend to the HoPE the award of contract to the S/LCQ or MEARQ.

35.11 Community Participation. The Procuring Entity may directly purchase agricultural and fishery products from local farmers and fisherfolk and directly negotiate simple Infrastructure Projects with local communities or social groups (CSG) or members thereof, subject to the Guidelines to be issued by the GPPB.

For this purpose, CSG may be classified as organized or unorganized.

- a) Organized community or social group (OCSG) shall refer to a CSG that has a defined organizational structure, identified membership and leadership, adopts a principle of shared responsibility for their actions and shall be registered with the appropriate regulatory bodies. It shall include Microenterprises.
- b) Unorganized community or social group (UCSG) shall refer to a CSG that is not registered with any government regulatory body or a member of a duly recognized private organization, which include, but are not limited to, community labor or pakyaw groups, social enterprises, associations of barangay health workers, farmers, fisherfolk, women, elderly, indigenous peoples, parent-teacher associations, solo parents, and persons with disabilities.

35.11.1 Under this mode of procurement, the following procedural guidelines shall apply:

- a) The End-User or Implementing Unit shall identify project proposals in line with the Procurement Entity's strategic plan, key results areas, and major final outputs that will be sustainable if implemented with the participation of the CSGs or members thereof, or where their engagement will lead to the achievement of specific social objectives. The procurement mode to be reflected in the APP shall be Negotiated Procurement – Community Participation (NP-CP) pursuant to this IRR.

- b) The objectives, requirements, and target community for the community-based project shall be identified by the End-User or Implementing Unit. The project requirements shall include a brief description of the Goods or Simple Infrastructure Projects to be procured, the Technical Specifications or Scope of Work, the ABC, the manner and deadline for submission of quotations, the terms and conditions of the project, and other necessary information.
- c) In preparing the technical specifications of agricultural and fishery products, the End-User or Implementing Unit shall identify clear standards of functionality and performance in the technical specifications to be met.
- d) For Simple Infrastructure Projects, the Procuring Entity shall ensure the conduct of detailed engineering activities in accordance with Section 8 of this IRR. Further, the Procuring Entity shall provide a clear delineation in the Scope of Work for each phase to ensure that the project would be usable and structurally sound.
- e) The End-User or Implementing Unit shall conduct a market scoping to determine the availability of CSGs within the area where the target community is located. If no such CSG is capable to supply the required Goods or implement simple Infrastructure Projects, the Procuring Entity shall determine if CSGs in nearby or other communities may be engaged based on the specific objectives and purpose of the Community-based Projects, i.e., improving the well-being of the target community or to achieve positive outcomes like poverty reduction, hunger mitigation or elimination, climate change adaptation or mitigation, gender inequality reduction, disease reduction, job generation, among others.

35.11.2 To ensure the readiness of the procurement, the End-User or Implementing Unit shall undertake the following:

- a) Conduct prior consultation with the local communities through CSGs or members thereof before implementation of any Community-based Project;

- 2850 b) Secure any prior approval from the LGU as may be required
2851 under Section 27 of RA No. 7160 or the Local Government
2852 Code and its IRR or other laws and issuances;
2853
2854 c) Consider the peculiar needs and situations of Indigenous
2855 Peoples and those located in conflict-afflicted areas that are
2856 included in the target community for the implementation of
2857 Community-based Project; and
2858
2859 d) Determine the necessity of undertaking activities for social
2860 preparation and capacity development of the target
2861 community prior to the implementation of Community-based
2862 Projects.
2863

2864 **35.12 United Nations (UN) Agencies, International Organizations or**
2865 **International Financing Institutions.** The Procuring Entity is allowed to
2866 conduct direct procurement from specialized agencies of the UN,
2867 international organizations or international financing institutions, of any of the
2868 following:
2869

- 2870 a) Small quantities of off-the-shelf goods, exclusively used in
2871 education and health;
2872
2873 b) Specialized products where the number of suppliers is limited,
2874 such as vaccine;
2875
2876 c) Goods and Consulting Services involving advanced technologies,
2877 techniques, and innovations not locally available as certified by the
2878 DTI, when it is most advantageous to the Procuring Entity; or
2879
2880 d) Goods for critical public health priorities as determined and
2881 certified by the DOH.
2882

2883 **35.13 Direct Retail Purchase of Petroleum Fuel, Oil and Lubricant (POL)**
2884 **Products, electronic charging devices, and Online Subscriptions.** Direct
2885 retail purchase of POL products, electronic charging devices, and online
2886 subscriptions not available in the PS-DBM may be made by the End-User or
2887 Implementing Units delegated to procure the same from identified direct
2888 suppliers or service providers, where Goods are required by a Procuring
2889 Entity for the efficient discharge of its principal functions or day-to-day
2890 operations.
2891

2892 Online subscription includes:

2893

2894 a) Computer software and applications such as video conferencing
2895 applications, computer-aided design and drafting applications,
2896 office productivity tools, and system protection software;

2897

2898 b) Electronic publications, reference materials and journals;

2899

2900 c) Off-the-shelf software and applications, except internet and cloud
2901 computing services; and

2902

2903 d) Web-based services.

2904

2905 For the purpose of this type of Negotiated Procurement, Electronic
2906 Charging Devices shall refer to charging ports and installations
2907 intended for electric vehicles.

2908

2909 The GPPB may provide an amendment on the above enumeration or make
2910 an additional type of Negotiated Procurement subject to the following
2911 conditions:

2912

2913 a) The Procuring Entity has requested the GPPB for the use of
2914 Negotiated Procurement of Goods, Infrastructure Projects or
2915 Consulting Services with utmost necessity and justification;

2916

2917 b) The GPPB shall have findings that any of the existing modes of
2918 procurement will be impossible or defeats the purpose of the
2919 procurement;

2920

2921 c) The Goods, Infrastructure Projects or Consulting Services are better
2922 identified by the Procuring Entity on its distinctiveness and uniqueness
2923 to a procurement program, activity or project; and

2924

2925 d) Other circumstances that may be identified by the GPPB which
2926 justifies the addition of a new type of Negotiated Procurement that will
2927 address the concerns of one or more government agencies.

2928

2929 The purchase of POL products, electronic charging devices and online
2930 subscriptions can be contracted by the End-User or Implementing Unit to any
2931 available direct suppliers or service providers under the following conditions:

2932

2933 a) For petroleum fuel (gasoline, diesel, and kerosene), oil and
2934 lubricants:

2935

- 2936 i) Direct purchase must be made from any available retailers,
2937 dealers or gas stations at retail pump price;
2938
- 2939 ii) The requirement must be intended to be used for any official
2940 government vehicles and equipment for immediate
2941 consumption; and
2942
- 2943 iii) Payment may be made through cash advance, reimbursement
2944 or other allowable payment modalities subject to pertinent
2945 auditing and accounting rules and regulations.
2946
- 2947 b) For online subscriptions:
2948
- 2949 i) Direct purchase shall be made for online subscription where no
2950 local provider is available;
2951
- 2952 ii) The maximum amount for the ABC shall be One Million Pesos
2953 (₱1,000,000). Provided, That if the online subscription to be
2954 directly purchased would require an ABC beyond the
2955 aforementioned amount, the ABC may be increased but not
2956 exceeding Five Million Pesos (₱5,000,000) and subject to prior
2957 approval of the HoPE;
2958
- 2959 iii) Justification shall be provided by the End-User or Implementing
2960 Unit on its need to directly purchase a specific online
2961 subscription to the HoPE. Thus, it shall:
2962
- 2963 a) Submit a report indicating that no local provider is
2964 available; and
2965
- 2966 b) Prepare a comparative matrix and evaluation showing
2967 that the preferred specific online subscription is better
2968 than any other similar online subscriptions available
2969 locally or that there is no suitable substitute in the local
2970 market that can be obtained at more advantageous
2971 terms;
2972
- 2973 iv) Payment for online subscription can only be made through
2974 direct electronic payment using credit card subject to the
2975 issuance of a certification by the HoPE or its duly authorized
2976 representative stating that it is the more expeditious and
2977 inexpensive mode of payment in accordance with the COA
2978 Circular No. 2021-014; and

2979

2980 v) A payment confirmation receipt shall cover the direct purchase
2981 of online subscription.

2982

2983 Under this mode of procurement, the following procedure shall be observed:

2984

2985 a) The End-User or Implementing Unit delegated to directly purchase POL
2986 products, and online subscriptions shall determine the supplier or
2987 service provider capable of delivering the required POL products, and
2988 online subscriptions at retail pump price or at the most reasonable retail
2989 price, as the case may be.

2990

2991 b) Taking into account the usual trade and business practices being
2992 observed in the industry and the requirements and other reasonable
2993 considerations identified by the End-User or Implementing Unit, direct
2994 retail purchase of the required POL products, or online subscriptions
2995 shall be carried out in accordance with pertinent accounting principles
2996 and practices as well as of sound management and fiscal administration
2997 provided that they do not contravene existing laws and regulations
2998 applicable to financial transactions.

2999

3000 c) The End-User or Implementing Unit shall carefully review the terms and
3001 conditions or similar agreements which shall contain a provision on
3002 compensation for losses incurred caused by delays of the supplier or
3003 service provider.

3004

3005 d) The Procuring Entity shall require the submission of a warranty security
3006 based on the End-User or Implementing Unit's determination that the
3007 terms and conditions or similar agreements do not provide corrective
3008 actions to be undertaken by the supplier or service provider on any noted
3009 defects in the procured online subscription.

3010

3011 e) The End-User or Implementing Unit shall post the electronic copy of the
3012 payment confirmation receipt and agreed terms and conditions or similar
3013 agreements for the direct purchase of online subscription as equivalent
3014 documents of the notice of award, and contract or purchase order,
3015 respectively.

3016

3017 **Section 36. Direct Sales**

3018

3019 36.1 Direct Sales is a mode of procurement of non-CSEs where a Procuring
3020 Entity directly purchases from a supplier that has satisfactorily delivered non-
3021 CSEs to another government agency under a completed contract.

3022

3023 Direct Sales may only be resorted to when all of the following conditions are
3024 met:

3025

3026 a) The procurement project is included in the approved APP of the
3027 Procuring Entity;

3028

3029 b) The original non-CSE was procured and awarded through Competitive
3030 Bidding, Limited Source Bidding, and Competitive Dialogue;

3031

3032 c) The government agency that originally procured the non-CSEs has
3033 inspected and accepted the same, and has issued a certification that the
3034 supplier has satisfactorily performed its obligations under the contract;

3035

3036 d) The procurement for the same non-CSEs by the Procuring Entity shall
3037 only be initiated once within six (6) months from the acceptance of the
3038 non-CSEs by the original government agency;

3039

3040 e) The contract to be executed between the Procuring Entity and the
3041 supplier must be within the amount of the contract executed with the
3042 original government agency, and that the supplier must offer the non-
3043 CSEs to the Procuring Entity at the same or lower unit price offered to
3044 the original government agency; and

3045

3046 f) The supplier agreed to the terms offered by the Procuring Entity and
3047 remains legally, technically, and financially capable to undertake the
3048 contract with the Procuring Entity.

3049

3050 36.2 Under this mode of procurement, the following procedure shall be
3051 observed:

3052

3053 a) The original government agency, when requested by the Procuring
3054 Entity, shall provide a copy of the original procurement documents and
3055 papers, such as, but not limited to, the actual Bidding Documents, BAC
3056 Resolution Recommending Award of Contract, Notice of Award, signed
3057 contract or Purchase Order, Notice to Proceed, Inspection and
3058 Acceptance Report, Certificate of Satisfactory Performance and
3059 Completion, and other relevant documents;

3060

3061 b) The End-User or Implementing Unit shall carefully review the
3062 procurement documents obtained from the original government agency,
3063 and prepare the necessary Purchase Request for the procurement of the
3064 Goods;

3065

- 3066 c) Direct Sales Request (DSR) shall be issued by the Procuring Entity to
3067 the supplier. In the event of acceptance by the supplier, the same shall
3068 be made in writing and communicated to the Procuring Entity within five
3069 (5) calendar days from receipt of the request. The acceptance shall
3070 contain Statement of compliance with the technical requirements stated
3071 in the DSR, computation of the NFCC, and the supplier's offer which
3072 must be the same or lower unit price as in the original contract, and
3073 accompanied by a copy of its valid and updated PhilGEPS Certificate of
3074 Registration (Platinum Membership); otherwise, the supplier shall notify
3075 the Procuring Entity in writing of its non-acceptance of the request within
3076 the same period; and
3077
- 3078 d) When all the conditions are present, the BAC of the Procuring Entity shall
3079 recommend to the HoPE the award of contract through Direct Sales to
3080 the supplier. The award of contract shall be made in accordance with
3081 Section 66 of this IRR.
3082

3083 **Section 37. Direct Procurement for Science, Technology, and Innovation**
3084

3085 37.1 Direct Procurement for Science, Technology and Innovation is a mode of
3086 procurement where the Procuring Entity may procure the following Goods
3087 directly from a legally, technically and financially capable manufacturer or
3088 supplier, or from a qualified Startup business:
3089

- 3090 a) Supplies, materials, equipment, and related services to be used actually,
3091 exclusively, and directly in the conduct of research and development
3092 projects or activities;
3093
- 3094 b) Goods which include products of a commissioned task by a Procuring
3095 Entity which were processed, developed, and manufactured in
3096 satisfaction of its needs and requirements. These include: (1) pre-
3097 commercial goods and services that involve early market engagement
3098 to stimulate the development of new Goods that meet specific
3099 government needs; and (2) Goods to be manufactured by qualified
3100 Startup businesses alongside the thrust to develop and support new and
3101 startup businesses.
3102

3103 Unless otherwise indicated in a written agreement, the intellectual
3104 property rights and ownership over the commissioned goods developed
3105 and manufactured pursuant to this provision shall belong to the
3106 Procuring Entity, and no manufacturing or sale thereof can be performed
3107 by the supplier; and
3108

3109 c) Other goods analogous to the foregoing.

3110

3111 The GPPB, in coordination with the National Innovation Council, shall develop
3112 procurement policies encompassing the entire research, innovation, and
3113 enterprise ecosystem, consistent with the principles under Section 3 of this IRR.
3114 To foster innovation, relevant government agencies shall expedite the release
3115 of goods used in and documents necessary for science, technology, and
3116 innovation.

3117

3118 37.2 For purposes of this Section, the following terms shall be understood as:

3119

3120 a) Scientific and Technological Activities (STA) refers to all systematic
3121 activities which are closely concerned with the generation,
3122 advancement, dissemination, and application of scientific and technical
3123 knowledge in all fields of natural science and technology. STA may be
3124 classified into three (3) broad groups, namely:

3125

3126 i) Research and Experimental Development (R&D) refers to
3127 any systematic and creative work undertaken in the physical,
3128 natural, mathematical and applied sciences by using methods
3129 to increase the stock of knowledge, and the use of this
3130 knowledge in these fields to devise new applications;

3131

3132 ii) Scientific and Technological Services (STS) refers to activities
3133 in support of scientific research and development,
3134 dissemination and applications of scientific and technical
3135 knowledge (i.e. library, information and museum services;
3136 geological and hydrological surveys; meteorological and
3137 seismological observations; compilation of routine statistics;
3138 testing, standardization and quality control; counseling of
3139 clients; patenting and licensing; engineering and technical
3140 services); and

3141

3142 iii) Scientific and Technical Education and Training (STET) refers
3143 to all activities comprising higher education and training
3144 leading to a university degree, post-graduate and further
3145 training, organized lifelong training for scientists and
3146 engineers, and specialized non- university higher education.

3147

3148 b) Science Technology and Innovation (ST&I) refers to the combined
3149 definition of Scientific and Technological activities (STA) and Innovation
3150 as provided in this Section.

3151

- c) Startup refers to any person or registered entity in the Philippines which aims to develop an innovative product, process, or business model pursuant to RA No. 11337 or The Innovative Startup Act.

37.3 Under this mode of procurement, the following shall be observed:

37.3.1 For the procurement of supplies, materials, equipment, and related services to be used actually, exclusively, and directly in the conduct of Research and Development (R&D) projects or activities, the End-User or Implementing Unit shall secure a certification that the procurement of Goods are undertaken to be used actually, exclusively directly for the conduct of STA & STS, from the office within the procuring entity tasked to manage research activities, or in the absence of such office, the HoPE or any person delegated by the HoPE to approve these projects and activities.

The Procuring Entity shall directly purchase the required supplies, materials, equipment and related services from reputable and legally, technically and financially capable suppliers.

37.3.2 For Goods of a commissioned task by a Procuring Entity, the following procedure shall be applied:

a) The Procuring Entity identifies that its needs and requirements cannot be met by purchasing goods and services that are readily available in the market.

b) The Procuring Entity may directly negotiate for the procurement of pre-commercial Goods which contain substantially novel characteristics and/or commission a qualified Startup business to develop the goods or service which shall answer to the needs of the Procuring Entity; and

c) In this case, the Procuring Entity shall request from the identified manufacturer, supplier, or Startup business to submit its PhilGEPS Registration Number and the technical information of the pre-commercial Goods or the innovative product being developed.

37.4 To determine technical capacity, the Procuring Entity may evaluate the Startup based on factors it may deem relevant to the project, such as, but not limited to:

- a) Pertinent novel ideas in the specific branch of science and technology involved;

3196
3197 b) The availability and competence of engineering, scientific, or
3198 other technical personnel; and
3199
3200 c) The availability, from any source, of necessary research, test,
3201 laboratory, or shop facilities.
3202
3203 Upon confirmation and ascertainment of the manufacturer's, supplier's, or
3204 Startup business' capacity, the Procuring Entity shall invite the qualified
3205 manufacturer, supplier, consultant, or start-up business for negotiation for the
3206 technical and financial aspects of the project;
3207
3208 After the conclusion of the negotiation, the HoPE, upon recommendation of the
3209 BAC, shall immediately award the contract to the manufacturer, supplier, or
3210 Startup business.
3211
3212 **Section 38. Video Recording of All Procurement-Related Conferences for**
3213 **Competitive Bidding**
3214
3215 38.1 To enhance the transparency of the procurement process, the Procuring
3216 Entity shall keep a video recording of all procurement-related conferences for
3217 competitive bidding, which includes pre-procurement conference, pre-bid
3218 conference, bid opening, and other meetings of the BAC. All procurement-
3219 related conferences for competitive bidding shall not commence without a video
3220 recording initiated by the BAC.
3221
3222 38.2 The Procuring Entity shall also livestream the preliminary examination and
3223 the opening of the bids to the public on its website, social media account, or
3224 any other form of livestreaming services.
3225
3226 The GPPB in coordination with the DICT, shall issue specific guidelines on the
3227 conduct of livestream for the opening of bids.
3228
3229 Section 38.3 The mandatory video recording shall only apply to the
3230 procurement of Goods costing above Ten Million Pesos (₱10,000,000.00),
3231 Infrastructure Projects costing above Twenty Million Pesos (₱20,000,000.00),
3232 and Consulting Services costing above Five Million Pesos (₱5,000,000.00)
3233 using Competitive Bidding as the mode of procurement.
3234
3235 Section 38.4 The Procuring Entity shall ensure that copies of the video
3236 recording shall be stored for not less than five (5) years and shall be made
3237 available to the public upon request and payment of a fee, which shall be fixed
3238 by the Procuring Entity, subject to existing budgeting, accounting, and auditing
3239 laws, rules, and regulations.

3240

3241 When national security is involved, the HoPE shall decide whether or not to
3242 video record all procurement related conferences, taking into consideration
3243 the nature, classification, sensitivity, and confidentiality thereof.

3244

3245 The GPPB is authorized to adjust the threshold amounts and the storage period
3246 as may be deemed appropriate.

3247

3248 **Section 39. Prohibition on Splitting of Government Contracts**

3249

3250 Splitting of Government Contracts is not allowed. In using any of the modes of
3251 procurement under Article IV of the Act, the Procuring Entity shall ensure that
3252 this does not result in splitting of government contracts, which involves dividing
3253 or breaking up of contracts into smaller quantities and amounts, or dividing
3254 contract implementation into artificial phases or subcontracts for the purpose of
3255 evading or circumventing the requirements of the Act and this IRR; Provided,
3256 That procurement per unit, by lot or package, is allowed subject to the available
3257 budget, required quantity, product availability, delivery sites, geographical
3258 location and market capacity.

3259

3260 For Infrastructure Projects to be implemented by phases, the Procuring Entity
3261 shall ensure that there is a clear delineation of work for each phase, which must
3262 be usable and structurally sound, in accordance with the Detailed Architectural
3263 and Engineering Design as developed in accordance with Section 8 of this IRR.

3264

3265 **Section 40. Procurement of CSE**

3266

3267 40.1 All NGAs, GOCCs, GFIs, SUCs, and LGUs shall procure CSE only from
3268 the PS-DBM, subject to its availability, through the Virtual Store, eMarketplace,
3269 or through any enhancement, module, or feature of the PhilGEPS.

3270

3271 40.2 Procuring Entities are authorized to procure the CSE from other sources
3272 in any of the following instances:

3273

3274 a) If the CSE is unavailable due to zero inventory, in which case the
3275 Procuring Entity shall secure a Certificate of Non-Availability of Stocks
3276 (CNAS) by downloading from the PhilGEPS Electronic Catalogue;

3277

3278 b) If the technical specifications of the CSE are not sufficient to meet the
3279 Procuring Entity's specific needs and requirements, in which case the
3280 PE shall secure a complete list of technical specifications of all CSE
3281 items by downloading from the PhilGEPS Electronic Catalogue;

3282

3283 c) If the available stock of the CSE is not sufficient to meet the required
3284 quantity of the Procuring Entity , in which case the Procuring Entity shall
3285 generate and download the current Stock Position Report from the
3286 PhilGEPS Electronic Catalogue showing the available stock at the
3287 specific time and date of access;

3288

3289 d) When the BAC, upon recommendation of the End-User or
3290 Implementing Unit, has resolved that the procurement from other
3291 sources is for reasons of efficiency, practicality, or economic viability. To
3292 support this, the End-User or Implementing Unit shall submit its written
3293 recommendation to the BAC identifying the specific reason and
3294 providing justifications thereof. To ensure proper monitoring of this
3295 instance, which could aid the PS-DBM in addressing gaps in supply
3296 chain and inventory management, the Procuring Entity shall inform the
3297 PS-DBM by filling out and submitting an online form available in the
3298 PhilGEPS Electronic Catalogue. In assessing the existence of the
3299 foregoing reasons, Procuring Entities may refer to the following
3300 instances:

3301

3302 i) Inefficiency – Procurement from PS-DBM will require
3303 extensive time and effort on the part of the Procuring Entity
3304 leading to wastage, delays or errors compared to conventional
3305 procurement methods.

3306

3307 ii) Impracticality – Procurement from PS-DBM will be excessively
3308 difficult due to an unforeseen event or a lack of feasible means
3309 or access, which includes no internet connectivity or
3310 geographical limitations.

3311

3312 iii) Economic Non-viability – Procurement from the PS is not
3313 sustainable since it will result to realize savings for the
3314 government in the long-term. This may pertain to the cost
3315 where it would be more expensive, or non-cost factors such
3316 as issues in product quality and lifecycle cost considerations.

3317

3318 40.3 Due to the efficiency and economy of bulk purchasing, the PS-DBM may
3319 deal directly with manufacturers or exclusive distributors subject to legal,
3320 technical, and financial requirements ensuring that products are obtained from
3321 reliable sources, of the best quality, and at the most advantageous price for the
3322 whole of government. Access to goods and equipment in economic lot sizes
3323 may likewise be achieved by PS-DBM through consignment or any appropriate
3324 contractual arrangement.

3325

3326 40.3.1 The PS-DBM may use the modes of procurement enumerated under
3327 Rule IV of this IRR, or deal directly with manufacturers or exclusive distributors
3328 – whether to gain access to the supply or to obtain the rights to sell, distribute,
3329 or otherwise dispose CSE to Procuring Entities through consignment or any
3330 appropriate contractual arrangement; Provided, That these manufacturers or
3331 exclusive distributors comply with the requirements set by PS-DBM to
3332 determine their legal, technical, and financial capacity to provide the required
3333 goods or services; Provided, further, That such requirements shall be set or
3334 formulated to ensure that the Goods or services are obtained from reliable
3335 sources, of the best quality, and at the most advantageous price for the whole
3336 of government.

3337

3338 40.4 For purposes of this IRR, consignment shall refer to an arrangement
3339 whereby the consignor gives actual or constructive possession of Goods,
3340 equipment and services to the consignee without transfer of ownership and
3341 disbursement of government funds between consignee and consignor, and
3342 such Goods, equipment and services are to be sold by the consignee for and
3343 on account of the consignor at terms advantageous to the government. The
3344 consignee shall remit the proceeds of the sale to the consignor, net of service
3345 fees, if applicable. The PhilGEPS eMarketplace may be used as a consignment
3346 platform for Goods and equipment.

3347

3348 40.4.1 Consignment agreements shall primarily be governed by the general law
3349 on contracts, considering that the transaction involved is not procurement as
3350 defined under Section 5(z) of this IRR.

3351

3352 40.5 PS DBM, which is primarily tasked with the centralized procurement of
3353 CSE for the government in accordance with Letter of Instructions (LOI) No. 755,
3354 E.O. No. 359, s. of 1989, and Administrative Order No. 17, s. of 2011, shall
3355 develop the parameters in the identification, expansion, and the definition of
3356 requirements and specifications of CSE through the conduct of market scoping,
3357 market survey, and market availability.

3358

3359 40.5.1 As defined in Section 5(h) of this IRR, CSE refers to Goods, materials,
3360 and equipment that are used repetitively in the day-to-day operations of
3361 Procuring Entities in the performance of their functions which are included in
3362 the Electronic Catalogue of PhilGEPS. In order to be classified as CSE,
3363 compliance with all of the following requirements shall be mandatory:

3364

3365 a) The Goods, material, supply, equipment, or service is used repetitively
3366 or frequently in the day-to-day operations of PEs in the performance of
3367 their functions;

3368

3369 b) Publication by PS-DBM of the list of CSE, with available classification,
3370 description, and other relevant information, once in the Official Gazette
3371 or in a newspaper of general circulation; and
3372

3373 c) Posting of the CSE and its complete technical specifications in the
3374 Electronic Catalogue which may be accessed on the PhilGEPS.
3375

3376 40.5.2 In operating and maintaining a centralized procurement system for CSE,
3377 PS-DBM shall be authorized to perform the following functions:
3378

3379 a) Identification and review of technical specifications for CSE.
3380

3381 In determining the technical specifications of the CSE, PS-DBM must
3382 identify the standards that should be met by the CSE in terms of function,
3383 performance, environmental, and sustainability considerations. PS-DBM
3384 may adopt established standards and quality as formulated by
3385 appropriate government entities or similar international bodies;
3386

3387 b) Expansion or reduction of the list of CSE
3388

3389 The PS-DBM shall regularly study, review, and rationalize the list of CSE
3390 to develop strategy on how to procure them. Depending on market
3391 availability and needs of agencies, PS-DBM may add or delist items in
3392 the list of CSE. The PS-DBM shall submit a report to the GPPB of the
3393 additions or delistings made in the list of CSE.
3394

3395 c) Formulation of procedures and parameters for the identification of CSE
3396 and its technical specifications.
3397

3398 **RULE V**
3399 **BIDS AND AWARDS COMMITTEE**
3400

3401 **SECTION 41. The BAC and its Composition**
3402

3403 41.1 BAC Structure
3404

3405 41.1.1 The Procuring Entity shall establish in its head office a BAC to undertake
3406 the functions specified in this IRR to facilitate professionalization and
3407 harmonization of procedures and standards; Provided, however, That in a
3408 department, bureau, office, or agency where the procurement is decentralized,
3409 the head of each decentralized unit, which is individually considered as a
3410 Procuring Entity, shall be considered as the HoPE, subject to the limitations

3411 and authority delegated by the head of the department, bureau, office or
3412 agency.

3413

3414 41.1.2 Further, to expedite the procurement process for practical intents and
3415 purposes, the HoPE may create BACs where the number and complexity of the
3416 items to be procured shall so warrant.

3417

3418 41.2 BAC Composition

3419

3420 41.2.1 The HoPE shall designate five (5) or seven (7) permanent officials of
3421 unquestionable integrity and procurement proficiency as members of the BAC.
3422 The term “permanent” does not refer to whether the person holding the plantilla
3423 position is contractual, regular, or temporary; rather, this refers to whether the
3424 position exists within the organizational structure of the procuring entity or not.

3425

3426 41.2.2 The BAC for NGAs, departments, bureaus, offices, or instrumentalities
3427 of the GoP, including the judicial and legislative branches, constitutional
3428 commissions, SUCs, GOCCs, and GFIs shall be composed of the following:

3429

3430 a) Chairperson, who is at least a third (3rd) ranking permanent official of
3431 the Procuring Entity or in the absence thereof, a permanent official of the
3432 next lower rank other than the duly authorized representative of the
3433 HoPE;

3434

3435 b) An officer, who is at least a fifth (5th) ranking permanent official, or if not
3436 available, an officer of the next lower rank with knowledge, experience
3437 or expertise in procurement who, to the extent possible, represents the
3438 legal or administrative area of the Procuring Entity: Provided, That in the
3439 case of bureaus, regional offices and sub-regional/district offices, BAC
3440 members shall be at least a third (3rd) ranking permanent personnel or
3441 if not available, an officer of the next lower rank;

3442

3443 c) An officer, who is at least a fifth (5th) ranking permanent official, or if not
3444 available, an officer of the next lower rank with knowledge, experience
3445 or expertise in procurement who, to the extent possible, represents the
3446 finance area of the Procuring Entity: Provided, That in the case of
3447 bureaus, regional offices and sub-regional or district offices, BAC
3448 members shall be at least a third (3rd) ranking permanent personnel or
3449 if not available, an officer of the next lower rank;

3450

3451 d) As a provisional member, a representative from the End-User or
3452 Implementing Unit who has technical expertise relevant to the
3453 procurement at hand, and, to the extent possible, has knowledge,
3454 experience or expertise in procurement; and

3455

3456 e) To complete the membership of the BAC, any other employee who has
3457 completed the required number of procurement training hours, which
3458 include modules on environmental protection, climate risk management,
3459 or other sustainable public procurement programs.

3460

3461 The Vice-Chairperson shall also be designated by the HoPE from among
3462 the regular members of the BAC.

3463

3464 41.2.3 The BAC for Local Government Units shall be composed of the following:

3465

3466 a) For Provinces, Cities, and Municipalities

3467

3468 i) One representative each from the regular offices under the
3469 Office of the Local Chief Executive such as, but not limited to, the
3470 following: Office of the Administrator, Budget Office, Legal Office,
3471 Engineering Office, General Services Offices;

3472

3473 ii) As a provisional member, a representative from the End-User
3474 or Implementing Unit who has technical expertise relevant to the
3475 procurement at hand, and, to the extent possible, has knowledge,
3476 experience and/or expertise in procurement; and

3477

3478 iii) any other employee who has completed the required number
3479 of procurement training hours, which include modules on
3480 environmental protection, climate risk management, or other
3481 sustainable public procurement programs.

3482

3483 The Chairperson and Vice-Chairperson shall be designated by the Local Chief
3484 Executive from among the regular members of the BAC. The Chairperson of
3485 the BAC shall be at least a third (3rd) ranking permanent official of the Procuring
3486 Entity or in the absence thereof, a permanent official of the next lower rank
3487 other than the duly authorized representative of the HoPE.

3488

3489 b) For Barangays:

3490

3491 i) For Sangguniang Barangay

3492

3493 1) The BAC shall be composed of at least five (5) or seven
3494 (7) regular members of the Sangguniang Barangay, except
3495 the Punong Barangay. 1) The BAC shall be composed of
3496 five (5) or seven (7) regular members of the Sangguniang
3497 Barangay, except the Punong Barangay.

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2) The Punong Barangay, being the Local Chief Executive, shall designate the Chairperson, Vice-Chairperson, and members of the BAC.

ii) For Sangguniang Kabataan (SK)

1) The BAC shall be composed of five (5) or seven (7) regular members of the Sangguniang Kabataan, except the SK Chairperson.

2) The SK Chairperson, being the Local Chief Executive, shall designate the Chairperson, Vice-Chairperson, and members of the BAC.

41.2.4 The HoPE may designate alternate BAC members, who shall have the same qualifications as that of the members originally designated under this this IRR. The alternate members shall attend meetings of the BAC and receive the proportionate honoraria, whenever the original members are absent. The alternate members shall have the same term as the original members.

41.2.5 In no case shall the HoPE or the approving authority be a member of the BAC and the Chief Accountant cannot be a regular member of the BAC.

41.2.6 Unless sooner removed for a cause, the members of the BAC shall have a fixed term of one (1) year reckoned from the date of designation renewable at the discretion of the HoPE; Provided, That no member of the BAC shall serve for more than three (3) consecutive terms, except when allowed by the HoPE. Upon expiration of the terms of the current members, they shall continue to exercise their functions until new BAC members are designated. In case of resignation, retirement, separation, transfer, re-assignment, removal, or death, the replacement shall serve only for the unexpired term; Provided, however, That in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes to be expressed in writing a member shall be suspended or removed by the Procuring Entity. For transfer of knowledge and experience, membership in the BAC shall allow for staggered designations.

Section 42. Functions of the BAC

42.1 The BAC shall have the following functions:

a) Recommend to the HoPE the use of any of the modes of procurement as provided in Rule IV of this IRR;

- 3542
- 3543 b) Publish or post the Invitation to Bid or Request for Expressions of
- 3544 Interest;
- 3545
- 3546 c) Conduct pre-procurement and pre-bid conferences;
- 3547
- 3548 d) Determine the eligibility of prospective bidders;
- 3549
- 3550 e) Receive and open bids;
- 3551
- 3552 f) Conduct the evaluation of bids;
- 3553
- 3554 g) Undertake post-qualification proceedings;
- 3555
- 3556 h) Resolve requests for reconsideration;
- 3557
- 3558 i) Recommend award of contracts to the HoPE or the duly authorized
- 3559 representative; Provided, That in the event the HoPE shall disapprove
- 3560 such recommendation, such disapproval shall be based only on valid,
- 3561 reasonable, and justifiable grounds to be expressed in writing, copy
- 3562 furnished the BAC;
- 3563
- 3564 j) Recommend the imposition of sanctions in accordance with Rule XXI
- 3565 of this IRR;
- 3566
- 3567 k) Prepare a procurement monitoring report that shall be approved and
- 3568 submitted by the HoPE to the GPPB on a semestral basis. The contents
- 3569 and coverage of this report shall be in the form prescribed by the GPPB
- 3570 provided in this IRR; and
- 3571
- 3572 l) Perform such other related functions as may be necessary, including
- 3573 the creation of a TWG, as affirmed by the HoPE in an appropriate order,
- 3574 from a pool of technical, financial, and/or legal experts to assist in the
- 3575 following procurement processes, such as but not limited to:
- 3576
- 3577 Review of the Technical Specifications, Scope of Work, and Terms of
- 3578 Reference;
- 3579
- 3580 Review of Bidding Documents;
- 3581
- 3582 Shortlisting of Consultants;
- 3583
- 3584 Eligibility Screening;

3585
3586 Evaluation of Bids;
3587
3588 Post-Qualification; and
3589
3590 Resolution of Request for Reconsideration.
3591

3592 **42.2 Quorum**
3593

3594 A majority of the total BAC composition as designated by the HoPE shall
3595 constitute a quorum for the transaction of business, Provided, That the
3596 presence of the Chairperson or Vice-Chairperson shall be required.
3597

3598 For purposes of determining a quorum, a member of the BAC, which include
3599 the Chairperson or the Vice-Chairperson, may be present, either in person or
3600 face-to-face through videoconferencing, webcasting or similar technology for
3601 Procuring Entities with such technology.
3602

3603 **42.3 Conduct of Meetings**
3604

3605 The Chairperson or, in its absence, the Vice-Chairperson, shall preside at all
3606 meetings of the BAC. Meetings of the BAC may be conducted electronically for
3607 Procuring Entities with videoconferencing, webcasting, or similar technology
3608 capability. The decision of at least a majority of those present, either in person,
3609 face-to-face through videoconferencing, webcasting or similar technology, or a
3610 combination thereof, at a meeting at which there is quorum shall be valid and
3611 binding as an act of the BAC; Provided, however, That the Chairperson or, in
3612 his absence, the Vice-Chairperson, shall vote only in case of a tie.
3613

3614 **Section 43. Observers**
3615

3616 43.1 To enhance the transparency of the process, the BAC shall, during the
3617 eligibility checking, shortlisting, pre-bid conference, preliminary examination of
3618 bids, bid evaluation, and post-qualification, invite, in addition to the
3619 representative of the COA, at least two (2) Observers, who shall not have the
3620 right to vote, to sit in its proceedings where:
3621

3622 43.1.1 At least one (1) from a duly recognized private group in a sector or
3623 discipline relevant to the procurement at hand, for example:
3624

3625 a) For Infrastructure Projects, national associations of constructors duly
3626 recognized by the Construction Industry Authority of the Philippines,
3627 such as but not limited to the following:
3628

- 3629 i) Philippine Constructors Association, Inc.; or
3630
3631 ii) National Constructors Association of the Philippines, Inc.
3632
3633 b) For Goods, a specific relevant chamber member of the Philippine
3634 Chamber of Commerce and Industry.
3635
3636 c) For Consulting Services, a project-related professional organization
3637 accredited or duly recognized by the Professional Regulation
3638 Commission or the Supreme Court, such as but not limited to:
3639
3640 i) Philippine Institute of Civil Engineers;
3641
3642 ii) Philippine Institute of Certified Public Accountants; or
3643
3644 iii) Confederation of Filipino Consulting Organizations.
3645
3646 43.1.2 The other observer shall come from a civil society organization (CSO) or
3647 people's organization (PO), as the case may be; Provided, That they do not
3648 have any direct or indirect interest in the contract to be bid out. The private
3649 group or CSO or PO shall be duly registered with the SEC or the CDA, as the
3650 case may be, and the Observers therefrom shall meet the following
3651 qualifications:
3652
3653 a) Knowledge, experience or expertise in procurement or in the subject
3654 matter of the contract to be bid, hence, it must have previously attended
3655 procurement or relevant training/s within a period of one (1) year
3656 immediately preceding the date of designation as observer or
3657 representative, as evidenced by a Certificate/s of training issued by the
3658 GPPB;
3659
3660 b) Absence of actual or potential conflict of interest in the contract to be bid
3661 out; and
3662
3663 c) Any other relevant criteria that may be determined by the GPPB under
3664 this IRR:
3665
3666 43.2 In order to preclude familiarity and fraternization, and to give fair and equal
3667 opportunity to Observers, the selection of Observers, who shall attend every
3668 specific procurement, shall be done through random selection on a specific date
3669 to be announced by the concerned BAC.
3670
3671 43.3 Observers shall be invited at least three (3) calendar days before the date
3672 of the procurement stage or activity. The absence of Observers will not nullify

the BAC proceedings; Provided, That they have been duly invited in writing. The Procuring Entities should ensure that the invitation is received at least five (5) calendar days before each procurement activity. In the event that a procurement activity has to be postponed, the Observers shall be notified immediately of the change in schedule.

43.4 The representative of the observer who will attend the BAC proceedings should be a certified member of good standing of the CSO or PO.

43.5 The Observers shall have the following responsibilities:

a) To prepare the report covering the observations of the actual proceedings they are concerned with and have attended to, either jointly or separately indicating their observations made on the procurement activities conducted by the BAC for submission to the HoPE, copy furnished the BAC Chairperson. The report shall assess the extent of the BAC's compliance with the provisions of this IRR and areas of improvement in the BAC's proceedings;

b) To submit their report to the HoPE, PhilGEPS, and COA and furnish a copy to the GPPB and the Office of the Ombudsman or Resident Ombudsman. If no report is submitted by the observer within seven (7) calendar days after each procurement activity, then it is presumed that the bidding activity conducted by the BAC followed the correct procedure; and

c) To immediately inhibit participation in the procurement activity, and notify in writing the Procuring Entity concerned of any actual or potential interest in the contract to be bid.

43.6 Observers shall be allowed t

o access or be provided with the following documents free of charge upon their request: (a) minutes of relevant BAC meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) APP and related PPMP; and (e) opened proposals. In all instances, Observers shall be required to enter into a confidentiality agreement with the concerned Procuring Entity in accordance with the form prescribed by the GPPB.

Each Observer shall make a separate report on the conduct of the public bidding, its procedures, conditions, and problems, if any, which shall be submitted to the HoPE, PhilGEPS, and COA. The GPPB shall prescribe the form of the report.

3716 The GPPB shall maintain a registry or roster of qualified Observers for the
3717 benefit of the Procuring Entities and shall have the authority to determine
3718 additional qualifications of the Observers.

3719

3720 **Section 44. Procurement Unit**

3721

3722 44.1 The HOPE shall create a Secretariat which shall serve as the main support
3723 unit of the BAC. An existing organic office within the Procuring Entity may also
3724 be designated to serve as Secretariat.

3725

3726 44.2 To strengthen and promote the professionalization of the organizations'
3727 procuring unit, a procurement unit, division or office in each Procuring Entity
3728 which shall serve as Secretariat to the BAC and perform other functions related
3729 to procurement as may be delegated by the HoPE shall be created subject to
3730 the standards and guidelines prescribed by the DBM.

3731

3732 44.3 The Secretariat shall have the following functions and responsibilities:

3733

3734 a) Provide administrative support to the BAC and the TWG;

3735

3736 b) Organize and make all necessary arrangements for BAC and the TWG
3737 meetings and conferences;

3738

3739 c) Prepare minutes of meetings and resolutions of the BAC;

3740

3741 d) Take custody of procurement documents and other records and ensure
3742 that all procurements undertaken by the Procuring Entity are properly
3743 documented;

3744

3745 e) Manage the sale and distribution of Bidding Documents to interested
3746 bidders;

3747

3748 f) Publish or post bidding opportunities, including Bidding Documents, and
3749 notices of awards;

3750

3751 g) Assist in managing the procurement processes;

3752

3753 h) Assist in the conduct of delegated procurement activities;

3754

3755 i) Monitor procurement activities and milestones for proper reporting to
3756 relevant agencies when required;

3757

3758 j) Consolidate PPMPs from various units of the Procuring Entity to make
3759 them available for review as indicated in Section 7 of this IRR and
3760 prepare the APP; and

3761

3762 k) Act as the central channel of communications for the BAC with End-User
3763 or Implementing Units, PMOs, other units of the line agency, other
3764 government agencies, providers of goods, Infrastructure Projects, and
3765 consulting services, Observers, and the general public.

3766

3767 44.4 In case of an ad hoc Secretariat, the HoPE shall assign full-time support
3768 staff to their BAC Secretariat. The head of the Secretariat in central offices shall
3769 be at least a fifth (5th) ranking permanent employee or, if not available, a
3770 permanent employee of lower rank; or shall be at least a third (3rd) ranking
3771 permanent employee in bureaus, regional offices and sub-regional, or district
3772 offices, or if not available, a permanent employee of lower rank. In addition to
3773 integrity, HoPEs shall consider procurement proficiency as a factor in
3774 designating the head of the Secretariat and Procurement Unit.

3775

3776 **Section 45. Honoraria**

3777

3778 The Procuring Entity may grant payment of honoraria to all members of the
3779 BAC, regardless of position, TWG, and ad hoc Secretariat, in an amount not to
3780 exceed thirty percent (30%) of their respective basic monthly salaries, subject
3781 to availability of funds, which may be sourced from fees collected by the BAC
3782 in relation to its procurement activities. The DBM shall issue the necessary
3783 guidelines for this purpose and may determine other sources of funds to
3784 implement the grant of honoraria; Provided, however, That officials and
3785 employees whose organic functions are primarily related to procurement are
3786 not entitled to honoraria.

3787

3788 **Section 46. Professionalization of Government Procurement Practitioners**

3789

3790 In achieving the objective of professionalizing public procurement practitioners,
3791 the following shall be implemented:

3792

3793 46.1 The DBM shall create procurement positions in the government based on
3794 the qualification standards recommended by the GPPB and approved by the
3795 CSC.

3796

3797 46.2 The GPPB shall ensure the professionalization of procurement
3798 practitioners and for this purpose, shall develop the following:

3799

3800 a) A competency framework to identify the skills, knowledge, and
3801 attribute of each of the procurement positions;

3828

PREPARATION OF BIDDING DOCUMENTS

3844

d) Terms of Reference or Scope of Work, as applicable;

- 3845
- 3846 e) Eligibility Requirements;
- 3847
- 3848 f) Environmental criteria and specifications in relation to Section 73 of this
- 3849 IRR;
- 3850
- 3851 g) Plans and Technical Specifications;
- 3852
- 3853 h) Bid Form, Price Schedule, and List of Goods or Bill of Quantities;
- 3854
- 3855 i) Delivery Time or Completion Schedule;
- 3856
- 3857 j) Form and Amount of Bid Security;
- 3858
- 3859 k) Form and Amount of Performance Security and Warranty;
- 3860
- 3861 l) Form of Contract, and General and Special Conditions of Contract; and
- 3862
- 3863 m) Additional documentary requirements or specifications necessary to
- 3864 complete the information required for the bidders to prepare and submit
- 3865 their respective bids.
- 3866

3867 Based on specific needs, the End-User or Implementing Unit of the Procuring

3868 Entity shall be responsible for the preparation of all documents necessary for

3869 the procurement activity including, but shall not be limited to, the technical

3870 specifications, scope of work, or terms of reference.

3871

3872 47.2 The specifications and other terms in the Bidding Documents shall reflect

3873 the necessary specifications required to meet the needs of the Procuring Entity

3874 in clear and unambiguous terms.

3875 In mixed procurements, the Procuring Entity shall specify in the Bidding

3876 Documents the requirements, criteria, and other conditions of the bidding

3877 procedures and of the ensuing contract as applicable to each component of the

3878 project. In the preparation of Bidding Documents, the Procuring Entity shall

3879 ensure compliance with existing laws, rules, and regulations, especially those

3880 concerning licenses and permits required for the project, in accordance with

3881 Section 63 of this IRR.

3882

3883 47.3 To provide prospective bidders ample time to examine the Bidding

3884 Documents and to prepare their respective bids, the concerned BAC shall make

3885 the Bidding Documents available from the time the Invitation to Bid or Request

3886 for Expression of Interest is first published or posted until the deadline for the

3887 submission and receipt of bids.

3888

47.4 Bidders may be asked to pay a fee to recover the cost for the preparation and development of the Bidding Documents pursuant to the Guidelines on the Sale of Bidding Documents issued by the GPPB. The BAC shall post the complete Bidding Documents at its website and the PhilGEPS website from the time the Invitation to Bid or Request for Expression of Interest is published. Bidding Documents may be downloaded from any of the said websites; Provided, That upon submission of their bids, the Bidders shall pay the applicable fee, if required. The Bidding Documents may also be secured from the BAC Secretariat upon payment of the corresponding fee, if required.

47.5 Bidding Documents fee may be refunded in accordance with the aforementioned Guidelines based on the grounds provided for under Section 70 of the Act and this IRR.

Section 48. Access to Information

48.1 In all stages of the preparation of the Bidding Documents, the Procuring Entity shall ensure equal access to information. Prior to their official release to prospective bidders, no aspect of the Bidding Documents shall be divulged or released to any prospective bidder or person having direct or indirect interest in the project to be procured, or to any party, except those officially authorized in the handling of the documents.

48.2 Individuals authorized to handle procurement documents under this Section shall refer to the BAC Chairperson, BAC Members, BAC Secretariat, TWG, and representatives from the End-User or Implementing Unit involved in the project at hand.

48.3 In procurements involving and affecting national security, the disclosure of the specific components of the procurement documents, such as the technical specifications, requirements, and components, shall be dependent upon the HoPE, having due regard to the nature, classification, sensitivity, and confidentiality of the relevant documents in relation to the purpose and reason for the request.

RULE VII INVITATION TO BID

Section 49. Pre-Procurement Conference

49.1 Prior to the publication or the issuance of the Invitation to Bid or Request for Expression of Interest, the BAC is mandated to hold a pre-procurement conference on each and every procurement. However, the holding of a pre-

procurement conference is optional for procurement of Goods costing Five Million Pesos (₱5,000,000.00) and below, procurement of Infrastructure Projects costing Ten Million Pesos (₱10,000,000.00) and below, and procurement of Consulting Services costing Two Million Pesos (₱2,000,000.00) and below.

3937

The pre-procurement conference shall be attended by the BAC, TWG, the Secretariat, the unit or officials, including consultants hired by the Procuring Entity, who prepared the Bidding Documents and the draft Invitation to Bid or Request for Expression of Interest for each procurement. During this conference, the participants, led by the BAC, shall:

3943

a) Confirm the description and scope of the contract, the ABC, and contract duration;

3946

b) Ensure that the procurement is in accordance with the PPMP and APP;

3948

c) Determine the readiness of the procurement at hand, including, among other aspects, the following:

3951

i) Availability of appropriations for the procurement activity in the GAA, appropriation ordinance, corporate operating budget, or loan agreement, as the case may be. In the case of EPA, the inclusion of the procurement project in the proposed funding source, i.e. NEP, proposed corporate operating budget, or local expenditure program;

3958

ii) Completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;

3961

iii) Completion of the detailed engineering according to the prescribed standards in the case of Infrastructure Projects; and

3964

iv) Confirmation of the availability of right-of-way site or location, and the possession of affected properties, subject to Section 8 of this IRR.

3968

d) Review, modify and agree on the criteria for eligibility screening, evaluation, post-qualification. For the procurement of Goods and Infrastructure Projects, the BAC, based on the recommendation of the End-User or Implementing Unit, shall finally determine whether the contract will be awarded to the LCRB, MEARB, MARB, or HRRB;

3974

3975 e) Review and adopt the procurement schedule, including deadlines and
3976 timeframes, for the different activities; and
3977

3978 f) Reiterate and emphasize the importance of confidentiality, in
3979 accordance with Section 48 of this IRR, and the applicable sanctions and
3980 penalties, as well as agree on measures to ensure compliance with the
3981 foregoing.
3982

3983 49.2 During the pre-procurement conference, the BAC shall resolve whether to
3984 use LCRB, MEARB, MARB, or HRRB, as applicable, as the criteria for
3985 determining the contract award.
3986

3987 LCRB shall be used in the procurement of Goods and Infrastructure Projects
3988 where the considerations for the award of contract are the eligibility and
3989 qualifications of the bidder and the responsiveness to the technical
3990 requirements in relation to the lowest financial bid.
3991

3992 MEARB shall be used in the procurement of Goods or Infrastructure Projects
3993 where the considerations for the award of contract are the eligibility and
3994 qualifications of the bidder and the responsiveness to the technical
3995 requirements, vis-a-vis the most economically advantageous bid in reference
3996 to the quality-price ratio.
3997

3998 MARB shall be used in the procurement of Goods or Infrastructure Projects
3999 where the consideration is the responsiveness of the eligible and qualified
4000 bidder to the technical requirements; with the technical bid being the highest
4001 rated offer based on the quality criteria, and the price proposal, which is equal
4002 to or lower than the ABC, after negotiations, is the most advantageous bid.
4003

4004 HRRB shall be used in the procurement of Consulting Services where, based
4005 on the evaluation procedure, the considerations for the award of contract
4006 depend on the eligibility and qualifications of the bidder, and (i) the weighted
4007 quality-cost criteria of the technical proposal and the financial bid for QCBE, or
4008 (ii) the rating of the technical proposal for QBE.
4009

4010 **Section 50. Publication and Contents of the Invitation to Bid**

4011

4012 **50.1 Contents of the Invitation to Bid or Request for Expression of Interest**

4013

4014 The Invitation to Bid or Request for Expression of Interest shall provide
4015 prospective bidders the following information, among others:
4016

4017 a) For the procurement of:

- 4018
- 4019 i) Goods, the name of the contract to be bid and a brief description of
- 4020 the goods to be procured;
- 4021
- 4022 ii) Infrastructure Projects, the name and location of the contract to be
- 4023 bid, the project background and other relevant information regarding
- 4024 the proposed contract works, including a brief description of the type,
- 4025 size, major items, and other important or relevant features of the
- 4026 works; and
- 4027
- 4028 iii) Consulting Services, the name of the contract to be bid, a general
- 4029 description of the project and other important or relevant information;
- 4030
- 4031 b) The name of the project, identification and number of lots or items
- 4032 specific to the bidding, as well as the basis of evaluation of the project,
- 4033 lots, or items, where applicable;
- 4034
- 4035 c) A general statement on the criteria to be used by the Procuring Entity for
- 4036 the eligibility check, the short listing of prospective bidders, in the case
- 4037 of the procurement of Consulting Services, the examination and
- 4038 evaluation of bids, post-qualification, and award;
- 4039
- 4040 d) For the procurement of Goods and Infrastructure Projects, whether the
- 4041 contract will be awarded to the LCRB or the MEARB.
- 4042
- 4043 e) If the contract is to be awarded to the MEARB, the criteria to be used in
- 4044 assessing the bid, the weight or score assigned by the Procuring Entity
- 4045 to each criterion, and the quality-price ratio to determine the award;
- 4046
- 4047 f) The date, time and place of the deadline for the submission and receipt
- 4048 of the eligibility requirements, the pre-bid conference if any, the
- 4049 submission and receipt of bids, and the opening of bids;
- 4050
- 4051 g) ABC for the project, lot, or item to be bid;
- 4052
- 4053 h) The source of funding;
- 4054
- 4055 i) The place, time and website where the Bidding Documents may be
- 4056 secured or downloaded, and, where required, the price of the Bidding
- 4057 Documents, in accordance with Section 47.4 of this IRR;
- 4058
- 4059 j) The contract duration or delivery schedule;
- 4060

- 4061 k) The name, address, telephone number, facsimile number, e-mail and
4062 website addresses of the concerned Procuring Entity, as well as its
4063 designated contact person;
4064
4065 l) Bid security requirement;
4066
4067 m) Such other necessary information deemed relevant by the Procuring
4068 Entity; and
4069
4070 n) For electronic bid submission, the Invitation to Bid, including the Bidding
4071 Documents shall clearly state whether the PE shall allow the submission
4072 and receipt of bids through electronic means.
4073
- 4074 50.2 Publication and Posting of the Invitation to Bid/Request for Expression
4075 of Interest.
4076
- 4077 50.2.1 For competitive bidding, competitive dialogue, and unsolicited offer with
4078 bid matching, the Invitation to Bid/Request for Expression of Interest shall be:
4079
- 4080 a) Posted at any conspicuous place reserved for this purpose in the
4081 premises of the Procuring Entity concerned for seven (7) calendar days
4082 as certified by the head of the BAC Secretariat of the Procuring Entity
4083 concerned; and
4084
4085 b) Posted continuously in the PhilGEPS website, the website of the
4086 Procuring Entity concerned, if available, and the website prescribed by
4087 the foreign government/foreign or international financing institution, if
4088 applicable, for seven (7) calendar days starting on the date of
4089 advertisement.
4090
- 4091 50.2.2 For the following modes, the BAC, through its Secretariat, shall post the
4092 invitation or request for submission of price quotations/proposals in the
4093 PhilGEPS website, the website of the Procuring Entity concerned, if available,
4094 and at any conspicuous place reserved for this purpose in the premises of the
4095 Procuring Entity for a period of at least three (3) calendar days:
4096
- 4097 a) Section 28 Limited Source Bidding;
4098
4099 b) Section 35.1 Two Failed Biddings;
4100
4101 c) Section 35.9 Small Value Procurement (For ABC above One Hundred
4102 Thousand Pesos (₱100,000.00)); and
4103
4104 d) Section 35.11 NGO Participation.

4105

4106 Other modes not enumerated herein shall not be required to comply with the
4107 publication and/or posting requirements.

4108

4109 50.2.3 Until such time the use of the electronic bidding facility of the PhilGEPS
4110 becomes mandatory and²⁴¹ if the Procuring Entity will allow electronic bid
4111 submission, the highest official managing the Information Technology system
4112 of the agency shall issue a Certification based on the prescribed form of the
4113 GPPB. The said Certification shall be submitted to the GPPB-TSO prior to
4114 posting of the Bidding Documents allowing for electronic submission and
4115 receipt of bids.

4116

4117 **Section 51. Pre-bid Conference**

4118

4119 51.1 For contracts to be bid through competitive selection such as competitive
4120 bidding, competitive dialogue, limited source bidding, and unsolicited offer with
4121 bid matching, with an ABC of Three Million Pesos (P3,000,000.00) or more, the
4122 BAC shall convene at least one (1) pre-bid conference to clarify or explain any
4123 of the requirements, terms, conditions, and specifications stipulated in the
4124 Bidding Documents. For contracts to be bid with an ABC of less than Three
4125 Million Pesos (P3,000,000), pre-bid conferences may be conducted at the
4126 discretion of the BAC. Subject to the approval of the BAC, a pre-bid conference
4127 may also be conducted upon written request of any prospective bidder.

4128

4129 51.2 The pre-bid conference shall be held at least twelve (12) calendar days
4130 before the deadline for the submission and receipt of bids, but not earlier than
4131 seven (7) calendar days from the PhilGEPS posting of the Invitation to Bid or
4132 Bidding Documents and in the case of Consulting Services, from the
4133 determination of the shortlisted consultants.

4134

4135 51.3 The pre-bid conference shall discuss, clarify and explain, among other
4136 things, the eligibility requirements and the technical and financial components
4137 of the contract to be bid, including questions and clarifications raised by the
4138 prospective bidders before and during the Pre-Bid Conference.

4139

4140 The BAC shall have a proactive role during the conduct of pre-bid conference:

4141

4142 a) The BAC shall discuss the requirements for a particular procurement
4143 project, as stated in the Bidding Documents. The BAC shall not merely
4144 rely on the questions propounded by the prospective bidders, but must
4145 initiate discussions on the requirements of the project.

4146

4147 b) The BAC shall likewise discuss the common reasons of bidders'
4148 disqualifications based on its experiences in previous procurement

4149 projects. Accordingly, the BAC shall present and explain the ways to
4150 prevent similar occasions of disqualification.

4151

4152 Pre-bid conference may be conducted in person or face-to-face or online
4153 through videoconferencing, webcasting, or similar technology, or a combination
4154 thereof. Procuring Entities with videoconferencing capabilities that have
4155 manufacturers, suppliers, distributors, contractors and/or consultants that also
4156 have videoconferencing capabilities may conduct their pre-bid conferences
4157 electronically. The pre-bid conference is open to prospective bidders, and in
4158 case of procurement of Consulting Services, the shortlisted bidder, but
4159 attendance shall not be mandatory.

4160

4161 51.4 The minutes of the pre-bid conference shall be recorded and prepared
4162 not later than five (5) calendar days after the pre-bid conference, and shall be
4163 made available to prospective bidders not later than five (5) calendar days upon
4164 written request.

4165

4166 Decisions of the BAC amending any provision of the Bidding Documents shall
4167 be issued in writing through a Supplemental/Bid Bulletin at least seven (7)
4168 calendar days before the deadline for the submission and receipt of bids.

4169

4170 51.5 Supplemental/Bid Bulletins

4171

4172 51.5.1 Requests for clarification(s) on any part of the Bidding Documents or for
4173 an interpretation must be in writing and submitted to the BAC of the Procuring
4174 Entity concerned at least ten (10) calendar days before the deadline set for the
4175 submission and receipt of bids. The BAC shall respond to the said request by
4176 issuing a Supplemental or Bid Bulletin, duly signed by the BAC Chairperson, to
4177 be made available to all those who have properly secured the Bidding
4178 Documents, at least seven (7) calendar days before the deadline for the
4179 submission and receipt of bids.

4180 51.5.2 For purposes of clarifying or modifying any provision of the Bidding
4181 Documents, Supplemental or Bid Bulletins may be issued upon the Procuring
4182 Entity's initiative at least seven (7) calendar days before the deadline for the
4183 submission and receipt of bids. Any modification to the Bidding Documents
4184 shall be identified as an amendment.

4185 51.5.3 Any Supplemental/Bid Bulletin issued by the BAC shall also be posted
4186 in the PhilGEPS, in any conspicuous place in the premises of the Procuring
4187 Entity, and in the website or social media platforms of the Procuring Entity, if
4188 available, or such other channels as may be authorized by the GPPB. It shall
4189 be the responsibility of all those who have properly secured the Bidding
4190 Documents to inquire and secure Supplemental or Bid Bulletins that may be
4191 issued by the BAC. However, bidders who have submitted bids before the

issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with Section 55 of this IRR.

**RULE VIII
RECEIPT AND OPENING OF BIDS**

Section 52. Eligibility Requirements for the Procurement of Goods, Infrastructure Projects, and Consulting Services

52.1 For purposes of determining the eligibility of bidders using the criteria stated in Section 52.4 of this IRR, only the following documents shall be required by the BAC, using the forms prescribed in the Bidding Documents:

a) Class "A" Documents

Legal Documents

- i) PhilGEPS Certificate of Registration (Platinum Membership) pursuant to the requirement provided in Section 20 of this IRR.

Technical Documents

- i) Statement of the 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.
- ii) For Goods and Infrastructure Projects, Statement of the bidder's Single Largest Completed Contract (SLCC) similar to the contract to be bid, except under conditions provided for in Sections 52.4.1.3 and 52.4.2.4 of this IRR, within the relevant period as provided in the Bidding Documents in the case of Goods.

All of the above statements shall include all information required in the Philippine Bidding Documents (PBDs) prescribed by the GPPB.

- iii) In the case of procurement of Infrastructure Projects, a valid Philippine Contractors Accreditation Board (PCAB) License or Special PCAB License in case of Joint Ventures, and registration for the type and cost of the contract to be bid.

- iv) In case of procurement of Consulting Services, a statement of the consultant 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 Documents

- i) The bidder's Audited Financial Statements, showing, among others, the bidder's total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of bid submission.

- ii) For Goods and Infrastructure Projects, the bidder's computation of NFCC. However, in the case of procurement of Goods, a bidder may submit a committed Line of Credit from a universal, rural, or commercial bank, in lieu of its NFCC computation.

b) Class "B" Document

For Goods, valid joint venture agreement (JVA), in case the joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners should be included in the bid, stating that they will enter into and abide by the provisions of the JVA in the event 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.

For Infrastructure Projects, JV bidders shall submit a JVA in accordance with RA No. 4566 and its IRR.

Each partner of the joint venture shall submit their respective PhilGEPS Certificates of Registration in accordance with Section 20.5.2 of this IRR. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance; Provided, That the partner responsible to submit the NFCC shall likewise submit the Statement of all of its ongoing contracts and Audited Financial Statements.

4278

4279 52.2 In case of foreign bidders, the eligibility requirements or statements, the
4280 bids, and all other documents to be submitted to the BAC must be in English. If
4281 the eligibility requirements or statements, the bids, and all other documents
4282 submitted to the BAC are in a foreign language other than English, it must be
4283 accompanied by a translation of the documents in English. The documents shall
4284 be translated by the relevant foreign government agency, the foreign
4285 government agency authorized to translate documents, or a registered
4286 translator in the foreign bidder's country; and shall be authenticated by the
4287 appropriate Philippine foreign service establishment or post or the equivalent
4288 office having jurisdiction over the foreign bidder's affairs in the Philippines.

4289

4290 However, for Contracting Parties to the Apostille Convention, the documents
4291 shall be authenticated through an apostille by the Competent Authority, as
4292 defined in Section 20.5.2 paragraph 4 of this IRR, except for countries identified
4293 by the DFA that will still require legalization (red ribbon) by the relevant
4294 Embassy or Consulate.

4295

4296 52.3 To facilitate determination of eligibility, the BAC of a Procuring Entity
4297 shall use the contents of the PhilGEPS electronic registry of manufacturers,
4298 suppliers, distributors, contractors, or consultants, in accordance with Section
4299 20.2.9(f) of this IRR.

4300

4301 In lieu of the Class "A" eligibility documents mentioned under this section, the
4302 bidder shall only submit a valid and updated PhilGEPS Certificate of
4303 Registration (Platinum Membership) in accordance with Section 20.2.9(f) of this
4304 IRR for purposes of determining eligibility.

4305

4306 52.4 Eligibility Criteria

4307

4308 52.4.1 For the procurement of Goods:

4309

4310 52.4.1.1 The following shall be eligible to participate in the bidding for the
4311 supply of Goods:

4312

4313 a) Duly licensed Filipino citizens or sole proprietorships;

4314

4315 b) Partnerships duly organized under the laws of the Philippines and of
4316 which at least sixty percent (60%) of the interest belongs to citizens of
4317 the Philippines;

4318

4319 c) Corporations duly organized under the laws of the Philippines, and of
4320 which at least sixty percent (60%) of the outstanding capital stock
4321 belongs to citizens of the Philippines;

4322

4323 d) Cooperatives duly organized under the laws of the Philippines; or

4324

4325 e) Persons or entities forming themselves into a joint venture, i.e., a
4326 group of two (2) or more persons or entities that intend to be jointly and
4327 severally responsible or liable for a particular contract: Provided,
4328 however, That Filipino ownership or interest of the joint venture
4329 concerned shall be at least sixty percent (60%). For this purpose, Filipino
4330 ownership or interest shall be based on the contributions of each of the
4331 members of the joint venture as specified in their JVA: Provided further,
4332 That the primary purpose of each member of the joint venture must be
4333 similar or related to the requirement of the project to be bid out.

4334

4335 52.4.1.2 Foreign bidders may be eligible to participate under any of the
4336 following circumstances in accordance with the guidelines issued by the GPPB:

4337

4338 a) When provided for under any treaty or international or executive
4339 agreement as provided in Section 4 of the Act and this IRR;

4340

4341 b) When the foreign supplier is a citizen, corporation or association of a
4342 country, the laws or regulations of which grant reciprocal rights or
4343 privileges to citizens, corporations or associations of the Philippines;

4344

4345 c) When the goods sought to be procured are not available from local
4346 suppliers; or

4347

4348 d) When there is a need to prevent situations that defeat competition or
4349 restrain trade.

4350

4351 52.4.1.3 The bidder must have completed, within the period specified in
4352 the Invitation to Bid, an SLCC that is similar to the contract to be bid, and whose
4353 value, adjusted to current prices using the Philippine Statistics Authority (PSA)
4354 consumer price indices, must be at least twenty-five percent (25%) of the ABC.

4355

4356 If, at the outset and after conducting market scoping, the Procuring Entity can
4357 already determine that imposing the foregoing requirement will likely result to:
4358 (a) failure of bidding, or (b) monopoly that will defeat the purpose of competitive
4359 bidding, the Procuring Entity, in lieu thereof, may require the following:

4360

4361 a) The bidder should have completed at least one (1) similar contract
4362 amounting to at least 12.5% of the ABC; and

4363

4364 b) The bidder should have completed other contracts, whether similar or
4365 not, with an aggregate amount of at least 12.5% of the ABC.

4366
4367 For this purpose, the similar contracts mentioned under (a) and (b) above must
4368 have been completed within the period specified in the Invitation to Bid. The
4369 Procuring Entity may clarify in the Bidding Documents the definition or
4370 description of what it considers to be a similar project, which must be germane
4371 to the kind, class, or genus of goods or services to be procured.
4372
4373 52.4.1.4 The computation of a bidder's NFCC must be at least equal to the
4374 ABC to be bid, calculated as follows:
4375
4376
$$\text{NFCC} = [(\text{Current assets minus current liabilities}) (15)] \text{ minus the value of all}$$

4377 outstanding or uncompleted portions of the projects under ongoing contracts,
4378 including awarded contracts yet to be started, coinciding with the contract to be
4379 bid.
4380
4381 The values of the domestic bidder's current assets and current liabilities shall
4382 be based on the latest Audited Financial Statements submitted to the BIR.
4383
4384 For purposes of computing the foreign bidders' NFCC, the value of the current
4385 assets and current liabilities shall be based on their Audited Financial
4386 Statements prepared in accordance with international financial reporting
4387 standards.
4388
4389 52.4.1.5 If the bidder submits a committed Line of Credit, it must be at least
4390 equal to ten percent (10%) of the ABC to be bid; Provided, That if the same is
4391 issued by a foreign universal or commercial bank, it shall be confirmed or
4392 authenticated by a local universal or commercial bank.
4393
4394 52.4.2 For the procurement of Infrastructure Projects:
4395
4396 52.4.2.1 The following persons or entities shall be allowed to participate in
4397 the bidding for Infrastructure Projects:
4398
4399 a) Duly licensed Filipino citizens or sole proprietorships;
4400
4401 b) Partnerships duly organized under the laws of the Philippines and of
4402 which at least sixty percent (60%) of the interest belongs to citizens of
4403 the Philippines;
4404
4405 c) Corporations duly organized under the laws of the Philippines, and of
4406 which at least sixty percent (60%) of the outstanding capital stock
4407 belongs to citizens of the Philippines;
4408
4409 d) Cooperatives duly organized under the laws of the Philippines; or

4410
4411 e) Persons or entities forming themselves into a joint venture, i.e., a
4412 group of two (2) or more persons or entities that intend to be jointly and
4413 severally responsible or liable for a particular contract: Provided,
4414 however, That in accordance with EO No. 65, s. 2018, Filipino
4415 ownership or interest of the joint venture concerned shall be at least sixty
4416 percent (60%): Provided, further, That joint ventures in which Filipino
4417 ownership or interest is less than sixty percent (60%) may be eligible
4418 where the structures to be built require the application of techniques or
4419 technologies which are not adequately possessed by a person or entity
4420 meeting the sixty percent (60%) Filipino ownership requirement:
4421 Provided, furthermore, That in the latter case, Filipino ownership or
4422 interest shall not be less than twenty-five percent (25%). For this
4423 purpose, Filipino ownership or interest shall be based on the
4424 contributions of each of the members of the joint venture as specified in
4425 their JVA: Provided, finally, That the primary purpose of each member
4426 of the joint venture must be similar or related to the requirement of the
4427 project to be bid out.

4428
4429 52.4.2.2 Foreign bidders may be eligible to participate in the procurement
4430 of Infrastructure Projects when provided for under any treaty or international or
4431 executive agreement as provided in Section 4 of the Act and this IRR.

4432
4433 52.4.2.3 In accordance with RA No. 4566, entitled "An Act Creating the
4434 Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and
4435 Functions, Providing Funds Therefor, and for Other Purposes," the persons or
4436 entities enumerated in Section 52.4.2.1 of this IRR may participate in
4437 competitive bidding if he has been issued a license by the PCAB to engage or
4438 act as a contractor.

4439
4440 52.4.2.4 The bidder must have completed an SLCC that is similar to the
4441 contract to be bid, and whose value, adjusted to current prices using the PSA
4442 consumer price indices, must be at least twenty-five (25%) of the ABC to be
4443 bid: Provided, however, That contractors under Small A and Small B categories
4444 without similar experience on the contract to be bid may be allowed to bid if the
4445 cost of such contract is not more than the Allowable Range of Contract Cost
4446 (ARCC) of their registration based on the guidelines as prescribed by the
4447 PCAB.

4448
4449 For foreign-funded procurement, the GoP and the foreign government, or
4450 foreign or international financing institution may agree on another track record
4451 requirement.

4452

Moreover, a contract shall be considered “similar” to the contract to be bid if it has the same major categories of work. The Procuring Entity may clarify in the Bidding Documents what is regarded as major categories of work.

52.4.2.5 The SLCC shall be supported by an Owner’s Certificate of Final Acceptance issued by the project owner other than the contractor or a final rating of at least Satisfactory in the Constructors Performance Evaluation System (CPES), or a similar performance and monitoring system. In case of contracts with the private sector, an equivalent document shall be submitted.

52.4.3 For the Procurement of Consulting Services

52.4.3.1 The following persons or entities shall be allowed to participate in the bidding for Consulting Services:

- a) Duly licensed Filipino citizens or sole proprietorships;
- b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
- 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 organized under the laws of the Philippines; or
- e) Persons or entities forming themselves into a joint venture, i.e., a group of two (2) or more persons or entities that intend to be jointly and severally

52.4.3.2 When the types and fields of Consulting Services in which the foregoing persons or entities wish to engage involve the practice of professions regulated by law, those who will actually perform the services shall be Filipino citizens and registered professionals authorized.

52.4.3.3 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 HoPE subject to the submission of the documents in accordance with Section 66 of this IRR.

52.5 GOCCs may be eligible to participate in competitive bidding only if they can establish that they (a) are legally and financially autonomous, (b) operate

4497 under commercial law, and (c) are not attached agencies of the Procuring
4498 Entity. The GPPB shall promulgate the necessary guidelines for this provision.
4499

4500 52.6 Notwithstanding the eligibility of a bidder, the Procuring Entity concerned
4501 reserves the right to review the qualifications of the bidder at any stage of the
4502 procurement process if the Procuring Entity has reasonable grounds to believe
4503 that a misrepresentation has been made by the said bidder, or that there has
4504 been a change in the bidder's capability to undertake the project from the time
4505 it submitted its eligibility requirements. Should such review uncover any
4506 misrepresentation made in the eligibility requirements, statements or
4507 documents, or any changes in the situation of the bidder which will affect the
4508 capability of the bidder to undertake the project so that it fails the eligibility
4509 criteria, the Procuring Entity shall consider the said bidder as ineligible and shall
4510 disqualify it from obtaining an award or contract, in accordance with Rules XX
4511 and XXI of this IRR.
4512

4513 **Section 53. Short-Listing for Consulting Services**
4514

4515 53.1 Short Listing of Prospective Bidders
4516

4517 53.1.1 With respect to a particular contract for Consulting Services to be bid,
4518 the concerned Procuring Entity shall only consider for short listing those
4519 consultants whose contracts, as identified in the eligibility documents submitted
4520 for registration, are similar in nature and complexity to the contract to be bid,
4521 based on the Request for Expression of Interest.
4522

4523 53.1.2 The BAC shall draw up the short list of consultants from those who have
4524 been determined as eligible in accordance with the provisions of this IRR. The
4525 number of short listed consultants, which shall be determined in the pre-
4526 procurement conference, shall consist of three (3) to seven (7) consultants, with
4527 five (5) as the preferable number. Should only one (1) or less than the required
4528 number apply for eligibility and short listing, pass the eligibility check, and/or
4529 pass the minimum score required in the short listing, the BAC shall consider the
4530 same. The shortlisted bidders shall then be required to pay the fee for the
4531 Bidding Documents, if applicable, subject to the provisions of Section 47 of this
4532 IRR.
4533

4534 53.1.3 The BAC shall specify in the Request for Expression of Interest the set
4535 of criteria and rating system for short listing of consultants to be used for the
4536 particular contract to be bid, which shall consider the following, among others:
4537

4538 a) Applicable experience of the consultant and members in case of joint
4539 ventures, considering both the overall experiences of the firm or, in the

4540 case of new firms, the individual experiences of the principal and key
4541 staff, including the times when employed by other consultants;

4542

4543 b) Qualification of personnel who may be assigned to the job in relation
4544 to the extent and complexity of the undertaking; and

4545

4546 c) Current workload relative to capacity.

4547

4548 53.1.4 The BAC shall recommend the short list of consultants to the HoPE for
4549 consideration and approval. The entire process of eligibility checking and short
4550 listing shall not exceed twenty (20) calendar days.

4551

4552 **Section 54. Submission and Receipt of Bids**

4553

4554 54.1 Bidders shall submit their bids through their duly authorized
4555 representative using the forms specified in the Bidding Documents in two (2)
4556 separate sealed bid envelopes, or two (2) password-protected Bidding
4557 Documents in compressed archive folders, in case of electronic bid submission
4558 as subjected to the relevant Guidelines, and which shall be submitted
4559 simultaneously. The first shall contain the technical component of the bid,
4560 including the eligibility requirements under Section 52.1 of this IRR, and the
4561 second shall contain the financial component of the bid.

4562

4563 54.2 The first envelope shall contain the following technical documents, at the
4564 least:

4565

4566 a) For the procurement of Goods:

4567

4568 i) PhilGEPS Certificate of Registration (Platinum Membership)
4569 in accordance with Section 20 of this IRR. Procurement to be
4570 performed overseas shall be subject to the Guidelines issued
4571 by the GPPB.

4572

4573 ii) Statement of all ongoing government and private contracts;

4574

4575 iii) Statement of SLCC;

4576

4577 iv) NFCC Computation or Committed Line of Credit;

4578

4579 v) JVA or the duly notarized statement in accordance with
4580 Section 52.1(b) of this IRR, if applicable;

4581

4582 vi) Bid security in the prescribed form, amount and validity period;

4583

4584 vii) Technical Specifications, which may include production or
4585 delivery schedule, manpower requirements, or after-sales
4586 service or parts, if applicable;

4587

4588 viii) Omnibus Sworn Statement in accordance with Section 54.3 of
4589 this IRR; and

4590

4591 ix) For foreign bidders claiming eligibility by reason of their
4592 country's extension of reciprocal rights to Filipinos, a
4593 certification from the relevant government office of their
4594 country stating that Filipinos are allowed to participate in their
4595 government procurement activities for the same item or
4596 product.

4597

4598 b) For the procurement of Infrastructure Projects:

4599

4600 i) PhilGEPS Certificate of Registration (Platinum Membership)
4601 in accordance with Section 20 of this IRR. Procurement to be
4602 performed overseas shall be subject to the Guidelines issued
4603 by the GPPB.

4604

4605 ii) PCAB License and Registration, in case of JV;

4606

4607 iii) Statement of all ongoing government and private contracts;

4608

4609 iv) Statement of SLCC;

4610

4611 v) NFCC Computation;

4612

4613 vi) JVA, if applicable;

4614

4615 vii) Bid security in the prescribed form, amount and validity period;

4616

4617 viii) Project Requirements, which shall include the following:

4618

4619 1) Organizational chart for the contract to be bid;

4620

4621 2) List of contractor's personnel (e.g., Project
4622 Manager, Project Engineers, Materials Engineers,
4623 and Foremen), to be assigned to the contract to be
4624 bid, with their complete qualifications and
4625 experience data;

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3) List of contractor's major equipment units which are owned, leased, or under purchase agreements, supported by proof of ownership or certification of availability of equipment from the equipment lessor or vendor for the duration of the project, as the case may be; and

4) Omnibus Sworn Statement in accordance with Section 54.3 of this IRR;

c) For the procurement of Consulting Services:

i) The bid security in the prescribed form, amount and validity period;

ii) Organizational chart for the contract to be bid;

iii) List of completed and ongoing projects;

iv) 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;

v) List of key personnel to be assigned to the contract to be bid, with their complete qualification and experience data; and

vi) Omnibus Sworn Statement in accordance with Section 54.3 of this IRR.

54.3 The Omnibus Sworn Statement executed by the bidder, or its duly authorized representative, shall contain the following:

a) The signatory is the duly authorized representative of the prospective bidder, and is granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract accompanied by the duly notarized Special Power of Attorney, Board or Partnership Resolution, or Secretary's Certificate, whichever is applicable;

b) It is not "blacklisted" or barred from bidding by the GoP or any of its agencies, offices, corporations, or LGUs, including foreign

4669 government or foreign or international financing institution whose
4670 blacklisting rules have been recognized by the GPPB; by itself or by
4671 relation, membership, association, affiliation, or controlling interest
4672 with another blacklisted person or entity;

4673

4674 c) Each of the documents submitted in satisfaction of the bidding
4675 requirements is an authentic copy of the original, complete, and all
4676 statements and information provided therein are true and correct;

4677

4678 d) It is authorizing the HoPE or its duly authorized representative/s to
4679 verify all the documents submitted;

4680

4681 e) It complies with the disclosure provision under Section 81 of the Act
4682 and this IRR, in relation to other provisions of R.A. No. 3019;

4683

4684 f) It complies with existing labor laws and standards;

4685

4686 g) It complies with the responsibilities of a prospective or eligible bidder
4687 provided in the PBDs;

4688

4689 h) It did not give or pay, directly or indirectly, any commission, amount,
4690 fee, or any form of consideration, pecuniary or otherwise, to any
4691 person or official, personnel or representative of the government in
4692 relation to any procurement project or activity; and

4693

4694 i) In case advance payment was made or given, failure to perform or
4695 deliver any of the obligations and undertakings in the contract shall
4696 be sufficient grounds to constitute criminal liability for swindling
4697 (estafa) or the commission of fraud with unfaithfulness or abuse of
4698 confidence through misappropriating or converting any payment
4699 received by a person or entity under an obligation involving the duty
4700 to deliver certain goods or services, to the prejudice of the public and
4701 the GoP pursuant to Article 315 of Act No. 3815 s. 1930, as
4702 amended, or the Revised Penal Code.

4703

4704 54.4 The second envelope shall contain the financial documents as specified
4705 in the PBDs.

4706

4707 54.5 Bids shall be received by the BAC on the date, time, and place specified
4708 in the Invitation to Bid or Request for Expression of Interest. The following
4709 periods from the last day of posting of the Invitation to Bid or Request for
4710 Expression of Interest up to the submission and receipt of bids shall be
4711 observed:

4712

a) For Goods, a maximum period of forty-five (45) calendar days.

b) For Infrastructure Projects, the following maximum periods:

ABC (in Philippine currency)	Period
Fifty (50) million and below	50 calendar days
Above fifty (50) million	65 calendar days

c) For Consulting Services, a maximum period of seventy-five (75) calendar days.

54.6 Bids, including the eligibility requirements under Section 52.1 of this IRR, submitted after the deadline shall not be accepted by the BAC. The BAC shall record in the minutes of the submission and opening of bids, the bidder's name, its representative and the time the late bid was submitted.

54.7 To ensure transparency and accurate representation of the bid submission, the BAC Secretariat shall notify in writing all bidders whose bids it has received through its PhilGEPS-registered physical address or official e-mail address. The notice shall be issued within seven (7) calendar days from the date of the bid opening.

54.8 The original copy of the bid form shall be typewritten or written in ink and shall be signed by the bidder or its duly authorized representative.

54.9 Unsealed or unmarked bid envelopes, or in case of electronic bid submission, Bidding Documents not in compressed archive folders and are not password-protected, shall be rejected. However, bid envelopes that are not properly sealed and marked or not properly compressed and password-protected, as required in the Bidding Documents, shall be accepted; Provided, That the bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The BAC shall assume no responsibility for misplaced or lost contents of the improperly sealed or marked bid, or improperly compressed or password-protected folder, or for its premature opening.

Section 55. Modification and Withdrawal of Bids

55.1 Bidders may modify their bids; Provided, That this is done before the deadline for the receipt of bids. For manual submission and receipt of bids, where bidders modify their bids, they shall not be allowed to retrieve their original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to their original bid and marked as a "modification,"

thereof, 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.

For online or electronic bid submission, where bidders modify their Bid, they shall not be allowed to retrieve their original Bid but shall only be allowed to send another Bid equally secured and properly identified. In the case of electronic submission, it shall be labelled as a “modification” of the one previously submitted. The time indicated in the latest bid receipt page generated shall be the official time of submission. Bids submitted after the deadline shall not be accepted.

55.2 Bidders may, through a letter, withdraw their bids before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline shall be subject to appropriate sanctions as prescribed in this IRR. Bidders may also express their 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. Bidders that withdraw their bids shall no longer be allowed to submit another bid for the same contract either directly or indirectly.

Section 56. Bid Security

56.1 All bids in modes of procurement that are competitive in nature particularly competitive bidding, competitive dialogue, unsolicited offer with bid matching, and limited source bidding shall be accompanied by a bid security, payable to the Procuring Entity concerned as a guarantee that the successful bidder shall, within ten (10) calendar days from receipt of the notice of award, enter into contract with the Procuring Entity and furnish the performance security required in Section 68 of this IRR, except when Section 66.1 of this IRR allows a longer period. Failure to enclose the required bid security in the form and amount prescribed herein shall automatically disqualify the bid concerned.

56.2 The bidder shall submit a Bid Securing Declaration, or any form of bid security, in an amount not less than the required percentage of the ABC in accordance with the following schedule:

Form of Bid Security	Amount of Bid Security (Not less than the required percentage of the ABC)
a) Cash, or cashier's or manager's check issued by a universal or commercial bank. For biddings conducted by LGUs, the cashier's or manager's check may be	

issued by other banks certified by the BSP as authorized to issue such financial instrument.	Two percent (2%)
b) Bank draft or 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. For biddings conducted by LGUs, bank draft or guarantee, or irrevocable letter of credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Five percent (5%)
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.	Five percent (5%)

4789

4790 56.3 The procuring entity shall indicate in the Bidding Documents at least three
4791 (3) acceptable forms of bid security that bidders may choose from, which shall
4792 include Bid Securing Declaration, provided in Section 56.6 of this IRR.

4793

4794 56.4 The bid security shall be denominated in Philippine Pesos and posted in
4795 favor of the Procuring Entity.

4796

4797 56.5 Without prejudice to the provisions of the Act and this IRR on the
4798 forfeiture of bid securities, bid securities shall be returned only after the bidder
4799 with the LCRB, MEARB, MARB or HRRB, as the case may be, has signed the
4800 contract and furnished the performance security, except to those declared by
4801 the BAC as failed or post-disqualified in accordance with this IRR, upon
4802 submission of a written waiver of their right to file a request for reconsideration
4803 and/or protest.

4804

4805 56.6 A Bid Securing Declaration is an undertaking which states, among
4806 others, that the bidder shall enter into contract with the Procuring Entity and
4807 furnish the required performance security within ten (10) calendar days, as
4808 indicated in the Bidding Documents, from receipt of the Notice of Award, and
4809 commits to pay the corresponding amount as fine and be automatically
4810 disqualified from bidding of any procurement contract of any Procuring Entity
4811 for a period of time, upon receipt of the Blacklisting Order, in the event it

4812 violates any of the conditions stated therein as required in the guidelines issued
4813 by the GPPB.

4814

4815 56.7 In no case shall the bid security be returned later than the expiration of
4816 the bid validity period indicated in the Bidding Documents, unless it has been
4817 extended in accordance with Section 57.2 of this IRR.

4818

4819 **Section 57. Bid Validity**

4820

4821 57.1 Bids and bid securities shall be valid for a reasonable period as
4822 determined by the HoPE concerned, which shall be indicated in the Bidding
4823 Documents, but in no case shall the period exceed one hundred twenty (120)
4824 calendar days from the date of the opening of bids.

4825

4826 57.2 Should it become necessary to extend the validity of the bids and bid
4827 securities beyond one hundred twenty (120) calendar days, the Procuring Entity
4828 concerned shall request in writing all those who submitted bids for such
4829 extension before the expiration date therefor. Bidders, however, shall have the
4830 right to refuse to grant such extension without forfeiting their bid security.

4831

4832 **Section 58. Bid Opening**

4833

4834 The BAC shall open the bids immediately after the deadline for the submission
4835 and receipt of bids. The time, date, and place of the opening of bids shall be
4836 specified in the Bidding Documents.

4837

4838 The manner of opening of bids for goods and Infrastructure Projects shall
4839 depend on the award criterion to be adopted, as follows:

4840

4841 a) For LCRB, the BAC shall open the technical and financial proposals on
4842 the same day; and

4843

4844 b) For MEARB or MARB, only the technical proposals shall be opened
4845 while the financial proposals shall remain unopened and be secured by
4846 the BAC until the specified time of their opening as indicated in the
4847 Bidding Documents. Only the financial proposals of the bidders who
4848 have met the minimum technical score for MEARB or highest technical
4849 score for MARB shall be opened.255

4850

4851 For electronic bid submission, the passwords for accessing the Bidding
4852 Documents will be disclosed by the Bidders only during the actual bid opening
4853 which may be done in person or face-to-face through videoconferencing,
4854 webcasting or similar technology.

4855

In case the bids cannot be opened as scheduled due to justifiable reasons, the BAC shall secure the bids submitted and reschedule the opening of bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the PhilGEPS website and the website of the Procuring Entity concerned.

The bidders or their duly authorized representatives may attend the opening of bids. The BAC shall ensure the integrity, security, and confidentiality of all submitted bids. The abstract of bids as read and the minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover the cost of materials.

RULE IX BID EVALUATION

Section 59. Preliminary Examination of Bids

59.1 Prior to bid evaluation, the BAC shall open the first bid envelopes in public to determine each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements, as prescribed in this 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 or fail" criterion, as stated in the Instructions to Bidders. 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."

Receipt of the scanned copies of the first bid envelope with the required forms prescribed in this IRR, which are for online or electronic bid submission, shall be considered as compliant with the requirements of the said bid submission, subject to the submission of the original copies of the following:

- a) Bid Securing Declaration or other forms of bid security excluding cash;
and
- b) the Omnibus Sworn Statement.

These forms shall be submitted by the bidder to and duly received by the BAC concerned during the post-qualification stage.

4898 The non-submission of these forms within the set period shall render the bid
4899 submission as non-compliant and shall result in the post-disqualification of the
4900 bid.

4901

4902 59.2 Immediately after determining compliance with the requirements in the first
4903 envelope, the BAC shall then open the second bid envelope of each remaining
4904 eligible bidder whose technical proposal contained in the first bid envelope was
4905 rated "passed." The second envelope of each complying bidder shall be opened
4906 within the same day, except as provided under Sections 58 and 62 of this IRR.
4907 In case any of the requirements in the second envelope of a particular bid is
4908 missing, incomplete, or patently insufficient, and/or if the submitted total bid
4909 price exceeds the ABC, the BAC shall rate the bid concerned as "failed." Only
4910 bids that are determined to contain all the bid requirements for both
4911 components shall be rated "passed" and immediately considered for evaluation
4912 and comparison.

4913

4914 Receipt of the scanned copies of the second bid envelope with the required
4915 forms such as the duly signed bid form, price schedules, or other forms
4916 prescribed in this IRR, for electronic or online bid submission, shall be
4917 considered as compliant with the requirements of the said bid submission.

4918

4919 59.3 For the procurement of Goods and Infrastructure Projects using MEARB
4920 as award criteria, the detailed implementation of the procedure specified in this
4921 Section shall be provided in Sections 61.3 to 61.7 of this IRR.

4922

4923 59.4 For the procurement of Consulting Services, the detailed implementation
4924 of the procedure specified in this Section shall be as provided in Section 62 of
4925 this IRR.

4926

4927 **Section 60. Ceiling for Bid Prices**

4928

4929 60.1 The ABC shall be the upper limit or ceiling for acceptable bid prices. If a
4930 bid price, as evaluated and calculated in accordance with this IRR, is higher
4931 than the ABC, the bidder submitting the same shall be automatically
4932 disqualified. There shall be no lower limit or floor on the amount of the award.

4933

4934 60.2 For foreign-funded procurement, the ABC shall be applied as the ceiling:
4935 Provided, That the following conditions are met:

4936

4937 a) Bidding Documents are obtainable free of charge on a freely
4938 accessible website. If payment of Bidding Documents is required by the
4939 Procuring Entity, payment could be made upon the submission of bids;

4940

4941 b) The Procuring Entity has procedures in place to ensure that the ABC
4942 is based on recent estimates made by the engineer or the responsible
4943 unit of the Procuring Entity and that the estimates are based on adequate
4944 detailed engineering (in the case of Infrastructure Projects) and reflect
4945 the quality, supervision and risk and inflationary factors, as well as
4946 prevailing market prices, associated with the types of Goods or
4947 Infrastructure Projects to be procured;

4948
4949 c) The Procuring Entity has trained cost estimators in estimating prices
4950 and analyzing bid variances. In the case of Infrastructure Projects, the
4951 Procuring Entity must also have trained quantity surveyors;

4952
4953 d) The Procuring Entity has established a system to monitor and report
4954 bid prices relative to the ABC and the engineer's or Procuring Entity's
4955 estimate.

4956
4957 e) The Procuring Entity has established a monitoring and evaluation
4958 system for contract implementation to provide feedback on actual total
4959 costs of Goods and Infrastructure Projects.

4960
4961 However, the GoP and the foreign government, or foreign or international
4962 financing institution may agree to waive the foregoing condition.

4963
4964 **Section 61. Bid Evaluation for the Procurement of Goods and**
4965 **Infrastructure Projects**
4966

4967 61.1 Members of the BAC, its staff and personnel, Secretariat, and TWG, as
4968 well as Observers, are prohibited from making or accepting any communication
4969 with any bidder regarding the evaluation of their bids until the issuance of the
4970 Notice of Award. However, the BAC, through its Secretariat, may ask the bidder
4971 in writing for a clarification of its bid. All responses to requests for clarification
4972 shall be in writing.

4973
4974 61.2 For the procurement of Goods and Infrastructure Projects, the BAC shall
4975 evaluate the financial component of the bids to determine the LCB using the
4976 following steps:

4977
4978 61.2.1 The BAC shall immediately conduct a detailed evaluation of all bids
4979 using non-discretionary criteria in considering the following:

4980
4981 a) Completeness of the bid. Unless the Instructions to Bidders
4982 specifically allow partial bids, bids not addressing or providing all of the
4983 required items in the Bidding Documents including, where applicable, bill

4984 of quantities, shall be considered non-responsive and, thus,
4985 automatically disqualified.

4986

4987 However, when no price or a zero (0) or a dash (-) is indicated in a
4988 required item in the bid form, the same would mean that it is being
4989 offered for free to the Government, except those required by law or
4990 regulations to be provided for; and

4991

4992 b) Arithmetical corrections. The BAC shall consider computational errors
4993 and omissions to enable proper comparison of all eligible bids. It may
4994 also consider bid modifications if expressly allowed in the Bidding
4995 Documents. Any adjustment shall be calculated in monetary terms to
4996 determine the calculated prices.

4997

4998 61.2.2 The BAC shall evaluate all bids on an equal footing to ensure fair
4999 and competitive bid comparison. For this purpose, all bidders shall be required
5000 to include the cost of all taxes, such as, but not limited to, value added tax
5001 (VAT), income tax, local taxes, and other fiscal levies and duties, if applicable,
5002 which shall be itemized in the bid form and reflected in the detailed estimates.
5003 Such bids, including said taxes, shall be the basis for bid evaluation and
5004 comparison.

5005

5006 61.2.3 In case of discrepancies between: (a) bid prices in figures and in words,
5007 the latter shall prevail; (b) total price per item and unit price for the item as
5008 extended or multiplied by the quantity of that item, the latter shall prevail; (c)
5009 stated total price and the actual sum of prices of component items, the latter
5010 shall prevail; (d) unit cost in the detailed estimate and unit cost in the bill of
5011 quantities, the latter shall prevail; and (e) amount in price schedule and in the
5012 bid form, the latter shall prevail.

5013

5014 61.2.4 Bids shall then be ranked in the ascending order of their total calculated
5015 bid prices, as evaluated and corrected for computational errors, and other bid
5016 modifications, to identify the LCB. Total calculated bid prices, as evaluated and
5017 corrected for computational errors, and other bid modifications, which exceed
5018 the ABC shall be disqualified.

5019

5020 61.2.5 The entire evaluation process for the procurement of Goods and
5021 Infrastructure Projects using LCB as criteria shall be completed within seven
5022 (7) calendar days from the deadline for receipt of proposals.

5023

5024 61.3 For the procurement of Goods and Infrastructure Projects using MEARB
5025 as award criteria, the BAC shall evaluate the quality and price proposals to
5026 determine the Most Economically Advantageous Bid (MEAB) using the
5027 following steps:

5028

5029 a) The quality proposal together with the price proposal shall be considered
5030 in the evaluation of bidders. The quality proposals shall be evaluated first
5031 using the criteria in Section 61.4 of this IRR. The price proposals of the
5032 bidders who meet the minimum quality score shall then be opened.

5033

5034 b) The price and quality proposals shall be given corresponding weights
5035 with the price proposal given a minimum weight of fifteen percent (15%)
5036 up to a maximum of forty percent (40%). The weight of the quality criteria
5037 shall be adjusted accordingly such that their total weight in percent
5038 together with the weight given to the price proposal shall add to one
5039 hundred percent (100%). To further promote green public procurement,
5040 sustainability of products, materials, or structures with green
5041 specifications shall be given greater weight in the evaluation of bids. The
5042 exact weights shall be approved by the BAC upon the recommendation
5043 of the End-User or Implementing Unit and indicated in the Bidding
5044 Documents. The BAC shall rank the bidders in descending order based
5045 on the combined numerical ratings of their quality and price proposals.
5046 The bidder with the best overall score using the quality-price ratio shall
5047 be referred to as the MEAB.

5048

5049 c) The HoPE shall approve or disapprove the recommendations of the BAC
5050 within two (2) calendar days after receipt of the results of the evaluation
5051 from the BAC.

5052

5053 61.4 The quality component shall be assessed on the basis of criteria with
5054 corresponding numerical weights indicated in the Bidding Documents, that may
5055 include qualitative, environmental, or social aspects linked to the subject matter
5056 of the contract. These may include any or a combination of the following:

5057

5058 a) Quality and technical merit, including technical competence and a
5059 credible track record;

5060

5061 b) Aesthetic and functional design and characteristics;

5062

5063 c) Approach and methodology;

5064

5065 d) Accessibility;

5066

5067 e) Tools and equipment;

5068

5069 f) Social, environmental, economic, and innovative characteristics;

5070

- 5071 g) Organization, qualification, and experience of employees or staff
5072 assigned to perform the contract;
5073
5074 h) On-going contracts and work commitments;
5075
5076 i) After-sales service and technical assistance;
5077
5078 j) Delivery conditions, such as delivery period and delivery process;
5079
5080 k) Disposal measures; or
5081
5082 l) Other relevant criteria in relation to the subject goods or Infrastructure
5083 Projects to be procured.
5084

5085 61.5 In order to eliminate bias in evaluating the quality proposals, it is
5086 recommended that the highest and lowest scores for each bidder for each
5087 criterion shall not be considered in determining the average scores of the
5088 bidders, except when the evaluation is conducted in a collegial manner
5089

5090 61.6 All participating bidders shall be furnished the results (ranking and total
5091 scores only) of the evaluation, which shall include the ranking and total scores
5092 only, after the approval by the HoPE of the ranking. Said results shall also be
5093 posted in the PhilGEPS and the website of the Procuring Entity, whenever
5094 available, for a period of not less than seven (7) calendar days.
5095

5096 61.7 The entire evaluation process for the procurement of Goods and
5097 Infrastructure Projects using MEARB as criteria shall be completed within
5098 fourteen (14) calendar days from the deadline for receipt of proposals.
5099

5100 **Section 62. Bid Evaluation of Short-Listed Bidders for Consulting** 5101 **Services** 5102

5103 62.1 From submission and receipt of bids until the approval by the HoPE of
5104 the ranking of short-listed bidders, those that have submitted their bids are
5105 prohibited from making any communication with any BAC member, including
5106 its staff and personnel, as well as its Secretariat and TWG, regarding matters
5107 connected to their bids. However, the BAC, through its Secretariat, may ask in
5108 writing the bidder for a clarification of its bid. All responses to requests for
5109 clarification shall be in writing.
5110

5111 62.2 The purpose of bid evaluation is to determine the Highest Rated Bid
5112 using the following steps:
5113

5114 62.2.1 The BAC shall conduct a detailed evaluation of bids using either of the
5115 following evaluation procedures as specified in the Bidding Documents:

5116

5117 62.2.1.1 Quality-Based Evaluation Procedure

5118

5119 a) A two-stage procedure shall be adopted whereby each consultant
5120 shall be required to submit its technical and financial proposals
5121 simultaneously in separate sealed envelopes.

5122

5123 b) After the receipt of bids, the technical proposals shall first be opened
5124 and evaluated, in accordance with Section 62.2.2 of this IRR. The BAC
5125 shall rank the consultants in descending order based on the numerical
5126 ratings of their technical proposals and identify the Highest Rated Bid:
5127 Provided, however, That the Highest Rated Bid shall pass the minimum
5128 score indicated in the Bidding Documents.

5129

5130 c) The HoPE shall approve or disapprove the recommendations of the
5131 BAC within two (2) calendar days after receipt of the results of the
5132 evaluation from the BAC.

5133

5134 d) After approval by the HoPE of the Highest Rated Bid, its financial
5135 proposal shall then be opened. The BAC shall, within three (3) calendar
5136 days, notify and invite the consultant with the Highest Rated Bid for the
5137 opening of financial proposal for the purpose of conducting negotiations
5138 with the said consultant. In the letter of notification, the BAC shall inform
5139 the consultant of the issues in the technical proposal the BAC may wish
5140 to clarify during negotiations.

5141

5142 e) Negotiations shall be in accordance with Section 62.2.5 of this IRR:
5143 Provided, That the amount indicated in the financial envelope shall be
5144 made as the basis for negotiations and the total contract amount shall
5145 not exceed the amount indicated in the envelope and the ABC as stated
5146 in the Bidding Documents.

5147

5148 62.2.1.2 Quality-Cost Based Evaluation Procedure

5149

5150 a) The technical proposal together with the financial proposal shall be
5151 considered in the evaluation of consultants. The technical proposals
5152 shall be evaluated first using the criteria in Section 62.2.2 of this IRR.
5153 The financial proposals of the consultants who meet the minimum
5154 technical score shall then be opened.

5155

5156 b) The financial and technical proposals shall be given corresponding
5157 weights with the financial proposal given a minimum weight of fifteen

5158 percent (15%) up to a maximum of forty percent (40%). The weight of
5159 the technical criteria shall be adjusted accordingly such that their total
5160 weight in percent together with the weight given to the financial proposal
5161 shall add to one hundred percent (100%). The exact weights shall be
5162 approved by the HoPE upon the recommendation of the BAC and
5163 indicated in the Bidding Documents. The BAC shall rank the consultants
5164 in descending order based on the combined numerical ratings of their
5165 technical and financial proposals and identify the Highest Rated Bid.

5166

5167 c) The HoPE shall approve or disapprove the recommendations of the
5168 BAC within two (2) calendar days after receipt of the results of the
5169 evaluation from the BAC.

5170

5171 d) After approval by the HoPE of the Highest Rated Bid, the BAC shall,
5172 within three (3) calendar days, notify and invite the consultant with the
5173 Highest Rated Bid for negotiation in accordance with Section 62.2.5 of
5174 this IRR, except for the financial proposal under item (e) thereof.

5175

5176 62.2.2 The technical proposals of consultants shall be evaluated based on the
5177 following criteria and using the corresponding numerical weights indicated in
5178 the Bidding Documents:

5179

5180 a) Quality of personnel to be assigned to the project, which covers
5181 suitability of key staff to perform the duties of the particular assignments,
5182 and general qualifications and competence including education and
5183 training of the key staff;

5184

5185 b) Experience and capability of the consultant which include records of
5186 previous engagement and quality of performance in similar and in other
5187 projects; relationship with previous and current clients; and, overall work
5188 commitments, geographical distribution of current or impending projects
5189 and attention to be given by the consultant. The experience of the
5190 consultant to the project shall consider both the overall experiences of
5191 the firm and the individual experiences of the principal and key staff
5192 including the times when employed by other consultants; and

5193

5194 c) Plan of approach and methodology with emphasis on the clarity,
5195 feasibility, innovativeness, and comprehensiveness of the plan
5196 approach, and the quality of interpretation of project problems, risks, and
5197 suggested solutions.

5198

5199 For complex or unique undertakings, such as those involving new concepts or
5200 technology, or financial advisory services, participating short-listed consultants

5201 may be required, at the option of the agency concerned, to make an oral
5202 presentation to be presented by each consultant, or its nominated Project
5203 Manager or head, in case of firms, within fifteen (15) calendar days after the
5204 deadline for submission of technical proposals.

5205

5206 62.2.3 In order to eliminate bias in evaluating the technical proposals, it is
5207 recommended that the highest and lowest scores for each consultant for each
5208 criterion shall not be considered in determining the average scores of the
5209 consultants, except when the evaluation is conducted in a collegial manner.

5210

5211 62.2.4 All participating short-listed consultants shall be furnished the results
5212 (ranking and total scores only) of the evaluation, which shall include the ranking
5213 and total scores only, after the approval by the HoPE of the ranking. Said results
5214 shall also be posted in the PhilGEPS and the website of the Procuring Entity,
5215 whenever available, for a period of not less than seven (7) calendar days.

5216

5217 62.2.5 Negotiations shall cover the following:

5218 a) Discussion and clarification of the terms of reference and scope of
5219 services;

5220

5221 b) Discussion and finalization of the methodology and work program
5222 proposed by the consultant;

5223

5224 c) Consideration of appropriateness of qualifications and pertinent
5225 compensation, number of man-months and the personnel to be
5226 assigned to the job, taking note of over-qualified personnel, to be
5227 commensurate with the compensation of personnel with the appropriate
5228 qualifications, number of man-months and schedule of activities which
5229 shall pertain to the manning schedule;

5230

5231 d) Discussion on the services, facilities and data, if any, to be provided
5232 by Procuring Entity concerned;

5233

5234 e) Discussion on the financial proposal submitted by the consultant; and

5235

5236 f) Provisions of the contract.

5237

5238 Except for meritorious reasons, negotiations with any one consultant shall be
5239 completed within ten (10) calendar days.

5240

5241 62.2.6 Total calculated bid prices, as evaluated and corrected for minor
5242 arithmetical corrections, such as computational errors, which exceed the ABC
5243 shall not be considered.

5244

62.3 There should be no replacement of key personnel before the awarding of contract, except for any delay caused by the Procuring Entity, or for justifiable reason as may be determined by the BAC, such as, illness, death, or resignation; Provided, That it is duly supported by relevant certificates. The BAC shall immediately consider negotiation with the next ranked consultant if unjustifiable replacement of personnel by the first ranked firm is made. Once the contract has been awarded, no replacement shall be allowed by the HoPE until after fifty percent (50%) of the personnel's man-months have been served, except for justifiable reasons, subject to appropriate sanctions as prescribed in the PBDs.

62.4 The entire evaluation process, including the submission of the results thereof to the HoPE for approval, shall be completed in not more than twenty-one (21) calendar days after the deadline for receipt of proposals. The proposal with the highest score shall be identified as the Highest Rated Bid.

RULE X POST-QUALIFICATION

Section 63. Objective and Process of Post-Qualification

63.1 The Bidder with the LCB, MAB, or the MEAB, in the case of Goods and Infrastructure Projects, or the HRB, in the case of Consulting Services, shall undergo post-qualification in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents.

63.2 Within five (5) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the LCB, MEAB, MAB, or HRB, the bidder shall submit all the Class "A" eligibility documents supporting its PhilGEPS Certificate of Registration (Platinum Membership), its latest income and business tax returns filed for the preceding quarter which should not be earlier than two (2) quarters from the date of submission and receipt of bid, and other appropriate licenses and permits required by law and stated in the Bidding Documents.

Failure to submit any of the post-qualification requirements on time, or a finding against the veracity thereof, shall disqualify the bidder for award: Provided, That in the event that a finding against the veracity of any of the documents submitted is made, it shall cause the forfeiture of the Bid Security in accordance with Article XXI of the Act and this IRR.

63.3 During post-qualification, the BAC shall verify and validate the veracity, authenticity and validity of all the Class "A" eligibility documents supporting the PhilGEPS Certificate of Registration (Platinum Membership), and all the other

5289 statements made, and documents submitted by the bidder with the LCB, MEAB,
5290 MAB, or HRB, using non-discretionary criteria, as stated in the Bidding
5291 Documents. These criteria shall consider, but shall not be limited to, the
5292 following:

5293

5294 a) Legal Requirements. To verify, and validate, and ascertain licenses,
5295 certificates, permits, and agreements submitted by the bidder, and the
5296 fact that it is not included in any "blacklist" as provided in Section 54 of
5297 this IRR. For this purpose, the GPPB shall maintain the portal which
5298 contains the consolidated file of all "blacklisted" suppliers, contractors,
5299 and consultants.

5300

5301 b) Technical Requirements. To verify and validate the Bidder's stated
5302 compliance with the requirements specified in the Bidding Documents.

5303

5304 c) Financial Requirements. To verify and validate the bid price proposal of
5305 the bidder and, whenever applicable, the required committed Line of
5306 Credit in the amount specified and over the period stipulated in the
5307 Bidding Documents, or the bidder's NFCC to ensure that the bidder can
5308 sustain the operating cash flow of the transaction.

5309

5310 63.4. If the BAC determines that the bidder with the LCB, MEAB, MAB, or HRB
5311 passes all the criteria for post-qualification, it shall declare the said bid as the
5312 LCRB, Most Economically Advantageous Responsive Bid (MEARB), or Most
5313 Advantageous Responsive Bid (MARB), in the case of Goods and Infrastructure
5314 Projects, or the Highest Rated and Responsive Bid (HRRB), in the case of
5315 Consulting Services, and recommend to the HoPE the award of contract to the
5316 said bidder at its submitted bid price or its calculated bid price, whichever is
5317 lower or, in the case of quality-based evaluation procedure, submitted bid price
5318 or its negotiated price, whichever is lower.

5319

5320 63.5. If, however, the BAC determines that the bidder with the LCB, MEAB,
5321 MAB, or HRB fails the criteria for post-qualification, it shall immediately notify
5322 the said bidder in writing of its post-disqualification and the grounds for it.

5323

5324 63.6. Immediately after the BAC has notified the first bidder of its post-
5325 disqualification, and notwithstanding any pending request for reconsideration
5326 thereof, the BAC shall initiate and complete the same post-qualification process
5327 on the bidder with the second LCB, MEAB, MAB, or HRB. If the second bidder
5328 passes the post-qualification, and provided that the request for reconsideration
5329 of the first bidder has been denied, the second bidder shall be post-qualified as
5330 the bidder with the LCB, MEAB, MAB, or HRB.

5331

5332 63.7. If the second bidder, however, fails the post-qualification, the procedure
5333 for post-qualification shall be repeated for the bidder with the next LCB, MEAB,
5334 MAB, or HRB , and so on until the LCRB, MEARB, MARB, or HRRB, as the
5335 case may be, is determined for award, subject to Section 66 of this IRR.

5336

5337 63.8. The post-qualification process shall be completed in not more than twelve
5338 (12) calendar days from the determination of the LCB, MEAB, or MAB. For
5339 Consulting Services, the twelve-day period to complete the post-qualification
5340 process shall reckon from the completion of the negotiation with the Bidder that
5341 submitted the HRB. In exceptional cases, the post-qualification period may be
5342 extended by the HoPE, but in no case shall the aggregate period exceed forty-
5343 five (45) calendar days for Goods and Infrastructure Projects, or thirty (30)
5344 calendar days in Consulting Services.

5345

5346 In case of post-disqualification of the bidder with the LCB, MEAB, MAB, or
5347 HRB, the BAC shall be given the same fresh period to conduct the post-
5348 qualification of the next LCB/MEAB/HRBLCB, MEAB, MAB, or HRB until a
5349 bidder is post-qualified or failure of bidding is declared based on Section 64 of
5350 this IRR.

5351

5352 **Section 64. Failure of Bidding**

5353

5354 64.1 There shall be a failure of bidding in competitive bidding, limited source
5355 bidding, or competitive dialogue, if:

5356

5357 a) No bids are received;

5358

5359 b) All bidders are declared ineligible;

5360

5361 c) No bid qualifies as the SCRB, MARB, LCRB, HRRB, or MEARB; or

5362

5363 d) Whenever the bidder with the SCRB, MARB, LCRB, HRRB, or MEARB, as
5364 the case may be, refuses, without justifiable cause, to accept the award of
5365 contract.

5366

5367 For other modes of procurement that do not require competitive selection, the
5368 BAC may declare failure of procurement in any of the above-mentioned
5369 instances or if negotiations fail, as may be applicable.

5370 For other modes of procurement that do not require competitive selection, the
5371 BAC may declare failure of procurement if no offers are ultimately received or
5372 if the bidder refuses, without justifiable cause, to accept the award of contract.

5373

5374 64.2 In order to determine the reason for the failed bidding, the End-User or
5375 Implementing Unit shall conduct a mandatory review and evaluation of the

5376 terms, conditions, and specifications in the Bidding Documents, including its
5377 cost estimates.

5378

5379 64.3 Based on the End User or Implementing Unit's findings or evaluation, the
5380 BAC shall revise the terms, conditions, and specifications, and if necessary,
5381 adjust the ABC, subject to the required approvals, and conduct a re-bidding
5382 with re-publishing or posting, as provided for in Section 50.2 of this IRR.

5383

5384 64.4 All bidders who have initially responded to the Invitation to Bid or Request
5385 for Expression of Interest and have been declared eligible or shortlisted in the
5386 previous biddings shall be allowed to submit new bids. The BAC shall observe
5387 the same process and set the new periods according to the same rules followed
5388 during the previous bidding(s).

5389

5390 64.5 Should there occur a second failure of bidding, the Procuring Entity may
5391 resort to negotiated procurement as provided for in Section 35.1 of this IRR.

5392

5393 64.6 Without prejudice to Section 64.1 hereof, the BAC is authorized, upon
5394 consultation with or recommendation of the End-User or Implementing Unit, to
5395 cancel or terminate the conduct of procurement activities, for any justifiable
5396 reason, such as but not limited to:

5397

5398 a) the physical and economic conditions have significantly changed so as
5399 to render the project no longer economically, financially, or technically
5400 feasible, as determined by the End-User or Implementing Unit;

5401

5402 b) the project is no longer necessary as determined by the End-User or
5403 Implementing Unit;

5404

5405 c) the source of funds for the project has been withheld or reduced through
5406 no fault of the PE; or

5407

5408 d) brought about by the declaration of a State of Calamity, or
5409 implementation of community quarantine or similar restrictions.

5410

5411 Under any of the above instances, the contract shall be re-published or
5412 reposted and re-bid. The BAC shall observe the same process and set the new
5413 periods according to the same rules followed during the first bidding. After the
5414 second failed bidding, however, the BAC may resort to negotiated procurement
5415 as provided for in Section 35 of this Act.

5416

5417 64.7 Without prejudice to Sec. 64.1 hereof, the BAC is authorized, upon
5418 consultation with the End-User or Implementing Unit, to cancel or terminate the

5419 conduct of procurement activities for all modes of procurement, for any
5420 justifiable reason, such as but not limited to:

5421

5422 a) The physical and economic conditions have significantly changed so as to
5423 render the project no longer economically, financially, or technically feasible, as
5424 determined by the End-User or Implementing Unit;

5425

5426 b) The project is no longer necessary as determined by the End-User or
5427 Implementing Unit;

5428

5429 c) The source of funds for the project has been withheld or reduced through no
5430 fault of the Procuring Entity; or

5431

5432 d) Brought about by the declaration of a State of Calamity, or implementation
5433 of community quarantine or similar restrictions.

5434

5435 **Section 65. Single Calculated/Rated/Economically Advantageous and**
5436 **Responsive Bid Submission**

5437

5438 A Single Calculated Responsive Bid (SCRB), a Single Rated Responsive Bid
5439 (SRRB) or a Single Economically Advantageous Responsive Bid (SEARB)
5440 shall be considered for award if it falls under any of the following circumstances:

5441

5442 a. If after publication, only one prospective bidder applies for eligibility
5443 check in accordance with the provisions of this IRR, and it meets the
5444 eligibility requirements or criteria, after which it submits a bid which is
5445 found to be responsive to the bidding requirements;

5446

5447 b. If after publication, more than one prospective bidder applies for eligibility
5448 check in accordance with the provisions of this IRR, but only one bidder
5449 meets the eligibility requirements or criteria, after which it submits a bid
5450 which is found to be responsive to the bidding requirements; or

5451

5452 c. If after the eligibility check, more than one bidder meets the eligibility
5453 requirements in accordance with the provisions of this IRR, but only one
5454 bidder submits a bid, and its bid is found to be responsive to the bidding
5455 requirements.

5456

5457 In all instances, the Procuring Entity shall ensure that the ABC reflects the most
5458 advantageous prevailing price for the Government.

5459

5460

5461 **AWARD, IMPLEMENTATION AND TERMINATION OF THE CONTRACT**

RULE XI

5462

5463 **Section 66. Notice and Execution of Award**

5464

5465 66.1 The BAC shall recommend to the HoPE the award of contract to the bidder
5466 with the LCRB, MEARB, MARB, HRRB, SCRB, SEARB, SARB or SRRB, as
5467 the case may be, after the post-qualification process has been completed.

5468

5469 To facilitate the approval of the award, the BAC shall submit the following
5470 supporting documents to the HoPE:

5471

5472 a) Resolution of the BAC recommending award;

5473

5474 b) Abstract of Bids;

5475

5476 c) Duly approved program of work or delivery schedule, and cost estimates;

5477

5478 d) Document issued by the appropriate entity authorizing the Procuring
5479 Entity to incur obligations for a specified amount; and

5480

5481 e) Other pertinent documents required by existing laws, rules, and
5482 regulations, or the Procuring Entity concerned.

5483

5484 Within three (3) calendar days from the issuance of the resolution
5485 recommending award of the contract, the BAC shall notify all other bidders, in
5486 writing, of its recommendation.²⁵³

5487

5488 66.2 Within a period not exceeding ten (10) calendar days from the
5489 determination and declaration through a resolution by the BAC of the LCRB,
5490 MEARB, MARB, HRRB, SCRB, SEARB, SARB or SRRB, as the case may be,
5491 and the recommendation of the award, the HoPE or its duly authorized
5492 representative shall approve or disapprove the said recommendation.

5493

5494 66.3 In case of approval, the HoPE or its duly authorized representative shall
5495 immediately issue the Notice of Award to the bidder with the LCRB, MEARB,
5496 MARB, HRRB, SCRB, SEARB, SARB or SRRB, as the case may be.

5497 In the event that the approving authority shall disapprove the resolution on the
5498 award of the contract, such disapproval shall be based only on valid,
5499 reasonable, and justifiable grounds as enumerated under Section 70 to be
5500 expressed in writing. A copy of the decision disapproving the resolution shall
5501 be furnished to the BAC and the bidder.

5502

5503 66.4 When applicable, the BAC shall conduct a post-qualification of the bidder
5504 with the next LCB, MEAB, or HRB, as provided in Section 63.7 of this IRR.

5505

5506 A request for reconsideration may be filed by the bidder with the HoPE within
5507 three (3) calendar days from receipt of the notice of disapproval or the
5508 explanation for the inaction. The HoPE shall resolve with finality the request for
5509 reconsideration within seven (7) calendar days from the filing thereof and
5510 furnish the bidder a copy of the resolution immediately from its promulgation. In
5511 no case shall the request for reconsideration stay or delay the bidding process.
5512 However, the request for reconsideration must first be resolved before any
5513 award is made.

5514

5515 66.5 Within ten (10) **calendar** days from receipt of by the winning bidder of the
5516 Notice of Award, the following conditions should be complied before the
5517 contract may be awarded:

5518

5519 a) Submission of the following documents within ten (10) calendar days
5520 from Notice of Award:

5521

5522 i) Valid JVA, if applicable;

5523

5524 ii) A valid PCAB license and registration for the type and cost of
5525 the contract to be bid for foreign bidders in Infrastructure
5526 Projects, when the treaty or international or executive
5527 agreement expressly allows submission of such license and
5528 registration as a pre-condition to the Notice of Award; or

5529

5530 iii) The SEC Certificate of Registration of the foreign corporation,
5531 or the SEC Certificate of Registration of the foreign consulting
5532 firm, or the authority or license from the appropriate
5533 government agency or professional regulatory body of the
5534 foreign professionals engaging in the practice of regulated
5535 professions and allied professions, where applicable.

5536

5537 b) Posting of performance security in accordance with Section 68 of this
5538 IRR;

5539

5540 c) Signing of the contract as provided in Section 66.2 of this IRR; and

5541

5542 d) Approval by higher authority, if required, as provided in Section 66.3 of
5543 this IRR.

5544

5545 **Section 67. Period of Action on Procurement Activities**

5546

5547 67.1 The procurement process, from the opening of bids up to the award of
5548 contract, shall not exceed sixty (60) calendar days. All members of the BAC,
5549 BAC Secretariat, TWG, and other relevant procurement personnel shall be on

5550 a “jury duty” type of assignment until the Notice of Award is issued by the HoPE
5551 in order to complete the entire procurement process at the earliest possible
5552 time.

5553

5554 For purposes of this Section, the term “jury duty” shall be understood to mean
5555 a state by which the members give utmost priority to BAC assignment over all
5556 other duties and responsibilities until the requirements for the said assignments
5557 at hand are completed.

5558

5559 67.2 The maximum periods and the recommended earliest possible time for
5560 action on specific procurement activities are provided for in this IRR. In case
5561 the deadline for each activity falls on a non-working day (i.e., Saturday and
5562 Sunday), legal holiday, or special non-working holiday, or other nonworking
5563 days duly declared by the President, Governor, Mayor or other Government
5564 Official authorized to make such declaration, the deadline shall be the next
5565 working day.

5566

5567 However, for purposes of expediency, economy, and efficiency, as determined
5568 by the BAC, specific procurement activities may be held on a Saturday, Sunday,
5569 nonworking day or holiday: Provided, That the BAC, Secretariat, and TWG
5570 members shall be available on such date, and the appropriate supplemental or
5571 bid bulletin is issued and posted pursuant to the posting requirements
5572 embodied in Section 51.5.3 of this IRR.

5573

5574 67.3 The period of action on procurement activities is tolled or suspended, as
5575 follows:

5576

5577 a) For Early Procurement Activities, pending approval and effectivity of the
5578 GAA, corporate budget or appropriations ordinance, or the loan
5579 agreement in the case of FAPs; and

5580

5581 b) During the suspension of the conduct of procurement activities, as
5582 determined by the BAC.

5583

5584 The period of action on procurement activities which has been tolled or
5585 suspended shall begin to run again once the basis of such tolling or suspension
5586 no longer exists, such as upon the approval and effectivity of the GAA,
5587 reenacted budget, appropriations ordinance, corporate budget or loan
5588 agreement, as the case may be, or upon lifting of the suspension of the conduct
5589 of procurement activities.

5590

5591 The period of action on procurement activities shall not commence anew, but
5592 rather, grant the Procuring Entity the balance of the remaining period available
5593 for the conduct of procurement activities which has been tolled or suspended.

5594

5595 **Section 68. Performance Security**

5596

5597 To guarantee the faithful performance by the winning bidder of its obligations
5598 under the contract in accordance with the Bidding Documents, it shall post a
5599 performance security prior to the signing of the contract. The contractor or
5600 supplier is required to update the performance security posted prior to the
5601 issuance of the variation order or the amendment to order, as the case may be.

5602

5603 The IC shall maintain an updated list in its website of its identified and
5604 accredited surety companies that may be tapped to issue surety and/or
5605 performance bonds. The list of surety companies identified by the IC shall
5606 include only those whose surety business is ready to provide callable-on-
5607 demand surety contracts, where the Procuring Entity can claim outright on the
5608 surety contract and receive the proceeds thereof upon default of the bidder.
5609 The performance security posted by the winning bidder must remain effective
5610 until final acceptance by the Procuring Entity.

5611

5612 Sectors enumerated under Section 76 of this IRR may be allowed to post other
5613 forms such as Performance Securing Declaration (PSD) in lieu of a
5614 performance security 257 to guarantee the winning bidder's faithful
5615 performance of obligations under the contract, subject to the following:

5616

5617 a) Similar to the PSD used in Framework Agreement, such declaration shall
5618 state, among others, that the winning bidder shall be blacklisted from
5619 being qualified to participate in any government procurement activity for
5620 one (1) year, in case of the first offense or two (2) years, if with prior
5621 similar offense, in the event it violates any of the conditions stated in the
5622 contract. An unnotarized PSD may be accepted, subject to submission
5623 of a notarized PSD before payment, unless the same is replaced with a
5624 performance security in the prescribed form, as stated below; and

5625

5626 b)
5627 c) The End-user or Implementing Unit may require the winning bidder to
5628 replace the submitted PSD with a performance security in any of the
5629 prescribed forms under Section 68.2 of this IRR upon lifting of the State
5630 of Calamity, or community quarantine or similar restrictions, as the case
5631 may be.

5631

5632 The performance security shall be in an amount not less than the required
5633 percentage of the total contract price in accordance with the following schedule:

5634

Form of Performance Security	Amount of Performance Security (Not less than the
------------------------------	---

	required percentage of the Total Contract
a) Cash or cashier's or manager's check issued by a universal or commercial Bank. For biddings conducted by LGUs, the cashier's or manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Goods and Consulting Services – Five percent (5%) Infrastructure Projects – Ten percent (10%)
b) Bank draft or 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.	
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.	Thirty percent (30%)

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The performance security shall be denominated in Philippine Pesos and posted in favor of the Procuring Entity, which shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.

The performance security may be released by the Procuring Entity after the issuance of the Certificate of Final Acceptance, subject to the following conditions:

- a) Procuring Entity has no claims filed against the contract awardee or the surety company;
- b) It has no claims for labor and materials filed against the contractor; and
- c)
- d) Other terms of the contract.

For the procurement of Infrastructure Projects, 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 or change orders, extra work

orders and supplemental agreements, as the case may be. The winning bidder shall cause the extension of the validity of the performance security to cover approved contract time extensions.

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 GoP, and the use of which, in the judgment of the implementing agency or the Procuring Entity, will not affect the structural integrity of the entire project, the said agency or Procuring Entity 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 69. Failure to Enter into Contract and Post Performance Security

69.1 If the bidder with the LCRB, MEARB, MARB, HRRB, SCRB, SEARB, SARB or SRRB fails, refuses or is unable to submit the documents required under Section 66.1 of this IRR or to make good its bid by entering into a contract with the Procuring Entity or post the required Performance Security within the period stipulated in this IRR 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.

69.2 In the case of the failure, refusal or inability of the bidder with MEARB, MARB, LCRB, SARB, SEARB or HRRB, to submit the documents required under Section 66.1 of this IRR or to enter into contract and post the required Performance Security, as provided in this Section, the BAC shall disqualify the said bidder, and shall initiate and complete the post-qualification process on the bidder with the second LCB or HRB; Provided, however, That in the case of Consulting Services, the second Highest Rated Bid has successfully undergone the negotiation stage in accordance with Section 62 of this IRR. This procedure shall be repeated until the MEARB, LCRB or HRRB 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-publication. 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.

69.3 In the case of failure, refusal or inability of the bidder with the SCRB, SRRB or SEARB to submit the documents required under Section 66.1 of this IRR or to enter into contract and post the required Performance Security, as provided in this Section, the BAC shall disqualify the said bidder, and shall

5700 declare the bidding a failure and conduct a re-bidding with re-publication or
5701 posting, as provided for in Sections 50 and 54 of this IRR. Should there occur
5702 another failure of bidding after the conduct of the contract's re-bidding, the
5703 Procuring Entity concerned may enter into a negotiated procurement.

5704

5705 **Section 70. Reservation Clause**

5706

5707 The HoPE reserves the right to reject any and all bids, declare a failure of
5708 bidding, or not award the contract in the following situations:

5709

5710 a) If there is prima facie evidence of collusion between appropriate public
5711 officers or employees of the Procuring Entity, or between the BAC and
5712 any of the bidders, or if the collusion is between or among the bidders
5713 themselves, or between a bidder and a third party, including any act
5714 which restricts, suppresses or nullifies, or tends to restrict, suppress or
5715 nullify competition or influences or tends to influence the bidding
5716 process;

5717

5718 b) If the BAC is found to have failed in complying with the applicable law or
5719 in following the prescribed bidding procedures; or

5720

5721 c) For justifiable and reasonable grounds, where the award of the contract
5722 will not redound to the benefit of the government in the following
5723 instances: (1) if the physical and economic conditions have significantly
5724 changed so as to render the project no longer economically, financially,
5725 or technically feasible, as determined by the HoPE; (2) if the project is
5726 no longer necessary, as determined by the HoPE; or (3) if the source of
5727 funds for the project has been withheld or reduced through no fault of
5728 the Procuring Entity.

5729

5730 **Section 71. Contract Implementation and Termination**

5731

5732 The rules for the implementation and termination of contracts awarded pursuant
5733 to the provisions of the Act and its IRR are hereby prescribed, subject to
5734 relevant provisions in the Manual to be issued by the GPPB.

5735

5736 **71.1 Contract Implementation for the Procurement of Goods**

5737

5738 71.1.1 Amendment to Order. – Amendments to Order for procurement of goods
5739 may be issued by the Procuring Entity concerned at any time after the contract
5740 execution, subject to the following conditions:

5741

- 5742 a) Emergency cases, fortuitous events or unforeseen contingencies arising
5743 during project/contract implementation, and such contingencies have an
5744 impact on the procurement at hand, such as: (i) Changes in the
5745 conditions affecting the project (e.g., drawings, design or specifications,
5746 if the goods to be furnished are to be specifically manufactured for the
5747 Government in accordance therewith; method of shipment or packing; or
5748 place of delivery); (ii) time is of the essence in the implementation of the
5749 project, and any changes require immediate implementation; (iii) where
5750 there are additional items needed and necessary for the protection of the
5751 goods, such as changes in the packaging of the goods; or (iv) other
5752 causes where immediate action is necessary to prevent damage to or
5753 loss of life or property;
5754
- 5755 b) When the contract does not reflect the real intention of the parties due
5756 to mistake or accident, and the amendment is necessary to reflect the
5757 parties' intention as provided in the procurement documents;
5758
- 5759 c) When requested by the End-User or Implementing Unit, as may be
5760 prompted by a request from the supplier, the HoPE may approve the
5761 amendment of the delivery schedule based on meritorious grounds and
5762 without fault or negligence on the part of the supplier. The maximum
5763 allowable extension should not be longer than the initial delivery period;
5764
- 5765 d) When the offered goods are no longer available, goods of equivalent or
5766 higher specifications may be accepted by the Procuring Entity; Provided;
5767 That there is no resulting increase in contract price and the acceptance
5768 of such goods is advantageous to the government; or
5769
- 5770 e) Other analogous circumstances that could affect the conditions of the
5771 procurement at hand.
5772
- 5773 If any such order increases or decreases the cost of, or the time required for
5774 executing any part of the contracted goods, supplies, or materials, an equitable
5775 adjustment in contract price and/or delivery schedule shall be mutually agreed
5776 upon between the parties, and the contract modified in writing; Provided: That
5777 any increase must not exceed ten percent (10%) of the original contract price.
5778 However, the HoPE approves the increase to twenty percent (20%).
5779
- 5780 Payment for additional items shall be based on the unit prices in the original
5781 contract. If the contract does not contain any rate applicable to the additional
5782 items, then suitable prices shall be mutually agreed upon between the parties.
5783
- 5784 71.1.2 Suspension of Delivery of Goods

5785 The Procuring Entity may suspend the delivery of Goods, in whole or in part,
5786 through a written order for a specified period of time as it deems necessary
5787 based on based on justifiable circumstances. Suspension order may be
5788 extended, as the case may be, but not to exceed the original contract duration.

5789

5790 During such suspension, the supplier, manufacturer, or distributor shall take
5791 all reasonable steps to minimize the costs related to storage and handling of
5792 Goods, or other activities affected by the suspension order. Delivery of
5793 Goods shall be understood to include installation, commissioning, and other
5794 relevant services, as may be applicable.

5795

5796 Before the suspension order expires, the Procuring Entity concerned shall
5797 either lift such order or terminate the delivery covered by the same. If the
5798 suspension order is lifted, or if the period of the order expires, the Procuring
5799 Entity shall notify the supplier, manufacturer, or distributor in writing of such
5800 fact. The supplier, manufacturer, or distributor shall resume delivery upon
5801 receipt of such notice.

5802

5803 71.1.3 Liquidated Damages

5804

5805 The supplier, manufacturer, or distributor shall deliver the goods procured
5806 within the period as specified in the Contract. Liquidated damages shall be
5807 imposed if any or all of the contracted Goods remain undelivered on the
5808 specified date, including the duly granted extensions.

5809

5810 When the supplier, manufacturer, or distributor fails to satisfactorily deliver the
5811 goods under the contract within the specified delivery schedule, inclusive of
5812 duly granted time extensions, if any, the supplier, manufacturer, or distributor
5813 shall be liable for liquidated damages not by way of penalty for the delay and
5814 shall pay an amount equal to one-tenth (1/10) of one percent (1%) of the cost
5815 of the delayed goods scheduled for delivery for every day of delay until such
5816 goods are finally delivered and accepted by the Procuring Entity. The Procuring
5817 Entity need not prove that it has incurred actual damages to be entitled to
5818 liquidated damages. Such amount shall be deducted from any money due or
5819 which may become due to the supplier, manufacturer, or distributor, or collected
5820 from any securities or warranties posted by the supplier, manufacturer, or
5821 distributor, whichever is convenient to the Procuring Entity. In case the total
5822 sum of liquidated damages reaches ten percent (10%) of the total contract
5823 price, the Procuring Entity may rescind the contract and impose appropriate
5824 sanctions over and above the liquidated damages to be paid.

5825

5826 If delays are likely to be incurred, the supplier, manufacturer, or distributor shall
5827 promptly notify the Procuring Entity in writing, providing details of the causes

5828 and duration of the expected delay beyond its control. The Procuring Entity
5829 may, at its discretion, grant a time extension based on meritorious grounds,
5830 with or without the imposition of liquidated damages.

5831

5832 In all cases, the requests for extensions shall be submitted at least three (3)
5833 calendar days before the original delivery deadline. The Procuring Entity shall
5834 approve or disapprove the request for extension within the remaining period
5835 counted from the receipt of the request up until the original delivery deadline. If
5836 approved, the extension shall not exceed the original delivery period specified
5837 in the contract.

5838

5839 71.1.4 Advance Payment

5840

5841 In accordance with applicable accounting and auditing rules and regulations,
5842 advance payment may be made only after prior approval of the President, and
5843 it should not exceed fifteen percent (15%) of the contract amount, unless
5844 otherwise directed by the President. Prior approval by the President is not
5845 necessary in the following cases:

5846

5847 a) In contracts entered into by the Procuring Entity for the following services
5848 where requirement of downpayment is a standard industry practice: (i)
5849 hotel and restaurant services; (ii) use of conference or seminar and
5850 exhibit areas; (iii) lease of office space;

5851

5852 b) For procurement of Goods in areas where a "State of Calamity" has been
5853 declared by appropriate authorities; and

5854

5855 c) When the supplier, manufacturer, or distributor submits an irrevocable
5856 letter of credit or bank guarantee issued by a Universal or Commercial
5857 Bank

5858

5859 71.1.5 Other Aspects of Contract Implementation

5860 The rules and regulations for the other aspects of contract implementation shall
5861 be included in the manuals to be issued by the GPPB, such as, but not limited
5862 to, the following:

5863

- 5864 a) Incidental Services;
- 5865 b) Spare Parts;
- 5866 c) Delays in the Supplier's Performance;
- 5867 d) Purchaser's Responsibilities;
- 5868 e) Prices;
- 5869 f) Payment;
- 5870 g) Taxes and Duties;

- 5871 h) Subcontracts;
- 5872 i) Standards;
- 5873 j) Packing;
- 5874 k) Insurance;
- 5875 l) Transportation;
- 5876 m) Inspections and Tests;
- 5877 n) Patent Rights;
- 5878 o) Limitations of Liability;
- 5879 p) Termination for Default;
- 5880 q) Termination for Insolvency;
- 5881 r) Termination for Convenience; and
- 5882 s) Assignment.

5883

5884 Section 71.2 Contract Implementation for the Procurement of Infrastructure 5885 Projects

5886

5887 71.2.1 Variation Orders

5888

5889 Variation Orders may be issued by the Procuring Entity to cover any increase
5890 or decrease in quantities, including the introduction of new work items that are
5891 not included in the original contract or reclassification of work items that are
5892 either due to change of plans, design or alignment to suit actual field conditions
5893 resulting in disparity between the preconstruction plans used for purposes of
5894 bidding and the "as staked plans" or construction drawings prepared after a
5895 joint survey by the contractor and the Government after award of the contract;
5896 Provided, That the cumulative amount of the positive or additive variation order
5897 does not exceed twenty percent (20%) of the original contract price. A Variation
5898 Order may either be in the form of either a Change Order or Extra Work Order.

5899

5900 71.2.2 A Change Order may be issued by the HoPE or duly authorized
5901 representative to cover any increase or decrease in quantities of original work
5902 items in the contract.

5903

5904 71.2.3 An Extra Work Order may be issued by the implementing official to cover
5905 the introduction of new work necessary for the completion, improvement or
5906 protection of the project which was not included as items of work in the original
5907 contract, such as, where there are subsurface or latent physical conditions at
5908 the site differing materially from those indicated in the contract, or where there
5909 are duly unknown physical conditions at the site of an unusual nature differing
5910 materially from those ordinarily encountered and generally recognized as
5911 inherent in the work or character provided for in the contract.

5912

5913 71.2.4 Additional or Extra Work Costing

5914

5915 For Variation Orders, the contractor shall be paid for additional work items
5916 whose unit prices shall be derived based on the following:

5917

5918 a) For additional or extra works duly covered by Change Orders involving
5919 work items which are exactly the same or similar to those in the original
5920 contract, the applicable unit prices of work items original contract shall
5921 be used;

5922

5923 b) For additional or extra works duly covered by Extra Work Orders
5924 involving new work items that are not in the original contract, the unit
5925 prices of the new work items shall be based on the direct unit costs used
5926 in the original contract (e.g., unit cost of cement, rebars, form lumber,
5927 labor rate, equipment rental, etc.). All new components of the new work
5928 item shall be fixed prices; Provided, The same is acceptable to both the
5929 Government and the contractor; Provided further, That the direct unit
5930 costs of new components shall be based on the contractor's estimate as
5931 validated by the Procuring Entity concerned via documented canvass in
5932 accordance with existing rules and regulations. The direct cost of the
5933 new work item shall then be combined with the mark-up factor (i.e., taxes
5934 and profit) used by the contractor in its bid to determine the unit price of
5935 the new work item.

5936

5937 71.2.5 Conditions under which the Contractor is to start work under Variation
5938 Orders and Receive Payments

5939

5940 Under no circumstances shall a contractor proceed to commence work under
5941 any Change Order or Extra Work Order unless it has been approved by the
5942 HoPE or its duly authorized representative. However, under any of the following
5943 conditions, the Procuring Entity's representative or Project Engineer may,
5944 subject to the availability of funds and within the limits of its delegated authority,
5945 allow the immediate start of work under any Change Order or Extra Work Order:

5946

5947 a) In the event of an emergency where the prosecution of the work is urgent
5948 to avoid detriment to public service, or damage to life and/or property;
5949 and/or

5950

5951 b) When time is of the essence;

5952

5953 Provided, however, That such approval is valid on work done up to the point
5954 where the cumulative increase in value of work on the project which has not yet
5955 been duly fully approved does not exceed five percent (5%) of the adjusted
5956 original contract price.

5957

5958 Provided, further, That immediately after the start of work, the corresponding
5959 Change Order or Extra Work Order shall be prepared and submitted for
5960 approval in accordance with the abovementioned rules. Payments for works
5961 satisfactorily accomplished on any Change Order or Extra Work Order may be
5962 made only after approval of the same by the HoPE or its duly authorized
5963 representative.

5964

5965 Provided, finally, That for a Change Order or Extra Work Order involving a
5966 cumulative amount exceeding five percent (5%) of the original contract price,
5967 no work thereon may be commenced unless said Change Order or Extra Work
5968 Order has been approved by the Head of the Procuring Entity or its duly
5969 authorized representative.

5970

5971 71.2.2 Suspension of Work

5972

5973 The Procuring Entity shall have the authority to suspend the work wholly or
5974 partly by written order for such period as may be deemed necessary, due to
5975 force majeure or any fortuitous events or for failure on the part of the contractor
5976 to correct bad conditions which are unsafe for workers or for the general public,
5977 to carry out valid orders given by the Procuring Entity or to perform any
5978 provisions of the contract, or due to adjustment of plans to suit field conditions
5979 as found necessary during construction. The contractor shall immediately
5980 comply with such order to suspend the work wholly or partly.

5981

5982 Meanwhile, the contractor or its duly authorized representative shall have the
5983 right to suspend work operation on any or all projects or activities along the
5984 critical path of activities after fifteen (15) calendar days from date of receipt of
5985 written notice from the contractor to the district engineer or regional director or
5986 consultant or equivalent official, as the case may be, due to the following:

5987

5988 a) There exist right-of-way problems which prohibit the contractor from
5989 performing work in accordance with the approved construction schedule;

5990

5991 b) Requisite construction plans which must be owner-furnished are not
5992 issued to the contractor precluding any work called for by such plans;

5993

5994 c) Peace and order conditions make it extremely dangerous, if not possible,
5995 to work. However, this condition must be certified in writing by the
5996 Philippine National Police (PNP) station which has responsibility over the
5997 affected area and confirmed by the Department of Interior and Local
5998 Government (DILG) Regional Director;

5999

6000 d) There is failure on the part of the Procuring Entity to deliver government-
6001 furnished materials and equipment as stipulated in the contract;
6002

6003 e) Delay in the payment of contractor's claim for progress billing beyond
6004 forty-five (45) calendar days from the time the contractor's claim has
6005 been certified to by the Procuring Entity's authorized representative that
6006 the documents are complete unless there are justifiable reasons thereof
6007 which shall be communicated in writing to the contractor.
6008

6009 71.2.3 Negative Slippage
6010

6011 The Procuring Entity shall ensure the timely implementation of Infrastructure
6012 Projects by monitoring the performance of the contractors. When the contractor
6013 incurs negative slippage during the contract duration, the Procuring Entity shall
6014 implement the calibrated measures to be provided in the guidelines issued by
6015 the GPPB.
6016

6017 71.2.4 Liquidated Damages
6018

6019 Once the contract duration expires, including any time extension duly granted,
6020 and the contractor refuses or fails to satisfactorily complete the work, the
6021 Procuring Entity shall impose upon the contractor in default liquidated
6022 damages. Liquidated damage is an amount equal to at least one tenth (1/10) of
6023 one percent (1%) of the cost of the unperformed portion of the works for every
6024 day of delay.
6025

6026 In computing for liquidated damages, the Procuring Entity determines the
6027 usability of the project. A project or a portion thereof may be deemed usable
6028 when it starts to provide the desired benefits as certified by the targeted End-
6029 Users or Implementing Units and the concerned Procuring Entity.
6030

6031 To be entitled to such liquidated damages, the Procuring Entity does not have
6032 to prove that it has incurred actual damages. Such amount shall be deducted
6033 from any money due or which may become due the contractor under the
6034 contract or collect such liquidated damages from the retention money or other
6035 securities posted by the contractor, or a combination thereof, whichever is
6036 convenient to the Procuring Entity.
6037

6038 71.2.5 Advance Payment
6039

6040 The Procuring Entity shall, upon a written request of the contractor which shall
6041 be submitted as a contract document, make an advance payment to the
6042 contractor in an amount not exceeding twenty percent (20%) of the total

6043 contract price, to be made in lump sum or, at the most, two installments
6044 according to a schedule specified in the Instructions to Bidders and other
6045 relevant Tender Documents.

6046

6047 The advance payment shall be made only upon the submission to and
6048 acceptance by the Procuring Entity of an irrevocable standby letter of credit of
6049 equivalent value from a commercial bank, rural bank, thrift bank or cooperative
6050 bank, a bank guarantee or a surety bond callable upon demand, issued by a
6051 surety or insurance company duly licensed by the Insurance Commission and
6052 confirmed by the Procuring Entity.

6053

6054 71.2.6 Progress Payment

6055

6056 Once a month, the contractor may submit a statement of work accomplished
6057 (SWA) or progress billing and corresponding request for progress payment for
6058 work accomplished. The SWA should show the amounts which the contractor
6059 considers itself to be entitled to up to the end of the month, to cover (a) the
6060 cumulative value of the works it executed to date, based on the items in the Bill
6061 of Quantities, and (b) adjustments made for approved variation orders
6062 executed. Alternatively, the Procuring Entity may require in the Bidding
6063 Documents that statement of work accomplished or progress billing and the
6064 corresponding request for progress payment may only be submitted upon
6065 actual completion of the Infrastructure Project or a specific portion, segment,
6066 milestone or phase thereof.

6067

6068 The Procuring Entity's representative or Project Engineer shall check the
6069 contractor's SWA and certify the amount to be paid to the contractor as
6070 progress payment. Except as otherwise stipulated in the Instruction to Bidders,
6071 materials and equipment delivered on the site but not completely put in place
6072 shall not be included for payment.

6073

6074 The Procuring Entity shall deduct the following from the certified gross amounts
6075 to be paid to the contractor as progress payment:

6076

6077 a) Cumulative value of the work previously certified and paid for.

6078

6079 b) Portion of the advance payment to be recouped.

6080

6081 c) Retention money in accordance with the condition of contract.

6082

6083 d) Amount to cover third party liabilities.

6084

6085 e) Amount to cover uncorrected discovered defects in the works.

6086

6087 71.2.7 Retention Money

6088

6089 Progress payments are subject to retention of ten percent (10%) referred to as
6090 the retention money. Such retention shall be based on the total amount due to
6091 the contractor prior to any deduction and shall be retained from every progress
6092 payment until fifty percent (50%) of the value of works, as determined by the
6093 Procuring Entity, are completed. If, after fifty percent (50%) completion, the
6094 work is satisfactorily done and on schedule, no additional retention shall be
6095 made; otherwise, the ten percent (10%) retention shall be imposed, which may
6096 be decreased to 5 percent (5%) by the Procuring Entity based on justifiable
6097 causes.

6098

6099 The total retention money shall be due for release upon final acceptance of the
6100 works. The contractor may, however, request the substitution of the retention
6101 money for each progress billing with irrevocable standby letters of credit of from
6102 a commercial bank, bank guarantees or surety bonds callable on demand, of
6103 amounts equivalent to the retention money substituted for and acceptable to
6104 Government; Provided, That the project is on schedule and is satisfactorily
6105 undertaken.

6106

6107 71.2.8 Extension of Contract Time

6108

6109 Should the amount of additional work of any kind or other special circumstances
6110 of any kind whatsoever occur such as to fairly entitle the contractor to an
6111 extension of contract time, the Procuring Entity shall determine the amount of
6112 such extension; Provided, That the Procuring Entity is not bound to take into
6113 account any claim for an extension of time unless the contractor has, prior to
6114 the expiration of the contract time and within thirty (30) calendar days after such
6115 work has been commenced or after the circumstances leading to such claim
6116 have arisen, delivered to the Procuring Entity notices in order that it could have
6117 investigated them at that time. Failure to provide such notice shall constitute a
6118 waiver by the contractor of any claim. Upon receipt of full and detailed
6119 particulars, the Procuring Entity shall examine the facts and extent of the delay
6120 and shall extend the contract time completing the contract work when, in the
6121 Procuring Entity's opinion, the findings of facts justify an extension.

6122

6123 No extension of contract time shall be granted the contractor due to ordinary
6124 unfavorable weather conditions and inexcusable failure or negligence of
6125 contractor to provide the required equipment, supplies, or materials.

6126

6127 71.2.9 Evaluation of Contractors Performance

6128

6129 All Procuring Entities implementing government infrastructure projects are
6130 mandated to evaluate the performance of their contractors using the NEDA-
6131 Approved Constructors Performance Evaluation System (CPES) Guidelines for
6132 the type of project being implemented. These guidelines cover all infrastructure
6133 projects awarded by the government regardless of contract amount and funding
6134 source. CPES evaluation shall be done during construction and upon
6135 completion of each government project. To ensure continuous implementation
6136 of CPES, all Procuring Entities concerned are required to include in their
6137 Projects' Engineering and Administrative Overhead Cost the budget for the
6138 implementation of CPES.

6139

6140 For project types which do not have specific CPES Guidelines, the Procuring
6141 Entities concerned may formulate and adopt their own implementing Guidelines
6142 specific to their needs provided the NEDA-INFRACOM poses no objections to
6143 their adoption, and provided further that said Guidelines are made known to all
6144 prospective bidders.

6145

6146 71.2.10 Other Aspects of Contract Implementation

6147

6148 The rules and regulations for the other aspects of contract implementation shall
6149 be included in the manuals to be issued by the GPPB, such as, but not limited
6150 to, the following:

6151

6152 a) Sub-contracting;

6153

6154 b) Interference with Traffic and Adjoining Properties;

6155

6156 c) Clearance of Project Site of Obstruction;

6157

6158 d) Inspection and Testing;

6159

6160 e) Daywork;

6161

6162 f) Measurement of Works; and

6163

6164 g) Other Implementation Aspects.

6165

6166 71.3 Contract Implementation for the Procurement of Consulting Services

6167

6168 71.3.1 Advance Payment for Mobilization

6169

6170 The Government, as it considers fair and reasonable, may allow advance
6171 payment to the Consultant in the amount which shall not exceed fifteen percent

6172 (15%) of the contract amount to cover the cost of mobilization, subject to the
6173 posting of an irrevocable standby letter of credit issued by an entity acceptable
6174 to the agency and of an amount equal to the advance payment. The advance
6175 payment shall be repaid by the Consultant by deducting from its progress
6176 payments such sum as agreed upon during the contract negotiations until fully
6177 liquidated within the duration of the contract.

6178

6179 71.3.2 Cost of Consulting Services

6180

6181 All Consultancy contracts shall be fixed price contracts, all taxes, duties and
6182 fees required to be paid by him under the Contract. Except in cases where there
6183 is force majeure or any fortuitous events as defined in the contract, an extension
6184 of contract time shall not involve any additional cost.

6185

6186 71.3.3 Other Aspects of Contract Implementation

6187

6188 The rules and regulations for the other aspects of contract implementation shall
6189 be included in the Manual issued by the GPPB.

6190

6191 71.4 Termination of Contracts for the Procurement of Goods, Infrastructure 6192 Projects, and Consulting Services

6193

6194 The policies relating to the whole or partial termination of government
6195 procurement contracts of Goods, Infrastructure Projects, and Consulting
6196 Services are herein established, subject to the Manual issued by the GPPB.

6197

6198 71.4.1 Termination for Breach of Contract

6199

6200 a) In contracts of Goods, the Procuring Entity may terminate for breach
6201 of contract when the Supplier fails to deliver or perform any or all of
6202 the Goods within the period(s) specified in the contract, or within any
6203 extension thereof granted by the Procuring Entity, pursuant to a
6204 request made by the supplier prior to the delay, and such failure
6205 amounts to at least ten percent (10%) of the contract price, consistent
6206 with the provision of this IRR on liquidated damages. The Procuring
6207 Entity may likewise impose appropriate sanctions therein.

6208

6209 b) In contracts of Infrastructure Projects, the Procuring Entity shall
6210 terminate a contract for breach thereof when any of the following
6211 conditions are present:

6212

- 6213 i) Due to the Contractor's fault and while the project is on-going, it
6214 has incurred negative slippage of fifteen percent (15%) or more
6215 in accordance with Presidential Decree 1870, s. 1983;
6216
- 6217 ii) Due to the contractor's fault and after the contract time has
6218 expired, it has incurred a negative slippage of ten percent (10%)
6219 or more in the completion of the work;
6220
- 6221 iii) The contractor abandons the contract works, or plainly
6222 demonstrates an intention not to continue the performance of the
6223 contractor's obligations under the contract, refuses or fails to
6224 comply with Procuring Entity's instructions or fails to proceed
6225 expeditiously and without delay despite a written notice by the
6226 Procuring Entity;
6227
- 6228 iv) When the contractor, without reasonable excuse fails to comply
6229 with the Notice of Rejection given by the Engineer that, after
6230 examination therein, the Infrastructure Project is found to be
6231 defective or otherwise not in accordance with the Contract, or an
6232 Engineer's instruction to conduct remedial work, within 30 days
6233 after receiving the said notice;
6234
- 6235 v) The contractor does not actually have on the project site the
6236 minimum essential equipment listed on the Bid necessary to
6237 prosecute the Works in accordance with the approved work plan
6238 and equipment deployment schedule as required for the
6239 project;
6240
- 6241 vi) The contractor does not execute the Works in accordance with
6242 the contract or persistently or flagrantly neglects to carry out its
6243 obligations under the contract;
6244
- 6245 vii) The contractor neglects or refuses to remove materials or to
6246 perform a new work that has been rejected as defective or
6247 unsuitable;
6248
- 6249 viii) The contractor subcontracts any part of the contract works
6250 without approval by the Procuring Entity; or
6251
- 6252 ix) The contractor becomes bankrupt or insolvent; goes into
6253 liquidation, administration, reorganization, winding-up or
6254 dissolution; becomes subject to the appointment of a liquidator,
6255 receiver, administrator, manager or trustee; enters into a

6256 composition or arrangement with the contractor's creditors; or
6257 any act is done or any event occurs which is analogous to or has
6258 a similar effect to any of these acts or events under applicable
6259 laws.

6260

6261 c) In contracts for Consulting Services, the Procuring Entity may
6262 terminate for breach of contract when the consultant fails to deliver
6263 or perform the Outputs and Deliverables, within the period specified
6264 in the contract, or within any extension thereof granted by the
6265 Procuring Entity pursuant to a request made by the consultant prior
6266 to the delay.

6267

6268 71.4.2 Termination due to Force Majeure

6269

6270 a) In contracts for Goods, the Procuring Entity may terminate the contract
6271 and impose liquidated damages when, as a result of force majeure, the
6272 supplier is unable to deliver or perform any or all of the Goods,
6273 amounting to at least ten percent (10%) of the contract price, for a period
6274 of not less than sixty (60) calendar days, or earlier, as deemed
6275 necessary by the Procuring Entity, after receipt of the written notice from
6276 the Procuring Entity stating that the circumstance of force majeure is
6277 deemed to have ceased.

6278

6279 b) In contracts for Consulting Services, the consultant is unable to deliver
6280 or perform a material portion of the Outputs and Deliverables for a period
6281 of not less than sixty (60) calendar days or earlier, as deemed necessary
6282 by the Procuring Entity, after the consultant's receipt of the notice from
6283 the Procuring Entity stating that the circumstance of force majeure is
6284 deemed to have ceased.

6285

6286 71.4.3 Termination for Procuring Entity's Convenience

6287

6288 The Procuring Entity, by notice sent to the Supplier, may terminate the Contract,
6289 in whole or in part, at any time, if it has determined the existence of any of the
6290 following conditions that make Contract Implementation economically,
6291 financially or technically impractical or unnecessary:

6292

6293 a) In case of Goods and Consulting Services

6294

6295 i) If physical and economic conditions have significantly changed
6296 so as to render the project no longer economically, financially
6297 or technically feasible, as determined by the Head of the
6298 Procuring Entity;

6299

6300 ii) The Head of the Procuring Entity has determined the existence
6301 of conditions that make project implementation impractical or
6302 unnecessary, such as, but not limited to, fortuitous event/s,
6303 changes in laws and government policies;

6304

6305 iii) Funding for the project has been withheld or reduced by higher
6306 authorities through no fault of the Procuring Entity; or

6307

6308 iv) Any circumstance analogous to the foregoing.

6309

6310 b) In case of Infrastructure Projects

6311

6312 i) If physical and economic conditions have significantly changed
6313 so as to render the project no longer economically, financially,
6314 or technically feasible, as determined by the HoPE; or

6315

6316 ii) The HoPE has determined the existence of conditions that
6317 make project implementation impractical or unnecessary, such
6318 as, but not limited to, fortuitous events, changes in laws and
6319 government policies;

6320

6321 71.4.4 Termination for Unlawful Acts

6322

6323 The Procuring Entity may terminate the contract in case it is determined prima
6324 facie that the supplier or contractor or consultant, including any joint venture
6325 partner therein, has engaged, before or during the implementation of the
6326 contract, in unlawful deeds and behaviors relative to contract acquisition and
6327 implementation.

6328

6329 These unlawful acts include, but are not limited to, the following:

6330

- 6331 a) Corrupt, fraudulent, collusive and coercive practices;
6332 b) Drawing up or using forged document;
6333 c) Using adulterated materials, means or methods, or engaging in
6334 production contrary to rules of science or the trade; or
6335 d) Any other act analogous to the foregoing.

6336

6337 71.4.5 Termination by Contractor or Consultant

6338

6339 a) In contracts for Infrastructure Projects

6340

6341 The contractor may terminate its contract with the Procuring Entity if the
6342 works are completely stopped for a continuous period of at least sixty
6343 (60) calendar days through no fault of its own, due to any of the following
6344 reasons:

6345

6346 i) Failure of the Procuring Entity to deliver, within a reasonable time,
6347 supplies, materials, right-of-way, or other items it is obligated to
6348 furnish under the terms of the contract; or

6349

6350 ii) Substantial failure of the Procuring Entity to perform its obligations
6351 under the Contract, and such failure constitutes a material breach of
6352 the Procuring Entity's obligations under the contract;

6353

6354 iii) Prolonged suspension by the Procuring Entity, to no fault of the
6355 Contractor, which affects the substantial part of the Infrastructure
6356 Projects; or

6357

6358 iv) The prosecution of the work is disrupted by the adverse peace and
6359 order situation, as certified by the Armed Forces of the Philippines
6360 Provincial Commander and approved by the Secretary of National
6361 Defense.

6362

6363 b) In contracts for Consulting Projects

6364

6365 The consultant may terminate its agreement with the Procuring Entity,
6366 through a written notice at least thirty (30) calendar days prior to its
6367 intended termination, if, through no fault on its own, any of the following
6368 conditions exists:

6369

6370 i) The latter is in material breach of its obligations pursuant to the
6371 contract and has not remedied the same within sixty (60) calendar
6372 days following its receipt of the consultant's notice specifying such
6373 breach;

6374

6375 ii) Substantial failure of the Procuring Entity to perform its obligations
6376 under the contract; or

6377

6378 iii) Prolonged suspension by the Procuring Entity, to no fault of the
6379 contractor, which affects the substantial part of the Consulting
6380 Project.

6381

6382 In case of termination, the Procuring Entity shall return to the consultant its
6383 performance security and unpaid claims.

6384

6385 71.4.6 Procedures for Termination of Contracts

6386

6387 a) **Verification** - Upon receipt of a written report of acts or causes which
6388 may constitute grounds for termination as aforementioned, or upon its
6389 own initiative, the End-User or Implementing Unit shall, within a period
6390 of seven (7) calendar days, verify the existence of such grounds and
6391 cause the execution of a Verified Report, with all relevant evidence
6392 attached.

6393

6394 b) **Notice to Terminate** - Upon recommendation by the End-User or
6395 Implementing Unit, the HoPE shall terminate contracts only by a written
6396 notice to the supplier or contractor conveying the termination of the
6397 contract. The notice shall state:

6398

6399 i) That the contract is being terminated for any of the grounds
6400 aforementioned, and a statement of the acts that constitute the
6401 grounds constituting the same;

6402

6403 ii) The extent of termination, whether in whole or in part;

6404

6405 iii) An instruction to the supplier or contractor or consultant to show cause
6406 as to why the contract should not be terminated; and

6407

6408 iv) Special instructions of the Procuring Entity, if any.

6409

6410 The Notice to Terminate shall be accompanied by a copy of the Verified
6411 Report.

6412

6413 c) **Show Cause** - Within a period of seven (7) calendar days from receipt
6414 of the Notice of Termination, the supplier or contractor or consultant shall
6415 submit to the HoPE a verified position paper stating why the contract
6416 should not be terminated. If the supplier or contractor or consultant fails
6417 to show cause after the lapse of the seven (7) day period, either by
6418 inaction or by default, the HoPE shall issue an order terminating the
6419 contract.

6420

6421 d) **Rescission of Notice of Termination** - The Procuring Entity may, at
6422 any time before receipt of the supplier's or contractor's or consultant's
6423 verified position paper to withdraw the Notice to Terminate if it is
6424 determined that certain items or works subject of the notice had been
6425 completed, delivered, or performed before the supplier's or contractor's
6426 or consultant's receipt of the notice.

6427

6428 e) **Decision** - Within a non-extendible period of ten (10) calendar days from
6429 receipt of the verified position paper, the HoPE shall decide whether or
6430 not to terminate the contract. It shall serve a written notice to the supplier
6431 or contractor or consultant of its decision and, unless otherwise provided,
6432 the Contract is deemed terminated from receipt of the supplier or
6433 contractor or consultant of the notice of decision. The termination shall
6434 only be based on the grounds stated in the Notice to Terminate.

6435

6436 f) **Contract Termination Review Committee (CTRC)** - The HoPE may
6437 create a committee to assist him in the discharge of his function under
6438 these Guidelines. All decisions recommended by the CTRC shall be
6439 subject to the approval of the HoPE.

6440

6441 g) **Take-over of Contracts** - If a Procuring Entity terminates the contract
6442 due to default, insolvency, or for cause, it may enter into a Negotiated
6443 Procurement pursuant to Section 35(c) of RA No. 12009 and this IRR.

6444

6445 h) **Procuring Entity's Options in Termination for Convenience in**
6446 **Contracts for Goods** - The Goods that have been performed or are
6447 ready for delivery within thirty (30) calendar days after the supplier's
6448 receipt of Notice to Terminate shall be accepted by the Procuring Entity
6449 at the contract terms and prices. For Goods not yet performed or ready
6450 for delivery, the Procuring Entity may elect:

6451

6452 i) To have any portion delivered or performed and paid at the contract
6453 terms and prices; and/or

6454

6455 ii) To cancel the remainder and pay to the supplier an agreed amount
6456 for partially completed or performed goods and for materials and
6457 parts previously procured by the supplier.

6458

6459 i) **Notice by Contractor or Consultant** - The Contractor or Consultant
6460 must serve a written notice to the Procuring Entity of its intention to
6461 terminate the contract at least thirty (30) calendar days before its
6462 intended termination. The Contract is deemed terminated if it is not
6463 resumed in thirty (30) calendar days after the receipt of such notice by
6464 the Procuring Entity.

6465

6466 **RULE XII**

6467 **SUSTAINABLE PUBLIC PROCUREMENT**

6468

6469 **Section 72. Sustainable Public Procurement**

6470

6471 72.1 All Procuring Entities shall establish and implement a Sustainable Public
6472 Procurement (SPP) Program aimed at achieving value for money on a whole
6473 lifecycle basis. This is designed not only to meet the specific needs of
6474 government agencies but also to create broader societal and economic benefits
6475 and reduce adverse environmental impacts.

6476

6477 72.2 The establishment of a SPP Program requires Procuring Entities to
6478 integrate sustainability considerations from procurement planning, budgeting to
6479 implementation, contract management, and disposal. This includes
6480 incorporating environmental, social, and economic criteria into procurement
6481 Specifications, evaluations, and decisions.

6482

6483 72.2.1 For the Environmental aspect, Goods, Services, and Infrastructure that
6484 minimize negative impacts must be prioritized.

6485

6486 72.2.2 For the Social aspect, Procuring Entities must consider fair labor
6487 practices, respect human rights, promote gender equity, inclusivity, and support
6488 small and medium-sized enterprises (SMEs), social enterprises, cooperatives,
6489 and other marginalized sectors.

6490

6491 72.3 The GPPB will issue guidelines on the necessary sustainability criteria,
6492 ensuring that all procurement activities align with these standards.

6493

6494 **Section 73. Green Public Procurement Strategy**

6495

6496 73.1 Green public procurement is an approach whereby Procuring Entities
6497 seek to procure Goods, Infrastructure Projects, and Consulting Services with
6498 reduced environmental impact through their lifecycle.

6499

6500 As part of strategic procurement planning and in support of the Philippines'
6501 commitment to accelerate climate action and strengthen disaster resilience,
6502 procuring entities shall integrate and implement green practices, as well as
6503 environmentally relevant criteria or requirements, in the design and
6504 specifications of their procurement projects.

6505

6506 73.1.1 Environmental sustainability should be integrated from the outset,
6507 encompassing project identification, design, and budget preparation, to ensure
6508 that climate-resilient and environmentally advantageous solutions are
6509 prioritized throughout the procurement process.

6510

6511 To further promote green public procurement, sustainability of products,
6512 materials or structures with green specifications shall be given greater weight
6513 in the evaluation of Bids, as outlined in the Bidding Documents.

6514

6515 73.2 During planning and design, Procuring Entities, subject to impact
6516 assessment, must apply criteria such as energy efficiency, sustainable
6517 materials, and waste reduction. Green specifications should be included in
6518 technical and performance requirements for Goods, Infrastructure, and
6519 Consulting Services, focusing on energy-efficient products, renewable or
6520 recyclable materials, and reduced carbon emissions.

6521

6522 73.2.1 Integrating green practices in procurement requires Procuring Entities to
6523 incorporate environmental considerations throughout the project lifecycle.

6524

6525 73.2.2 Specifications must also align with environmental standards and
6526 certifications, advancing sustainability goals in government procurement as
6527 identified in the guidelines issued by the GPPB.

6528

6529 73.2.3 Environmental criteria and specifications shall also be included in the
6530 Procuring Entity's bidding documents.

6531

6532 73.3 In order to achieve broader policy objectives on energy, water and material
6533 efficiency, waste reduction, pollution, and emission prevention, climate change
6534 mitigation, local and rural development, greening supply chains, greening
6535 infrastructure and work, industry productivity, innovation and competitiveness,
6536 inclusive business models, green jobs, and circular economy.

6537

6538 73.3.1 For Goods, technical considerations and criteria that particularly deal
6539 with each item's or product's primary impact on the environment are important
6540 for the development of these green specs.

6541

6542 73.3.2. For Infrastructure, performance standards and green building
6543 requirements must be in accordance with PD 1096 (Philippine Green Building
6544 Code), for projects with significant environmental impacts, such as construction
6545 and infrastructure.

6546

6547 Procuring Entities must require contractors to submit an Environmental Impact
6548 Assessment (EIA) as part of the procurement process. The EIA should outline
6549 the potential environmental consequences of the project and propose effective
6550 mitigation measures to minimize harm and ensure sustainability.

6551

6552 73.4 In evaluating procurement Bids, and in accordance with Sections 41 and
6553 61 on MEARB, Procuring Entities must prioritize sustainability by emphasizing
6554 items, materials, or services that meet green criteria. Measurable green criteria
6555 such as environmental certifications, energy data, recyclability, and compliance
6556 with green standards shall be incorporated into the technical evaluation phase
6557 to ensure sustainability.

6558

6559 73.5 Procuring Entities shall regularly review and report on the green public
6560 procurement strategy's implementation, ensuring that green criteria are
6561 included in procurement activities.

6562

6563 73.6 The GPPB shall ensure the incorporation and implementation of the
6564 concepts of sustainability and green public procurement in the activities of the
6565 government. The green public procurement strategy shall be implemented in
6566 phases, taking into account the readiness of both the government agencies as
6567 well as green product suppliers.

6568

6569 **Section 74. Development of a Green Local Market**

6570

6571 74.1 The Department of Trade and Industry, in consultation with relevant
6572 government agencies and the private sector, shall develop a cost-efficient
6573 program for the validation and certification of green products. This program
6574 aims to attract green investments and enhance competition within government
6575 procurement.

6576

6577 74.1.1 The validation and certification program shall include, but not be limited
6578 to, the establishment of clear criteria for identifying green products, ensuring
6579 compliance with recognized environmental standards, and facilitating the
6580 efficient and transparent certification process.

6581

6582 74.2 The program shall be designed to reduce the financial and administrative
6583 burden on businesses, especially SMEs, by ensuring that the certification
6584 process is accessible, affordable, and aligned with international best practices
6585 in environmental sustainability.

6586

6587 74.3 The DTI, in coordination with relevant agencies, shall regularly review and
6588 update the certification criteria to reflect advancements in environmental
6589 standards, technologies, and market trends, ensuring the program remains
6590 effective and competitive. Additionally, it shall maintain an up-to-date directory
6591 of green local vendors in the market.

6592

6593 **Section 75. Inclusive Procurement Program**

6594

6595 75.1 To provide equal opportunities to the vulnerable and marginalized sectors,
6596 as well as microenterprises, social enterprises, and startups in public
6597 procurement, procuring entities shall encourage active participation of
6598 registered sectors in all procurement activities, by giving weight to gender
6599 parity, ethnic equity, and other social factors by integrating marginalized groups
6600 and socially responsible enterprises into government procurement. This

6601 program shall likewise ensure that procurement practices contribute to poverty
6602 reduction and respect to fundamental labor standards.

6603

6604 75.2 Measures shall be implemented by Procuring Entities to guarantee
6605 responsibility, fairness and adherence to inclusive procurement strategies.

6606

6607 75.2.1 In evaluating procurement Bids, and in accordance with Sections 41
6608 and 61 on MEARB, Procuring Entities shall give weight to gender equity,
6609 ethnic diversity, and other social standards.

6610

6611 75.2.2 Procuring Entities are required encouraged to conduct routine
6612 monitoring and evaluation of the Inclusive Procurement Program's results,
6613 determining how much procurement possibilities can assist startups, social
6614 businesses, microenterprises, and vulnerable sectors.

6615

6616 75.4 Procuring Entities shall provide the GPPB with yearly reports that include
6617 information on how these sectors participated in their procurement activities,
6618 including a breakdown of contracts awarded, gender parity attained, and
6619 compliance with social responsibility standards. These reports will be utilized to
6620 improve the inclusive procurement framework and further refine policies.

6621

6622 75.5 The GPPB will issue guidelines, in consultation with relevant agencies, on
6623 gender-responsive public procurement covering Goods, Infrastructure Projects
6624 or Consulting Services. These guidelines shall prioritize women-led or women-
6625 owned businesses by ensuring their meaningful and active participation in
6626 public procurement and government contracting

6627

6628 **Section 76. Registration of Certain Sectors**

6629

6630 76.1 The GPPB, once data is available from relevant agencies, shall maintain
6631 a registry of entities belonging to the following sectors:

6632

6633 a) Farmers as certified by the Department of Agriculture (DA);

6634

6635 b) Fisherfolk as certified by the Bureau of Fisheries and Aquatic
6636 Resources (BFAR);

6637

6638 c) Persons with disabilities as certified by the National Council for
6639 Disability Affairs (NCDA) pursuant to RA No. 7277, otherwise
6640 known as the Magna Carta for Disabled Persons, as amended;

6641

6642 d) Solo parents as certified by the Department of Social Welfare and
6643 Development (DSWD);

6644

6645 e) Microenterprises and social enterprises as certified by the Micro,
6646 Small and Medium Enterprises Development Council (MSMED
6647 Council);

6648

6649 f) Startups, spin-offs and other form of entity involved in science,
6650 technology, and innovation activities as certified by the DTI, DICT,
6651 National Innovation Council (NIC) or the Department of Science
6652 and Technology (DOST), as may be applicable;

6653

6654 g) Cooperatives duly registered with the CDA pursuant to Republic
6655 Act No. 6938, otherwise known as the Cooperative Code of the
6656 Philippines, as amended; and

6657

6658 h) Other relevant sectors as may be determined by the GPPB to
6659 ensure inclusivity and diversity in the procurement process.

6660

6661 **Section 77. Exemptions and other Forms of Support.**

6662

6663 77.1 The GPPB, after due consultation with the DA, BFAR, NCDA, DSWD,
6664 MSMED Council, DTI, DICT, NIC, DOST, Commission On Higher Education,
6665 and CDA shall prescribe instances for outright exemption and other forms of
6666 support for the sectors mentioned in the preceding section as may be provided
6667 for in the relevant guidelines to be issued by the GPPB based on the data
6668 gathered from the preceding Section of this IRR.

6669

6670

6671

6672

6673 **Section 78. Procurement of Domestic and Foreign Goods**

6674

6675 78.1 Consistent with the country's obligations under treaty or international or
6676 executive agreement, goods may be obtained from domestic or foreign
6677 sources, and the procurement thereof shall be open to all eligible suppliers,
6678 manufacturers and distributors.

6679

6680 **Section 79. Domestic Preference**

6681

6682 79.1 The procuring entity shall give priority and preference to Philippine
6683 products and services. The preference and priority for Philippine products shall
6684 be guaranteed upon all levels of the procurement process, including raw
6685 materials, ingredients, supplies, or fixtures.

6686

6687 79.2 For a period of ten (10) years from the effectivity of R.A No. 11981, and
6688 for Philippine products and services in sectors and economic activities covered
6689 by the prevailing Tatak Pinoy Strategy (TPS), the Procuring Entity is mandated
6690 to award the contract to the domestic bidder. Domestic bidder refers to any
6691 person or entity offering unmanufactured articles, materials, or supplies of the
6692 growth or production of the Philippines, or manufactured articles, materials, or
6693 supplies manufactured or to be manufactured in the Philippines substantially
6694 from articles, materials, or supplies of the growth, production, or manufacture,
6695 as the case may be, of the Philippines.

6696

6697 79.3 After the ten (10) year period counted from the effectivity of R.A No. 11981,
6698 the domestic preference provided in the previous item shall be subject to a
6699 margin of preference to be determined by the Tatak Pinoy (TP) Council which
6700 shall not be lower than fifteen percent (15%).

6701

6702 79.4 For products and services governed by the TPS, the domestic preference
6703 in procurement shall be in accordance with the IRR or guidelines issued for the
6704 Tatak Pinoy Act.

6705

6706 79.5 The Procuring Entity shall award to the domestic bidder if the bid is not
6707 more than twenty-five percent (25%) in excess of the lowest foreign bid. The
6708 margin of preference provided herein shall be subject to a periodic review and
6709 adjustment by the GPPB, as may be necessary.

6710

6711 79.6 A Domestic Bidder can only claim preference if it secures from the
6712 appropriate agency a certification that the articles forming part of its bid are
6713 substantially composed of articles, materials, or supplies grown, produced, or
6714 manufactured in the Philippines.

6715

6716 79.7 The preference herein established may be waived should any of the
6717 following conditions be present:

6718

- 6719 a) Where domestic production is insufficient or unavailable in the required
6720 commercial quantities;
6721 b) Where the specific or desired quality is not met;
6722 c) Where domestic preference will result in inconsistencies with the
6723 Philippines' obligations under treaty or international or executive
6724 agreements; or
6725 d) Other analogous circumstances.

6726

6727

RULE XIV

6728

LEASE OF MOVABLE PROPERTIES

6729

Section 80. Lease Contracts

6730

6731
6732 80.1 The lease of movable properties shall also be subject to government
6733 procurement using the most applicable mode of procurement. Movable
6734 properties refer to those properties defined under Articles 416, 417, and 418 of
6735 the New Civil Code of the Philippines.

6736

6737

6738

6739

6740 **Section 81. Disclosure of Relations**

6741

6742 81.1 All Bids shall be accompanied by a sworn affidavit of the bidder that it is
6743 not related to the HoPE, Procurement Agent if engaged, members of the BAC,
6744 the TWG, and the BAC Secretariat, the head of the PMO or the End-User or
6745 Implementing Unit, and the project consultants, by consanguinity or affinity up
6746 to the third civil degree. The bidder shall also disclose the ultimate beneficial
6747 ownership of an entity. Failure to comply with the aforementioned provision
6748 shall be a ground for the automatic disqualification of the bid in consonance
6749 with Section 59 of this IRR. For this reason, relation to the aforementioned
6750 persons within the third civil degree of consanguinity or affinity shall
6751 automatically disqualify the bidder from participating in the procurement of
6752 contracts of the Procuring Entity notwithstanding the act of such persons
6753 inhibiting themselves from the procurement process. This provision shall apply
6754 to the following persons and affiliates:

6755

6756 a) In case of individuals or sole proprietorships, to the bidders and their
6757 spouses;

6758 b) In case of partnerships, to the partnership itself and its partners;

6759

6760 c) In case of cooperatives, to the cooperative itself and members of the
6761 board of directors, general manager or chief executive officer;

6762

6763 d) A partnership, joint venture or consortium which is blacklisted or which
6764 has blacklisted member/s and/or partner/s as well as a person or entity
6765 who is a member of a blacklisted joint venture or consortium are,
6766 likewise, not allowed to participate in any government procurement
6767 during the period of suspension or blacklisting; and

6768

6769 e) In the case of corporations, a single stockholder, together with its
6770 relatives up to the third civil degree of consanguinity or affinity, and their
6771 assignees, holding at least twenty percent (20%) of the shares therein,
6772 its chairman and president, shall be blacklisted after they have been
6773 determined to hold the same controlling interest in a previously
6774 blacklisted corporation or in two corporations which have been

6775 blacklisted; the corporations of which they are part shall also be
6776 blacklisted.

6777

6778 81.2 All bidders also found to have conflicting interests with each other shall
6779 be disqualified to participate in the procurement at hand, without prejudice to
6780 the imposition of appropriate administrative, civil, and criminal sanctions. A
6781 bidder may be considered to have conflicting interests with another bidder in
6782 any of the events described in paragraphs (a) through (c) below and a general
6783 conflict of interest in any of the circumstances set out in paragraphs (d) through
6784 (i) below:

6785

6786 a) A bidder has controlling shareholders in common with another bidder;

6787

6788 b) A bidder receives or has received any direct or indirect subsidy from any
6789 other bidder;

6790

6791 c) A bidder has the same legal authorized representative as that of another
6792 bidder for purposes of this bid;

6793

6794 d) A bidder has a relationship, directly or through third parties, that puts
6795 them in a position to have access to information about or influence on
6796 the bid of another bidder or influence the decisions of the Procuring
6797 Entity regarding this bidding process. This will include a firm or an
6798 organization who lends, or temporarily seconds, its personnel to firms or
6799 organizations which are engaged in Consulting Services for the
6800 preparation related to procurement for or implementation of the project
6801 if the personnel would be involved in any capacity on the same project;

6802

6803 e) A bidder who participated as a consultant in the preparation of the design
6804 or technical specifications of the Goods and related services that are the
6805 subject of the bid;

6806

6807 f) A bidder who lends, or temporarily seconds, its personnel to firms or
6808 organizations which are engaged in Consulting Services for the
6809 preparation related to procurement for or implementation of the project,
6810 if the personnel would be involved in any capacity on the same project;

6811

6812 g) If a consultant combines the function of consulting with those of
6813 contracting and/or supply of equipment;

6814

6815 h) If a consultant is associated with, affiliated to, or owned by a contractor
6816 or a manufacturing firm with departments or design offices offering
6817 services as consultants unless such consultant includes relevant

information on such relationships along with a statement in the technical proposal cover letter to the effect that the consultant shall limit its role to that of a consultant and disqualify itself and its associates from work in any other capacity that may emerge from the project (including bidding for any part of the future project). The contract with the consultant selected to undertake the project shall contain an appropriate provision to such effect; or

- i) If there is a conflict among consulting projects, the consultant (including its personnel and subcontractors) and any subsidiaries or entities controlled by such consultant shall not be recruited for the relevant project. The duties of the consultant depend on the circumstances of each case. While continuity of Consulting Services may be appropriate in particular situations where no conflict exists, a consultant cannot be recruited to carry out a project that, by its nature, shall result in conflict with a prior or current project of such consultant. Examples of the situations mentioned are when a consultant engaged to prepare engineering design for an Infrastructure Project shall not be recruited to prepare an independent environmental assessment for the same project; similarly, a consultant assisting a Procuring Entity in privatization of public assets shall not purchase, nor advise purchasers, of such assets; or a consultant hired to prepare terms of reference for a project shall not be recruited for the project in question.

Section 82. Declaration of Beneficial Ownership

82.1 Legal entities like corporations, partnerships, private sector organizations, foundations, and associations that participate in procurement projects shall safeguard the government from all acts that undermine a transparent, fair, and competitive procurement process. The beneficial ownership information of the suppliers, manufacturers, distributors, contractors, or consultants, which shall be identified by the GPPB, shall be a requirement to participate in government procurement.

82.2 The GPPB shall maintain an online registry of beneficial ownership information of bidders established for government procurement which shall be accessible to the public.

82.3 The Bidder shall ensure that all beneficial ownership information is updated through the beneficial ownership registry.

RULE XVI PROTEST MECHANISM

Section 83. Protests on Decisions of the BAC

Decisions of the BAC in all stages of procurement may be protested to the HoPE; Provided, That a prior request for reconsideration should have been filed by the party concerned to the BAC and the same has been resolved.

83.1 The bidder may file a request for reconsideration to the BAC within three (3) calendar days upon receipt of written notice or upon verbal notification of the BAC decision. The BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The bidder shall not be allowed to submit additional documents to correct any defects in the bid submitted.

If a failed bidder signifies its intent to file a request for reconsideration, the BAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.

83.2 In the event that the request for reconsideration is denied, decisions of the BAC may be protested to the HoPE within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration. The protest shall be made by electronically filing a verified position paper with the HoPE concerned, accompanied by the payment of a non-refundable protest fee, which shall be paid via electronic payment channels in accordance with the following schedule:

ABC RANGE	PROTEST FEE
P50 million and below	0.75% of the ABC
More than P50 million to P100 million	P500,000.00
More than P100 million to P500 million	0.5% of the ABC
More than P500 million to P1 billion	P2,500,000.00
More than P1 billion to P2 billion	0.25% of the ABC
More than P2 billion	P5,000,000.00

83.3 The verified position paper shall contain the following information:

- a) Name of bidder;
- b) Office address of the bidder;
- c) Name of project or contract;
- d) Implementing office or agency or Procuring Entity;
- e) Brief statement of facts;
- f) Issue to be resolved;

- 6896 g) Factual basis and legal arguments in support of the protest; and
6897 h) Such other matters and information pertinent and relevant to the proper
6898 resolution of the protest.
6899

6900 The position paper is verified by an affidavit that the affiant has read and understood
6901 the contents thereof and that the allegations therein are true and correct of its personal
6902 knowledge or based on authentic records. An unverified position paper shall be
6903 considered unsigned, produces no legal effect, and results in the outright dismissal of
6904 the protest.
6905

6906 In addition, the bidder shall likewise certify under oath that:
6907

- 6908 a) It has not previously commenced any action or filed any claim involving
6909 the same issues in any court, tribunal or quasi-judicial agency and, to
6910 the best of its knowledge, no such other action or claim is pending
6911 therein;
6912
6913 b) If there is such other pending action or claim, the bidder is providing a
6914 complete statement of the present status thereof; and
6915
6916 c) If it should thereafter learn that the same or similar action or claim has
6917 been filed or is pending, he shall report that fact within five (5) days
6918 therefrom to the HoPE wherein its protest is filed.
6919

6920 Failure to comply with the foregoing requirements shall not be curable by mere
6921 amendment of the verified position paper.
6922

6923 For this purpose, the GPPB shall establish an electronic filing system which
6924 shall cover the process from request for reconsideration to resolution of protest.
6925 The procedures for the use of the electronic filing system shall be provided for
6926 in the Guidelines issued by the GPPB.
6927

6928 **Section 84. Resolution of Protests**

6929

6930 The protests shall be resolved strictly on the basis of records of the BAC.
6931

6932 84.1 The HoPE shall resolve the protest within seven (7) calendar days from
6933 receipt thereof. Subject to the provisions of existing laws on the authority of
6934 Department Secretaries and the heads of agencies, branches, constitutional
6935 commissions, or instrumentalities of the GoP to approve contracts, the
6936 decisions of the HoPE concerned shall be final up to the limit of its contract
6937 approving authority. With respect to LGUs, the decision of the local chief
6938 executive shall be final.
6939

6940 84.2 The decision of the HoPE shall be final and executory for the following
6941 procurement projects:

6942

6943 a) Procurement of Goods consisting Twenty Million Pesos
6944 (₱20,000,000.00) and below;

6945

6946 b) Procurement of infrastructure projects consisting Fifty Million Pesos
6947 (₱50,000,000.00) and below; and

6948

6949 c) Procurement of Consulting Services consisting Ten Million Pesos
6950 (₱10,000,000.00) and below.

6951

6952 **Section 85. Resort to Regular Courts**

6953

6954 Court action may be resorted to only after the protests contemplated in the Act
6955 and this IRR has been completed. Cases filed in violation of the procedures
6956 shall be dismissed for lack of jurisdiction. The Regional Trial Court shall have
6957 jurisdiction over final decisions of the HoPE. Court actions shall be governed
6958 by Rule 65 of the 1997 Rules of Civil Procedure, as amended.

6959

6960 85.1 In cases where the amounts are not in excess of the specified thresholds
6961 stated in Section 84.2, the decisions of the HoPE shall become final and
6962 executory ten (10) calendar days after receipt of a copy thereof by the parties,
6963 unless, within the same period, the matter is submitted for arbitration under
6964 Section 88, or an appeal to the Regional Trial Court has been perfected within
6965 the period provided in the Rules of Court.

6966

6967 85.2 Nothing in the Act shall be interpreted to prejudice or prohibit the Office of
6968 the Ombudsman from exercising its duties, functions, and powers as provided
6969 under the 1987 Constitution, RA No. 6770, otherwise known as the
6970 "Ombudsman Act of 1989," or any relevant rules and regulations pursuant
6971 thereto.

6972

6973 **Section 86. Non-interruption of the Bidding Process**

6974

6975 In no case shall any protest taken from any decision stay or delay the bidding
6976 process. Protests must first be resolved before any award is made.

6977 .

6978 **Section 87. Prohibition on the Issuance of Temporary Restraining Orders, 6979 Preliminary Mandatory Injunctions.**

6980

6981 No court, except the Supreme Court, shall issue any temporary restraining
6982 order, preliminary injunction, or preliminary mandatory injunction against the

government or any of its subdivisions, officials, or any person or entity, whether public or private acting under the government direction, to restrain, prohibit, or compel the procurement, bidding, or awarding of contracts for Goods, Infrastructure Projects, and Consulting Services of the government; commencement, execution, implementation, operation of any such contract; termination or rescission of any such contract; and the undertaking or authorization of any other lawful activity necessary for such contract.

This prohibition shall apply in all cases, disputes, or controversies instituted by a party, including, but not limited to, cases filed by bidders or those claiming to have rights through such bidders involving such contract. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which shall accrue in favor of the government should the court finally decide that the applicant was not entitled to the relief sought.

RULE XVII SETTLEMENT OF DISPUTES

Section 88. Dispute Resolution

88.1 Any dispute arising from the implementation of a contract covered by the Act and this IRR shall first be resolved and settled amicably by mutual consultation or agreement.

88.2 To ensure efficiency in the procurement process, parties to the dispute are encouraged to select the most expeditious mode of dispute resolution. The process of arbitration may be incorporated as a provision in the contract that will be executed pursuant to the provisions of the Act and this IRR; Provided, further, That by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

88.3 In case of disagreement or after exhausting the remedies provided in the preceding Section, the dispute shall may be submitted to arbitration or other forms of alternative dispute resolution which includes mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof in accordance with the provisions of RA. No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004"; Provided, however, That disputes that are within the competence and jurisdiction of the Construction Industry Arbitration Commission to resolve shall be referred thereto.

RULE XVIII

CONTRACT PRICES AND WARRANTIES

Section 89. Contract Prices

89.1 For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except when a treaty or international or executive agreement expressly allows it.

a) In cases where the cost of awarded contract is affected by any applicable new laws, ordinances, regulations, other acts of the GoP, promulgated after the date of opening, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis; and

b) In the event of the extraordinary increase in prices of specific components of the Infrastructure Project, price escalation may be considered, subject to prior approval of the GPPB.

89.2 For purposes of this Section, extraordinary increase in prices shall refer to any extraordinary changes in raw material, labor costs, transportation, etc., provided that the total cost exceeds 10% percent of the contract price as determined by the Procuring Entity and verified by GPPB.

The following procedure shall be observed:

a) Any request for price escalation due to extraordinary increase in prices of specific components of the Infrastructure Project shall be submitted by the concerned contractor to the Procuring Entity for evaluation;

b) Should the Procuring Entity find merit in the request, it shall submit the same to the GPPB for review and approval;

c) The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest upon the concerned contractor and Procuring Entity. GPPB shall only review and evaluate the request based on the proof and documents submitted by the Procuring Entity; and

d) If the cost of construction components increases by more than ten percent (10%) of the unit price of work items, as determined against the prevailing price indices of the Philippine Statistics Authority (PSA), a price escalation may be authorized at a no loss, no-gain basis, using the appropriate formula prescribed by the GPPB. For the purpose of this

7069 Section, the PSA shall ensure that its price indices are region specific
7070 and updated on a monthly basis.

7071

7072 89.4 All contracts shall be denominated and payable in Philippine currency, and
7073 this shall be stated in the Bidding Documents: Provided, however, That subject
7074 to the guidelines to be issued by the GPPB, the Procuring Entity may provide
7075 in the Bidding Documents that obligations may be paid in foreign currency,
7076 which shall be accepted or tradeable by the Bangko Sentral ng Pilipinas;
7077 Provided, further, That should the Procuring Entity receive bids denominated in
7078 foreign currency, the same shall be converted to Philippine currency based on
7079 the exchange rate prevailing on the day of the bid opening for purposes of bid
7080 comparison and evaluation.

7081

7082 **Section 90. Warranty**

7083

7084 90.1 For the procurement of Goods, in order to assure that manufacturing
7085 defects shall be corrected by the supplier, a warranty security shall be required
7086 from the contract awardee for a minimum period of three (3) months, in the case
7087 of Expendable Supplies, or a minimum period of one (1) year, in the case of
7088 Non-expendable Supplies, after acceptance by the Procuring Entity of the
7089 delivered supplies.

7090

7091 The obligation for the warranty shall be covered by either retention money in an
7092 amount equivalent to at least one percent (1%) but not to exceed five percent
7093 (5%) of every progress payment, or a special bank guarantee equivalent to at
7094 least one percent (1%) but not to exceed five percent (5%) of the total contract
7095 price. The said amounts shall only be released after the lapse of the warranty
7096 period or, in the case of Expendable Supplies, after consumption thereof;
7097 Provided, however, That the supplies delivered are free from patent and latent
7098 defects and all the conditions imposed under the contract have been fully met.

7099

7100 In the absence of a specified retention money or special bank guarantee
7101 percentage within the Bidding Documents or Technical Requirements, a default
7102 warranty rate of one percent (1%) of the total contract price shall be applied.

7103

7104 90.2 For the procurement of Infrastructure Projects, the following warranties
7105 shall be made:

7106

7107 90.2.1 From the time project construction commenced up to final acceptance,
7108 the contractor shall assume full responsibility for the following:

7109

7110 a) Any damage or destruction of the works except those occasioned by
7111 force majeure; and

7112

7113 b) Safety, protection, security, and convenience of his personnel, third
7114 parties, and the public at large, as well as the works, equipment,
7115 installation and the like to be affected by his construction work.

7116

7117 90.2.2 One (1) year from project completion up to final acceptance or the
7118 defects liability period:

7119

7120 a) The contractor shall undertake the repair works, at his own expense, of
7121 any damage to the infrastructure on account of the use of materials of
7122 inferior quality, defects in the construction, or due to any violation of the
7123 terms of the contract, within ninety (90) calendar days from the time the
7124 HoPE has issued an order to undertake repair. In case of failure or
7125 refusal to comply with this mandate, the Procuring Entity shall undertake
7126 such repair works and shall be entitled to full reimbursement of expenses
7127 incurred therein upon demand.

7128

7129 b) The defects liability period shall be covered by the Performance Security
7130 of the contractor required in Section 68 of this IRR, which shall guarantee
7131 that the contractor performs his responsibilities stated in the immediately
7132 preceding Section. If the contractor fails to comply with its obligations
7133 under Section 90.2.2 (a) of this IRR, the Procuring Entity shall forfeit its
7134 performance security, subject its properties to attachment or
7135 garnishment proceedings, and may impose the appropriate penalty
7136 under Sections 99, 100, and 101 of this IRR. All payables of the GoP in
7137 his favor shall be offset to recover the costs.

7138

7139 90.2.3 The following guidelines for Structural Defects shall cover the persons
7140 liable and their corresponding periods of liability:

7141

7142 a) The following persons shall be held responsible for “Structural Defects,”
7143 i.e., major faults or flaws or deficiencies in one or more key structural
7144 elements of the project which may lead to structural failure of the
7145 completed elements or structure, or “Structural Failures,” i.e., where one
7146 or more key structural elements in an infrastructure facility fails or
7147 collapses, thereby rendering the facility or part thereof incapable of
7148 withstanding the design loads, and/or endangering the safety of the
7149 users or the general public:

7150

7151 i) Contractor – Where Structural Defects/Failures arise due to faults
7152 attributable to improper construction, use of inferior
7153 quality/substandard materials, and any violation of the contract plans
7154 and specifications, the contractor shall be held liable;

7155

7156 ii) Consultants – Where Structural Defects/Failures arise due to faulty
7157 and/or inadequate design and specifications as well as construction
7158 supervision, then the consultant who prepared the design or
7159 undertook construction supervision for the project shall be held liable;
7160

7161

7162 iii) Procuring Entity's Representatives or Project Manager or
7163 Construction Managers and Supervisors – The project owner's
7164 representative, project manager, construction manager, and
7165 supervisor shall be held liable in cases where the Structural Defects
7166 or Failures are due to his/their willful intervention in altering the
7167 designs and other specifications; negligence or omission in not
7168 approving or acting on proposed changes to noted defects or
7169 deficiencies in the design and/or specifications and the use of
7170 substandard construction materials in the project;

7171

7172 iv) Third Parties - Third Parties shall be held liable in cases where
7173 Structural Defects or Failures are caused by work undertaken by
7174 them such as leaking pipes, diggings or excavations, underground
7175 cables and electrical wires, underground tunnel, mining shaft and the
7176 like, in which case the applicable warranty to such structure should
7177 be levied to third parties for their construction or restoration works.

7178

7179 v) Users - In cases where Structural Defects or Failures are due to
7180 abuse or misuse by the End-User or Implementing Unit of the
7181 constructed facility and/or non-compliance by a user with the
7182 technical design limits and/or intended purpose of the same, then the
7183 user concerned shall be held liable.

7184

7185 b) The warranty against Structural Defects and Failures, except those
7186 occasioned by Force Majeure, shall begin from Final Acceptance until
7187 the following periods:

7188

7189 i) Permanent Structures: Fifteen (15) years Buildings of types 4 and 5
7190 as classified under the National Building Code of the Philippines and
7191 other structures made of steel, iron, or concrete which comply with
7192 relevant structural codes (e.g., DPWH Standard Specifications),
7193 such as, but not limited to, steel or concrete bridges, flyovers, aircraft
7194 movement areas, ports, dams, tunnels, filtration and treatment
7195 plants, sewerage systems, power plants, transmission and
7196 communication towers, railway system, and other similar permanent
7197 structures;

7198

- 7198 ii) Semi-Permanent Structures: Five (5) years Buildings of types 1, 2,
7199 and 3 as classified under the National Building Code of the
7200 Philippines, concrete or asphalt roads, concrete river control,
7201 drainage, irrigation lined canals, river landing, deep wells, rock
7202 causeway, pedestrian overpass, and other similar semi-permanent
7203 structures; and
7204
7205 iii) Other Structures: Two (2) years Bailey and wooden bridges, shallow
7206 wells, spring developments, and other similar structures.
7207
7208 c) To guarantee that the contractor shall perform his responsibilities as
7209 prescribed in Section 90.2.3.1 of this IRR, it shall be required to post a
7210 warranty security in accordance with the following schedule:
7211

Form of Warranty Security	Amount of Warranty Security (Not less than the required percentage of the Total Contract Price)
a) Cash or Letter of Credit issued by a Universal or Commercial Bank; Provided, however, That the Letter of Credit shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. For biddings conducted by LGUs, the Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Five percent (5%)
b) Bank guarantee confirmed by a Universal or Commercial Bank. For biddings conducted by LGUs, the bank draft/guarantee may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Ten percent (10%)
c) Surety bond callable upon demand issued by GSIS or a surety or	Thirty percent (30%)

insurance company duly certified by the Insurance Commission as authorized to issue such security.	
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- d) In case of Structural Defects/Failure occurring during the applicable warranty period provided in Section 90.2.3 (b) hereof, the Procuring Entity shall undertake the necessary restoration or reconstruction works and shall be entitled to full reimbursement by the parties found to be liable for 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 Procuring Entity.

RULE XIX

THE GOVERNMENT PROCUREMENT POLICY BOARD

Section 91. Organization and Functions

91.1 The Government Procurement Policy Board, as established in Section 91 of the Act, shall have the following duties and responsibilities:

- a) To set strategic direction and make policy decisions regarding all matters affecting public procurement, with due regard to the country's regional and international obligations;
- b) To lead the nation's efforts in advancing public procurement reforms in accordance with the Act and its IRR;
- c) To formulate and amend, whenever necessary, this IRR, associated issuances and government procurement manuals, Philippine Bidding Documents and standard forms for procurement, and issue policy papers to ensure that the procurement process is streamlined and responsive to the needs of the government;
- d) To establish an online automated process to provide timely responses to inquiries related to the implementation of the Act;
- e) To establish and implement the professionalization program provided in this Act; and
- f) To establish and implement a strategic procurement monitoring program that uses data analytics to enhance procurement planning and evidence-based policymaking as provided under Section 24 of the Act.

7252

7253 91.2 Membership

7254

7255 The GPPB shall be composed of the Secretary of the DBM as Chairperson,
7256 and the Secretary of the National Economic and Development Authority
7257 (NEDA) as Alternate Chairperson, with the following as members: the
7258 Secretaries of the Departments of Public Works and Highways, National
7259 Defense, Education, Interior and Local Government, and Transportation, or
7260 their duly authorized representatives; a representative from the PS-DBM; and
7261 a representative from the private sector, to be appointed by the President of the
7262 Republic of the Philippines upon the recommendation of the GPPB. The GPPB
7263 may invite a representative from the COA to serve as a resource person.

7264

7265 91.3 The GPPB Technical Support Office

7266

7267 The GPPB shall be supported by a Technical Support Office (TSO), an agency
7268 attached to the DBM. The TSO shall be headed by a Director General with a
7269 rank equivalent to an Undersecretary and supported by Deputy Directors
7270 General with a rank equivalent to an Assistant Secretary, to be appointed by
7271 the President, as endorsed by the Secretary of the DBM, all of whom should be
7272 of good moral character, honesty, probity, and unquestionable integrity. The
7273 Secretary of the DBM shall appoint the officials and employees of the TSO for
7274 ranks lower than the Deputy Directors General. The security of tenure of
7275 existing officials and employees of the GPPB-TSO shall be observed, subject
7276 to existing civil service rules and regulations.

7277

7278 91.4 In addition to the powers granted under the Act and its IRR, the GPPB
7279 shall absorb all the powers, functions, and responsibilities of the Procurement
7280 Policy Board created under E.O. No. 359, series of 1989. All affected functions
7281 of the Infrastructure Committee of the NEDA Board are hereby transferred to
7282 the GPPB.

7283

7284 91.5 The GPPB may establish Inter-agency Technical Working Group/s
7285 (IATWG/s) to provide subject matter expertise to the GPPB in the formulation
7286 and review of policies, rules, and regulations related to government
7287 procurement. The IATWG/s, in particular, shall endorse policy
7288 recommendations for the GPPB's consideration and approval. The IATWG/s
7289 shall consist of representatives from the economic services, social services,
7290 agriculture, health, education, construction, energy, environment, information
7291 and communications technology, research and development, and other
7292 sectoral groups as determined by the GPPB, to guarantee that the procurement
7293 policies are inclusive and promote good governance.

7294

Section 92. Administrative Liability of Public Officers

Without prejudice to the criminal and civil liabilities under Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act" and other penal laws, any public officer found to have committed any of the following acts shall be administratively liable with all the accessory penalties for government employees even if no criminal prosecution is instituted against him:

- 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 to any prospective bidder, person, or any party having direct or indirect interest in the project to be procured, 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 this IRR;
- c) Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take a particular bidder, or allowing oneself to be unduly influenced or pressured;
- d) Splitting of contracts which exceed procedural purchase limits and competitive bidding;
- e) Abusing the exercise of the power of the HoPE or its duly authorized representative to reject any and all bids with manifest preference to any bidder;
- f) Simulating procurement eligibility requirements or strategic procurement planning activities; or
- g) All other acts or omissions with the intention of not complying with the mandatory provisions of the Act.

All criminal actions filed before the effectivity of the Act and its IRR shall be governed by the laws in force at the time the offenses were committed; Provided, That judicial decisions and orders issued prior to the effectivity of the Act and this IRR shall remain valid.

Section 93. Jurisdiction

7338

7339 Jurisdiction over the offenses defined under this Article shall belong to the
7340 appropriate courts, according to laws existing at the time of the commission of
7341 the offenses.

7342

7343 Notwithstanding Article 22 of the Revised Penal Code or any law to the
7344 contrary, the administrative, civil, and/or criminal liability of any person,
7345 corporation, or any other entity for any unlawful act committed prior to the
7346 effectivity of the Act shall not be diminished, modified, or affected in any way by
7347 its enactment.

7348

7349 **Section 94. Preventive Suspension**

7350

7351 The head of agency upon issuance of the formal charge or notice of charge, or
7352 immediately thereafter, may preventively suspend any member of the TWG or
7353 the Secretariat, or the BAC, and other officials and employees involved as a
7354 precautionary measure to ensure that such employee charged will not
7355 suppress evidence or harass any witness against the charged employee, if
7356 there are strong reasons or prima facie evidence showing that the officials or
7357 employees concerned may be found liable of the charges filed against them
7358 under Rule XX of the Act and its IRR or for dishonesty as defined by civil service
7359 laws. In all cases, procedural and substantive due process as mandated by the
7360 Constitution and civil service laws, rules and regulations shall be strictly
7361 observed.

7362

7363 **Section 95. Lifting of Suspension and Removal of Administrative**
7364 **Disabilities**

7365

7366 Lifting of preventive suspension pending administrative investigation, as well as
7367 removal of administrative penalties and disabilities shall be in accordance with
7368 the provisions of Sections 52 and 53, Chapter 7 (Civil Service Commission),
7369 Book V of E.O. No. 292, otherwise known as the "Administrative Code of 1987",
7370 and other civil service laws, rules, and regulations.

7371

7372 **Section 96. Civil Liability in Case of Conviction**

7373

7374 Without prejudice to administrative sanctions that may be imposed in proper
7375 cases, a conviction under RA No. 3019 and other penal laws shall carry with it
7376 civil liability, which may either consist of restitution for the damage done, or
7377 forfeiture in favor of the government of any unwarranted benefit derived from
7378 the act or acts in question, or both, at the discretion of the courts.

7379

7380 **Section 97. Liquidated Damages**

7381
7382 All contracts executed in accordance with the Act and this IRR shall contain a
7383 provision on liquidated damages which shall be payable by the contractor in
7384 case of breach thereof. For the procurement of Goods, Infrastructure Projects,
7385 and Consulting Services, the amount of the liquidated damages shall be at least
7386 equal to one-tenth of one percent of the cost of the unperformed portion for
7387 every day of delay. Once the cumulative amount of liquidated damages reaches
7388 ten percent (10%) of the amount of the contract, the Procuring Entity may
7389 terminate the contract, without prejudice to other courses of action and
7390 remedies available under the circumstances.

7391

7392

RULE XXI

7393

SUSPENSION AND BLACKLISTING

7394

Section 98. Administrative Liability of Private Entities

7395

7396
7397 Without prejudice to criminal and civil liabilities under applicable laws, including
7398 their accessory penalties, if any, administrative liability attaches to private
7399 entities, such as suppliers, contractors or consultants, who may be subject to
7400 the following penalties in accordance with this IRR and other relevant laws,
7401 rules, and regulations:

7402

7403 98.1 Any appropriate corrective measure, depending on the severity of the
7404 offense considering its disadvantages to the GOP, shall be imposed in
7405 accordance with the guidelines of the GPPB;

7406

7407 98.1.1 These corrective measures may include any of the following:

7408

7409 a) Imposition of fine;

7410

7411 b) Rehabilitation through the development of a corrective action plan that
7412 outline steps they need to take to improve performance, compliance, and
7413 accountability;

7414

7415 c) Implementation of a probationary period during which the performance
7416 of the supplier, contractor, or consultant is closely monitored;

7417

7418

7419 d) Creation of a performance improvement plan that outlines the areas of
7420 performance that needs to be improved (e.g. ensure compliance to
7421 quality measures or improved quality control measures);

7422

7423 e) Conduct of mandatory training or workshops; and

7424

7425 f) Other similar measures.

7426

7427 98.1.2. The penalty shall be commensurate proportional to the severity of the
7428 offense considering the resulting disadvantages to the GoP.

7429

7430 98.2 Suspension shall be imposed for offenses committed under Section 99 of
7431 this IRR. The entity is prohibited from participating in any procurement of the
7432 Procuring Entity concerned for a given period.

7433

7434 98.3 Blacklisting shall be imposed in case offenses occur under Sections 100
7435 and 101 of this IRR. The entity shall be disqualified from participating in all
7436 government procurements for a given period or perpetually, as the case may
7437 be.

7438

7439 **Section 99. Imposition of Suspension**

7440

7441 The HoPE shall impose the penalty of suspension for one (1) year for the first
7442 offense, and suspension of two (2) years for the second offense, for any of the
7443 following offenses:

7444

7445 99.1. During Procurement

7446

7447 a) Causing the delay, without justifiable cause, of the screening for
7448 eligibility, opening of Bids, evaluation and post evaluation of Bids, and
7449 awarding of contracts;

7450

7451 b) Refusing to clarify or validate in writing its bid during post-qualification
7452 within a period of seven (7) calendar days from receipt of the request for
7453 clarification;

7454

7455 c) Withdrawing a bid, or refusing to accept an award, or refusing or failing
7456 to enter into contract with the Procuring Entity without justifiable cause,
7457 after the approval of the HoPE for having been the declared LCRB,
7458 MEARB, or HRRB, as the case may be;

7459

7460 d) Refusing or failing to post the required performance security within the
7461 prescribed time; or

7462

7463 e) For the renewal of contracts for regular and recurring services, refusal
7464 of the service provider to accept the notice of renewal or failure to submit
7465 its updated documentary requirements for the renewal of contract
7466 without any justifiable reason.

7467

7468 99.2. During Contract Implementation

7469

7470 a) Delivering goods of unsatisfactory or inferior quality as may be provided
7471 in the contract;

7472

7473 b) Rendering poor performance by the consultant of one's service. Poor
7474 performance shall be as follows:

7475

7476 i) Defective design resulting in substantial corrective works in
7477 design or construction;

7478

7479 ii) Failure to deliver critical output due to the fault or negligence of
7480 the consultant;

7481

7482 iii) Specifying materials which are inappropriate, substandard, or
7483 way above acceptable standards; and

7484

7485 iv) Allowing defective workmanship or works by the winning bidder
7486 being supervised by the consultant; or

7487

7488 c) Rendering poor performance by the winning bidder or unsatisfactory
7489 quality and/or progress of work. Poor performance shall be as follows:

7490

7491 i) Negative slippage of fifteen percent (15%) and above within
7492 the critical path of the project due entirely to the fault or
7493 negligence of the winning bidder; and

7494

7495 ii) Quality of materials and workmanship not complying with the
7496 approved specifications arising from the fault or negligence of
7497 the winning bidder.

7498

7499 Moreover, the bid security or the performance security posted by the entity
7500 concerned shall also be forfeited.

7501

7502 **Section 100. Imposition of Blacklisting**

7503

7504 The HoPE may impose the penalty of blacklisting consisting of one (1) year
7505 prohibition for the first offense, or two (2) years prohibition for the second
7506 offense for any of the following offenses:

7507

7508 100.1 In General or During Procurement or Contract Implementation

7509

- 7510 a) Committing three (3) or more of any of the acts imposed with
7511 suspension, as provided under Section 99 of this IRR;
7512
- 7513 b) Using force, fraudulent machinations, coercion, undue influence or
7514 pressure on any member of the BAC or any officer or employee of the
7515 Procuring Entity to take a particular action for its own favor or gain, or to
7516 the advantage of a particular bidder;
7517
- 7518 c) In case it is determined prima facie that the winning bidder has engaged,
7519 before or during implementation of the contract, in the following unlawful
7520 deeds and behaviors relative to contract acquisition and implementation:
7521
- 7522 i) Corrupt, fraudulent, collusive and coercive practices;
7523
- 7524 ii) Drawing up or using forged documents; or
7525
- 7526 iii) Using adulterated materials, means or methods, or engaging
7527 in production contrary to rules of science or trade.
7528
- 7529 100.2 During Procurement
7530
- 7531 a) Agreeing with two (2) or more bidders and submitting different bids as if
7532 they were bona fide, when they knew that one or more of them was so
7533 much higher than the other that it could not be honestly accepted and
7534 that the contract will surely be awarded to the pre-arranged lowest bid;
7535
- 7536 b) Maliciously submitting different bids through two (2) or more persons,
7537 corporations, partnerships, or any other business entity in which it has
7538 interest, to create the appearance of competition that does not in fact
7539 exist so as to be declared as the winning bidder;
7540
- 7541 c) Entering into an agreement with other bidder/s which call upon one to
7542 refrain from bidding for procurement contracts, or which call for
7543 withdrawal of bids already submitted, or which are otherwise intended to
7544 secure an undue advantage to any of the bidders;
7545
- 7546 d) Failing to faithfully disclose its relationship, regardless of the time of its
7547 discovery, with the HoPE, members of the BAC, the TWG, and the BAC
7548 Secretariat, the head of the PMO or the End-User or Implementing Unit,
7549 and the project consultants of the Procuring Entity, or of the procurement
7550 agent, whichever is applicable, by consanguinity or affinity up to the third
7551 civil degree pursuant to Section 81 of this IRR;
7552

- 7553 e) Submission of beneficial ownership information containing false entries;
7554
7555 f) Using the name of another for purposes of participating in any
7556 procurement activity;
7557
7558 g) Submitting eligibility requirements and bids containing false information
7559 or falsified documents or the concealment of such information that will
7560 materially alter the outcome of eligibility screening or any stage of the
7561 procurement;
7562
7563 h) Unauthorized accessing of the contents of any Bid submitted to the
7564 Procuring Entity before the opening of bids;
7565
7566 i) Engaging in any documented unsolicited attempt to unduly influence the
7567 outcome of the bidding;
7568
7569 j) Employing schemes which stifle or suppress any procurement activity.
7570

7571 **100.3. During Contract Implementation**
7572

- 7573 a) Assigning or subcontracting the contract or any part thereof or
7574 substituting key personnel named in the proposal without prior written
7575 approval by the Procuring Entity;
7576
7577 b) Willful or deliberate abandonment or non-performance of the project or
7578 contract by the winning bidder resulting in substantial breach thereof
7579 without lawful and/or just cause; or
7580
7581 c) Terminating the contract due to the default or unlawful acts of the bidder
7582 supplier, contractor or consultant.
7583

7584 Moreover, the bid security or the performance security posted by the entity
7585 concerned shall also be forfeited.
7586

7587 **Section 101. Imposition of Blacklisting with Perpetual Disqualification**
7588

7589 The HoPE shall impose blacklisting with perpetual disqualification based on any
7590 of the following grounds:
7591

- 7592 a) Committing a third offense imposed with blacklisting under the Act by the
7593 same Procuring Entity, or a combination of three (3) violations imposed
7594 with blacklisting by the Procuring Entity and other Procuring Entities, as
7595 posted on the GPPB portal; or

7596

7597 b) Failing to comply with the provision on warranty that requires to repair
7598 any noted defect or damage to the Infrastructure Project due to the use
7599 of materials of inferior quality within ninety (90) calendar days from the
7600 issuance of the order by the HoPE to undertake such repairs.

7601

7602 Moreover, the bid security or the performance security posted by the entity
7603 concerned shall also be forfeited.

7604

7605 **Section 102. Suspension of Bidder Pending Blacklisting Proceedings**

7606

7607 During the pendency of the blacklisting proceedings, the bidder shall be
7608 automatically suspended from participating in the current procurement activity
7609 being undertaken by the Procuring Entity concerned.

7610

7611 The notice of the commencement of the blacklisting proceedings to the bidder
7612 shall likewise serve as the notice of automatic suspension.

7613

7614 The receipt of the notice of dismissal of a case against the bidder shall serve
7615 as the lifting of the suspension of the said bidder.

7616

7617 **Section 103. Status of Suspended or Blacklisted Person**

7618

7619 Before the issuance of a blacklisting order, the erring bidder may participate in
7620 the procurement of any government project except in the Procuring Entity
7621 where it is suspended: Provided, That if the blacklisting order is issued prior to
7622 the date of the Notice of Award, the blacklisted person shall not be qualified for
7623 award and such contract shall be awarded to another bidder.

7624

7625 The issuance of a suspension or blacklisting order shall not prejudice any
7626 contract awarded prior thereto: Provided, That the offenses which brought
7627 about the suspension or blacklisting are not connected to the awarded contract.

7628

7629 In case the penalty of suspension or blacklisting is imposed during the
7630 pendency of a previous penalty, the latter shall be deemed terminated and
7631 subsumed in the former.

7632

7633 **Section 104. Initiation of Action; Subsequent Procedure**

7634

7635 The BAC or the HoPE may, motu proprio, commence the administrative
7636 proceedings for corrective measures, suspension or blacklisting, at any stage
7637 of the procurement or contract implementation, upon prima facie determination
7638 that a bidder or prospective bidder has committed any of the grounds provided

for in Sections 99, 100, and 101 of this IRR. Any bidder or prospective bidder may also initiate the suspension and blacklisting proceedings.

At the option of the Procuring Entities, a reasonable fee may be required for initiating the suspension and blacklisting proceedings.

104.1 The administrative proceedings for suspension and blacklisting shall cover the following, among others:

- a. **Notice and Hearing** – Upon initiation of action, the BAC shall immediately notify the contractor concerned in writing, advising him of his opportunity to show cause why he should not be held administratively liable, and to request, if preferred, for the conduct of a hearing before the BAC.

Upon evaluation of the records and if the BAC is convinced by substantial evidence that the contractor is at fault, it shall issue a resolution recommending to the head of the agency the imposition of administrative penalties.

- b. **Decision** – The HoPE shall, within fifteen (15) days from receipt of the relevant BAC resolution, determine whether substantial evidence exists to support a finding of guilt in the administrative case. Otherwise, the HoPE shall dismiss the action.

- c. **Request for Reconsideration** – A Request for Reconsideration may be filed by the suspended person/entity within three (3) calendar days from receipt of the notice of decision. The HoPE shall resolve the request for reconsideration within seven (7) calendar days from the filing thereof and furnish suspended contractor a copy of the resolution immediately from its promulgation. Only one (1) request for reconsideration shall be allowed.

- d. **Posting in the GPPB Portal** – It is the responsibility of the Procuring Entity to upload to the portal of the GPPB the corrective measure, suspension or blacklisting order, as the case may be, within seven (7) calendar days after the issuance (finality) of the order.

Section 105. Extent of Administrative Sanctions

The penalties of suspension and blacklisting shall be applied against (i) any entity in which the suspended or blacklisted person has a controlling interest; and (ii) any beneficial owner of the suspended or blacklisted person.

7682

7683 The penalties shall also be applied against the following affiliates:

7684

7685 a) In case of individuals or sole proprietorships, to the bidders and their
7686 spouses;

7687

7688 b) In case of partnerships, to the partnership itself and its partners;

7689

7690 c) In case of cooperatives, to the cooperative itself and members of the
7691 board of directors, general manager or chief executive officer;

7692

7693 d) A partnership, joint venture or consortium which is blacklisted or which
7694 has blacklisted member/s and/or partner/s as well as a person or entity
7695 who is a member of a blacklisted joint venture or consortium are,
7696 likewise, not allowed to participate in any government procurement
7697 during the period of suspension or blacklisting; and

7698

7699 e) In the case of corporations, a single stockholder, together with its
7700 relatives up to the third civil degree of consanguinity or affinity, and their
7701 assignees, holding at least twenty percent (20%) of the shares therein,
7702 its chairman and president, shall be blacklisted after they have been
7703 determined to hold the same controlling interest in a previously
7704 blacklisted corporation or in two corporations which have been
7705 blacklisted; the corporations of which they are part shall also be
7706 blacklisted

7707

7708 105.1. Blacklisting Due to Enforcement of a Bid or Performance Securing
7709 Declaration

7710

7711 In addition to the forfeiture of the bid security or the performance security posted
7712 by the private entity, the following provisions shall be observed in the imposition
7713 of administrative penalties pursuant to the enforcement of the Bid Securing
7714 Declaration Form (BSDF) or the Performance Securing Declaration Form
7715 (PSDF):

7716

7717 The HoPE, upon recommendation of the BAC, shall immediately issue the
7718 blacklisting or suspension order upon determination of the grounds for
7719 enforcement and forfeiture of the BSDF or the PSDF.

7720

7721 A request for reconsideration with the HoPE may be filed within three (3)
7722 calendar days from receipt of the blacklisting or suspension order.

7723

7724 105.2. Other Aspects of Suspension and Blacklisting

7725

7726 The procedures and other aspects relative to the suspension and blacklisting
7727 of suppliers, contractors, or consultants shall be undertaken in accordance with
7728 the guidelines to be issued by the GPPB.

7729

7730

RULE XXII

7731

LEGAL ASSISTANCE AND INDEMNIFICATION PACKAGE FOR BAC MEMBERS AND SUPPORT STAFF

7732

7733

Section 106. Private Legal Assistance

7734

7735

7736 All members of the BAC, TWG, and Secretariat, are hereby authorized to
7737 engage the services of private lawyers or external counsel immediately upon
7738 receipt of a Court notice that an administrative, civil or criminal action, suit or
7739 proceeding is filed against them in connection with the lawful performance of
7740 their official functions and duties. The lawyer's fee shall be part of the
7741 indemnification package for the members of the BAC, TWG, and Secretariat,
7742 subject to the provisions of Section 107 hereof.

7743

7744

Section 107. Indemnification Package

7745

7746 The GPPB shall establish an equitable indemnification package for public
7747 officials providing services in the BAC, TWG, and Secretariat, which may be in
7748 the form of free legal assistance, liability insurance, and other forms of
7749 protection and indemnification for all costs and expenses reasonably incurred
7750 by such persons in connection with any administrative, civil or criminal action,
7751 suit or proceeding to which they may be, or have been made, a party by reason
7752 of the performance of their functions or duties, unless they are finally adjudged
7753 in such action or proceeding to be liable for gross negligence or grave
7754 misconduct or grave abuse of discretion.

7755

7756 In the event of a settlement or compromise, indemnification shall be confined
7757 only to matters covered by the settlement: Provided, That the public officials to
7758 be indemnified have not committed gross negligence or grave misconduct in
7759 the performance of their functions and duties.

7760

7761 The members of the BAC, TWG, and Secretariat shall also be entitled to
7762 medical assistance for injuries incurred in the performance of their functions.

7763

7764

RULE XXIII

7765

FINAL PROVISIONS

7766

Section 108. Appropriations

7767

7768

7769 The amount necessary for the initial implementation of this Act and its IRR shall
7770 be charged against the current year's available appropriations. Thereafter, such
7771 sums as may be necessary for the implementation of this Act and its IRR shall
7772 be included in the annual General Appropriations Act.

7773

7774 **Section 109. Whole-of-Government Approach**

7775

7776 To effectively achieve the objectives of this Act and its IRR and to scale up
7777 professionalization of government procurement practitioners, the GPPB shall
7778 provide sustained training, capacity-building, and support to stakeholders in the
7779 government procurement process, such as education, training, seminars, and
7780 workshops in areas such as modes of procurement, streamlined processes,
7781 supply chain management and logistics including warehousing, and
7782 digitalization.

7783

7784 The HoPE, members of the BAC, and TWG shall undergo an executive course
7785 on procurement while the BAC Secretariat shall undergo annual training
7786 programs.

7787

7788 Pursuant thereto, all branches and instrumentalities of the government, its
7789 departments, bureaus, offices and agencies, including SUCs, GOCCs, GFIs,
7790 and LGUs shall allocate a portion of their capacity development funds to send
7791 their BAC members, BAC Secretariats, and TWGs to training. The capacity-
7792 building program shall include the development of skills of government
7793 agencies in understanding and implementing the government's Green Public
7794 Procurement Strategy through the following:

7795

7796 a) Conduct of relevant training needs assessment of the public sector;

7797

7798 b) Provision of technical assistance to suppliers, particularly the
7799 microenterprises and social enterprises; and

7800

7801 c) Conduct of public awareness campaigns on green procurement, among
7802 others.

7803

7804 The GPPB shall establish partnerships with SUCs and other educational
7805 institutions in providing training programs. It shall establish standards for
7806 accreditation of said institutions.

7807

7808 The Procuring Entity, through the HoPE, shall submit periodic progress reports
7809 to the GPPB on the status of its capacity development. Reportorial
7810 requirements prescribed under this Act and its IRR shall take into consideration

7811 reports required under other laws related to procurement, with a view to
7812 harmonizing and achieving efficiencies in the preparation of these reports.

7813

7814 **Section 110. Mandatory Review**

7815

7816 Based on the report submitted by the Joint Congressional Oversight
7817 Committee, the Congress shall conduct a mandatory review of the Act at least
7818 once every five (5) years, and as often as it may deem necessary.

7819

7820 **Section 111. Implementing Rules and Regulations and Standard Forms**

7821

7822 111.1 As the need arises, this IRR may be amended by the GPPB.

7823

7824 111.2. Any amendment to this IRR shall be applicable to all procurement
7825 activities, the advertisement or invitation of which were issued after the date of
7826 effectivity of the said amendment.

7827

7828 111.3 For a period not later than ninety (90) calendar days upon the approval
7829 of this IRR, the standard forms or procurement shall be formulated and
7830 approved.

7831

7832 **Section 112. Transitory Provision**

7833

7834 112.1 Prior to the effectivity of the IRR of this Act, the provisions of Republic
7835 Act No. 9184 and its IRR shall remain in force and effect to ensure the continued
7836 implementation of programs, activities, and projects.

7837

7838 112.2 Procuring Entities are enjoined to leverage the Fit-for-Purpose and
7839 Proportional approaches afforded by the Act and this IRR. Meanwhile, the
7840 GPPB and all HoPEs, Procuring Entities and the BACs affected by this Act shall
7841 be given a three (3)-year transitory period from the approval of the standard
7842 forms for procurement, to fully comply with the requirements of the Act and its
7843 IRR.

7844

7845 **Section 113. Repealing Clause**

7846

7847 RA No. 9184 otherwise known as the "Government Procurement Reform Act"
7848 and Commonwealth Act No. 138 are hereby repealed. All other laws, acts,
7849 presidential decrees, executive orders, presidential proclamations, issuances,
7850 rules and regulations, or parts thereof which are contrary to or inconsistent with
7851 any of the provisions of the Act and this IRR are hereby repealed, amended, or
7852 modified accordingly.

7853

7854 **Section 114. Separability Clause**

7855

7856 If any provision in this IRR, or application of such provision to any circumstance,
7857 is declared invalid or unconstitutional, the other provisions not affected thereby
7858 shall remain valid and subsisting.

7859

7860 **Section 115. Effectivity**

7861

7862 This IRR shall take effect sixty (60) calendar days after its publication in the
7863 Official Gazette or in two (2) newspapers of general nationwide circulation and
7864 upon filing with the University of the Philippines Law Center of three (3) certified
7865 copies of this IRR.

DRAFT FOR ROUTING, NOT FOR
DISSEMINATION OR PUBLICATION WITHOUT
PERMISSION FROM THE GPPB