

**APPROVING THE ESTABLISHMENT AND THE USE OF THE PROCUREMENT
OBSERVERS' PORTAL**

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

WHEREAS, Section 3 of RA No. 9184 and its 2016 revised IRR provides that all procurement shall be governed by the principles of transparency in the procurement process and the implementation of procurement contracts and public monitoring of the procurement process, and the implementation of awarded contracts, among others;

WHEREAS, to enhance the transparency of the procurement process, Section 13 of RA No. 9184 and its 2016 revised IRR expressly states that the Bids and Awards Committee (BAC) shall, in all stages of the procurement process, invite at least two (2) observers, in addition to the representative of the Commission on Audit (COA), from a duly recognized private group in a sector or discipline relevant to the procurement at hand and the other from a non-government organization, to sit in the proceedings;¹

WHEREAS, Section 13.5 of the 2016 revised IRR of RA No. 9184 provides that the observers shall have access to the following documents upon request and signing of a confidentiality agreement: (i) Annual Procurement Plan and Project Procurement Management Plan; (ii) minutes of the BAC meetings; (iii) abstract of bids; (iv) opened proposals; and (v) post-qualification summary report; this is anchored on the observers' responsibility under Section 13.4 (a) of the said IRR to prepare a report on the observations made during the procurement activities conducted by the BAC, which shall indicate an assessment of the extent of the BAC's compliance with the provisions of the IRR and shall include an evaluation on the areas of improvement in the BAC's proceedings;

WHEREAS, in July 2019, the GPPB-TSO, with the technical assistance of the World Bank (WB) and the Asian Development Bank, conducted a public procurement assessment using the Methodology for Assessing Procurement Systems (MAPS) and has identified under "Pillar III: Public Procurement Operations and Market Practices" and "Pillar IV: Accountability, Integrity, and Transparency of the Public Procurement System" the relevance of procurement observers in the procurement process;

WHEREAS, based on this public procurement assessment using the MAPS, the GPPB-Technical Support Office (TSO) noted that there is a declining involvement of CSOs in procurement activities due to the lack of support to observers in the form of logistics, training, or access to relevant information and facilities; thus, it was recommended that there should be an increased use of electronic means and digital platforms, including an updated list of CSO observers with the area of their expertise;

WHEREAS, in April 2023, the GPPB-TSO further sought the technical assistance of the WB in engaging two (2) consultants for the development of the Procurement Observers' Portal (POP) and the POP Manual. The POP will provide an online space for the observers to register, access procurement information, and submit reports to the GPPB-TSO, and where PEs will have access to the observers' directory where they can invite potential observers for their procurement projects;

¹ Especially during the i) the pre-bid conference; ii) opening of bids; iii) bid evaluation; iv) post-qualification; and v) contract award.

WHEREAS, on 13 June 2023, the WB consultant presented the following features of the POP, as prescribed by the GPPB-TSO: (i) Industry Management - which allows the GPPB-TSO as administrator to add the corresponding industry of the observers; (ii) Approval of Request - the GPPB-TSO can approve or reject the registration of the authorized representative of the PE or observer; (iii) Registration and Login Flow - the portal will require all users to register including the designated user of the GPPB-TSO; (iv) Procuring Entity Creation and Observer Approval Flow - this feature allows the PE to invite another authorized representative in the same agency same as observer that belongs to the same organization; (v) PE Project Management - the PE may provide the project details and upload the documents related to the procurement at hand including the letter to the observer; and (vi) Observer Project - the observer can access the information on the projects he or she was invited to and accept the invitation;

WHEREAS, on 19 June 2023 and 11 September 2023, the GPPB-TSO met with the WB consultant for the incorporation of its comments, proposed changes, and recommended additional features for the POP;

WHEREAS, on 12 January 2024, pending the submission of the updated User's Manual for the POP by the other WB consultant, the deployment of POP was completed by the WB consultant with the assistance of the Information Management Division (IMD) of the GPPB-TSO;

WHEREAS, on 23 and 24 May 2024, the GPPB-TSO conducted the 1st Batch of 2024 CSO Training for the simulation of the POP, where the CSOs provided their proposed changes and feedback on the use of the POP;

WHEREAS, on 06 August 2024, during the 3rd GPPB Meeting, the GPPB-TSO presented the overview of the POP, including its scope and application, features, users, and the corresponding access or features, and safeguards of the system. Further, the GPPB-TSO, through its IMD, also provided a walkthrough of the system from the point of view of the observer and the PE;

WHEREAS, during the same meeting, the representative from the Department of Public Works and Highways (DPWH) mentioned that the observers who participate in their procurement projects are limited to those observers selected through a raffle, thus, the DPWH inquired if they could implement this using the system; to which the GPPB-TSO mentioned that if the DPWH decide to have an internal process for the selection for observers, they may do so but it should be implemented through the portal;

WHEREAS, the representative from the Department of Budget and Management (DBM) inquired if, as a rule, the POP will be open to all interested observers and, as an exception, the observers may be selected through a raffle. The GPPB-TSO clarified that all observers who would like to participate need to register in the POP but it will be the PE who will choose the observers, thus, if the PE provides additional filtering in the selection of its observers, the PE needs to implement this through the POP;

WHEREAS, the representative from the DPWH inquired if they will no longer need to accredit their observers using the POP once it is established and operationalized. The GPPB-TSO answered in the affirmative and explained that the POP will provide a platform for PEs to invite all registered and qualified observers so they may have access to procurement information, and submit reports to the GPPB-TSO;

WHEREAS, the DPWH representative further inquired if they could go beyond the number of observers required under the rules, to which the GPPB-TSO responded that this depends on the number of observers that the PE can manage, considering the volume of its procurement projects and the size of the PE;

Whereas, upon the inquiry of the DPWH, the DBM, and the Department of Transportation (DOTr) representatives, the GPPB-TSO provided the following clarifications on the establishment and use of the POP: (i) the PEs can encourage their observers to register in the POP so that they can be invited as observers in the said portal; (ii) the PEs will not be able to use its discretion in inviting the PEs since the observers are selected based on who will first confirm the invitation of the PE using the POP; (iii) upon Board's approval of the use and establishment of the POP, the GPPB-TSO is granted the authority to enhance and update the POP guidelines to address the concerns on the use of the non-disclosure agreement (NDA), conflict of interest, submission of reports, and the parameters of the PEs in inviting the observers; and (iv) the POP is the single mode of invitation for observers in government procurement, thus, templates for the report will be developed for its use.

WHEREAS, the DOTr further inquired as to who would have access to the reports. In response, the GPPB-TSO mentioned that the agency would be given a copy of the reports, and the agency would come up with an internal mechanism as to how to address the concerns in the reports;

WHEREAS, the DPWH mentioned that they are implementing projects from other agencies, thus, it inquired as to how they can manage requesting observers who are not authorized observers of the agencies. The GPPB-TSO clarified that, if the procurement is undertaken by a procurement agent, under the law, there should be a BAC representative from the PE. Otherwise, the PE may allow an observer to sit in the proceedings but not in its official capacity. Further, the GPPB mentioned that what is peculiar about the observers in the Philippines is that an observer can sit in the procurement proceedings even if they are not part of it;

WHEREAS, the Department of Finance (DOF) suggested enhancements on the POP and requested clarification the implementation date as well as the conduct of pilot implementation and the use of templates for the non-disclosure agreement and disclosure of conflict of interest;

WHEREAS, the GPPB-TSO responded to the suggestions and concerns of the DOF as follows: (i) once the POP is populated and the necessary enhancements after the pilot implementation of the POP is made, the use of the POP shall be mandated to all PEs in line with the transitory period under RA No. 12009 or earlier, if the POP is ready before then; and (ii) the PEs can use one (1) form for both the NDA and the disclosure of conflict of interest; and (iii) the IMD of the GPPB-TSO will check if the system can be changed accommodate the DOF's suggestions as to system enhancement;

WHEREAS, the DBM inquired if the Head of the Procuring Entity (HoPE) and the COA would immediately have access to the observer's report, to which the GPPB-TSO responded in the affirmative as provided under the rules. Thus, like the automatic notification to the BAC Chairman in the Online Blacklisting Portal, the HoPE will automatically be notified of the observer's report on the conduct of the public bidding, its procedures, conditions, and problems;

WHEREAS, the DOTr inquired if the invitation to the observers to join the meeting through the POP is on a per-meeting basis. The GPPB-TSO responded that observers can view the details of the meeting through the POP. Upon further inquiry of the DBM representative whether these observers will be invited per goods, the GPPB-TSO clarified that the invitation is per industry; this is also applicable to the procurement of consulting services since this will fall under a particular umbrella organization;

WHEREAS, the DOTr further inquired if the system can auto-fill the entries and provide an electronic signature for the NDA. The GPPB-TSO mentioned that it may consider this enhancement in the system;

WHEREAS, the Department of Energy inquired if anybody can sit in the proceedings and observe the conduct of procurement, to which the GPPB-TSO mentioned that the PE can have their protocol or internal rules to manage the participation of observers, and to ensure that, for example, their security considerations are not violated;

WHEREAS, the DBM representative inquired if this provision is self-executory since RA No. 12009 will take effect on 13 August 2024. The Board, upon the recommendation of the GPPB-TSO, decided that this is self-executory since there is no indication that it is subject to the issuance of the IRR of RA No. 12009. In addition to this, the DOF further inquired if the current members of the GPPB would approve the resolution and if the existing provisions of RA No. 9184, pending the effectivity of the new law, would be applied. The Board, upon the recommendation of the GPPB-TSO, confirmed the same, however, since this is in anticipation of the effectivity of RA No. 12009, the approval would allow the GPPB to have the data on PEs and observers considering the upcoming launch of the POP;

WHEREAS, the GPPB, after careful review and deliberations, as recommended by the GPPB-TSO, resolved to approve, as follows:

1. Establish and use the POP with the User Manual and the Observer's Report Template to allow the registration of PEs and observers in anticipation of the effectivity of RA No. 12009, particularly Section 43 thereof, subject to the issuance of an updated Procurement Observers' Guide; and
2. Direct the GPPB-TSO, particularly its IMD, to incorporate the proposed system changes and enhancements of the POP, based on the comments and suggestions of the Board.²

NOW, THEREFORE, for and in view of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the above-mentioned GPPB-TSO recommendations.

This Resolution shall take effect immediately.

APPROVED this 06th day of August 2024 at Quezon City, Philippines.

² Proposed system changes and enhancements: (i) use of online form for the NDA and Conflict of Interest Form, including the auto-fill and use of electronic signature/s therein; (ii) use of separate fields of the first name, middle name, and last names; (iii) use of dropdown functions for PEs or use autocomplete for the fields to avoid typing the abbreviations of the PEs; and (iv) specify whether the supporting documents uploaded is the ID or duly approved office order of the PEs.

SGD

GPPB, Chairperson
DEPARTMENT OF BUDGET AND MANAGEMENT

SGD _____ NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY	SGD _____ DEPARTMENT OF EDUCATION
_____ DEPARTMENT OF ENERGY	_____ DEPARTMENT OF FINANCE
_____ DEPARTMENT OF HEALTH	SGD _____ DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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