

**REVISED IMPLEMENTING  
RULES AND REGULATIONS  
OF REPUBLIC ACT 9184**



**REVISED IMPLEMENTING RULES AND REGULATIONS OF  
REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE  
GOVERNMENT PROCUREMENT REFORM ACT**

**RULE I – GENERAL PROVISIONS**

**Section 1. Short Title and Purpose**

This Revised Implementing Rules and Regulations,<sup>1</sup> hereinafter called the IRR, is promulgated pursuant to Section 75 of Republic Act No. (R.A.) 9184, otherwise known as the "Government Procurement Reform Act", for the purpose of prescribing the necessary rules and regulations for the modernization, standardization, and regulation of the procurement activities of the Government of the Philippines (GOP).<sup>(a)</sup>

**Section 2. Declaration of Policy**

The provisions of this IRR are in line with the commitment of the GOP to promote good governance and its effort to adhere to the principle of transparency, accountability, equity, efficiency, and economy in its procurement process. It is the policy of the GOP that procurement of infrastructure projects, goods and consulting services shall be competitive and transparent, and therefore shall go through public bidding, except as otherwise provided in this IRR.<sup>(a)</sup>

**Section 3. Governing Principles on Government Procurement**

The procurement of the GOP shall be governed by these principles:

- a) Transparency in the procurement process and in the implementation of procurement contracts through wide dissemination of bid opportunities and participation of pertinent non-government organizations.
- b) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.
- c) Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method.
- d) System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with GOP are, when warranted by circumstances, investigated and held liable for their actions relative thereto.
- e) Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the Act and this IRR, and that all these contracts are performed strictly according to specifications.

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<sup>1</sup> The Revised IRR was approved by the Government Procurement Policy Board (GPPB) through its Resolution 03-2009, dated 22 July 2009, and published in the Official Gazette on 3 August 2009. It took effect thirty (30) days after its publication or on 2 September 2009.

**Section 4. Scope and Application of the IRR**

- 4.1. This IRR shall apply to all procurement of any branch, agency, department, bureau, office, or instrumentality of the GOP, including government-owned and/or -controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).<sup>(a)</sup>
- 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.<sup>(a)</sup>
- 4.3. Unless the Treaty or International or Executive Agreement expressly provides use of foreign government/foreign or international financing institution procurement procedures and guidelines, this IRR shall apply to Foreign-funded Procurement for goods, infrastructure projects, and consulting services by the GOP.

Consistent with the policies and principles set forth in Sections 2 and 3 of this IRR, the GOP negotiating panels shall adopt, as its default position, use of this IRR, or at the very least, selection through competitive bidding, in all Foreign-funded Procurement. If the Treaty or International or Executive Agreement states otherwise, then the negotiating panels shall explain in writing the reasons therefor.<sup>(n)</sup>

- 4.4. This IRR shall not apply to the following activities:
  - a) Procurement for goods, infrastructure projects, and consulting services funded from Foreign Grants covered by R.A. 8182, as amended by R.A. 8555, entitled "An Act Excluding Official Development Assistance (ODA) from the Foreign Debt Limit in order to Facilitate the Absorption and Optimize the Utilization of ODA Resources, Amending for the Purpose Paragraph 1, Section 2 of Republic Act No. 4860, As Amended", unless the GOP and the foreign grantor/foreign or international financing institution agree otherwise;
  - b) Acquisition of real property which shall be governed by R.A. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes," and other applicable laws; and
  - c) Public-Private sector infrastructure or development projects and other procurement covered by R.A. 6957, as amended by R.A. 7718, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes," as amended: Provided, however, That for the portions financed by the GOP, regardless of source of funds, whether local or foreign, the provisions of this IRR shall apply.<sup>(1a)</sup>

**Section 5. Definition of Terms**

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

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- a) **Act.** Refers to R.A. 9184, entitled "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for other Purposes," otherwise known as the Government Procurement Reform Act.
- b) **Approved Budget for the Contract.** Refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act (GAA), continuing, and automatic appropriations, in the case of national government agencies (NGAs); the corporate budget for the contract approved by the governing board, pursuant to Executive Order No. 518, series of 1979 (E.O. 518), in the case of GOCCs and GFIs, and R.A. 8292 in the case of SUCs; the budget approved by the *Sanggunian* in the case of LGUs; and the estimated contract cost in the case of Foreign-funded Procurement. For purposes of, and throughout this IRR, the terms "ABC", "Approved Budget for the Contract", and "Approved Budget" shall have the same meaning and shall be used interchangeably. For Foreign-funded Procurement, the estimated contract cost for the project refers to the cost estimate prepared by the procuring entity and approved by the foreign government/foreign or international financing institution as specified in the Treaty or International or Executive Agreement.<sup>(a)</sup>
- c) **BAC.** Refers to the Bids and Awards Committee established in accordance with Rule V of this IRR.
- d) **Bid.** Refers to a signed offer or proposal to undertake a contract submitted by a bidder in response to and in consonance with the requirements of the Bidding Documents. For purposes of, and throughout this IRR, the term "Bid" shall be equivalent to and be used interchangeably with "Proposal" and "Tender".
- e) **Bidder.** Refers to an eligible contractor, manufacturer, supplier, distributor and/or consultant competing for the award of a contract in any procurement by the GOP. A contractor, manufacturer, supplier, distributor or consultant is said to be eligible if it meets all the eligibility requirements issued by the procuring entity.
- f) **Bidding Documents.** Refer to the 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 infrastructure projects, goods and/or consulting services required by the procuring entity.
- g) **Common-Use Supplies.** Refer to those goods, materials and equipment that are used in the day-to-day operations of Procuring Entities in the performance of their functions. For the purpose of this IRR, common-use supplies shall be those included in the Electronic Catalogue of the PhilGEPS.<sup>(a)</sup>
- h) **Competitive Bidding.** Refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract. For purposes of, and throughout this IRR, the terms "Competitive Bidding" and "Public Bidding" shall have the same meaning and shall be used interchangeably.
- i) **Consulting Services.** Refer to services for infrastructure projects and other types of projects or activities of the GOP requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the GOP to

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undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. General principles on consulting services are provided for in Annex "B" of this IRR.<sup>(a)</sup>

- j) **Domestic Bidder.** Refers to any person or entity offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.<sup>(n)</sup>
- k) **Domestic Entity.** Refers to an individual or a sole proprietor who is a citizen of the Philippines or a partnership, corporation, cooperative, or association duly organized under the laws of the Philippines and of which at least seventy five percent (75%) of the interest or outstanding capital stock belongs to citizens of the Philippines, habitually established in business and habitually engaged in the manufacture or sale of the merchandise covered by his bid, and the business has been in existence for at least five (5) consecutive years prior to the advertisement and/or posting of the Invitation to Bid.<sup>(n)</sup>
- l) **Executive Agreements.** Refer to International Agreements except that they do not require legislative ratification.<sup>(n)</sup>
- m) **Expendable Supplies.** Refer to articles which are normally consumed in use within one (1) year or converted in the process of manufacture or construction, or those having a life expectancy of more than one (1) year but which shall have decreased substantially in value after being put to use for only one (1) year (*e.g.*, medicines, stationery, fuel, and spare parts).<sup>(n)</sup>
- n) **Foreign Bid.** Refers to any offer of articles, materials or supplies not manufactured or not to be manufactured in the Philippines, substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.<sup>(n)</sup>
- o) **Foreign-funded Procurement.** Refers to the acquisition of goods, consulting services, and the contracting for infrastructure projects by the GOP which are wholly or partly funded by Foreign Loans or Grants pursuant to a Treaty or International or Executive Agreement. For purposes of, and throughout this IRR, the term "foreign-funded procurement" shall have the same meaning as and shall be used interchangeably with "foreign-funded projects" or "foreign-assisted projects".<sup>(n)</sup>
- p) **Foreign Grants.** Refer to grants with no repayment obligations and are provided in monetary form, goods, works, and consultancy services, among others.<sup>(n)</sup>
- q) **Foreign Loans.** Refer to loans, credits, and indebtedness with private foreign banks or with foreign governments, agencies, or instrumentalities of such foreign governments, foreign financial institutions, or other international organizations with whom, or belonging to countries with which, the Philippines has diplomatic relations, as may be necessary and upon such terms and conditions as may be agreed upon, to enable the GOP to finance, either directly or through any government office, agency or instrumentality or any government-owned and controlled corporation, industrial,

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agricultural or other economic development purposes or projects authorized by law.<sup>(n)</sup>

- r) **Goods.** Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term "related" or "analogous services" shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity.
- s) **GPPB.** Refers to the Government Procurement Policy Board created in accordance with Rule XX of this IRR.
- t) **Head of the Procuring Entity.** Refers to: (i) the head of the agency or body, or his duly authorized official, for NGAs and the constitutional commissions or offices, and branches of government; (ii) the governing board or its duly authorized official, for GOCCs, GFIs and SUCs; or (iii) the local chief executive, for LGUs: *Provided, however,* That in an agency, department, or office where the procurement is decentralized, the head of each decentralized unit shall be considered as the Head of the Procuring Entity, subject to the limitations and authority delegated by the head of the agency, department, or office.
- u) **Infrastructure Projects.** Include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. 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".
- v) **International Agreement.** Refers to a contract or understanding, regardless of nomenclature, entered into between the GOP and another government or foreign or international financing institution in written form and governed by international law, whether embodied in a single instrument or in two (2) or more related instruments.<sup>(n)</sup>
- w) **Non-expendable Supplies.** Refer to articles which are not consumed in use and ordinarily retain their original identity during the period of use, whose serviceable life is more than one (1) year and which add to the assets of the GOP (*e.g.*, furniture, fixtures, transport and other equipment).<sup>(n)</sup>
- x) **PhilGEPS.** Refers to the Philippine Government Electronic Procurement System as provided in Section 8 of this IRR. For purposes of, and throughout this IRR, the term "PhilGEPS" shall have the same meaning as, and shall be used interchangeably with, "G-EPS" referred to in the Act.<sup>(a)</sup>

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- y) **Philippine National.** Refers to an individual or a sole proprietor who is a citizen of the Philippines or a partnership, corporation, cooperative, or association organized under the laws of the Philippines of which at least sixty percent (60%) of the capital or interest is owned by citizens of the Philippines.<sup>(n)</sup>
- z) **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.
- aa) **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 R.A. 8974 and other applicable laws, rules and regulations.
- bb) **Procuring Entity.** Refers to any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of the GOP (NGA), including GOCC, GFI, SUC and LGU procuring goods, consulting services and infrastructure projects.
- cc) **Treaties.** Refer to international agreements entered into by the GOP which require legislative ratification after executive concurrence.<sup>(n)</sup>
- dd) **Universal or Commercial Banks.** Refer to universal or commercial banks duly authorized under R.A. 8791, otherwise known as "The General Banking Act of 2000".<sup>(n)</sup>

### Section 6. Standardization of Procurement Process and Forms

- 6.1. To systematize the procurement process, avoid confusion and ensure transparency, the GPPB shall pursue the development and approval of generic procurement manuals and standard bidding documents and forms including those to be used for major procurement like drugs and textbooks.
- 6.2. Once issued by the GPPB, the use of the Generic Procurement Manuals (GPMs), Philippine Bidding Documents (PBDs), and other standard forms 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.

## RULE II – PROCUREMENT PLANNING

### Section 7. Procurement Planning and Budgeting Linkage

- 7.1. All procurement shall be within the approved budget of the procuring entity and should be meticulously and judiciously planned by 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). For purposes of this IRR, a procurement project shall be



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considered crucial to the efficient discharge of governmental functions if it is required for the day-to-day operations or is in pursuit of the principal mandate of the procuring entity concerned. The APP shall include provisions for foreseeable emergencies based on historical records. In the case of infrastructure projects, the APP shall consider the appropriate timing/phasing of related project activities, such as, engineering design and acquisition of right of way, to reduce/lower project costs.<sup>(a)</sup>

- 7.2. No procurement shall be undertaken unless it is in accordance with the approved APP of the procuring entity. The APP shall bear the approval of the Head of the Procuring Entity or second-ranking official designated by the Head of the Procuring Entity to act on his behalf, and must be consistent with its duly approved yearly budget.<sup>(a)</sup>
- 7.3. The APP shall be formulated and revised only in accordance with the following guidelines:
  - 7.3.1. At the start of every budget period, the procuring entity shall prepare its proposed budget for the succeeding calendar year, taking into consideration the budget framework for that year in order to reflect its priorities and objectives for the budget period.<sup>(n)</sup>
  - 7.3.2. The end-user units of the procuring entity shall prepare their respective Project Procurement Management Plan (PPMP) for their different programs, activities, and projects (PAPs). The PPMP shall include:
    - a) information on whether PAPs will be contracted out, implemented by administration in accordance with the guidelines issued by the GPPB, or consigned;
    - b) the type and objective of contract to be employed;
    - c) the extent/size of contract scopes/packages;
    - d) the procurement methods to be adopted, and indicating if the procurement tasks are to be outsourced as provided in Section 53.6 of this IRR;
    - e) the time schedule for each procurement activity and for the contract implementation; and
    - f) the estimated budget for the general components of the contract.

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

- 7.3.3. The PPMP shall then be submitted to the procuring entity's Budget Office. The procuring entity's Budget Office shall evaluate each end-user's submitted PPMP and, if warranted, include it in the procuring entity's budget proposal for approval by the Head of the Procuring Entity.<sup>(n)</sup>
- 7.3.4. After the budget proposal has been approved by the Head of the Procuring Entity and/or other oversight bodies, the procuring entity's budget office shall furnish a copy of the procuring entity's budget proposal as well as the corresponding PPMPs

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to the BAC Secretariat for its review and consolidation into the proposed APP. The proposed APP shall be consistent with the procuring entity's budget proposal.<sup>(n)</sup>

- 7.3.5. As soon as the GAA, corporate budget, or appropriation ordinance, as the case may be, becomes final, the end-user units shall revise and adjust the PPMP to reflect the budgetary allocation for their respective PAPs. The revised PPMPs shall be submitted to the BAC, through its Secretariat, for the finalization of the modes of procurement under the proposed APP. The APP shall then be approved in accordance with Section 7.2 of this IRR.<sup>(n)</sup>
- 7.4. Updating of the individual PPMPs and the consolidated APP for each procuring entity shall be undertaken every six (6) months or as often as may be required by the Head of the Procuring Entity. The updating of the PPMPs shall be the responsibility of the respective end-user units of the Procuring Entities, while the consolidation of these PPMPs into an APP shall be lodged with the BAC Secretariat, subject to approval of the Head of the Procuring Entity.<sup>(a)</sup>
- 7.5. The ABC as reflected in the APP or PPMP shall be at all times consistent with the appropriations for the project authorized in the GAA, continuing, and automatic appropriations, the corporate budget, and the appropriation ordinance, as the case may be. For NGAs, to facilitate the immediate implementation of projects even pending approval of the GAA, the ABC shall be based on the budget levels under the proposed national budget submitted by the President to Congress.<sup>(a)</sup>

### RULE III – PROCUREMENT BY ELECTRONIC MEANS

#### **Section 8. Procurement by Electronic Means and the Philippine Government Electronic Procurement System (PhilGEPS)**

##### *8.1. The PhilGEPS*

- 8.1.1. To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be a single portal that shall serve as the primary source of information on all government procurement. The PhilGEPS shall serve as the primary and definitive source of information on government procurement. For this purpose, the Electronic Procurement System (EPS) established in accordance with Executive Order No. 322, series of 2000, and Executive Order No. 40, series of 2001 (E.O. 40), shall continue to be managed by the PS-DBM under the supervision of the GPPB, as the PhilGEPS, in accordance with this IRR.
- 8.1.2. To take advantage of the significant built-in efficiencies of the PhilGEPS and the volume discounts inherent in bulk purchasing, all Procuring Entities shall utilize the PhilGEPS for the procurement of Common-Use Supplies in accordance with the rules and procedures to be established by the GPPB. With regard to the procurement of non-common use items, infrastructure projects, and consulting services, agencies may hire service providers through competitive bidding to undertake their electronic procurement: *Provided, however,* That these service providers meet the following minimum requirements:

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- a) Comply with the provisions of the Act and this IRR, and R.A. 8792, otherwise known as the "Electronic Commerce Act;"
- b) Linked to the PhilGEPS, particularly with regard to the posting of all bid opportunities and awards;
- c) Allow parallel manual submission of bids to the procuring entity;
- d) Ensure that the BAC shall have complete control of the bidding process, and that the BAC's sole authority to open bids is strictly observed;
- e) Its system must be virus-resilient and must provide sufficient security which is at least equivalent to that employed by the PhilGEPS, such as, but not limited to, firewall and encryption devices;
- f) Must provide for the use of electronic signatures and other current electronic authentication devices;
- g) Must have sufficient redundant back-up facilities;
- h) Must have provisions for linkage to the procuring entity's Financial Management Information System (FMIS), Logistics Management Systems, and other internal information systems that may interact with the procurement process; and
- i) Electronic payment facilities, if used, shall comply with all laws, rules and regulations issued by the Government.

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

### 8.2. *Features of the PhilGEPS*

#### 8.2.1. The Electronic Bulletin Board

- a) The PhilGEPS shall have a centralized electronic bulletin board for posting procurement opportunities, notices, awards and reasons for award. All Procuring Entities are required to post all procurement opportunities, results of bidding and related information in the PhilGEPS bulletin board.
- b) Procuring Entities shall post the Invitation to Bid for goods and infrastructure projects or the Request for Expression of Interest for consulting services, in the electronic bulletin board in accordance with Section 21 of this IRR.

#### 8.2.2. Registry of Manufacturers, Suppliers, Distributors, Contractors and Consultants

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

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- b) Registration shall entail the submission of the requirements specified by the PS-DBM. Submission of these requirements may be done on-line at the PhilGEPS website or physically at the PhilGEPS office. Registration shall be effective for one year and may be renewed, provided that the manufacturer, supplier, distributor, contractor or consultant concerned maintains its registration current and updated at least once a year, or more frequently when needed.
- c) Manufacturers, suppliers, distributors, contractors and consultants applying for registration must also indicate their account number with a bank duly licensed by the *Bangko Sentral ng Pilipinas* (BSP) to facilitate payment as well as the posting of bid and performance security, when applicable. Any information submitted in connection with this subsection shall be kept confidential.<sup>(a)</sup>
- d) The PhilGEPS shall deny registration to or exclude from the registry any party that is found to have willfully misrepresented any of the information provided in the application for registration or who is in the "blacklist" of the Government or any of its Procuring Entities in accordance with Section 69.4 of this IRR, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB.
- e) A manufacturer, supplier, distributor, contractor or consultant applying for registration shall be required to provide an e-mail address to which all communications from the BAC and the procuring entity shall be sent. The e-mail address provided shall be considered as such applicant's information system for purposes of reckoning the date of sending or receipt of electronic messages or documents.
- f) Registered manufacturers, suppliers, distributors, contractors and consultants shall secure a digital certificate from the government-accredited certification authority to be able to participate in the procurement activities of the PhilGEPS.<sup>(a)</sup>
- g) Registration with the PhilGEPS is not an accreditation and thus not tantamount to a finding of eligibility, nor is it a guaranty that a manufacturer, supplier, distributor, contractor or consultant may participate in a public bidding without first being determined to be eligible for that particular public bidding.

### 8.2.3. The Electronic Catalogue

- a) The PhilGEPS shall have a centralized electronic catalogue of common and non-common use goods, supplies, materials and equipment.
- b) Procuring Entities shall procure common-use goods, supplies, materials and equipment from the Electronic Catalogue in the PhilGEPS. To be able to use the PhilGEPS, Procuring Entities shall be required to register and designate the officials or personnel authorized to transact with and operate the PhilGEPS from such Procuring Entities' terminals.
- c) Procuring Entities without internet access may avail of the PhilGEPS Public Access Terminals which shall be installed at DBM-designated locations in the

provinces and in Metro Manila: Provided, however, That they shall comply with Section 8.3 of this IRR.

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

#### 8.2.4. Additional Features

The PhilGEPS shall also feature a Virtual Store, Electronic Payment, Electronic Bid Submission, and such other features as may be developed in the future.

##### 8.2.4.1. Virtual Store

The PhilGEPS may have a feature that will enable the ordering of common-use and non-common use items online called a virtual store. The virtual store shall be open only to registered procuring entities and may not be accessed by suppliers.

##### 8.2.4.2. Electronic Payment

The PhilGEPS may support e-payment functions to pay for goods purchased through the Virtual Store to manage the generation of purchase orders and the payment of bids processed through the system.<sup>(a)</sup>

The focus of this feature is to facilitate the electronic transfer of funds from PS-DBM to and from procuring entities and suppliers, and from procuring entities to suppliers, for bids managed directly by the procuring entity. The system shall:

- a) Generate purchase orders from a bid notice, award notice or contract;
- b) Support approval process for purchase orders before any payment or fund transfer is processed;
- c) Have a process to submit request for payment upon delivery of goods and/or services and the completion of the approval process; and
- d) Have the ability to interface with the designated bank of the procuring entity and suppliers to support the electronic transfer of funds.

8.2.4.3. Electronic Bid Submission

The PhilGEPS may support the implementation of e-Bid submission processes, which includes creation of electronic bid forms, creation of bid box, delivery of bid submissions, notification to supplier of receipt of bids, bid receiving and electronic bid evaluation. This facility shall cover all types of procurement for goods, infrastructure projects and consulting services.

8.3. *Use of the PhilGEPS*

8.3.1. All Procuring Entities are mandated to fully use the PhilGEPS in accordance with the policies, rules, regulations, and procedures adopted by the GPPB and embodied in this IRR. In this connection, all Procuring Entities shall register with the PhilGEPS and shall undertake measures to ensure their access to an on-line network to facilitate the open, speedy and efficient on-line transmission, conveyance and use of electronic data messages or electronic documents. The PS-DBM shall assist Procuring Entities to ensure their on-line connectivity and help in training their personnel responsible for the operation of the PhilGEPS from their terminals.

8.3.2. The rules and regulations governing the manual method of procurement shall apply whenever the rules in this Section are silent. Further, the GPPB is authorized to approve changes in the procurement process to adapt to improvements in modern technology, provided that such modifications are consistent with the provisions of Section 3 of the Act and this IRR.

8.4. *Pre-bid Conferences and Notices under the PhilGEPS*

8.4.1. Pre-bid conferences shall be conducted in accordance with Section 22 of this IRR: *Provided, however,* That the requirement for face-to-face bidding conference may be replaced once videoconferencing, webcasting, or similar technology becomes the norm in business transactions in the country. Procuring Entities with videoconferencing capabilities that have manufacturers, suppliers, distributors, contractors and/or consultants that also have videoconferencing capabilities may conduct their pre-bidding conferences electronically.

8.4.2. Requests for clarification from bidders may be sent electronically to the BAC. To be binding on bidders, clarifications and amendments to the Invitation to Bid/Request for Expression of Interest and to the Bidding Documents shall be in the form of Supplemental/Bid Bulletins which shall be posted in the PhilGEPS bulletin board.

8.4.3. The Supplemental/Bid Bulletins mentioned in the immediately preceding Subsection as well as all other notices to be made by the BAC to the bidders or prospective bidders shall be posted in the PhilGEPS bulletin board and sent electronically to the e-mail address indicated in the bidders' registration.

8.5. *Registration, Eligibility Requirements and Submission of Bids under the PhilGEPS*

8.5.1. To ensure the widest dissemination of the Invitation to Bid/Request for Expression of Interest, manufacturers, suppliers, distributors, contractors and/or consultants shall register with the PhilGEPS. All Procuring Entities already maintaining an electronic registry upon the effectivity of this IRR shall integrate the same with

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that of the PhilGEPS. A manufacturer, supplier, distributor, contractor or consultant duly registered with the PhilGEPS may participate in a procurement undertaken by any procuring entity, provided that the said manufacturer, supplier, distributor, contractor or consultant maintains its registration current and updated in accordance with the provisions of this IRR, and its registration is proper and relevant to the particular type of procurement.<sup>(a), (23a)</sup>

- 8.5.2. Eligibility requirements may be sent electronically to a procuring entity through the PhilGEPS: *Provided, however,* That the prospective bidder concerned shall submit a certification to the BAC at least seven (7) calendar days before the deadline for the submission and opening of the technical and financial envelopes that the documents submitted are authentic copies of the original, complete, and all statements and information provided therein are true and correct: *Provided, further,* That the PhilGEPS shall allow manual submission of eligibility requirements. The PhilGEPS shall generate and send an acknowledgement of any eligibility requirement received by it.<sup>(a)</sup>
- 8.5.3. Registered bidders determined to be eligible may submit their bids at any time before the closing date specified in the Bidding Documents. The PhilGEPS shall bar all incoming bids after such date.
- 8.5.4. The PhilGEPS shall have a feature that allows the electronic submission of eligibility requirements and bids.
- 8.5.5. Upon receipt of a bid, the PhilGEPS shall generate and send a message to the bidder acknowledging such receipt.
- 8.6. *Opening of Bids under the PhilGEPS*
  - 8.6.1. The BAC shall have the sole authority to open the bids.
  - 8.6.2. Only the financial proposals of bidders whose technical proposals meet the minimum technical requirements shall be opened or decrypted.
  - 8.6.3. An update of all procurement contracts, regardless of whether procurement is done electronically or manually, shall be posted on the PhilGEPS bulletin board. The update shall include, but shall not be limited to, the status of procurement contracts, including the names of contract awardees and the amount of the contract.
  - 8.6.4. Without prejudice to criminal prosecution under the applicable provisions of the Act and this IRR, R.A. 8792, R.A. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," and other applicable penal laws, public officials and employees who commit any of the following acts shall be deemed to have committed grave misconduct and shall be sanctioned and/or penalized in accordance with the applicable Civil Service rules and regulations:
    - a) Opening or decryption, by whatever means, of bids submitted through the PhilGEPS ahead of the appointed time for the opening or decryption of such bids;
    - b) Causing the unauthorized disclosure of any information or document submitted through the PhilGEPS;

- c) Hacking into or cracking the PhilGEPS, or aiding another person to hack into or crack the same; or
- d) Any other act that breaches or violates the security, integrity, and confidentiality of the PhilGEPS.

8.6.5. When any of the foregoing acts is done by the administrator(s) or employee(s) of a service provider hired by a procuring entity, or in collusion with, or by a private party who is a participant in the bidding process, said administrator(s), employee(s) or private party shall be imposed the corresponding sanctions and/or penalties under this IRR.

#### 8.7. *Observers*

The PhilGEPS shall allow observers, duly authorized by the BAC, to monitor the procurement proceedings on-line: *Provided, however,* That such observers do not have any direct or indirect interest in the contract to be bid as prescribed in Section 13 of this IRR.<sup>(a)</sup>

### **Section 9. Security, Integrity and Confidentiality**

The PhilGEPS shall incorporate the following features, which shall be periodically upgraded to keep abreast with developments in technology:

- a) *Security* – The PhilGEPS shall be protected from unauthorized access or interference through the incorporation of security features such as, but not limited to, firewalls. Periodic tests shall be conducted to ensure that the system cannot be breached.
- b) *Integrity* – The PhilGEPS shall ensure that no person, including the system administrators and chairperson and members of the BAC, shall be able to alter the contents of bids submitted through the system or read the same ahead of the stipulated time for the decryption or opening of bids. For this purpose, bids submitted through the PhilGEPS shall be sealed through electronic keys. The authenticity of messages and documents submitted through the PhilGEPS shall also be ensured by the use of electronic signatures.
- c) *Confidentiality* – The PhilGEPS shall ensure the privacy of parties transacting with it. For this purpose, no electronic message or document sent through the system shall be divulged to third parties unless such electronic message or document was sent after the sender was informed that the same will be made publicly available. The PhilGEPS shall protect the intellectual property rights over documents, including technical designs, submitted in response to Invitations to Bid.
- d) *Audit Trail* – The PhilGEPS shall include a feature that provides for an audit trail for on-line transactions, and allows the Commission on Audit (COA) to verify the security and integrity of the system at any time.
- e) *Performance Tracking* – The performance of manufacturers, suppliers, distributors, contractors and consultants shall be tracked to monitor compliance with delivery schedules and other performance indicators. Similarly, the performance of Procuring



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Entities shall be tracked to monitor the settlement of their obligations to manufacturers, suppliers, distributors, contractors and consultants.

### **RULE IV – COMPETITIVE BIDDING**

#### **Section 10. Competitive Bidding**

All procurement shall be done through competitive bidding, except as provided in Rule XVI of this IRR.

### **RULE V – BIDS AND AWARDS COMMITTEE**

#### **Section 11. The BAC and its Composition**

##### *11.1. BAC Structure*

- 11.1.1. Each procuring entity shall establish in its head office a single BAC to undertake the functions specified in Section 12 of this IRR in order to facilitate professionalization and harmonization of procedures and standards. In line with the standardization of procurement procedures and the thrust towards strengthening the procurement function to increase operational efficiency and effectiveness, Heads of Procuring Entities shall aim to consolidate or unify all procurement activities of the organization, whether locally-funded or foreign-assisted, and whether pertaining to goods, infrastructure projects, or consulting services.<sup>(a)</sup>
- 11.1.2. However, to expedite the procurement process for practical intents and purposes, the Head of the Procuring Entity may create separate BACs where the number and complexity of the items to be procured shall so warrant. The BACs may be organized either according to: (a) geographical location of PMO or end-user units of the procuring entity; or (b) nature of procurement. Similar committees for decentralized and lower level offices may also be formed when deemed necessary by the Head of the Procuring Entity.<sup>(a)</sup>

##### *11.2. BAC Composition*

- 11.2.1. The Head of the Procuring Entity shall designate at least five (5) but not more than seven (7) members to the BAC of unquestionable integrity and procurement proficiency.<sup>(a)</sup>
- 11.2.2. The BAC for NGAs, departments, bureaus, offices, or instrumentalities of the GOP, including the judicial and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs shall be composed of the following:

Regular Members:

- a) Chairman, who is at least a third ranking permanent official of the procuring entity;
- b) An officer, who is at least a fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to the extent

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possible, represents the legal or administrative area of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel;

- c) An officer, who is at least a fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the finance area of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel;

Provisional Members:

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

The Chairman and the Vice-Chairman shall also be designated by the Head of the procuring entity. Moreover, the Vice-Chairman shall be a regular member of the BAC. For purposes of this IRR, the term "permanent" shall refer to a *plantilla* position within the procuring entity concerned.<sup>(a)</sup>

11.2.3. The BAC for Local Government Units shall be composed of the following:

- a) One representative each from the regular offices under the Office of the Local Chief Executive such as, but not limited to, the following: Office of the Administrator, Budget Office, Legal Office, Engineering Office, General Services Offices; and
- b) A representative from the end user unit.

The members shall elect among themselves who shall act as the Chairman and Vice-Chairman. The Chairman of the BAC shall be at least a third ranking permanent official of the procuring entity. The members of the BAC shall be personnel occupying *plantilla* positions of the procuring entity concerned.<sup>(a)</sup>

11.2.4. The Head of the Procuring Entity may designate alternate members to the BAC, who shall have the same qualifications as their principals as set in the Act and this IRR. The alternate members shall attend meetings of the BAC and receive the corresponding honoraria, whenever their principals are absent. The alternate members shall have the same term as their principals. The accountability of the principal and the alternate member shall be limited to their respective acts and decisions.<sup>(n)</sup>

11.2.5. In no case shall the Head of the Procuring Entity and/or the approving authority be the Chairman or a member of the BAC.

11.2.6. 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 appointment, renewable at the discretion of the Head of the Procuring Entity. 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, a member shall be suspended or removed by the Head of the Procuring Entity.<sup>(a)</sup>

## **Section 12. Functions of the BAC**

12.1. The BAC shall have the following functions: (a) advertise and/or post the invitation to bid/request for expressions of interest; (b) conduct pre-procurement and pre-bid conferences; (c) determine the eligibility of prospective bidders; (d) receive bids; (e) conduct the evaluation of bids; (f) undertake post-qualification proceedings; (g) resolve motions for reconsideration; (h) recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative; (i) recommend the imposition of sanctions in accordance with Rule XXIII; (j) recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Rule XVI hereof; and (k) perform such other related functions as may be necessary, including the creation of a Technical Working Group (TWG) from a pool of technical, financial, and/or legal experts to assist in the procurement process, particularly in the eligibility screening, evaluation of bids, and post-qualification.<sup>(a)</sup>

12.2. The BAC shall be responsible for ensuring that the procuring entity abides by the standards set forth by the Act and this IRR, and it shall prepare a procurement monitoring report in the form prescribed by the GPPB. The procurement monitoring report shall cover all procurement activities specified in the APP, whether ongoing and completed, from the holding of the pre-procurement conference to the issuance of notice of award and the approval of the contract, including the standard and actual time for each major procurement activity. The procurement monitoring report shall be approved and submitted by the Head of the Procuring Entity to the GPPB in printed and electronic format within fourteen (14) calendar days after the end of each semester.<sup>(a)</sup>

### 12.3. *Quorum*

A majority of the total BAC composition as designated by the Head of the Procuring Entity shall constitute a quorum for the transaction of business, provided that the presence of the Chairman or Vice-Chairman shall be required.

### 12.4. *Meetings*

The Chairman or, in his absence, the Vice-Chairman, shall preside at all meetings of the BAC. The decision of at least a majority of those present at a meeting at which there is quorum shall be valid and binding as an act of the BAC: *Provided, however,* That the Chairman or, in his absence, the Vice-Chairman, shall vote only in case of a tie.<sup>(a)</sup>

**Section 13. Observers**

- 13.1. To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the COA, at least two (2) observers, who shall not have the right to vote, to sit in its proceedings where:
1. At least one (1) shall come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, for example:
    - a) For infrastructure projects, national associations of constructors duly recognized by the Construction Industry Authority of the Philippines (CIAP), such as, but not limited to the following:
      - (1) Philippine Constructors Association, Inc.;
      - (2) National Constructors Association of the Philippines, Inc.; and
      - (3) Philippine Institute of Civil Engineers (PICE).
    - b) For goods, a specific relevant chamber-member of the Philippine Chamber of Commerce and Industry.
    - c) For consulting services, a project-related professional organization accredited or duly recognized by the Professional Regulation Commission or the Supreme Court, such as, but not limited to:
      - (1) PICE;
      - (2) Philippine Institute of Certified Public Accountants (PICPA); and
      - (3) Confederation of Filipino Consulting Organizations; and
  2. The other observer shall come from a non-government organization (NGO).<sup>(a)</sup>
- 13.2. The observers shall come from an organization duly registered with the Securities and Exchange Commission (SEC) or the Cooperative Development Authority (CDA), and should meet the following criteria:
- a) Knowledge, experience or expertise in procurement or in the subject matter of the contract to be bid;
  - b) Absence of actual or potential conflict of interest in the contract to be bid; and
  - c) Any other relevant criteria that may be determined by the BAC.<sup>(a)</sup>
- 13.3. Observers shall be invited at least three (3) calendar days before the date of the procurement stage/activity. The absence of observers will not nullify the BAC proceedings, provided that they have been duly invited in writing.<sup>(a)</sup>
- 13.4. The observers shall have the following responsibilities:
- a) To prepare the report either jointly or separately indicating their observations made on the procurement activities conducted by the BAC for submission to the Head of the Procuring Entity, copy furnished the BAC Chairman. 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 procuring entity and furnish a copy to the GPPB and Office of the Ombudsman/Resident Ombudsman. If no report is submitted by the observer, then it is understood that the bidding activity conducted by the BAC followed the correct procedure; and
  - c) To immediately inhibit and notify in writing the procuring entity concerned of any actual or potential interest in the contract to be bid.<sup>(a)</sup>
- 13.5. Observers shall be allowed access to the following documents upon their request, subject to signing of a confidentiality agreement: (a) minutes of BAC meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) APP and related PPMP; and (e) opened proposals.<sup>(a)</sup>

**Section 14. BAC Secretariat**

- 14.1. The Head of the Procuring Entity shall create a Secretariat which will serve as the main support unit of the BAC. An existing organic office within the procuring entity may also be designated to serve as Secretariat. However, to strengthen and promote the professionalization of the organizations' procuring unit, the Head of the Procuring Entity may create procurement units that may serve concurrently as BAC Secretariat in accordance with the guidelines issued by DBM. The Secretariat shall have the following functions and responsibilities:
- a) Provide administrative support to the BAC;
  - b) Organize and make all necessary arrangements for BAC meetings and conferences;
  - c) Prepare minutes of meetings and resolutions of the BAC;
  - d) Take custody of procurement documents and other records;
  - e) Manage the sale and distribution of Bidding Documents to interested bidders;
  - f) Advertise and/or post bidding opportunities, including Bidding Documents, and notices of awards;
  - g) Assist in managing the procurement processes;
  - h) Monitor procurement activities and milestones for proper reporting to relevant agencies when required;
  - i) Consolidate PPMPs from various units of the procuring entity to make them available for review as indicated in Section 7 of this IRR; and
  - j) Act as the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, infrastructure projects, and consulting services, observers, and the general public.<sup>(a)</sup>

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- 14.2. The head of the Secretariat in central offices shall be at least a fifth ranking permanent employee or, if not available, a permanent official of the next lower rank; or shall be at least a third ranking permanent employee in bureaus, regional offices and sub-regional/ district offices, or if not available, a permanent employee of the next lower rank. In addition to integrity, Heads of Procuring Entities shall consider procurement proficiency as a factor in designating the head of the Secretariat and Procurement Unit.<sup>(a)</sup>
- 14.3. To expedite the procurement process, the Head of the Procuring Entity shall ensure that the members of the BAC and TWG shall give utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the said assignments at hand are completed.

### **Section 15. Honoraria of BAC, BAC Secretariat, and TWG Members**

The procuring entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the DBM shall promulgate the necessary guidelines.<sup>2</sup> The procuring entity may also grant payment of honoraria to the BAC Secretariat and the TWG members, subject to the relevant rules of the DBM.<sup>(a)</sup>

### **Section 16. Professionalization of BAC, TWG Members and Procurement Units**

The GPPB shall establish a sustained training program to develop the capability of the BACs, BAC Secretariats, TWGs, and the Procurement Units of Procuring Entities, and professionalize the same.

## **RULE VI - PREPARATION OF BIDDING DOCUMENTS**

### **Section 17. Form and Contents of Bidding Documents**

- 17.1. The Bidding Documents shall be prepared by the procuring entity following the standard forms and manuals prescribed by the GPPB. The Bidding Documents shall include the following:
- a) Approved Budget for the Contract;
  - b) Invitation to Bid/Request for Expression of Interest;
  - c) Eligibility Requirements;
  - d) Instructions to Bidders, including scope of bid, documents comprising the bid, criteria for eligibility, bid evaluation methodology/criteria in accordance with the Act, and post-qualification, as well as the date, time and place of the pre-bid conference (where applicable), submission of bids and opening of bids;
  - e) Terms of Reference (TOR), for consulting services;

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<sup>2</sup> Refer to DBM Budget Circulars 2004-5A and 2007-3, dated 7 October 2005 and 29 November 2007, respectively.

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- f) Scope of work, where applicable;
  - g) Plans/Drawings and Technical Specifications;
  - h) Form of Bid, Price Form, and List of Goods or Bill of Quantities;
  - i) Delivery Time or Completion Schedule;
  - j) Form, Amount, and Validity Period of Bid Security;
  - k) Form, Amount, and Validity of Performance Security and Warranty; and
  - l) Form of Contract and General and Special Conditions of Contract.<sup>(a)</sup>
- 17.2. The specifications and other terms in the Bidding Documents shall reflect minimum requirements or specifications required to meet the needs of the procuring entity in clear and unambiguous terms.<sup>(a)</sup>
- 17.3. To provide prospective bidders ample time to examine the Bidding Documents and to prepare their respective bids, the concerned BAC shall make the Bidding Documents for the contract to be bid available for the following period:
- a) For the procurement of goods and infrastructure projects, from the time the Invitation to Bid is first advertised/posted until the deadline for the submission and receipt of bids.
  - b) For the procurement of consulting services, eligibility documents shall be made available from the time the Request for Expression of Interest is first advertised/posted until the deadline for the eligibility check, and the Bidding Documents, from the determination of the short list until the deadline for the submission and receipt of bids.<sup>(21a)</sup>
- 17.4. Bidders may be asked to pay for the Bidding Documents to recover the cost of its preparation and development. The BAC shall issue the Bidding Documents upon payment of the corresponding cost thereof to the collecting/disbursing officer of the procuring entity concerned.<sup>(a)</sup>
- 17.5. The procuring entity shall also post the Bidding Documents at its website and at the PhilGEPS website from the time that the Invitation to Bid/Request for Expression of Interest is advertised. Prospective bidders may download the Bidding Documents from any of the said websites; Provided that, bidders shall pay the fee for the Bidding Documents upon submission of their Bids.<sup>(n)</sup>
- 17.6. *Detailed Engineering for the Procurement of Infrastructure Projects*
- No bidding and award of contract for infrastructure projects shall be made unless the detailed engineering investigations, surveys and designs, including the acquisition of the ROW, for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the Head of the Procuring Entity concerned or his duly authorized representative, and in accordance with the provisions of Annex "A" of this IRR.

The exception is design and build scheme, wherein the bidders shall be allowed to submit its detailed engineering designs as part of its bid. The procedures for the procurement and contract implementation of infrastructure projects using a design and build scheme shall be in accordance with the provisions of Annex "G" of this IRR.<sup>(a)</sup>

### **Section 18. Reference to Brand Names**

Specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

### **Section 19. Access to Information**

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.

## **RULE VII – INVITATION TO BID**

### **Section 20. Pre-procurement Conference**

20.1. Prior to the advertisement or the issuance of the Invitation to Bid/Request for Expression of Interest for each procurement undertaken through a public bidding, the BAC, through its Secretariat, shall call for a pre-procurement conference. The pre-procurement conference shall be attended by the BAC, the Secretariat, the unit or officials, including consultants hired by the procuring entity, who prepared the Bidding Documents and the draft Invitation to Bid/Request for Expression of Interest for each procurement. During this conference, the participants, led by the BAC, shall:

- a) Confirm the description and scope of the contract, the ABC, and contract duration.
- b) Ensure that the procurement is in accordance with the project and annual procurement plans;
- c) Determine the readiness of the procurement at hand, including, among other aspects, the following:
  - i) availability of appropriations and programmed budget for contract;
  - ii) completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;
  - iii) completion of the detailed engineering according to the prescribed standards in the case of infrastructure projects; and
  - iv) confirmation of the availability of ROW and the ownership of affected properties.



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- d) Review, modify and agree on the criteria for eligibility screening, evaluation, and post-qualification;
  - e) Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities; and
  - f) Reiterate and emphasize the importance of confidentiality, in accordance with Section 19 of this IRR, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing.<sup>(a)</sup>
- 20.2. The holding of a pre-procurement conference may not be required for small procurements, *i.e.*, procurement of goods costing Two Million Pesos (P2,000,000.00) and below, procurement of infrastructure projects costing Five Million Pesos (P5,000,000.00) and below, and procurement of consulting services costing One Million Pesos (P1,000,000.00) and below.

### **Section 21. Advertising and Contents of the Invitation to Bid/Request for Expression of Interest**

#### *21.1. Contents of the Invitation to Bid/Request for Expression of Interest*

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

- a) For the procurement of:
  - i) Goods, the name of the contract to be bid and a brief description of the goods to be procured;
  - ii) Infrastructure projects, the name and location of the contract to be bid, the project background and other relevant information regarding the proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works; and
  - iii) Consulting services, the name of the contract to be bid, a general description of the project and other important or relevant information;
- b) A general statement on the criteria to be used by the procuring entity for the eligibility check, the short listing of prospective bidders, in the case of the procurement of consulting services, the examination and evaluation of bids, post-qualification, and award;
- c) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;
- d) ABC to be bid;
- e) The source of funding;
- f) The period of availability of the Bidding Documents, the place where the Bidding Documents may be secured, the website where the Bidding Documents

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may be downloaded, and, where applicable, the price of the Bidding Documents;

- g) The contract duration or delivery schedule;
- h) The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned procuring entity, as well as its designated contact person; and
- i) Such other necessary information deemed relevant by the procuring entity.

### 21.2. *Advertising and Posting of the Invitation to Bid/Request for Expression of Interest*

21.2.1. Except as otherwise provided in Sections 21.2.2 and 54.2 of this IRR and for the procurement of common-use goods and supplies, the Invitation to Bid/Request for Expression of Interest shall be:

- a) Advertised at least once in one (1) newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;
- b) Posted continuously in the PhilGEPS website, the website of the procuring entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for seven (7) calendar days starting on date of advertisement; and
- c) Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned for seven (7) calendar days, if applicable, as certified by the head of the BAC Secretariat of the procuring entity concerned.<sup>(a)</sup>

21.2.2. Advertisement of the Invitation to Bid/Request for Expression of Interest in a newspaper of general nationwide circulation provided in Section 21.2.1(a) shall not be required for contracts to be bid with an approved budget of Two Million Pesos (P2,000,000.00) and below for the procurement of goods, Five Million Pesos (P5,000,000.00) and below for the procurement of infrastructure projects, and One Million Pesos (P1,000,000.00) and below or those whose duration is four (4) months or less for the procurement of consulting services.<sup>(a)</sup>

## **Section 22. Pre-bid Conference**

22.1. For contracts to be bid with an approved budget of One Million Pesos (P1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the Bidding Documents. For contracts to be bid with an approved budget of less than One Million Pesos (P1,000,000), pre-bid conferences may be conducted at the discretion of the BAC. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon written request of any prospective bidder.

22.2. The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. If the procuring entity determines

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that, by reason of the method, nature, or complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.<sup>(a)</sup>

22.3. The pre-bid conference shall discuss, among other things, the eligibility requirements and the technical and financial components of the contract to be bid. Attendance of the bidders shall not be mandatory. However, at the option of the Procuring Entity,<sup>3</sup> only those who have purchased the Bidding Documents shall be allowed to participate in the pre-bid conference and raise or submit written queries or clarifications.<sup>(a)</sup>

22.4. The minutes of the pre-bid conference shall be recorded and made available to all participants not later than three (3) calendar days after the pre-bid conference. Any statement made at the pre-bid conference shall not modify the terms of the Bidding Documents, unless such statement is specifically identified in writing as an amendment thereto and issued as a Supplemental/Bid Bulletin.<sup>(a)</sup>

### 22.5. *Supplemental/Bid Bulletins*

22.5.1. Requests for clarification(s) on any part of the Bidding Documents or for an interpretation must be in writing and submitted to the BAC of the procuring entity concerned at least ten (10) calendar days before the deadline set for the submission and receipt of bids. The BAC shall respond to the said request by issuing a Supplemental/Bid Bulletin, duly signed by the BAC chairman, to be made available to all those who have properly secured the Bidding Documents, at least seven (7) calendar days before the deadline for the submission and receipt of bids.<sup>(a)</sup>

22.5.2. Supplemental/Bid Bulletins may be issued upon the procuring entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents at least seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the Bidding Documents shall be identified as an amendment.<sup>(a)</sup>

22.5.3. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted on the PhilGEPS and<sup>4</sup> the website of the procuring entity concerned, if available. It shall be the responsibility of all those who have properly secured the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be 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 26.1 of this IRR.<sup>(a)</sup>

## RULE VIII – RECEIPT AND OPENING OF BIDS

### **Section 23. Eligibility Requirements for the Procurement of Goods and Infrastructure Projects**

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<sup>3</sup> Amended through GPPB Resolution 06-2009, dated 30 September 2009, published in the Manila Times on 20 October 2009.

<sup>4</sup> *Ibid.*

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23.1. For purposes of determining the eligibility of bidders using the criteria stated in Section 23.5 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) Registration certificate from SEC, Department of Trade and Industry (DTI) for sole proprietorship, or CDA for cooperatives, or any proof of such registration as stated in the Bidding Documents.
- ii) Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located.

*Technical Documents*

- iii) Statement of the prospective bidder of all its ongoing and completed government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid, within the relevant period as provided in the Bidding Documents. The statement shall include all information required in the PBDs prescribed by the GPPB.
- iv) In the case of procurement of infrastructure projects, a valid Philippine Contractors Accreditation Board (PCAB) license and registration for the type and cost of the contract to be bid.

*Financial Documents*

- v) The prospective bidder's audited financial statements, showing, among others, the prospective 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.
- vi) The prospective bidder's computation for its Net Financial Contracting Capacity (NFCC) or a commitment from a Universal or Commercial Bank to extend a credit line in favor of the prospective bidder if awarded the contract to be bid (CLC).

b) Class "B" Document

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 stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance.<sup>(a)</sup>

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- 23.2. Subject to Section 37.1 of this IRR, in the case of foreign bidders, the foregoing eligibility requirements under Class "A" Documents may be substituted by the appropriate equivalent documents, if any, issued by the country of the foreign bidder concerned. The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. A translation of the documents in English certified by the appropriate embassy or consulate in the Philippines must accompany the eligibility requirements under Class "A" and "B" Documents if they are in other foreign language.<sup>(a)</sup>
- 23.3. A prospective bidder may be allowed to submit his eligibility requirements electronically in accordance with Section 8.5 of this IRR.<sup>(a)</sup>
- 23.4. To facilitate determination of eligibility, the BAC of a procuring entity may maintain a registry system using the PhilGEPS or its own manual or electronic system that allows submission and/or recording/entry of eligibility requirements simultaneously with registration.<sup>(a)</sup>
- 23.4.1. The registry system shall contain the foregoing Class "A" documents which should be maintained current and updated by the bidder concerned at least once a year or more frequently when needed.<sup>(a)</sup>
- 23.4.2. A bidder who maintains a current and updated file of his Class "A" Documents shall be issued a certification by the BAC to that effect, which certification may be submitted to the procuring entity concerned in lieu of the foregoing Class "A" documents.<sup>(a)</sup>
- 23.4.3. If the procuring entity maintains a registry system using the PhilGEPS or its own electronic system, a prospective bidder, whether or not duly registered in either system, shall submit a written letter of intent and/or its application for eligibility and latest Class "A" documents, to the BAC on or before the deadline specified in the Bidding Documents. Any application for eligibility or updates submitted after the deadline for the submission of the letter of intent shall not be considered for the bidding at hand.<sup>(a)</sup>
- 23.5. *Eligibility Criteria*
- 23.5.1. For the procurement of goods:
- 23.5.1.1. The following shall be eligible to participate in the bidding for the supply of goods:
- a) Duly licensed Filipino citizens/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;

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- d) Cooperatives duly organized under the laws of the Philippines, and of which at least sixty percent (60%) belongs to citizens of the Philippines; or
- e) Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.<sup>(a)</sup>

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

- a) When provided for under any Treaty or International or Executive Agreement as provided in Section 4 of the Act and this IRR;
- b) When the foreign supplier is a citizen, corporation or association of a country, included in Annex "I" to be issued by the GPPB, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines;
- c) When the goods sought to be procured are not available from local suppliers; or
- d) When there is a need to prevent situations that defeat competition or restrain trade.

The GPPB shall promulgate the necessary guidelines for this provision.<sup>(a)</sup>

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

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

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

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For this purpose, the similar contracts mentioned under (a) and (b) above must have been completed within the period specified in the Invitation to Bid. The procuring entity may clarify in the Bidding Documents the definition or description of what it considers to be a similar project.<sup>(a)</sup>

- 23.5.1.4. If the prospective bidder submits a computation of its NFCC, the NFCC must be at least equal to the ABC to be bid, calculated as follows:

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

Where:

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

If the prospective bidder submits a CLC, the CLC must be at least equal to ten percent (10%) of the ABC to be bid. If the CLC is issued by a foreign Universal or Commercial Bank, it shall be confirmed or authenticated by a Universal or Commercial Bank. For biddings conducted by LGUs, the prospective bidder may also submit CLC from other banks certified by the BSP as authorized to issue such financial instrument.<sup>(a)</sup>

- 23.5.2. For the procurement of infrastructure projects:

- 23.5.2.1. The following persons/entities shall be allowed to participate in the bidding for infrastructure projects:

- a) Duly licensed Filipino citizens/sole proprietorships;
- b) Partnerships duly organized under the laws of the Philippines and of which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;
- c) Corporations duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines;
- d) Cooperatives duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) belongs to citizens of the Philippines; or
- e) Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That, in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%): Provided, further, That joint ventures in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the

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structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement: Provided, finally, That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.<sup>(a)</sup>

- 23.5.2.2. Foreign bidders may be eligible to participate in the procurement of infrastructure projects when provided for under any Treaty or International or Executive Agreement as provided in Section 4 of the Act and this IRR.<sup>(n)</sup>
- 23.5.2.3. In accordance with R.A. 4566, entitled "An Act Creating the Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes", the persons/entities enumerated in Section 23.5.1.1 of this IRR may participate in public bidding if he has been issued a license by the PCAB to engage or act as a contractor.<sup>(a)</sup>
- 23.5.2.4. The Constructors Performance Evaluation Summary (CPES) rating and/or certificate of completion and owner's acceptance of the contract must be satisfactory.
- 23.5.2.5. The prospective bidder must have an experience of having completed, within a period of ten (10) years from the date of submission and receipt of bids, at least one (1) contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the NSO consumer price indices, must be at least fifty percent (50%) of the ABC to be bid: *Provided, however,* That contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines as prescribed by the PCAB.

For Foreign-funded Procurement, the GOP and the foreign government/foreign or international financing institution may agree on another track record requirement.

Moreover, a contract shall be considered "similar" to the contract to be bid if it has the same major categories of work.<sup>(a)</sup>

- 23.5.2.6. If the prospective bidder submits a computation of its NFCC, the NFCC must be at least equal to the ABC to be bid, calculated as follows:

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

Where:



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

If the prospective bidder submits a CLC, the CLC must be at least equal to ten percent (10%) of the ABC to be bid. If the CLC is issued by a foreign Universal or Commercial Bank, it shall be confirmed or authenticated by a Universal or Commercial Bank. For biddings conducted by LGUs, the prospective bidder may also submit CLC from other banks certified by the BSP as authorized to issue such financial instrument.<sup>(a)</sup>

- 23.6. Government corporate entities may be eligible to participate in Competitive Bidding only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not dependent agencies of the GOP or the procuring entity. The GPPB shall promulgate the necessary guidelines for this provision.<sup>(n)</sup>
- 23.7. Notwithstanding the eligibility of a prospective bidder, the procuring entity concerned reserves the right to review the qualifications of the bidder at any stage of the procurement process if the procuring entity has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the eligibility criteria, the procuring entity shall consider the said prospective bidder as ineligible and shall disqualify it from obtaining an award or contract, in accordance with Rules XXI, XXII, and XXIII of this IRR.

### **Section 24. Eligibility Requirements and Short Listing for Consulting Services**

24.1. For purposes of determining the eligibility and short list of bidders in accordance with Sections 24.4 and 24.5 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) Registration certificate from SEC, Department of Trade and Industry (DTI) for sole proprietorship, or CDA for cooperatives, or any proof of such registration as stated in the Bidding Documents;
- ii) Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located;

*Technical Documents*

- iii) Statement of the prospective bidder of all its ongoing and completed government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and

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complexity to the contract to be bid, within the relevant period as provided in the Bidding Documents. The statement shall include all information required in the PBDs prescribed by the GPPB.

- iv) 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.

### *Financial Document*

- v) The consultant's audited financial statements, showing, among others, the consultant'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.

- b) Class "B" Document

Valid joint venture agreement (JVA), in case a joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful, shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial documents by any of the joint venture partners constitutes compliance.<sup>(a)</sup>

- 24.2. In the case of foreign consultants, the foregoing eligibility requirements under Class "A" Documents may be substituted by the appropriate equivalent documents, if any, issued by the foreign consultant's country. The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. A translation of the documents in English certified by the appropriate embassy or consulate in the Philippines must accompany the eligibility requirements under Class "A" and "B" Documents if they are in other foreign language.<sup>(a)</sup>

### 24.3. *Eligibility Criteria*

- 24.3.1. The following persons/entities shall be allowed to participate in the bidding for consulting services:

- a) Duly licensed Filipino citizens/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;

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- d) Cooperatives duly organized under the laws of the Philippines, and of which at least sixty percent (60%) belongs to citizens of the Philippines; or
- e) Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That Filipino ownership or interest thereof shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.<sup>(n)</sup>

24.3.2. When the types and fields of consulting services in which the foregoing persons/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 by the appropriate regulatory body to practice those professions and allied professions.<sup>(a)</sup>

24.3.3. 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 Head of the Procuring Entity. Foreign consultants may be eligible to participate in the procurement of consulting services, subject to the following qualifications:

- a) must be registered with the SEC and/or any agency authorized by the laws of the Philippines; and
- b) when the types and fields of consulting services in which the foreign consultant wishes to engage involve the practice of regulated professions, the foreign consultant must be authorized by the appropriate GOP professional regulatory body to engage in the practice of those professions and allied professions: *Provided, however,* That the limits of such authority shall be strictly observed.<sup>(a)</sup>

### 24.4. *Eligibility Check of Prospective Bidders*

24.4.1. The eligibility envelopes of prospective bidders for procurement of consulting services shall be submitted on or before the deadline specified in the Request for Expression of Interest, and shall be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders, who shall then be allowed to acquire or purchase the relevant Bidding Documents from the procuring entity. A prospective bidder may be allowed to submit his eligibility requirements electronically in accordance with Section 8.5 of this IRR.<sup>(a)</sup>

24.4.2. Subject to the short listing of consultants as provided in this IRR, the determination of eligibility of consultants shall be based on the evaluation of the eligibility documents prescribed above in accordance with the procedures provided in Sections 30.1 and 30.3 of this IRR.

24.4.3. To facilitate determination of eligibility, the BAC of a procuring entity may maintain a registry system using the PhilGEPS or its own manual or electronic

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system that allows submission and/or recording/entry of eligibility requirements simultaneously with registration.<sup>(a)</sup>

- 24.4.3.1. The registry system shall contain the foregoing Class "A" documents which should be maintained current and updated by the bidder concerned at least once a year or more frequently when needed.<sup>(a)</sup>
- 24.4.3.2. A bidder who maintains a current and updated file of his Class "A" Documents shall be issued a certification by the BAC to that effect, which certification may be submitted to the procuring entity concerned in lieu of the foregoing Class "A" documents.<sup>(a)</sup>
- 24.4.3.3. If the procuring entity maintains a registry system using the PhilGEPS or its own electronic system, a prospective bidder, whether or not duly registered in either system, shall submit a written letter of intent and/or its application for eligibility and latest Class "A" documents, to the BAC on or before the deadline specified in the Bidding Documents which shall in no case be later than the date for the submission and receipt of bids. Any application for eligibility or updates submitted after the deadline for the submission of the letter of intent shall not be considered for the bidding at hand.<sup>(a)</sup>

### 24.5. *Short Listing of Prospective Bidders*

- 24.5.1. With respect to a particular contract for consulting services to be bid, the concerned procuring entity shall only consider for short listing those consultants whose contracts, as identified in the eligibility documents submitted for registration, are similar in nature and complexity to the contract to be bid, based on the Request for Expression of Interest.
- 24.5.2. The BAC shall draw up the short list of consultants from those who have been determined as eligible in accordance with the provisions of this IRR. The number of short listed consultants, which shall be determined in the pre-procurement conference, shall consist of three (3) to seven (7) consultants, with five (5) as the preferable number. Should less than the required number apply for eligibility and short listing, pass the eligibility check, and/or pass the minimum score required in the short listing, the BAC shall consider the same.<sup>5</sup>
- 24.5.3. The BAC shall specify in the Request for Expression of Interest the set of criteria and rating system for short listing of consultants to be used for the particular contract to be bid, which shall consider the following, among others:
  - a) Applicable experience of the consultant and members in case of joint ventures, considering both the overall experiences of the firm or, in the case of new firms, the individual experiences of the principal and key staff, including the times when employed by other consultants;
  - b) Qualification of personnel who may be assigned to the job vis-à-vis extent and complexity of the undertaking; and
  - c) Current workload relative to capacity.<sup>(a)</sup>

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<sup>5</sup> Amended through GPPB Resolution 06-2009, dated 30 September 2009, published in the Manila Times on 20 October 2009.

- 24.5.4. The BAC shall recommend the short list of consultants to the Head of the Procuring Entity for consideration and approval. The entire process of eligibility check and short listing shall not exceed twenty (20) calendar days.
- 24.6. Government corporate entities may be eligible to participate in Competitive Bidding only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not dependent agencies of the GOP or the procuring entity. The GPPB shall promulgate the necessary guidelines for this provision.<sup>(n)</sup>
- 24.7. Notwithstanding the eligibility of a consultant and/or inclusion in the short list of consultants, the procuring entity concerned reserves the right to review his qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said consultant, or that there has been a change in the consultant's capability to undertake the project from the time he submitted his eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the consultant which will affect the capability of the consultant to undertake the project so that the consultant fails the preset eligibility criteria, the procuring entity shall consider the said consultant as ineligible and shall disqualify him from submitting a bid or from obtaining an award or contract, in accordance with Rules XXI, XXII, and XXIII of this IRR.

## **Section 25. Submission and Receipt of Bids**

- 25.1. Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under Section 23.1 of this IRR, and the second shall contain the financial component of the bid.<sup>(a)</sup>
- 25.2. The first envelope shall contain the following technical information/documents, at the least:
- a) For the procurement of goods:
    - i) Eligibility requirements under Section 23.1 of this IRR;
    - ii) The bid security in the prescribed form, amount and validity period;
    - iii) Technical specifications, which may include production/delivery schedule, manpower requirements, and/or after-sales service/parts, if applicable; and
    - iv) Sworn statement by the prospective bidder or its duly authorized representative in the form prescribed by the GPPB as to the following:
      - (1) It is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;

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- (2) Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
  - (3) It is authorizing the Head of the Procuring Entity or his duly authorized representative/s to verify all the documents submitted;
  - (4) The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership, cooperative, or joint venture;
  - (5) It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of R.A. 3019;
  - (6) It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs; and
  - (7) It complies with existing labor laws and standards, in the case of procurement of services.<sup>(a)</sup>
- b) For the procurement of infrastructure projects:
- i) Eligibility requirements under Section 23.1<sup>6</sup> of this IRR;
  - ii) Bid security in the prescribed form, amount and validity period;
  - iii) Project Requirements, which shall include the following:
    - (1) Organizational chart for the contract to be bid;
    - (2) List of contractor's personnel (*viz*, Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the contract to be bid, with their complete qualification and experience data;
    - (3) List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the project; and
  - iv) Sworn statement by the prospective bidder or its duly authorized representative in the form prescribed by the GPPB as to the following:
    - (1) It is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;

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<sup>6</sup> *Ibid.*

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- (2) Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
  - (3) It is authorizing the Head of the Procuring Entity or his duly authorized representative/s to verify all the documents submitted;
  - (4) The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership or joint venture;
  - (5) It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of R.A. 3019;
  - (6) It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs; and
  - (7) It complies with existing labor laws and standards.<sup>(a)</sup>
- 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 on-going 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) Sworn statement by the prospective bidder or its duly authorized representative in the form prescribed by the GPPB as to the following:
    - (1) It is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
    - (2) Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
    - (3) It is authorizing the Head of the Procuring Entity or his duly authorized representative/s to verify all the documents submitted;

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- (4) The signatory is the duly authorized and designated representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership or joint venture;
- (5) It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of R.A. 3019;
- (6) It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs; and
- (7) It complies with existing labor laws and standards.<sup>(a)</sup>

25.3. The second envelope shall contain the financial information/documents as specified in the PBDs.<sup>(a)</sup>

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

- a) For Goods, a maximum period of forty-five (45) calendar days.
- b) For infrastructure projects, the following maximum periods:

Approved Budget for the Contract (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.<sup>(21a)</sup>

25.5. Bids, including the eligibility requirements under Section 23.1 of this IRR, submitted after the deadline shall not be accepted by the BAC.<sup>(a)</sup>

**Section 26. Modification and Withdrawal of Bids**

26.1. A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. Where a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to its 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.

26.2. A bidder may, through a letter, withdraw its bid 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. A bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped



received by the BAC before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

**Section 27. Bid Security**

27.1. All bids 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 or less, as indicated in the Instructions to Bidders, from receipt of the notice of award, enter into contract with the procuring entity and furnish the performance security required in Section 39 of this IRR, except when Section 37.1 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.

27.2. The bid security shall be in an amount equal to a percentage of the ABC in accordance with the following schedule:

Form of Bid Security	Amount of Bid Security (Equal to Percentage of the ABC)
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. <sup>7</sup>	Two percent (2%)
b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. <sup>8</sup>	
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%)
d) Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

For biddings conducted by LGUs, the prospective bidder may also submit bid securities in the form of cashier's/manager's check, bank draft/guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.<sup>(a)</sup>

27.3. The bid security shall be denominated in Philippine Pesos and posted in favor of the procuring entity.<sup>(a)</sup>

27.4. Without prejudice to the provisions of the Act and this IRR on the forfeiture of bid securities, bid securities shall be returned only after the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, has signed the contract and furnished the performance security, except to those declared by the BAC as failed or post-disqualified in accordance with this IRR, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest.<sup>(a)</sup>

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

- 27.5. In no case shall bid security be returned later than the expiration of the bid validity period indicated in the Bidding Documents, unless it has been extended in accordance with Section 28.2 of this IRR.<sup>(n)</sup>

### **Section 28. Bid Validity**

- 28.1. Bids and bid securities shall be valid for a reasonable period as determined by the Head of the Procuring Entity concerned, which shall be indicated in the Bidding Documents, but in no case shall the period exceed one hundred twenty (120) calendar days from the date of the opening of bids.
- 28.2. Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, the procuring entity concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security.<sup>(37a)</sup>

### **Section 29. Bid Opening**

The BAC shall open the bids at the time, date, and place specified in the Bidding Documents. The bidders or their duly authorized representatives may attend the opening of bids. The BAC shall adopt a procedure for ensuring the integrity, security, and confidentiality of all submitted bids. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.

## **RULE IX – BID EVALUATION**

### **Section 30. Preliminary Examination of Bids**

- 30.1. The BAC shall open the first bid envelopes of prospective bidders 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/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".<sup>(a)</sup>
- 30.2. Immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope of each remaining eligible bidder whose first bid envelope was rated "passed." The second envelope of each complying bidder shall be opened within the same day, except as provided under Section 33 of this IRR. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid concerned as "failed". Only bids that are determined to contain all the bid requirements for

both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.

- 30.3. For the procurement of goods where, due to the nature of the requirements of the project, the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically unequal bids is likely to occur, a two (2)-stage bidding procedure may be employed. In these cases, the procuring entity concerned shall prepare the Bidding Documents, including the technical specification in the form of performance criteria only. Under this procedure, prospective bidders shall be requested at the first stage to submit their respective eligibility requirements if needed, and initial technical proposals only (no price tenders). The concerned BAC shall then evaluate the technical merits of the proposals received from eligible bidders vis-à-vis the required performance standards. A meeting/discussion shall then be held by the BAC with those eligible bidders whose technical tenders meet the minimum required standards stipulated in the Bidding Documents for purposes of drawing up the final revised technical specifications/requirements of the contract. Once the final revised technical specifications are completed and duly approved by the concerned BAC, copies of the same shall be issued to all the bidders identified in the first stage who shall then be required to submit their revised technical tenders, including their price proposals in two (2) separate sealed envelopes in accordance with this IRR, at a specified deadline, after which time no more bids shall be received. The concerned BAC shall then proceed in accordance with the procedure prescribed in this IRR.
- 30.4. For the procurement of consulting services, the detailed implementation of the procedure specified in this Section shall be as provided in Section 33 of this IRR.

### **Section 31. Ceiling for Bid Prices**

- 31.1. The ABC shall be the upper limit or ceiling for acceptable bid prices. If a bid price, as evaluated and calculated in accordance with this IRR, is higher than the ABC, the bidder submitting the same shall be automatically disqualified. There shall be no lower limit or floor on the amount of the award.
- 31.2. For Foreign-funded Procurement, the ABC shall be applied as the ceiling, provided that the following conditions are met:
- a) Bidding Documents are obtainable free of charge on a freely accessible website. If payment of Bidding Documents is required by the procuring entity, payment could be made upon the submission of bids.
  - b) The procuring entity has procedures in place to ensure that the ABC is based on recent estimates made by the engineer or the responsible unit of the procuring entity and that the estimates are based on adequate detailed engineering (in the case of works) and reflect the quality, supervision and risk and inflationary factors, as well as prevailing market prices, associated with the types of works or goods to be procured.
  - c) The procuring entity has trained cost estimators on estimating prices and analyzing bid variances. In the case of infrastructure projects, the procuring entity must also have trained quantity surveyors.

- d) The procuring entity has established a system to monitor and report bid prices relative to ABC and engineer's/procuring entity's estimate.
- e) The procuring entity has established a monitoring and evaluation system for contract implementation to provide a feedback on actual total costs of goods and works.

However, the GOP and the foreign government/foreign or international financing institution may agree to waive the foregoing conditions.<sup>(n)</sup>

### **Section 32. Bid Evaluation for the Procurement of Goods and Infrastructure Projects**

- 32.1. Members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making or accepting any communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award. However, the BAC, through its Secretariat, may ask in writing the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing.<sup>(a)</sup>
- 32.2. For the procurement of goods and infrastructure projects, the purpose of bid evaluation is to determine the Lowest Calculated Bid using the following steps:
  - 32.2.1. The BAC shall immediately conduct a detailed evaluation of all bids using non-discretionary criteria in considering the following:
    - a) Completeness of the bid. Unless the Instructions to Bidders specifically allow partial bids, bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, bill of quantities, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a "0" (zero) for the said item would mean that it is being offered for free to the Government; and
    - b) Arithmetical corrections. Consider computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications if expressly allowed in the Bidding Documents.<sup>9</sup> Any adjustment shall be calculated in monetary terms to determine the calculated prices.<sup>(a)</sup>
  - 32.2.2. The BAC shall evaluate all bids on an equal footing to ensure fair and competitive bid comparison. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.<sup>(a)</sup>
  - 32.2.3. In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; (b) total price per item and unit price for the item as extended or multiplied by the quantity of that item, the latter shall prevail; (c) stated total price and the actual sum of prices of component items, the latter

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<sup>9</sup> *Ibid.*

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shall prevail; (d) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail.

- 32.2.4. Bids shall then be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, to identify the Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, which exceed the ABC shall be disqualified.<sup>(a)</sup>
- 32.3. After all bids have been received, opened, examined, evaluated, and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding bid securities and the minutes or proceedings of the bidding. The Abstract of Bids shall contain the following:
- a) Name of the contract and its location, if applicable;
  - b) Time, date and place of bid opening; and
  - c) Names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.
- 32.4. The entire evaluation process for the procurement of goods and infrastructure projects shall be completed within seven (7) calendar days from the deadline for receipt of proposals. However, for infrastructure projects costing Fifty Million Pesos (P50,000,000) and below, the entire evaluation process shall be completed in not more than five (5) calendar days from the deadline for receipt of proposals.<sup>(a)</sup>

### **Section 33. Bid Evaluation of Short Listed Bidders for Consulting Services**

- 33.1. From submission and receipt of bids until the approval by the Head of the Procuring Entity of the ranking of short listed bidders, those that have submitted their bids are prohibited from making any communication with any BAC member, including its staff and personnel, as well as its Secretariat and TWG, regarding matters connected to their bids. However, the BAC, through its Secretariat, may ask in writing the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing.<sup>(a)</sup>
- 33.2. The purpose of bid evaluation is to determine the Highest Rated Bid using the following steps:
- 33.2.1. The BAC shall conduct a detailed evaluation of bids using either of the following evaluation procedures as specified in the Bidding Documents:
- a) Quality-Based Evaluation Procedure
    - i) A two-stage procedure shall be adopted whereby each consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes.

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- ii) After receipt of bids, the technical proposals shall first be opened and evaluated, in accordance with Section 33.2.2 of this IRR. The BAC shall rank the consultants in descending order based on the numerical ratings of their technical proposals and identify the Highest Rated Bid: *Provided, however,* that the Highest Rated Bid shall pass the minimum score indicated in the Bidding Documents.
  - iii) The Head of the Procuring Entity shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC.
  - iv) After approval by the Head of the Procuring Entity of the Highest Rated Bid, its financial proposal shall then be opened. The BAC shall, within three (3) calendar days, notify and invite the consultant with the Highest Rated Bid for the opening of financial proposal for the purpose of conducting negotiations with the said consultant. In the letter of notification, the BAC shall inform the consultant of the issues in the technical proposal the BAC may wish to clarify during negotiations.
  - v) Negotiations shall be in accordance with Section 33.2.5 of this IRR, provided that the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the approved budget for the contract as stated in the Bidding Documents.<sup>(a)</sup>
- b) Quality-Cost Based Evaluation Procedure
- i) The technical proposal together with the financial proposal shall be considered in the evaluation of consultants. The technical proposals shall be evaluated first using the criteria in Section 33.2.2 of this IRR. The financial proposals of the consultants who meet the minimum technical score shall then be opened.
  - ii) The financial and technical proposals shall be given corresponding weights with the financial proposal given a minimum weight of fifteen percent (15%) up to a maximum of forty percent (40%). The weight of the technical criteria shall be adjusted accordingly such that their total weight in percent together with the weight given to the financial proposal shall add to one hundred percent (100%). The exact weights shall be approved by the Head of the Procuring Entity upon the recommendation of the BAC and indicated in the Bidding Documents. The BAC shall rank the consultants in descending order based on the combined numerical ratings of their technical and financial proposals and identify the Highest Rated Bid.
  - iii) The Head of the Procuring Entity shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC.
  - iv) After approval by the Head of the Procuring Entity of the Highest Rated Bid, the BAC shall, within three (3) calendar days, notify and

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invite the consultant with the Highest Rated Bid for negotiation in accordance with Section 33.2.5 of this IRR, except for item (e) thereof.<sup>(a)</sup>

33.2.2. The technical proposals of consultants shall be evaluated based on the following criteria and using the corresponding numerical weights indicated in the Bidding Documents:

- a) Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;
- b) Experience and capability of the consultant which include records of previous engagement and quality of performance in similar and in other projects; relationship with previous and current clients; and, overall work commitments, geographical distribution of current/impending projects and attention to be given by the consultant. The experience of the consultant to the project shall consider both the overall experiences of the firm and the individual experiences of the principal and key staff including the times when employed by other consultants; and
- c) Plan of approach and methodology with emphasis on the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of interpretation of project problems, risks, and suggested solutions.

For complex or unique undertakings, such as those involving new concepts/technology or financial advisory services, participating short listed consultants may be required, at the option of the agency concerned, to make an oral presentation to be presented by each consultant, or its nominated Project Manager or head, in case of firms, within fifteen (15) calendar days after the deadline for submission of technical proposals.

33.2.3. In order to eliminate bias in evaluating the technical proposals, it is recommended that the highest and lowest scores for each consultant for each criterion shall not be considered in determining the average scores of the consultants, except when the evaluation is conducted in a collegial manner.<sup>(a)</sup>

33.2.4. All participating short listed consultants shall be furnished the results (ranking and total scores only) of the evaluation after the approval by the Head of the Procuring Entity of the ranking. Said results shall also be posted in the PhilGEPS and the website of the procuring entity, whenever available, for a period of not less than seven (7) calendar days.<sup>(a)</sup>

33.2.5. Negotiations shall cover the following:

- a) Discussion and clarification of the TOR and Scope of Services;
- b) Discussion and finalization of the methodology and work program proposed by the consultant;

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- c) Consideration of appropriateness of qualifications and pertinent compensation, number of man-months and the personnel to be assigned to the job, taking note of over-qualified personnel, to be commensurate with the compensation of personnel with the appropriate qualifications, number of man-months and schedule of activities (manning schedule);
- d) Discussion on the services, facilities and data, if any, to be provided by procuring entity concerned;
- e) Discussion on the financial proposal submitted by the consultant; and
- f) Provisions of the contract.

Except for meritorious reasons, negotiations with any one consultant shall be completed within ten (10) calendar days.<sup>(a)</sup>

- 33.2.6. Total calculated bid prices, as evaluated and corrected for minor arithmetical corrections, such as computational errors, which exceed the ABC shall not be considered.<sup>(a)</sup>
- 33.3. There should be no replacement of key personnel before the awarding of contract, except for justifiable reason, such as, illness, death, or resignation provided it is duly supported by relevant certificates, or any delay caused by the procuring entity. The procuring entity 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 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.<sup>(a)</sup>
- 33.4. The entire evaluation process, including the submission of the results thereof to the Head of the Procuring Entity 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.<sup>(a)</sup>

### **RULE X – POST-QUALIFICATION**

#### **Section 34. Objective and Process of Post-Qualification**

- 34.1. The Lowest Calculated Bid/Highest Rated Bid 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.<sup>(a)</sup>
- 34.2. Within three (3) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Bid or Highest Rated Bid, the bidder shall submit the following documentary requirements to the BAC:
  - a) Tax clearance;



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- b) Latest income and business tax returns;
- c) Certificate of PhilGEPS Registration; and
- d) Other appropriate licenses and permits required by law and stated in the Bidding Documents.

Failure to submit the above requirements on time or a finding against the veracity of such shall be ground for the forfeiture of the bid security and disqualify the bidder for award.<sup>(n)</sup>

34.3. The post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the bidder with the Lowest Calculated Bid/Highest Rated Bid, using non-discretionary criteria, as stated in the Bidding Documents. These criteria shall consider, but shall not be limited to, the following:

- a) Legal Requirements. To verify, validate, and ascertain licenses, certificates, permits, and agreements submitted by the bidder, and the fact that it is not included in any "blacklist" as provided in Section 25.2 of this IRR. For this purpose, the GPPB shall maintain a consolidated file of all "blacklisted" suppliers, contractors, and consultants.
- b) Technical Requirements. To determine compliance of the goods, infrastructure projects, or consulting services offered with the requirements specified in the Bidding Documents, including, where applicable:
  - i) Verification and validation of the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, for the procurement of infrastructure projects and consulting services;
  - ii) Verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts (if any of these on-going contracts shows a reported negative slippage of at least fifteen percent (15%), or substandard quality of work as per contract plans and specifications, or unsatisfactory performance of the contractor's obligations as per contract terms and conditions, at the time of inspection, and if the BAC verifies any of these deficiencies to be due to the contractor's fault or negligence, the agency shall disqualify the contractor from the award), for the procurement of infrastructure projects;
  - iii) Verification and/or inspection and testing of the goods/product, after-sales and/or maintenance capabilities, in applicable cases, for the procurement of goods; and
  - iv) Ascertainment of the sufficiency of the bid security as to type, amount, form and wording, and validity period.

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- c) Financial Requirements. To verify, validate and ascertain the bid price proposal of the bidder and, whenever applicable, the required CLC in the amount specified and over the period stipulated in the Bidding Documents, or the bidder's NFCC to ensure that the bidder can sustain the operating cash flow of the transaction.
  
- 34.4. If the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid, and recommend to the Head of the Procuring Entity the award of contract to the said bidder at its submitted bid price or its calculated bid price, whichever is lower or, in the case of quality-based evaluation procedure, submitted bid price or its negotiated price, whichever is lower.<sup>(a)</sup>
  
- 34.5. If, however, the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it.<sup>(a)</sup>
  
- 34.6. Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second Lowest Calculated Bid/Highest Rated Bid. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid.<sup>(a)</sup>
  
- 34.7. If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next Lowest Calculated Bid/Highest Rated Bid, and so on until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, is determined for award, subject to Section 37 of this IRR.
  
- 34.8. The post-qualification process shall be completed in not more than seven (7) calendar days from the determination of the Lowest Calculated Bid/Highest Rated Bid. In exceptional cases, the post-qualification period may be extended by the Head of the Procuring Entity, but in no case shall the aggregate period exceed thirty (30) calendar days.<sup>(a)</sup>

### **Section 35. Failure of Bidding**

- 35.1. The BAC shall declare the bidding a failure when:
  - a) No bids are received;
  - b) All prospective bidders are declared ineligible;
  - c) All bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of consulting services, there is no successful negotiation; or
  - d) The bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid refuses, without justifiable cause, to accept the award of

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contract, and no award is made in accordance with Section 40 of the Act and this IRR.

- 35.2. In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.<sup>(a)</sup>
- 35.3. Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of this IRR.<sup>(a)</sup>
- 35.4. All bidders who have initially responded to the Invitation to Bid/Request for Expression of Interest and have been declared eligible or short listed in the previous biddings shall be allowed to submit new bids. The BAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding(s).<sup>(a)</sup>
- 35.5. Should there occur a second failure of bidding, the procuring entity may resort to negotiated procurement, as provided for in Section 53.1 of this IRR.

### **Section 36. Single Calculated/Rated and Responsive Bid Submission**

A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

- a) If after advertisement, only one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR, and it meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements;
- b) If after advertisement, more than one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or
- c) If after the eligibility check, more than one bidder meets the eligibility requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements.

In all instances, the procuring entity shall ensure that the ABC reflects the most advantageous prevailing price for the Government.

## **RULE XI – AWARD, IMPLEMENTATION AND TERMINATION OF THE CONTRACT**

### **Section 37. Notice and Execution of Award**

#### *37.1. Contract Award*

- 37.1.1. The BAC shall recommend to the Head of the Procuring Entity the award of contract to the bidder with the Lowest Calculated Responsive Bid/Highest Rated

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Responsive Bid or the Single Calculated/Rated Responsive Bid after the post-qualification process has been completed.

To facilitate the approval of the award, the BAC shall submit the following supporting documents to the Head of the Procuring Entity:

- a) Resolution of the BAC recommending award;
- b) Abstract of Bids;
- c) Duly approved program of work or delivery schedule, and Cost Estimates;
- d) Document issued by appropriate entity authorizing the procuring entity to incur obligations for a specified amount; and
- e) Other pertinent documents required by existing laws, rules, and/or the procuring entity concerned.<sup>(a)</sup>

37.1.2. Within a period not exceeding seven (7) calendar days from the date of receipt of the recommendation of the BAC, the Head of the Procuring Entity shall approve or disapprove the said recommendation. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000) and below, the Head of the Procuring Entity shall approve or disapprove the said recommendation within four (4) calendar days. In the case of GOCCs and GFIs, the period provided herein shall be fifteen (15) calendar days. Within the same period provided herein, the BAC shall notify all losing bidders of its decision.

37.1.3. In case of approval, the Head of the Procuring Entity shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid. In the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, copy furnished the BAC.<sup>(n)</sup>

37.1.4. Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:

- a) Submission of the following documents within the prescribed period:
  - i) Valid JVA, if applicable, within ten (10) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be; or
  - ii) In the case of infrastructure projects, valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders, within thirty (30) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Responsive Bid, when the Treaty or International or Executive Agreement expressly allows submission of the PCAB license and registration for the type and cost of the contract to be as a pre-condition to the Notice of Award;
- b) Posting of performance security in accordance with Section 39 of this IRR;
- c) Signing of the contract as provided in Section 37.2 of this IRR; and

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d) Approval by higher authority, if required, as provided in Section 37.3 of this IRR.<sup>(n)</sup>

37.1.5. Contract award shall be made within the bid validity period provided in Section 28 of this IRR.<sup>(a)</sup>

37.1.6. The BAC, through the Secretariat, shall post, within three (3) calendar days from its issuance, the Notice of Award in the PhilGEPS, the website of the procuring entity, if any, and any conspicuous place in the premises of the procuring entity.<sup>(n)</sup>

### 37.2. *Contract Signing*

37.2.1. The winning bidder shall post the required Performance Security and enter into contract with the procuring entity within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.<sup>(a)</sup>

37.2.2. The procuring entity shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.<sup>(a)</sup>

37.2.3. The following documents shall form part of the contract:

- a) Contract Agreement;
- b) Bidding Documents;
- c) Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;
- d) Performance Security;
- e) Credit line in accordance with the provisions of this IRR, if applicable;
- f) Notice of Award of Contract; and
- g) Other contract documents that may be required by existing laws and/or the procuring entity concerned in the Bidding Documents, such as the construction schedule and S-curve, manpower schedule, construction methods, equipment utilization schedule, construction safety and health program approved by the Department of Labor and Employment, and PERT/CPM for infrastructure projects.<sup>(a)</sup>

### 37.3. *Contract Approval by Higher Authority*

When further approval of higher authority is required, the approving authority for the contract or his duly authorized representative shall be given a maximum of fifteen (15) calendar days from receipt thereof to approve or disapprove it. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000) and below, the maximum period is five (5) calendar days. In the case of GOCCs, the concerned board or its duly authorized representative shall be given a maximum of twenty-five (25) calendar days from receipt thereof to approve or disapprove it.

37.4. *Notice to Proceed*

- 37.4.1. The procuring entity shall issue the Notice to Proceed together with a copy of the approved contract to the successful bidder within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000) and below, the maximum period is two (2) calendar days. The contract effectivity date shall be provided in the Notice to Proceed by the procuring entity, which date shall not be later than seven (7) calendar days from its issuance.<sup>(a)</sup>
- 37.4.2. The procuring entity, through the BAC Secretariat, shall post a copy of the Notice to Proceed and the approved contract in the PhilGEPS or the website of the procuring entity, if any, within fifteen (15) calendar days from the issuance of the Notice to Proceed.<sup>(n)</sup>

**Section 38. Period of Action on Procurement Activities**

- 38.1. The procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. All members of the BAC shall be on a "jury duty" type of assignment until the Notice of Award is issued by the Head of the Procuring Entity in order to complete the entire procurement process at the earliest possible time.

For purposes of this section, the term "jury duty" shall be understood to mean a state by which the members give utmost priority to BAC assignment over all the other duties and responsibilities until the requirements for the said assignments at hand are completed.

- 38.2. The maximum periods and earliest possible time for action on specific procurement activities are provided for in Annex "C" of this IRR. In case the deadline for each activity falls on a non-working day (*i.e.* Saturday and Sunday), legal holiday, or special non-working holiday, the deadline shall be the next working day.
- 38.3. If no action on the contract is taken by the Head of the Procuring Entity or the appropriate approving authority within the periods specified in this IRR, the contract concerned shall be deemed approved: *Provided, however,* That where further approval by the Office of the President is required, the contract shall not be deemed approved unless and until the Office of the President gives actual approval to the contract concerned.

**Section 39. Performance Security**

- 39.1. To guarantee the faithful performance by the winning bidder of its obligations under the contract in accordance with the Bidding Documents, it shall post a performance security prior to the signing of the contract.
- 39.2. The performance security shall be in an amount equal to a percentage of the total contract price in accordance with the following schedule:

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Form of Performance Security	Amount of Performance Security (Equal to Percentage of the Total Contract Price)
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. <sup>10</sup>	Goods and Consulting Services – Five percent (5%)  Infrastructure Projects – Ten percent (10%)
b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. <sup>11</sup>	
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%)
d) Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

For biddings conducted by LGUs, the prospective bidder may also submit performance securities in the form of cashier's/manager's check, bank draft/guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.<sup>(a)</sup>

- 39.3. 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.<sup>(n)</sup>
- 39.4. The performance security shall remain valid until issuance by the procuring entity of the final Certificate of Acceptance.
- 39.5. The performance security may be released by the procuring entity after the issuance of the Certificate of 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) Other terms of the contract.<sup>(a)</sup>
- 39.6. 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.
- 39.7. 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

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

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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.<sup>(a)</sup>

### **Section 40. Failure to Enter into Contract and Post Performance Security**

- 40.1. If the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid or the bidder with the Single Calculated/Rated Responsive Bid, fails, refuses or is unable to submit the documents required under Section 37.1 of this IRR or to make good its bid by entering into a contract with the 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.
- 40.2. In the case of the failure, refusal or inability of the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid to submit the documents required under Section 37.1 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 Lowest Calculated Bid/Highest Rated Bid: *Provided, however,* That in the case of consulting services, the second Highest Rated Bid has successfully undergone the negotiation stage in accordance with Section 33.2.5 of this IRR. This procedure shall be repeated until the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid is determined for award. However, if no bidder passes post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into a negotiated procurement.
- 40.3. In the case of failure, refusal or inability of the bidder with the Single Calculated/Rated Responsive Bid to submit the documents required under Section 37.1 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 declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Sections 21 and 25 of this IRR. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into a negotiated procurement.

### **Section 41. Reservation Clause**

The Head of the Procuring Entity reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations:

- a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the procuring entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a



third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;

- b) If the BAC is found to have failed in following the prescribed bidding procedures; or
- c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GOP, as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the Head of the Procuring Entity; (ii) if the project is no longer necessary as determined by the Head of the Procuring Entity; and (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity.

#### **Section 42. Contract Implementation and Termination**

- 42.1. The contract implementation guidelines for the procurement of goods, supplies and materials are provided for in Annex "D" of this IRR.
- 42.2. The contract implementation guidelines for the procurement of infrastructure projects are provided for in Annex "E" of this IRR.
- 42.3. The contract implementation guidelines for the procurement of consulting services are provided for in Annex "F" of this IRR.
- 42.4. No incentive bonus, in whatever form or for whatever purpose, shall be allowed.
- 42.5. Procuring Entities may issue a letter of credit in favor of a local or foreign suppliers; Provided, that, no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the procuring entity in accordance with the delivery schedule provided for in the contract have been concluded; Provided further, that, the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and must be stated in the Bidding Documents.

### **RULE XII – DOMESTIC AND FOREIGN PROCUREMENT**

#### **Section 43. Procurement of Domestic and Foreign Goods**

##### *43.1. Scope and Application*

- 43.1.1. Consistent with the GOP's obligations under international treaties or agreements, goods may be obtained from domestic or foreign sources: *Provided, however,* That the procurement thereof shall be open only to eligible suppliers, manufacturers and distributors: *Provided, further,* That, in the interest of availability, efficiency and timely delivery of goods, the procuring entity may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality, in accordance with the provisions of Commonwealth Act No. 138.<sup>(a)</sup>
- 43.1.2. The procuring entity shall give preference to materials and supplies produced, made and manufactured in the Philippines and to Domestic Entities, subject to the conditions herein below specified. The award shall be made to the lowest

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Domestic Bidder or lowest Domestic Entity, provided his bid is not more than fifteen percent (15%) in excess of the lowest Foreign Bid.<sup>(n)</sup>

43.1.3. A Domestic Entity can only claim preference if it secures from the DTI a certification that it has all the qualifications required under this IRR, in case of sole proprietorships, SEC, in case of partnerships and corporations, or CDA, in case of cooperatives.<sup>(n)</sup>

43.1.4. A Domestic Bidder can only claim preference if it secures from the DTI a certification that the articles forming part of its bid are substantially composed of articles, materials, or supplies grown, produced, or manufactured in the Philippines.<sup>(n)</sup>

### 43.2. *Procedures and Guidelines*

43.2.1. The preference shall be applied when (a) the lowest Foreign Bid is lower than the lowest bid offered by a Domestic Bidder, or (b) the lowest bid offered by a non-Philippine national is lower than the lowest bid offered by a Domestic Entity. The procuring entity shall ensure that both bids are responsive to the minimum requirements as specified in the Bidding Documents.<sup>(n)</sup>

43.2.2. For evaluation purposes, the lowest Foreign Bid or the bid offered by a non-Philippine national shall be increased by fifteen percent (15%).<sup>(n)</sup>

43.2.3. In the event that (a) the lowest bid offered by a Domestic Bidder does not exceed the lowest Foreign Bid as increased, or (b) the lowest bid offered by a Domestic Entity does not exceed the lowest bid offered by a non-Philippine national as increased, then the procuring entity shall award the contract to the Domestic Bidder/Entity at the amount of the lowest Foreign Bid or bid offered by a non-Philippine national, as the case may be.<sup>(n)</sup>

43.2.4. If the Domestic Entity/Bidder refuses to accept the award of contract at the amount of the Foreign Bid or bid offered by a non-Philippine national within two (2) calendar days from receipt of written advice from the BAC, the procuring entity shall award to the bidder offering the Foreign Bid or the non-Philippine national, as the case may be, subject to post-qualification and submission of all the documentary requirements under this IRR.<sup>(n)</sup>

## RULE XIII – BIDDING OF PROVINCIAL PROJECTS

### **Section 44. Bidding of Provincial Projects**

Priority programs and infrastructure projects funded out of the annual GAA which are intended for implementation within the province shall be subject to the same public bidding and to the procurement processes prescribed in this IRR. For purposes of this Section, Engineering District infrastructure projects and priority programs fully funded by the Government and identified in consultation with the concerned members of Congress, shall constitute "provincial projects" and shall be governed by this Section.

**Section 45. Provincial Bidders**

In accordance with Section 45 of the Act, the right to match accorded to provincial bidders is no longer available after 26 January 2008.<sup>(a)</sup>

**RULE XIV – LEASE OF COMPUTERS, COMMUNICATIONS, INFORMATION AND OTHER EQUIPMENT**

**Section 46. Lease Contracts**

The lease of construction and office equipment, including computers, communication and information technology equipment, are subject to the same public bidding and to the processes prescribed under the Act and this IRR. Lease may also cover lease purchases or lease-to-own and similar variations.

**RULE XV – DISCLOSURE OF RELATIONS**

**Section 47. Disclosure of Relations**

All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the Head of the Procuring Entity, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR. For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity. On the part of the bidder, this provision shall apply to the following persons:

- a) If the bidder is an individual or a sole proprietorship, to the bidder himself;
- b) If the bidder is a partnership, to all its officers and members;
- c) If the bidder is a corporation, to all its officers, directors, and controlling stockholders; and
- d) If the bidder is a joint venture, the provisions of items (a), (b), or (c) of this Section shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.<sup>(a)</sup>

**RULE XVI – ALTERNATIVE METHODS OF PROCUREMENT**

**Section 48. Alternative Methods**

- 48.1. Subject to the prior approval of the Head of the Procuring Entity, and whenever justified by the conditions provided in this Act, the procuring entity may, in order to promote economy and efficiency, resort to any of the alternative methods of procurement provided in this Rule. In all instances, the procuring entity shall ensure that the most advantageous price for the Government is obtained.
- 48.2. In accordance with Section 10 of this IRR, as a general rule, the Procuring Entities shall adopt public bidding as the general mode of procurement and shall see to it

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that the procurement program allows sufficient lead time for such public bidding. Alternative methods shall be resorted to only in the highly exceptional cases provided for in this Rule.

- 48.3. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was public bidding but cannot be ultimately pursued, the BAC, through a resolution, shall justify and recommend the change in the mode of procurement to be approved by the Head of the procuring entity.<sup>(n)</sup>

### Section 49. Limited Source Bidding

49.1. *Limited Source Bidding*, otherwise known as selective bidding, is a method of procurement of goods and consulting services that involves direct invitation to bid by the procuring entity from the list of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract. This alternative method of procurement may be employed under any of the following conditions:

- a) Procurement of highly specialized types of goods (*e.g.*, sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the public bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or
- b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.<sup>(a)</sup>

49.2. The pre-selected suppliers or consultants shall be those appearing in a list maintained by the relevant government authority that has expertise in the type of procurement concerned. The list of pre-selected suppliers or consultants shall be updated periodically. A copy of the list shall be submitted to, and maintained updated with, the GPPB.<sup>(a)</sup>

49.3. The pre-selection shall be based upon the capability and resources of the bidders to perform the contract taking into account their experience and past performance on similar contracts, capabilities with respect to personnel equipment or manufacturing facilities, and financial position. Pre-selection shall be done in accordance with the procedures provided in the GPMs.<sup>(n)</sup>

49.4. The BAC of the concerned procuring entity shall directly invite all the suppliers or consultants appearing in the pre-selected list. All other procedures for competitive bidding shall be undertaken, except for the advertisement of Invitation to Bid/Request for Expression of Interest under Section 21.2.1 of this IRR.<sup>(a)</sup>

### Section 50. Direct Contracting

*Direct Contracting* or single source procurement is a method of procurement of goods that does not require elaborate Bidding Documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be

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accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned Procuring Entities under any of the following conditions:

- a) Procurement of goods of proprietary nature which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets, and copyrights prohibit others from manufacturing the same item;
- b) When the procurement of critical plant components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or
- c) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the GOP.

### **Section 51. Repeat Order**

*Repeat Order*, when provided for in the APP, is a method of procurement of goods from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through Competitive Bidding. Repeat orders shall likewise be subject to the following conditions:

- a) Unit prices of the repeat order must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the GOP after price verification;
- b) The repeat order will not result in splitting of contracts, requisitions, or purchase orders, as provided for in Section 54.1 of this IRR;
- c) Except in cases duly approved by the GPPB, the repeat order shall be availed of only within six (6) months from the contract effectivity date stated in the Notice to Proceed arising from the original contract; and
- d) The repeat order shall not exceed twenty-five percent (25%) of the quantity of each item in the original contract.

### **Section 52. Shopping**

52.1. *Shopping* is a method of procurement of goods whereby the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications. This method of procurement shall be employed in any of the following cases:

- a) When there is an unforeseen contingency requiring immediate purchase: *Provided, however,* That the amount shall not exceed the thresholds prescribed in Annex "H" of this IRR.
- b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding the thresholds prescribed in Annex "H" of this IRR.<sup>(a)</sup>

- 52.2. The phrase "ordinary or regular office supplies" shall be understood to include those supplies, commodities, or materials which, depending on the procuring entity's mandate and nature of operations, are necessary in the transaction of its official businesses, and consumed in the day-to-day operations of said procuring entity. However, office supplies shall not include services such as repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services.<sup>(a)</sup>
- 52.3. Under Section 52.1 (b) of this IRR, at least three (3) price quotations from bona fide suppliers shall be obtained.<sup>(a)</sup>
- 52.4. The thresholds prescribed in Annex "H" of this IRR shall be subject to a periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons.<sup>(a)</sup>

### **Section 53. Negotiated Procurement**

*Negotiated Procurement* is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant in any of the following cases:

- 53.1. ***Two Failed Biddings.*** Where there has been failure of public bidding for the second time as provided in Section 35 of the Act and this IRR.
- 53.1.1. After conduct of the mandatory review of the terms, conditions, specifications, and cost estimates, as prescribed in Section 35 of this IRR, the BAC shall revise and agree on the minimum technical specifications, and if necessary, adjust the ABC, subject to the required approvals. However, the ABC cannot be increased by more than twenty percent (20%) of the ABC for the last failed bidding.<sup>(n)</sup>
- 53.1.2. The BAC shall invite and engage in negotiations with a sufficient number of suppliers, contractors or consultants to ensure effective competition.<sup>(a)</sup>
- 53.1.2.1. In the case of infrastructure projects, *bona fide* contractors licensed with the CIAP whose eligibility documents are on file with the procuring entity concerned or the Department of Public Works and Highways (DPWH) Contractors' Registry, as the case may be, and who have been classified under the type of contract/project where the subject contract falls are eligible to be invited for negotiation. Other contractors not previously deemed eligible may also apply for eligibility.
- 53.1.2.2. All Procuring Entities shall maintain a registry of suppliers, contractors, and consultants as basis for drawing up the short list and/or selecting the suppliers, contractors, and consultants for negotiations.
- 53.1.3. Any requirements, guidelines, documents, clarifications, or other information relative to the negotiations that are communicated by the procuring entity to a supplier, contractor, or consultant shall be communicated on an equal basis to

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all other suppliers, contractors, or consultants engaging in negotiations with the procuring entity relative to the procurement.<sup>(n)</sup>

- 53.1.4. Following completion of the negotiations, the procuring entity shall request all suppliers, contractors, or consultants remaining in the proceedings to submit, on a specified date, a best and final offer with respect to all aspects of their proposals.<sup>(n)</sup>
- 53.1.5. The procuring entity shall select the successful offer on the basis of such best and final offers which should meet the procuring entity's minimum technical requirements and should not exceed the ABC.<sup>(n)</sup>
- 53.1.6. In all stages of the negotiations, observers shall be invited.<sup>(n)</sup>
- 53.2. **Emergency Cases.** In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP.
- 53.3. **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.
- 53.3.1. The contract may be negotiated starting with the second lowest calculated/highest rated bidder for the project under consideration at the bidder's original bid price.<sup>(a)</sup>
- 53.3.2. If negotiation fails, then negotiation shall be done with the third lowest calculated/highest rated bidder at his original price. If the negotiation fails again, a short list of at least three (3) eligible contractors shall be invited to submit their bids, and negotiation shall be made starting with the lowest calculated/highest rated bidder.<sup>(a)</sup>
- 53.3.3. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the Heads of the Procuring Entities concerned, within their respective limits of approving authority.<sup>(a)</sup>
- 53.4. **Adjacent or Contiguous.** Where the subject contract is adjacent or contiguous to an on-going Infrastructure Project or Consulting Service where the consultants have unique experience and expertise to deliver the required service: *Provided, however,* That (a) the original contract is the result of a Competitive Bidding; (b) the subject contract to be negotiated has similar or related scopes of work; (c) it is within the contracting capacity of the contractor/consultant; (d) the contractor/consultant uses the same prices or lower unit prices as in the original contract less mobilization cost; (e) the amount involved does not exceed the amount of the ongoing project; and (f) the contractor/consultant has no negative slippage/delay: *Provided, further,* That negotiations for the procurement are commenced before the expiry of the original contract.<sup>(a)</sup>

- 53.5. **Agency-to-Agency.** Procurement of infrastructure projects, consulting services, and goods from another agency of the GOP, such as the PS-DBM, which is tasked with a centralized procurement of Common-Use Supplies for the GOP in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

For purposes of this sub-section, the term agency shall exclude GOCCs incorporated under *Batas Pambansa Blg. 68*, otherwise known as the "Corporation Code of the Philippines". The GPPB shall issue guidelines to implement this provision.<sup>(a)</sup>

- 53.6. **Procurement Agent.** In order to hasten project implementation, Procuring Entities which may not have the proficiency or capability to undertake a particular procurement, as determined by the Head of the Procuring Entity concerned, may request other GOP agencies to undertake such procurement for them, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function. The GPPB shall issue guidelines to implement this provision.<sup>(a)</sup>

- 53.7. **Highly Technical Consultants.** In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing Head of the Procuring Entity, but in no case shall exceed the term of the latter.<sup>(a)</sup><sup>12</sup>

- 53.8. **Defense Cooperation Agreement.** Upon prior approval by the President of the Philippines, and when the procurement for use by the AFP involves major defense equipment or materiel and/or defense-related consultancy services, when the expertise or capability required is not available locally, and the Secretary of National Defense has determined that the interests of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations: Provided, however, That the performance by the supplier of its obligations under the procurement contract shall be covered by a performance security in accordance with Section 39 of this IRR.<sup>(a)</sup>

- 53.9. **Small Value Procurement.** Where the procurement does not fall under Shopping in Section 52 of this IRR and the amount involved does not exceed the thresholds prescribed in Annex "H" of this IRR.<sup>(a)</sup>

53.9.1. The procuring entity shall draw up a list of at least three (3) suppliers, contractors, or consultants of known qualifications which will be invited to submit proposals, in the case of goods and infrastructure projects, or curriculum vitae, in the case of consulting services.<sup>(a)</sup>

53.9.2. The thresholds prescribed in Annex "H" of this IRR shall be subject to the periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect the changes in economic conditions and for other justifiable reasons.<sup>(n)</sup>

- 53.10. **Lease of Real Property.** Lease of privately owned real property and venue for official use, subject to guidelines to be issued by the GPPB.<sup>(a)</sup>

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<sup>12</sup> Amended through GPPB Resolution 06-2009, dated 30 September 2009, published in the Manila Times on 20 October 2009.



- 53.11. **NGO Participation.** When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB.<sup>(a)</sup>
- 53.12. **Community Participation.** Where, in the interest of project sustainability or to achieve certain specific social objectives, it is desirable in selected project components to call for participation of local communities in the delivery of services, the procuring entity shall propose the procedures, specifications, and contract packaging which are subject to the approval of the GPPB.<sup>(n)</sup>
- 53.13. **United Nations Agencies.** Procurement from specialized agencies of the United Nations of any of the following: (a) small quantities of off-the-shelf goods, primarily in the fields of education and health; and (b) specialized products where the number of suppliers is limited, such as vaccines or drugs.<sup>(n)</sup>

#### **Section 54. Terms and Conditions for the use of Alternative Methods**

- 54.1. Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of GOP contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this IRR, especially the necessity of public bidding and the requirements for the alternative methods of procurement.
- 54.2. For alternative methods of procurement, advertisement and posting as prescribed in Section 21.2.1 of this IRR may be dispensed with: Provided, however, That the BAC, through its Secretariat, shall post the invitation or request for submission of price quotations for Shopping under Sections 52.1 (b) and Negotiated Procurement under Sections 53.1 (two-failed biddings) and 53.9 (small value procurement) of this IRR in the PhilGEPS website, the website of the procuring entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the procuring entity for a period of seven (7) calendar days.<sup>(a)</sup>
- 54.3. In all instances of alternative methods of procurement, the BAC, through the Secretariat, shall post, for information purposes, the notice of award in the PhilGEPS website, the website of the procuring entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the procuring entity.<sup>(a)</sup>
- 54.4. Except for Limited Source Bidding under Section 49 of this IRR, submission of bid securities may be dispensed with.<sup>(n)</sup>
- 54.5. Performance and warranty securities, as prescribed in Sections 39 and 62 of this IRR, shall be submitted for contracts acquired through the alternative methods of procurement, except for Shopping under Section 52 and Negotiated Procurement under Sections 53.2 (emergency cases), 53.9 (small value procurement), 53.10 (lease of real property), and 53.13 (UN agencies).<sup>(n)</sup>

**RULE XVII – PROTEST MECHANISM**

**Section 55. Protests on Decisions of the BAC**

55.1. Decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration within the three (3) calendar days upon receipt of written notice or upon verbal notification. The BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof.

If a failed bidder signifies his 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.<sup>(a)</sup>

55.2. In the event that the request for reconsideration is denied, decisions of the BAC may be protested in writing to the Head of the Procuring Entity: *Provided, however,* That a prior request for reconsideration should have been filed by the party concerned in accordance with the preceding Section, and the same has been resolved.<sup>(a)</sup>

55.3. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration. A protest may be made by filing a verified position paper with the Head of the Procuring Entity concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be in an amount equivalent to no less than one percent (1%) of the ABC.<sup>(a)</sup>

55.4. The verified position paper shall contain the following information:

- a) The name of bidder;
- b) The office address of the bidder;
- c) The name of project/contract;
- d) The implementing office/agency or procuring entity;
- e) A brief statement of facts;
- f) The issue to be resolved; and
- g) Such other matters and information pertinent and relevant to the proper resolution of the protest.

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

**Section 56. Resolution of Protests**

The protests shall be resolved strictly on the basis of records of the BAC. The Head of the Procuring Entity shall resolve the protest within seven (7) calendar days from receipt thereof. Subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches, constitutional commissions, or instrumentalities of the GOP to approve contracts, the decisions of the Head of the Procuring Entity concerned shall be final up to the limit of his contract approving authority. With respect to LGUs, the decision of the local chief executive shall be final. The head of the BAC

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Secretariat shall furnish the GPPB a copy of the decision resolving the protest within seven (7) calendar days from receipt thereof.

### **Section 57. Non-interruption of the Bidding Process**

In no case shall any protest taken from any decision treated in this Rule stay or delay the bidding process: *Provided, however,* That protests must first be resolved before any award is made.

### **Section 58. Resort to Regular Courts; Certiorari**

- 58.1. Court action may be resorted to only after the protests contemplated in this Rule shall have been completed, *i.e.*, resolved by the Head of the Procuring Entity with finality. The regional trial court shall have jurisdiction over final decisions of the Head of the Procuring Entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.
- 58.2. This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to infrastructure projects of the GOP.
- 58.3. The head of the BAC Secretariat of the procuring entity concerned shall ensure that the GPPB shall be furnished a copy of the cases filed in accordance with this Section.

## **RULE XVIII – SETTLEMENT OF DISPUTES**

### **Section 59. Arbitration**

- 59.1. If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the contract covered by the Act and this IRR, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.<sup>(n)</sup>
- 59.2. Any and all disputes arising from the implementation of a contract covered by the Act and this IRR shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" and Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": *Provided, however,* That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall 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.<sup>(a)</sup>

### **Section 60. Appeals**

The arbitral award and any decision rendered in accordance with the foregoing Section shall be appealable by way of a petition for review to the Court of Appeals. The petition shall raise pure questions of law and shall be governed by the Rules of Court.

**RULE XIX – CONTRACT PRICES AND WARRANTIES**

**Section 61. Contract Prices**

- 61.1. 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 adjustment and escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB, or when a Treaty or International or Executive Agreement expressly allows it pursuant to Section 4 of this IRR.<sup>(a)</sup>
- 61.2. In cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the GOP, promulgated after the date of bid opening, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis.<sup>(17a)</sup>
- 61.3. Any request for price escalation under extraordinary circumstances shall be submitted by the concerned entity to the National Economic and Development Authority (NEDA) with the endorsement of the procuring entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

For purposes of this Section, “extraordinary circumstances” shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.<sup>(a)</sup>

- 61.4. All contracts shall be denominated and payable in Philippine currency, and this shall be stated in the Bidding Documents: *Provided, however,* That subject to the guidelines issued by the GPPB, the procuring entity may provide in the Bidding Documents that obligations may be paid in foreign currency; *Provided, further,* That should the procuring entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening for purposes of bid comparison and evaluation.<sup>(a)</sup>

**Section 62. Warranty**

- 62.1. For the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, a warranty security shall be required from the contract awardee for a minimum period of three (3) months, in the case of Expendable Supplies, or a minimum period of one (1) year, in the case of Non-expendable Supplies, after acceptance by the procuring entity of the delivered supplies.

The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee equivalent to at least ten percent (10%) of the total contract price. The said amounts shall only be released after the lapse of the warranty period or, in the case of Expendable Supplies, after consumption thereof: *Provided, however,* That the supplies delivered are free from patent and latent defects and all the conditions imposed under the contract have been fully met.<sup>(a)</sup>

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62.2. For the procurement of infrastructure projects, the following warranties shall be made:

62.2.1. From the time project construction commenced up to final acceptance, the contractor shall assume full responsibility for the following:

- a) any damage or destruction of the works except those occasioned by *force majeure*; and
- b) safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work;<sup>(a)</sup>

62.2.2. One (1) year from project completion up to final acceptance or the defects liability period.

62.2.2.1. The contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure on account of the use of materials of inferior quality, within ninety (90) days from the time the Head of the Procuring Entity has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the procuring entity shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

62.2.2.2. The defects liability period shall be covered by the Performance Security of the contractor required in Section 39.1 of this IRR, which shall guarantee that the contractor performs his responsibilities stated in the immediately preceding Section. If the contractor fails to comply with its obligations under Section 62.2.2.1 of this IRR, the procuring entity shall forfeit its performance security, subject its property(ies) to attachment or garnishment proceedings, and perpetually disqualify it from participating in any public bidding. All payables of the GOP in his favor shall be offset to recover the costs.<sup>(a)</sup>

62.2.3. From final acceptance of the project up to the period prescribed in Section 62.2.3.2.

62.2.3.1. The following shall be held responsible for "Structural Defects", *i.e.*, major faults/flaws/deficiencies in one or more key structural elements of the project which may lead to structural failure of the completed elements or structure, or "Structural Failures", *i.e.*, where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public:

- a) Contractor – Where Structural Defects/Failures arise due to faults attributable to improper construction, use of inferior quality/substandard materials, and any violation of the contract plans and specifications, the contractor shall be held liable;
- b) Consultants – Where Structural Defects/Failures arise due to faulty and/or inadequate design and specifications as well as construction supervision, then the consultant who prepared the design or

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undertook construction supervision for the project shall be held liable;

- c) Procuring Entity's Representatives/Project Manager/Construction Managers and Supervisors – The project owner's representative(s), project manager, construction manager, and supervisor(s) shall be held liable in cases where the Structural Defects/Failures are due to his/their willful intervention in altering the designs and other specifications; negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project;
- d) Third Parties - Third Parties shall be held liable in cases where Structural Defects/Failures are caused by work undertaken by them such as leaking pipes, diggings or excavations, underground cables and electrical wires, underground tunnel, mining shaft and the like, in which case the applicable warranty to such structure should be levied to third parties for their construction or restoration works.
- e) Users - In cases where Structural Defects/Failures are due to abuse/misuse by the end user of the constructed facility and/or non-compliance by a user with the technical design limits and/or intended purpose of the same, then the user concerned shall be held liable.<sup>(a)</sup>

62.2.3.2. The warranty against Structural Defects and Failures shall cover the following periods from final acceptance, except those occasioned by force majeure:

- a) Permanent Structures: Fifteen (15) years

Buildings of types 4 and 5 as classified under the National Building Code of the Philippines and other structures made of steel, iron, or concrete which comply with relevant structural codes (*e.g.*, DPWH Standard Specifications), such as, but not limited to, steel/concrete bridges, flyovers, aircraft movement areas, ports, dams, tunnels, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar permanent structures;

- b) Semi-Permanent Structures: Five (5) years

Buildings of types 1, 2, and 3 as classified under the National Building Code of the Philippines, concrete/asphalt roads, concrete river control, drainage, irrigation lined canals, river landing, deep wells, rock causeway, pedestrian overpass, and other similar semi-permanent structures; and

- c) Other Structures: Two (2) years

Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.<sup>(a)</sup>

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62.2.3.3. To guarantee that the contractor shall perform his responsibilities as prescribed in Section 62.2.3.1 (a) of this IRR, it shall be required to post a warranty security in accordance with the following schedule:

Form of Warranty Security	Amount of Warranty Security (Equal to Percentage of the Total Contract Price)
a) Cash or Letter of Credit issued by a Universal or Commercial Bank: Provided, however, that the LC shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	Five percent (5%)
b) Bank guarantee confirmed by a Universal or Commercial Bank.	Ten percent (10%)
c) Surety bond callable upon demand issued by GSIS or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

For biddings conducted by LGUs, the contractor may also submit warranty securities in the form of bank guarantee or letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.<sup>(a)</sup>

62.2.3.4. The warranty security shall be denominated in Philippine Pesos, remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by the procuring entity, and returned only after the lapse of the said one (1) year period.<sup>(a)</sup>

62.2.4. In case of Structural Defects/Failure occurring during the applicable warranty period provided in Section 62.2.3.2 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.<sup>(a)</sup>

**RULE XX – THE GOVERNMENT PROCUREMENT POLICY BOARD**

**Section 63. Organization and Functions**

63.1. The Government Procurement Policy Board (GPPB), as established in Section 63 of the Act, shall have the following duties and responsibilities:

- a) To protect national interest in all matters affecting public procurement, having due regard to the country's regional and international obligations;

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- b) To formulate and amend public procurement policies, rules and regulations, and amend, whenever necessary, this IRR;
- c) To prepare a generic procurement manual and the standard bidding forms for procurement;
- d) To ensure the proper implementation by Procuring Entities of the Act, this IRR and all other relevant rules and regulations pertaining to public procurement;
- e) To establish a sustainable training program to develop the capacity of Government procurement officers and employees, and to ensure the conduct of regular procurement training programs by and for Procuring Entities; and
- f) To conduct an annual review of the effectiveness of the Act and recommend any amendments thereto, as may be necessary.

The GPPB shall be under the administrative supervision of the DBM for general oversight and for budgeting purposes.

### 63.2. *The GPPB Technical Support Office*

The GPPB shall create a Technical Support Office (TSO) which shall provide support in the performance of its duties and responsibilities specified in the Act and this IRR.

The GPPB shall determine the TSO's organizational structure and staffing, subject to DBM approval. The TSO shall be headed by an Executive Director of good moral character, unquestionable integrity, and known probity.

### 63.3. The TSO shall provide research, technical and administrative support to the GPPB, including:

- a) Research-based procurement policy recommendations and rule-drafting;
- b) Development and updating of generic procurement manuals and standard bidding forms;
- c) Management and conduct of training on procurement systems and procedures;
- d) Evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems and procedures;
- e) Monitoring the compliance to the Act and assisting Procuring Entities improve their compliance;
- f) Monitoring the implementation and effectiveness of the PHILGEPS; and
- g) Secretariat support.

### 63.4. In addition to the powers granted under the Act and this IRR, the GPPB shall absorb all the powers, functions and responsibilities of the Procurement Policy Board created under Executive Order No. 359, series of 1989. All functions related to procurement policy-making of the Infrastructure Committee of the NEDA Board are transferred to the GPPB.



**Section 64. Membership**

The GPPB shall be composed of the Secretary of the Department of Budget and Management, as Chairman, the Director-General of NEDA, as Alternate Chairman, with the following as Members; the Secretaries of the Departments of Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy, or their duly authorized representatives and a representative from the private sector to be appointed by the President upon the recommendation of the GPPB. The GPPB may invite representatives from the COA or from relevant Government agencies and private sectors to serve as resource persons.

**RULE XXI – PENAL CLAUSE**

**Section 65. Offenses and Penalties**

65.1. Without prejudice to the provisions of R.A. 3019 and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

- a) Opening any sealed bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.
- b) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in 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 action which favors, or tends to favor a particular bidder.
- d) Splitting of contracts which exceed procedural purchase limits to avoid competitive bidding or to circumvent the limits of approving or procurement authority.
- e) Abuse by the Head of the Procuring Entity of his power to reject any and all bids as mentioned under Section 41 of the Act and this IRR, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of the Act and this IRR.

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

In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual shall be permanently disqualified from transacting business with the Government.

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- 65.2. Private individuals who commit any of the following acts, and any public officer who conspires with them, shall upon conviction, suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:
- a) When two or more bidders agree and submit different bids as *bona fide* bidders, all the while knowing that the bid(s) of one or more of them was so much higher than the other that the latter could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest bid.
  - b) When a bidder maliciously submits different bids through two or more persons, corporations, partnerships or any other business entity in which he has an interest, to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.
  - c) When two or more bidders enter into an agreement which calls upon one or more of them to refrain from bidding for procurement contracts, or which requires one or more of them to withdraw Bids already submitted, in order to secure an undue advantage to any one of them.
  - d) When a bidder, by himself or in connivance with others, employs schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

In addition, the public officer persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and the private individual shall be permanently disqualified from transacting business with the Government.

- 65.3. Private individuals who commit any of the following acts, and any public officer conspiring with them, shall upon conviction, suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:
- a) Submitting eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.
  - b) Submitting Bidding Documents of whatever kind and nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.
  - c) Participating in a public bidding using the name of another or allowing another to use one's name for the purpose of participating in a public bidding.
  - d) Withdrawing a bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or refusing to accept an award, without just cause or for the purpose of forcing the procuring entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.
- 65.4. It is understood that the above penalties and offenses shall cover all types of procurement whether done manually or electronically.

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

**Section 66. Jurisdiction**

Jurisdiction over the offenses defined under this Rule shall belong to the appropriate courts, according to laws existing at the time of the commission of the offenses.

**RULE XXII – CIVIL LIABILITY**

**Section 67. Civil Liability in Case of Conviction**

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

**Section 68. Liquidated Damages**

All contracts executed in accordance with the Act and this IRR shall contain a provision on liquidated damages which shall be payable by the contractor in case of breach thereof. For the procurement of goods, infrastructure projects and consulting services, the amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.1%) of the cost of the unperformed portion for every day of delay. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the procuring entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.

**RULE XXIII – ADMINISTRATIVE SANCTIONS**

**Section 69. Imposition of Administrative Penalties**

69.1. In addition to the provisions of Rules XXI and XXII of this IRR, the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, as well as disqualification from further participating in the public bidding being undertaken by the procuring entity concerned, where applicable, for the following violations:

- a) Submission of eligibility requirements containing false information or falsified documents.

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- b) Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening, or any other stage of the public bidding.
  - c) Allowing the use of one's name, or using the name of another for purposes of public bidding.
  - d) Withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.
  - e) Refusal or failure to post the required performance security within the prescribed time.
  - f) Termination of the contract due to the default of the bidder.
  - g) Refusal to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification.
  - h) Any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor.
  - i) All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons.<sup>(a)</sup>
- 69.2. In addition to the penalty of suspension, the bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.
- 69.3. The Head of the Procuring Entity may delegate to the BAC the authority to impose the aforementioned administrative penalties.
- 69.4. The procedures for the suspension or blacklisting of suppliers, contractors, or consultants for GOP projects shall be undertaken in accordance with the guidelines issued by the GPPB.

### **Section 70. Preventive Suspension**

The Head of the Procuring Entity may preventively suspend any member of the Technical Working Group or the Secretariat, or the BAC, if there are strong reasons or *prima facie* evidence showing that the officials or employees concerned are guilty of the charges filed against them under Rules XXI and XXII of this IRR, or for dishonesty as defined by the Civil Service Laws. For uniformed personnel of the AFP, the substantive and procedural due process under its justice system shall be applied. In all cases, due process as mandated by the Constitution and Civil Service laws, rules and regulations, shall be strictly observed.

**Section 71. Lifting of Suspension and Removal of Administrative Disabilities**

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

**RULE XXIV – LEGAL ASSISTANCE AND INDEMNIFICATION OF BAC MEMBERS**

**Section 72. Private Legal Assistance**

All the members of the BAC are hereby authorized to engage the services of private lawyers or external counsel immediately upon receipt of Court Notice that a civil or criminal action, suit or proceeding is filed against them in connection with the lawful performance of their official functions and duties as BAC members. The lawyer's fee shall be part of the indemnification package for the BAC members, subject to the provisions of Section 73 of the Act and this IRR. For purposes of this Rule, the BAC members shall be understood to include its support staff, such as the members of the TWG and the BAC Secretariat.

**Section 73. Indemnification of BAC Members**

- 73.1. The GPPB shall establish an equitable indemnification package for public officials providing services in and for the BAC, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all reasonable fees, costs, and expenses incurred by such persons in connection with any administrative, civil or criminal action, suit or proceeding to which they may be, or have been made, a party, by reason of the lawful performance of their official functions and duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion, or otherwise held liable or guilty of the complaints or charges.
- 73.2. In the event of a settlement or compromise, indemnification shall be confined only on matters covered by the settlement, for which the procuring entity had been advised by counsel, that, the public officials to be indemnified have not committed gross negligence or misconduct or grave abuse of discretion in the performance of their functions and duties.
- 73.3. The members of the BAC and its support staff, such as the members of the TWG and the BAC Secretariat, shall also be entitled to medical assistance for injuries incurred in the performance of their functions.

**RULE XXV – FINAL PROVISIONS**

**Section 74. Amendment**

- 74.1. As the need arises, this IRR may be amended by the GPPB.<sup>(a)</sup>
- 74.2. Any amendment to this IRR shall be applicable to all procurement activities, the advertisement or invitation of which were issued after the date of effectivity of the said amendment.

### **Section 75. Repealing Clause**

The Act repeals E.O. 40, entitled "Consolidating Procurement Rules and Procedures for All National Government Agencies, Government-Owned or -Controlled Corporations and/or Government Financial Institutions, and Requiring the Use of the Government Electronic Procurement System;" Executive Order No. 262, series of 2000, entitled "Amending Executive Order No. 302, series of 1996, entitled "Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/ Supplies by the National Government" and Sec. Three (3) of Executive order No. 201, series of 2000, entitled "Providing Additional Policies and Guidelines in the Procurement of Goods/Supplies by the National Government;" Executive Order No. 302, series of 1996, entitled "Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/Supplies by the National Government" and Presidential Decree No. 1594 (P.D. 1594), dated June 11, 1978, entitled "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts;" and the relevant provisions of Republic Act No. 7898 dated February 23, 1995, entitled "An Act Providing for the Modernization of the Armed Forces of the Philippines and for Other Purposes." This law amends Title Six, Book Two of Republic Act No. 7160 (R.A. 7160), otherwise known as the "Local Government Code of 1991," and, in furtherance thereto, Chapter Five, Title One, Book One of the same law; the relevant provisions of Executive Order No. 164, series of 1987, entitled "Providing Additional Guidelines in the Processing and Approval of Contracts of the National Government." Any other law, presidential decree or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of the Act is hereby repealed, modified or amended accordingly.

This IRR repeals Memorandum Order No. 119 dated 18 September 2003, otherwise known as the "Implementing Rules and Regulations Part A" and relevant portions of Executive Order No. 301, series of 1987 entitled "Decentralizing Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal". Any other issuance, executive order, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of this IRR is hereby repealed, modified or amended accordingly.<sup>(a)</sup>

### **Section 76. Separability Clause**

If any provision in this IRR, or application of such provision to any circumstance, is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

### **Section 77. Transitory Clause**

77.1. In all procurement activities, if the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.<sup>(a)</sup>

77.2. In cases where the advertisements or invitations for bids were issued before the effectivity of this IRR, Procuring Entities may continue adopting the procurement

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procedures, rules, and regulations provided in the IRR Part A or other applicable laws, as the case may be.<sup>(a)</sup>

### **Section 78. Effectivity Clause**

This IRR shall take effect thirty (30) calendar days after its publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of this IRR.<sup>(a)</sup>

**ANNEX "A"**  
**DETAILED ENGINEERING FOR THE PROCUREMENT OF INFRASTRUCTURE PROJECTS**

1. 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 (if necessary) the economic justification.
2. 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 Program of Work
  - i) Preparation of Proposed Construction Schedule (and estimated Cash Flow for projects with Schedule over Six (6) Months)
  - j) Preparation of Site or Right-of-Way Plans including Schedule of Acquisition
  - k) Preparation of Utility Relocation Plan
  - l) Preparation and Submission of Design Report
  - m) Environmental Impact Statement for critical project 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) Preparation of Bid/Tender Documents
3. Work under detailed engineering shall include, but not necessarily be limited to, the following:
  - a) Design Standards – Design standards shall be in accordance with appropriate standards and accepted detailed engineering practice adopted by the agency concerned. Design standards for structures shall take into account, among other things, the seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage.
  - b) Field Surveys And Investigations – Necessary field surveys and investigations which may include aerial, hydrographic, topographic, hydrologic, sub-surface, monumenting and other surveys shall be carried out in accordance with the design guidelines, criteria and standards adopted by the agency concerned. All survey and investigation works shall be prepared in a manner satisfactory to carry out accurate design and production of plans that will permit quantity estimates to be made within plus or minus ten percent (10%) of the final quantities of the completed structure.



- c) Contract Plans – The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the procuring entity concerned, incorporating at least the following:
  - i) Site development plan
  - ii) Plans and profile sheet
  - iii) Typical sections and details
  - iv) Drainage details where applicable
  - v) Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed
  - vi) Other details which may be required by the head of the agency
- d) Quantities – All construction quantities shall be computed to a reasonable accuracy of not more than plus or minus ten percent (10%) of the final quantities of the as-built structure.
- e) Special Provisions – Specifications shall be prepared for specific terms of work or methods of construction, measurement and payment under each contract, which are not covered by Standard Construction and Material Specifications adopted by the procuring entity concerned.
- f) Unit Prices – These shall be prepared for each contract using costs based on reasonable approved current prices as projected over the proposed construction period, divided into local and foreign exchange costs, as the case may be.
- g) Approved Budget for the Contract – the ABC to be bid shall be prepared by official(s) duly designated by the Head of the Procuring Entity concerned or by his duly authorized official. It shall be approved by the Head of the Procuring Entity or his duly designated official.

Since the contracts are fixed price contracts, the 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 issued by the Development Budget Coordination Committee (DBCC). It shall also show the local and foreign currency requirements, as the case may be.

The ABC to be bid shall specify for each major work item, such as earthwork, roadwork, and massive concreting, the components for equipment rentals, fuel, labor, materials and overhead, including the cost of the approved construction safety and health program and warranty premium.

- h) Bidding Documents – These shall be prepared as provided for in the IRR.
- i) Program of Work – Before prosecuting any project, the necessary program of work shall be prepared and submitted for approval. In no case shall construction funds be remitted to field offices or construction work on a project be started before the program of work is approved, in accordance with existing laws.

No program of work for any project shall be approved without detailed engineering.

The program of work shall include, among other things, estimates of the work, items, quantities and costs and a PERT/CPM network of the project activities. The program of work shall cover at least a usable portion of the project and no construction shall be started for portions of the project that are less than usable, except projects requiring stage construction, in which case continuity of construction up to the completion of a usable portion must be assured.

- j) Contract Time or Duration – In the preparation of the Bidding Documents, the agency shall make an estimate of the actual number of working days required to complete the project through PERT/CPM analysis of the project activities and corrected for holidays and weekends. Likewise, the agency shall make an estimate of the number of rainy/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 (PAGASA), 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/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 his 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/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) Warranty Period – Likewise, the Bidding Documents shall specify the type of project and the corresponding warranty period required by the procuring entity.
  - l) Value Engineering – For major projects as specified by the agency, value engineering shall be conducted according to accepted standards and practices. Value engineering shall analyze alternative schemes of achieving the projects 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 – These shall be prepared based on parcellary surveys and socio-economic surveys of households affected by the project.
4. As a requirement for the procurement of infrastructure works, the concerned consultants/government officials who prepared and approved the detailed engineering shall issue a certification that the detailed engineering surveys and designs have been conducted according to the prescribed agency standards and specifications in conformance with the provisions of this Annex, and that the detailed engineering outputs are adequate for the procurement at hand. The approval by the authorized government officials of detailed engineering surveys and designs undertaken by consultants neither diminishes the responsibility of the latter for the technical integrity of the surveys and designs nor transfer any part of that responsibility to the approving officials.
5. The above rules shall apply to the implementation of infrastructure projects under normal or ordinary conditions. However, under emergency or extraordinary cases

involving major calamities and disasters as declared by the President where time is of the essence to save lives and properties and restore damaged infrastructures, detailed engineering works shall be conducted in accordance with the guidelines and procedures, as prescribed by the head of the appropriate infrastructure agency and approved by the Infrastructure Committee of the National Economic and Development Authority Board, to enable quick response to said cases, while maintaining the safety and integrity of the structure.

**ANNEX "B"**  
**GENERAL PRINCIPLES ON CONSULTING SERVICES**

1. Definition

A natural or juridical person, qualified by appropriate education, training and relevant experience to render any or all of the types and fields of consulting services as defined in this IRR, shall be considered as a "Consultant," subject to the requirements provided in this IRR for eligibility check and post-qualification.

2. The Need for Consultants

The services of consultants may be engaged by any procuring entity for government projects or related activities of such magnitude and/or scope as would require a level of expertise or attention beyond the optimum in-house capability of the procuring entity concerned and consistent with the Government's policy not to compete with the private sector.

3. Independence of Consultants

To ensure the consultant's professional independence, integrity, and objectivity, consultants, as well as key staff working for the consulting entity, who may be directly or indirectly associated with non-consulting firms that may have an interest in or bias towards the project concerned, shall be selected only if they agree to limit their role to that of consultants and will disqualify themselves and their affiliates for bidding for products and services of the same government project.

4. Hiring of Consultants

4.1. Consultants shall be hired on the basis of their proven expertise, experience and capability. Under certain conditions provided herein, cost may be included as a factor in the selection of consultants.

4.2. In order to manifest trust and confidence in and promote the development of Filipino consultancy, Filipino consultants shall be hired whenever the services required for the project are within the expertise and capability of Filipino consultants: *Provided, however,* That in the event Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, as determined by the Head of the Procuring Entity, foreign consultants may be hired.

4.3. In the hiring of foreign consultants, all pertinent laws and regulations of the Philippines shall be followed.

4.4. Technology and knowledge transfer to the procuring entity shall be required in the provision of consulting services, where applicable.

5. Organization of Consultants

5.1. The umbrella organization of consultants recognized by the Government shall be composed of the various organizations of consultants that may be engaged by the Government under this IRR and shall accredit its members on the types of

services and fields of professions where the members are technically and financially qualified to offer their services. The umbrella organization shall prepare and certify a list of fields and expertise in such fields available with the names of the accredited local consultants which shall be updated annually or as often as necessary and disseminate such list to concerned agencies of the Government. It shall likewise regulate its members for the development of the industry. The Government may consult and deal with this umbrella organization on matters relating to the industry. The GPPB shall be the appropriate government body that shall recognize the consultants' umbrella organization.

- 5.2. The umbrella organization may submit its files of accredited consultants to the BAC of the procuring entity in accordance with the form prescribed by the BAC which can serve as registration of the consultants under the next succeeding Subsection: *Provided, however*, That each such accredited consultant shall comply with the eligibility requirements provided in this IRR. Such qualification statements, together with the list of accredited consultants prepared in accordance with the immediately preceding section, shall guide the BAC in determining the fields where Filipino consultants are already qualified and capable and where foreign consultants may not be required.

6. Types of Consulting Services

The services to be provided by consultants can be divided into six (6) broad categories, namely: (a) advisory and review services; (b) pre-investment or feasibility studies; (c) design; (d) construction supervision; (e) management and related services; and (f) other technical services or special studies.

- 6.1. Advisory and Review Services. These services include advice on particular projects or problems. These will include advice on and review of, among others, planning, design and other professional services, as well as management, production, inspection, testing and quality control. They also include such services as appearances before commissions, boards or other judicial bodies to give evidence or otherwise submit professional opinions.
- 6.2. Pre-Investment or Feasibility Studies. These are the studies which normally precede decisions to go (or not to go) forward with specific projects. These studies may have as their objectives:
- a) To establish investment priorities and sector policies - Studies for this objective include, among others, basic resource inventories, such as, river basin surveys, transport sector surveys, and studies of alternative development patterns and of sectors on a regional or nationwide scale.
  - b) To determine the basic features and the feasibility of individual projects - Studies for this objective include, among others, the functional design, project site selection, architectural and space programming and physical layout of specific projects, preliminary design and cost estimates, and the economic, financial and environmental impact analyses required for project evaluation.
  - c) To define and propose changes in governmental policies, operations and institutions necessary for the successful implementation or functioning of investment projects - Studies for this objective include, among others,

analysis of project related organizations, administrative problems, planning machinery, regulatory and marketing policies, accounting, and management systems, manpower resources and training requirements.

- 6.3. Design. This type of services normally consists of three (3) phases:
- a) Pre-Design Phase – establishes the general size and scope of the project and its location on the site. The services include but are not limited to reconnaissance, topographical and other engineering and land surveys, soils investigations, preparation of preliminary architectural/engineering designs, layouts, outline specifications, preliminary cost estimates and specific recommendations prior to actual design;
  - b) Basic Design Phase – includes the preparation of detailed plans, designs, working drawings, specifications, detailed cost estimates and tender documents required for invitations of bids for construction works and equipment; and
  - c) Support Services During Construction – includes assistance and advice in securing bids, tabulation and analysis of bid results, and making recommendations on the award of construction contracts, and in preparing formal contract documents; preparation of supplementary drawings required to suit actual field conditions; checking detailed construction and as-built drawings, shop and erection drawings submitted by contractors; making periodic visits to check on the general progress of work and quality of materials and workmanship; observing performance tests and start-up and making report thereon; and making a final inspection and reporting of completed project.
- 6.4. Construction Supervision. These include the following:
- a) Inspection and expediting of the work;
  - b) Verification and checking of quantities and qualities of work accomplished by the contractor as against the approved plans, specifications, and programs of work;
  - c) Issuance of instruction for corrections of defects on the work;
  - d) Verification and recommendation for approval of statements of work accomplished and certificate of project completed by the contractor;
  - e) Review and recommendation for approval of progress and final billings of the contractor; and
  - b) Provision of record or as-built drawings of the completed projects.
- The above do not mean direction, superintendence, or management of construction.
- 6.5. Management and Related Services. These may include the following:
- a) Sector policy and regional development studies;

- b) Planning, feasibility, market, economic, financial, technical, operations and sociological studies;
- c) Project management, including procurement advisory services, impact monitoring, and post-evaluation services;
- d) Production management, inventory control, and productivity improvement;
- e) Marketing management and systems;
- f) Information and communications technology services, including but not limited to, information systems design and development, and network design and installation;
- g) Institutional strengthening, organization development, manpower requirements, training and technology transfer;
- h) General management consultancy; and
- i) Other related services.

6.6. Other Technical Services or Special Studies. The Technical Services may include the following:

- a) Institution building, including organization and management studies, and business process re-engineering and development;
- b) Design and execution of training programs at different levels;
- c) Provision of staff to carry out certain functions and to train their replacements; and
- d) Tasks relating to economic and financial studies such as those of tariff structures.

The Special Studies may include the following and other studies not covered under any of the services and studies described above:

- a) Soils investigation;
- b) Studies, tests and process determination performed to establish design criteria for water facilities;
- c) Detailed mill, shop, and/or laboratory inspection of materials and equipment;
- d) Land surveys, establishment of boundaries and monuments, and related office computations and drafting;
- e) Parcellary surveys;
- f) Engineering surveys (for design and construction) and photogrammetry;

- g) Assistance in litigation arising from the development or construction of projects and in hearings before various approving and regulatory agencies;
- h) Investigation involving detailed consideration of the operation, maintenance, and overhead expenses; and the preparation of rate schedules; earning and expense statements, feasibility studies, appraisals, evaluations, and material audits or inventories required for certification of force account construction performed by the agencies;
- i) Preparation of environmental statements and assistance to the agencies in public hearings;
- j) Preparation of operating instructions and manuals for facilities and training of personnel and assistance in initial operation of facilities;
- k) Designs to meet unique and/or above normal requirements brought about by severe earthquakes, tornadoes, or blasts, or satisfy unique or abnormal tolerances, safety requirements, etc.;
- l) Site and physical planning;
- m) Environmental and other aspects of planning;
- n) Housing;
- o) Interior design;
- p) Studies on preservation and restoration of historical, cultural, and artworks;
- q) Landscaping;
- r) Construction management; and
- s) Defense systems design, including self-reliance defense program.

Technology and knowledge transfer should be considered an important objective in the provision of consulting services.



**ANNEX "C"  
PERIOD OF ACTION ON PROCUREMENT ACTIVITIES**

<b>LATEST ALLOWABLE TIME</b>						
Stage	Activities	Deadline	Goods	Infrastructure Projects		Consulting Services
				For ABC 50M and below	For ABC above 50M	
1	Advertisement/ Posting of Invitation to Bid/Request for Expression of Interest		7 cd	7 cd	7 cd	7 cd
2	Eligibility Check (and Short Listing, in case of Consulting Services)		Refer to Stage 5	Refer to Stage 5	Refer to Stage 5	20 cd
3	Issuance and availability of Bidding Documents	From 1 <sup>st</sup> day of Stage 1 until Stage 5				
4	Pre-bid Conference	12 cd before Stage 5	1 cd	1 cd	1 cd	1 cd
	Request for clarification	10 cd before Stage 5				
	Supplemental/Bid Bulletin	7 cd before Stage 5				
5	Submission and receipt of Bids	45 cd from last day of Stage 1 for Goods. 50/65 cd from last day of Stage 1 for Infrastructure Projects. 75 cd from last day of Stage 1 for Consulting Services.	1 cd (includes opening of bids and eligibility check)	1 cd (includes opening of bids and eligibility check)	1 cd (includes opening of bids and eligibility check)	1 cd (includes opening of bids)
	Submission of additional requirements	3 cd after Stage 5				
6	Bid Evaluation		7 cd	5 cd	7 cd	21 cd + 2 cd for approval of ranking
7	Notification for negotiation		n/a	n/a	n/a	3 cd
8	Negotiation		n/a	n/a	n/a	10 cd
9	Post-qualification		30 cd	30 cd	30 cd	30 cd
10	Approval of resolution/Issuance of Notice of Award		7 cd	4 cd	7 cd	7 cd
11	Contract preparation and signing		10 cd	10 cd	10 cd	10 cd
12	Approval of contract by higher authority		15 cd	5 cd	15 cd	15 cd
13	Issuance of Notice		3 cd	2 cd	3 cd	3 cd

**Revised Implementing Rules and Regulations Annex "C"**

	to Proceed				
<b>Total Time</b>			<b>124 cd</b>	<b>113 cd</b>	<b>144 cd</b>
					<b>170 cd</b>

<b>EARLIEST POSSIBLE TIME</b>					
Stage	Activities	Deadline	Goods	Infrastructure Projects	Consulting Services
1	Advertisement/ Posting of Invitation to Bid/Request for Expression of Interest		7 cd	7 cd	7 cd
2	Eligibility Check (and Short Listing, in case of Consulting Services)		Refer to Stage 5	Refer to Stage 5	3 cd (1 cd for eligibility, 1 cd for short listing, and 1 cd for notice)
3	Issuance and availability of Bidding Documents	From 1 <sup>st</sup> day of Stage 1 until Stage 5			
4	Pre-bid Conference	12 cd before Stage 5	1 cd	1 cd	1 cd
	Request for clarification	10 cd before Stage 5			
	Supplemental/Bid Bulletin	7 cd before Stage 5			
5	Submission and receipt of Bids		1 cd (includes opening of bids and eligibility check)	1 cd (includes opening of bids and eligibility check)	1 cd (includes opening of bids)
	Submission of additional requirements	3 cd after Stage 5			
6	Bid Evaluation		1cd	1cd	1 cd + 1 cd for approval of ranking
7	Notification for negotiation		n/a	n/a	1 cd
8	Negotiation		n/a	n/a	1 cd
9	Post-qualification		1 cd	1 cd	1 cd
10	Approval of resolution/Issuance of Notice of Award		2 cd (1 cd for BAC resolution and 1 cd for NOA)	2 cd (1 cd for BAC resolution and 1 cd for NOA)	2 cd (1 cd for BAC resolution and 1 cd for NOA)
11	Contract preparation and signing		2 cd (1 cd for contract preparation and 1 cd for contract signing)	2 cd (1 cd for contract preparation and 1 cd for contract signing)	2 cd (1 cd for contract preparation and 1 cd for contract signing)
12	Approval of contract by higher authority		1 cd	1 cd	1 cd
13	Issuance of Notice to Proceed		1 cd	1 cd	1 cd
<b>Total Time</b>			<b>28 cd</b>	<b>28 cd</b>	<b>34 cd</b>

**ANNEX "D"**  
**CONTRACT IMPLEMENTATION GUIDELINES FOR THE PROCUREMENT OF  
GOODS, SUPPLIES AND MATERIALS**

1. Amendment to Order
  - 1.1. Subject to the conditions set forth below, amendments to order may be issued at any time by the procuring entity concerned. If any such order increases or decreases the cost of, or the time required for executing any part of the work under the original contract, an equitable adjustment in contract price and/or delivery schedule shall be mutually agreed upon between the parties concerned, and the contract modified in writing.
  - 1.2. An amendment to order may be issued only in emergency cases or during fortuitous events requiring necessary adjustments within the general scope of the contract in any one or more of the following is required in order to fully meet the requirements of the project:
    - a) drawings, design or specifications, if the goods to be furnished are to be specifically manufactured for the Government in accordance therewith;
    - b) method of shipment or packing; or
    - c) place of delivery.
  - 1.3. An amendment to order may also be issued by the concerned procuring entity where there are additional items needed and necessary for the protection of the goods, which were not included in the original contract. Payments for these additional items shall be based on the unit prices in the original contract for items of goods similar to those in the original contract. If the contract does not contain any rate applicable to the additional items, then suitable prices shall mutually be agreed upon between the parties. Request for payment by the supplier for any additional items shall be accompanied by a statement with the approved supporting forms, giving a detailed accounting and record of amount for which it claims payment. The contract time shall likewise be extended if the acquisition of such additional items so warrants.
  - 1.4. Under no circumstances shall a supplier proceed to commence work under any amendment to order unless the same has been approved by the Head of the Procuring Entity concerned or his duly authorized representative. As an exception to the rule, the Regional Director/Head concerned may authorize the immediate start of work under any amendment to order in the event of emergencies to avoid detriment to public service, or damage to life and/or property or when time is of the essence: Provided, however, That the same is valid only on items up to the point where the cumulative increase in the contract cost which has not yet been duly fully approved by the Head of the Procuring Entity concerned or his duly authorized representative does not exceed five percent (5%) of the original contract cost: Provided, further, That the corresponding amendment to order shall immediately be prepared and submitted for approval to the Head of the Procuring Entity concerned or his duly authorized representative. For an amendment to order involving a cumulative amount exceeding five percent (5%) of the original contact price, no work thereon shall be commenced unless the same has been approved by the Head of Procuring

Entity concerned or his duly authorized representative: *Provided*, That, the said cumulative amount does not exceed ten percent (10%) of the original contract price.

2. Suspension of Work

- 2.1. The procuring entity may suspend the work wholly or partly by written order for a certain period of time, as it deems necessary due to force majeure or any fortuitous events as defined in the contract. The supplier or consultant shall take all reasonable steps to minimize the costs allocable to the work covered by such order during work stoppage.
- 2.2. Before the suspension order expires, the procuring entity concerned shall either lift such order or terminate the work covered by the same. If the suspension order is lifted, or if the period of the order expires, the supplier or consultant shall have the right to resume work. Appropriate adjustments shall be made in the delivery or contract schedule, or contract price, or both, and the contract shall be modified accordingly.

3. Liquidated Damages

- 3.1. When the supplier fails to satisfactorily deliver goods under the contract within the specified delivery schedule, inclusive of duly granted time extensions, if any, the supplier shall be liable for damages for the delay and shall pay the procuring entity liquidated damages, not by way of penalty, an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods scheduled for delivery for every day of delay until such goods are finally delivered and accepted by the procuring entity concerned.
- 3.2. The procuring entity need not prove that it has incurred actual damages to be entitled to liquidated damages. Such amount shall be deducted from any money due or which may become due to the supplier, or collected from any securities or warranties posted by the supplier, whichever is convenient to the procuring entity concerned. In no case shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the procuring entity concerned shall automatically rescind the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

4. Advance Payment

- 4.1. In accordance with Presidential Decree 1445, advance payment shall be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the contract amount, unless otherwise directed by the President; *Provided, however*, that for cases mentioned under 4.3, 4.4, and 4.5 of these guidelines, no prior approval by the President shall be necessary.
- 4.2. All progress payments shall first be charged against the advance payment until the latter has been fully exhausted, unless otherwise approved by the President.
- 4.3. A single advance payment not to exceed fifty percent (50%) of the contract amount shall be allowed for contracts entered into by a procuring entity for the following services where requirement of down payment is a standard industry practice:
  - a) Hotel and restaurant services;

- b) Use of conference/seminar and exhibit areas; and
  - c) Lease of office space.
- 4.4. Advance payment not to exceed fifteen percent (15%) of the contract amount, unless otherwise directed by the President, shall also be allowed for procurement of goods required to address contingencies arising from natural or man-made calamities in areas where a "State of Calamity" has been declared by appropriate authorities.
- 4.5. For goods supplied from abroad ten percent (10%) of the Contract Price shall be paid within 60 days from signing of the contract and upon submission of a claim and a bank guarantee issued by a licensed bank for the equivalent amount valid until the goods are delivered and in the form provided in the Bidding Documents.
5. Other Rules and Guidelines

The rules and regulations for the other aspects of contract implementation shall be included in the manuals to be issued by the GPPB, such as, but not limited to, the following:

- a) Incidental Services;
- b) Spare Parts;
- c) Delays in the Supplier's Performance;
- d) Purchaser's Responsibilities;
- e) Prices;
- f) Payment;
- g) Taxes and Duties;
- h) Subcontracts;
- i) Standards;
- j) Packing;
- k) Insurance;
- l) Transportation;
- m) Inspections and Tests;
- n) Patent Rights;
- o) Limitations of Liability;
- p) Termination for Default;
- q) Termination for Insolvency;
- r) Termination for Convenience; and
- s) Assignment.

**ANNEX "E"**  
**CONTRACT IMPLEMENTATION GUIDELINES FOR THE PROCUREMENT OF  
INFRASTRUCTURE PROJECTS**

1. VARIATION ORDERS - CHANGE ORDER/EXTRA WORK ORDER
  - 1.1. Variation Orders may be issued by the procuring entity to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the Government after award of the contract, provided that the cumulative amount of the positive or additive Variation Order does not exceed ten percent (10%) of the original contract price. The addition/deletion of works under Variation Orders should be within the general scope of the project as bid and awarded. The scope of works shall not be reduced so as to accommodate a positive Variation Order. A Variation Order may either be in the form of either a change order or extra work order.
  - 1.2. A Change Order may be issued by the implementing official to cover any increase/decrease in quantities of original work items in the contract.
  - 1.3. An Extra Work Order may be issued by the implementing official to cover the introduction of new work necessary for the completion, improvement or protection of the project which was not included as items of work in the original contract, such as, where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.
  - 1.4. Any cumulative positive Variation Order beyond ten percent (10%) of the original contract price shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the Head of the Procuring Entity may authorize a positive variation order that will make the cumulative value of the positive Variation Orders go beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price, subject to the guidelines to be determined by the GPPB: Provided, however, That appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).
  - 1.5. In claiming for any Variation Order, the contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within twenty-eight (28) calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim. The preparation and submission of Variation Orders are as follows:

- a) If the procuring entity's representative/Project Engineer believes that a Change Order or Extra Work Order should be issued, he shall prepare the proposed Order accompanied with the notices submitted by the contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order, and shall submit the same to the Head of the Procuring Entity for approval.
- b) The Head of the Procuring Entity or his duly authorized representative, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the technical staff to conduct an on-the-spot investigation to verify the need for the work to be prosecuted. A report of such verification shall be submitted directly to the Head of the Procuring Entity or his duly authorized representative.
- c) The Head of the Procuring Entity or his duly authorized representative, after being satisfied that such Change Order or Extra Work Order is justified and necessary, shall review the estimated quantities and prices and forward the proposal with the supporting documentation to the Head of Procuring Entity for consideration.
- d) If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office of the procuring entity empowered to review and evaluate Change Orders or Extra Work Orders recommends approval thereof, the Head of the Procuring Entity or his duly authorized representative, believing the Change Order or Extra Work Order to be in order, shall approve the same.
- e) The timeframe for the processing of Variation Orders from the preparation up to the approval by the procuring entity concerned shall not exceed thirty (30) calendar days.

## 2. ADDITIONAL/EXTRA WORK COSTING

- 2.1. For Variation Orders, the contractor shall be paid for additional work items whose unit prices shall be derived based on the following:
  - a. For additional/extra works duly covered by Change Orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items original contract shall be used.
  - b. For additional/extra works duly covered by Extra Work Orders involving new work items that are not in the original contract, the unit prices of the new work items shall be based on the direct unit costs used in the original contract (*e.g.*, unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both the Government and the contractor, and provided further that the direct unit costs of new components shall be based on the contractor's estimate as validated by the procuring entity concerned via

documented canvass in accordance with existing rules and regulations. The direct cost of the new work item shall then be combined with the mark-up factor (*i.e.*, taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

- 2.2. Request for payment by the contractor for any extra work shall be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. Said request for payment shall be included with the contractor's statement for progress payment.

3. CONDITIONS UNDER WHICH CONTRACTOR IS TO START WORK UNDER VARIATION ORDERS AND RECEIVE PAYMENTS

- 3.1. Under no circumstances shall a contractor proceed to commence work under any Change Order or Extra Work Order unless it has been approved by the Head of the Procuring Entity or his duly authorized representative. Exceptions to the preceding rule are the following:

- a. The Head of the Procuring Entity or his duly authorized representative may, subject to the availability of funds, authorize the immediate start of work under any Change or Extra Work Order under any or all of the following conditions:

i) In the event of an emergency where the prosecution of the work is urgent to avoid detriment to public service, or damage to life and/or property; and/or

ii) When time is of the essence;

*Provided, however,* That such approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the adjusted original contract price whichever is less;

*Provided, further,* That immediately after the start of work, the corresponding Change Order or Extra Work Order shall be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after approval of the same by the Head of the Procuring Entity or his duly authorized representative.

- b. For a Change Order or Extra Work Order involving a cumulative amount exceeding five percent (5%) of the original contract price, no work thereon may be commenced unless said Change Order or Extra Work Order has been approved by the Head of the Procuring Entity or his duly authorized representative.

4. ADVANCE PAYMENT

- 4.1. The procuring entity shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.



- 4.2. The advance payment shall be made only upon the submission to and acceptance by the procuring entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the procuring entity.
- 4.3. The advance payment shall be repaid by the contractor by deducting fifteen percent (15%) from his periodic progress payments a percentage equal to the percentage of the total contract price used for the advance payment.
- 4.4. The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.

5. PROGRESS PAYMENT

- 5.1. Once a month, the contractor may submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed.
- 5.2. The procuring entity's representative/project engineer shall check the contractor's monthly SWA and certify the amount to be paid to the contractor as progress payment. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.
- 5.3. The procuring entity shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:
  - a) Cumulative value of the work previously certified and paid for.
  - b) Portion of the advance payment to be recouped for the month.
  - c) Retention money in accordance with the condition of contract.
  - d) Amount to cover third party liabilities.
  - e) Amount to cover uncorrected discovered defects in the works.

6. RETENTION MONEY

- 6.1. Progress payments are subject to retention of ten percent (10%) referred to as the "retention money." Such retention shall be based on the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by the procuring entity, are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.
- 6.2. The total "retention money" shall be due for release upon final acceptance of the works. The contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit of from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to Government,

provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the Government shall be valid for a duration to be determined by the concerned implementing office/agency or procuring entity and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

**7. CONTRACT COMPLETION**

Once the project reaches an accomplishment of ninety five (95%) of the total contract amount, the procuring entity may create an inspectorate team to make preliminary inspection and submit a punch-list to the contractor in preparation for the final turnover of the project. Said punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not preclude the procuring entity's claim for liquidated damages.

**8. LIQUIDATED DAMAGES**

- 8.1. Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the procuring entity for liquidated damages, and not by way of penalty, an amount, as provided in the conditions of contract, equal to at least one tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for every day of delay.
- 8.2. A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned procuring entity.
- 8.3. To be entitled to such liquidated damages, the procuring entity does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or collect such liquidated damages from the retention money or other securities posted by the contractor whichever is convenient to the procuring entity.
- 8.4. In case that the delay in the completion of the work exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the contractor, the procuring entity concerned may rescind the contract, forfeit the contractor's performance security and takeover the prosecution of the project or award the same to a qualified contractor through negotiated contract.
- 8.5. In no case however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the contract shall automatically be taken over by the procuring entity concerned or award the same to a qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause and impose other appropriate sanctions.

- 8.6. For terminated contracts where negotiation shall be undertaken, the procedures prescribed in the IRR shall be adopted.

9. SUSPENSION OF WORK

- 9.1. The procuring entity shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to force majeure or any fortuitous events or for failure on the part of the contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the procuring entity or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The contractor shall immediately comply with such order to suspend the work wholly or partly.
- 9.2. The contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:
- a. There exist right-of-way problems which prohibit the contractor from performing work in accordance with the approved construction schedule.
  - b. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.
  - c. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.
  - d. There is failure on the part of the procuring entity to deliver government-furnished materials and equipment as stipulated in the contract.
  - e. Delay in the payment of contractor's claim for progress billing beyond forty-five (45) calendar days from the time the contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.
- 9.3. In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the contractor, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

10. EXTENSION OF CONTRACT TIME

- 10.1. Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, the procuring entity shall determine the amount of such extension; provided that the procuring entity is not bound to take into account any claim for an extension of time unless the contractor has, prior to the expiration of the contract

time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the procuring entity notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the contractor of any claim. Upon receipt of full and detailed particulars, the procuring entity shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in the procuring entity's opinion, the findings of facts justify an extension.

- 10.2. No extension of contract time shall be granted the contractor due to (a) ordinary unfavorable weather conditions and (b) inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials.
- 10.3. Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.
- 10.4. No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.
- 10.5. Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, in excess of the number of rainy/unworkable days pre-determined by the government in relation to the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection, and/or for equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the procuring entity, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralyzation of construction activities, and other meritorious causes as determined by the Government's authorized Engineer and approved by the procuring entity. Shortage of construction materials, general labor strikes, and peace and order problems that disrupt construction operations through no fault of the contractor may be considered as additional grounds for extension of contract time provided they are publicly felt and certified by appropriate government agencies such as DTI, DOLE, DILG, and DND, among others. The written consent of bondsmen must be attached to any request of the contractor for extension of contract time and submitted to the procuring entity for consideration and the validity of the performance security shall be correspondingly extended.

## 11. ACCREDITATION OF TESTING LABORATORIES

- 11.1. To help ensure the quality of materials being used in infrastructure projects, the Bureau of Research and Standards (BRS) of the DPWH, Department of Science and Technology (DOST), or Department of Trade and Industry (DTI) shall accredit, in accordance with industry guidelines, the testing laboratories whose services are engaged or to be engaged in infrastructure projects. All government infrastructure project owners must accept results of material test(s) coming only from DOST/BRS accredited laboratories.

12. EVALUATION OF CONTRACTORS PERFORMANCE

12.1. *Subject and Scope*

All Procuring Entities implementing government infrastructure projects are mandated to evaluate the performance of their contractors using the NEDA-Approved Constructors Performance Evaluation System (CPES) Guidelines for the type of project being implemented. These guidelines cover all infrastructure projects awarded by the government regardless of contract amount and funding source. CPES evaluation shall be done during construction and upon completion of each government project. To ensure continuous implementation of CPES, all Procuring Entities concerned are required to include in their Projects' Engineering and Administrative Overhead Cost the budget for the implementation of CPES pursuant to NEDA Board Resolution No. 18 (s. 2002).

12.2. *Evaluation Guidelines*

For project types which do not have specific CPES Guidelines, the Procuring Entities concerned may formulate and adopt their own implementing Guidelines specific to their needs provided the NEDA-INFRACOM poses no objections to their adoption, and provided further that said Guidelines are made known to all prospective bidders.

12.3. *Implementation Mechanism for CPES*

All Procuring Entities implementing infrastructure projects are required to establish CPES Implementing Units (IUs) in their respective offices/agencies/corporations. The CPES Implementing Units shall be responsible for the implementation of the CPES Implementing guidelines, including but not limited to, the supervision of Constructors Performance Evaluators (CPEs) to be accredited by the Construction Industry Authority of the Philippines (CIAP). The procuring entity's CPES IU shall be responsible for the following: a) pre-screening of applications of CPEs, b) funding for CPEs accreditation training and seminars; and c) yearly evaluation of CPEs.

12.4. *Submission and Dissemination of Evaluation Results*

All Procuring Entities implementing CPES shall submit the results of their performance evaluation to the CIAP on a monthly basis or as often as necessary. The procuring entity's CPES-IU shall likewise develop and maintain a databank and disseminate the CPES reports to the concerned units/departments within the procuring entity and to other interested users.

12.5. *Utilization of Evaluation Results*

The CIAP shall consolidate all of the CPES evaluation results received and shall disseminate the same to all Procuring Entities concerned. The CPES rating and other information shall be used by the concerned government agencies for the following purposes: (a) pre qualification/eligibility screening of constructors; (b) awarding of contracts; (c) project monitoring and control; (d) issuance of Certificate of Completion; (e) policy formulation/review; (f) industry planning; (g) granting of Incentives/Awards, and, in adopting measure to further improve performance of contractors in the prosecution of government projects.

13. OTHER RULES AND GUIDELINES

The rules and regulations for the other aspects of contract implementation shall be included in the manuals to be issued by the GPPB, such as, but not limited to, the following:

- a) Sub-contracting;
- b) Interference with Traffic and Adjoining Properties;
- c) Clearance of Project Site of Obstruction;
- d) Inspection and Testing;
- e) Daywork;
- f) Measurement of Works; and
- g) Other Implementation Aspects.

**ANNEX "F"**  
**CONTRACT IMPLEMENTATION GUIDELINES FOR THE PROCUREMENT OF  
CONSULTING SERVICES**

1. Advance Payment for Mobilization

The Government, as it considers fair and reasonable, may allow advance payment to the Consultant in the amount which shall not exceed fifteen percent (15%) of the contract amount to cover the cost of mobilization, subject to the posting of an irrevocable standby letter of credit issued by an entity acceptable to the agency and of an amount equal to the advance payment. The advance payment shall be repaid by the Consultant by deducting from his progress payments such sum as agreed upon during the contract negotiations until fully liquidated within the duration of the contract.

2. Cost of Consulting Services

All Consultancy contracts shall be fixed price contracts. Any extension of contract time shall not involve any additional cost.

3. Other Rules and Guidelines

The rules and regulations for the other aspects of contract implementation shall be included in the manuals to be issued by the GPPB.

**ANNEX "G"**  
**GUIDELINES FOR THE PROCUREMENT AND IMPLEMENTATION OF  
CONTRACTS FOR DESIGN AND BUILD INFRASTRUCTURE PROJECTS**

**1. SCOPE AND APPLICATION**

These guidelines shall govern the procurement and implementation of contracts for design and build infrastructure projects and shall supplement applicable provisions of Republic Act No. 9184 (RA 9184) and its Revised Implementing Rules and Regulations (IRR) in particular Section 17.6 and Annex E.

**2. PURPOSE**

These guidelines are formulated to determine the conditions for the use of the design and build scheme for infrastructure projects and the procedures for the implementation thereof.

**3. GUIDING PRINCIPLES**

The procuring entity, prior to resorting to the design and build scheme, should consider the following advantages and disadvantages of said scheme:

**3.1. Advantages:**

- a) Since both design and construction are in the hands of the contractor, there is a single point of responsibility for quality, cost, and schedule adherence, including the risks related to design. This precludes buck-passing and finger-pointing between the designer and the builder.
- b) Because design and construction periods can overlap, the total design and construction time, as well as the final project cost, will be significantly reduced.
- c) The procuring entity is assured of quality considering that the larger responsibility implicit in the design-build scheme serves as motivation for high quality of the facility to be provided. Once the requirements of the procuring entity are defined in performance terms, the designer-builder is responsible for producing the results accordingly. The designer-builder warrants to the procuring entity that the design documents are complete and free from error.
- d) The procuring entity does not need to spend much time and money in seeing to it that the work is done by the contractor exactly as indicated by the design documents prepared by the designer, and in coordinating and arbitrating between separate design and construction contracts.



3.2. **Disadvantages:**

- a) Procuring Entities should, however, take into account that in utilizing the design and build scheme for a particular project, contractors are given too much discretion in determining the project cost and there is difficulty in predicting its final cost until the actual commencement of construction. This, however, can be addressed by prescribing that the bid/contract price should not exceed the Approved Budget for Contract (ABC) of the procuring entity and that the contract price is a fixed lump sum amount.
- b) Considering that the extent of the integration of design and construction of the project is exceptionally dependent on the contractor, there may be cases when the end-result may not be exactly in accordance with what the procuring entity has required. These cases can be avoided if the procuring adequately defines the output or performance specifications and parameters.

**4. DEFINITION OF TERMS**

- a. **Approved Budget for the Contract (ABC).** This shall be a lump sum amount that shall cover the cost of design and construction works (*at the option of the procuring entity*) based on the conceptual design and performance specifications and in accordance with applicable provisions of the law or agency guidelines. The ABC shall be calculated based on either the approximate quantities of work of the conceptual design, from standardized designs or from cost records of previous projects of similar kind.
- b. **Bidding Documents for Design and Build Scheme.** These shall basically be similar to the Bidding Documents for infrastructure projects and shall also include the performance specifications and parameters to be followed by the design and build contractors and the method for allocation of risks for the design and build contract, among others.
- c. **Conceptual Design.** This shall describe the general idea of the procuring entity with regard to the completed facility and shall identify the scope or physical components and structures, specific outputs and requirements of the structures and proposed methods of construction, where necessary.
- d. **Design and Build Projects.** This refers to infrastructure projects where the procuring entity awards a single contract for the architectural/engineering design and construction to a single firm, partnership, corporation, joint venture or consortium.
- e. **Performance Specifications and Parameters.** The procuring entity shall define the required performance specifications and criteria and its means of measurement based on the operating outputs and in accordance with appropriate design and construction standards, legal and technical obligations and any other relevant government commitments as required by existing laws and regulations. It shall not be drawn up to favor a particular solution, design and construction method.

- f. **Preliminary Investigations.** These shall include, among others, information on soil, geotechnical, hydrologic, hydraulic, seismic, traffic, and environmental conditions that shall be used to define project design criteria, to set the basis for any changed conditions and establish preliminary project cost estimates.
- g. **Preliminary Survey and Mapping.** These shall determine boundaries and provide stationing along control lines to establish feature and design criteria location, and identify existing and future right-of-way limits and construction easements associated with the procuring entity's conceptual design.
- h. **Project Description.** This shall define the objectives, purpose, limitations or constraints, as well as the allocation of risks between the procuring entity and the winning bidder.
- i. **Utility Locations.** The procuring entity shall provide information on existing utilities in and around the project's area.

## **5. CONDITIONS FOR THE USE OF THE DESIGN AND BUILD SCHEME**

- 5.1. The Design and Build scheme shall be applied under any of the following cases:
  - a. For flagship, priority and fast track projects that need to be completed on a tight completion schedule, as included in the Medium Term Public Investment Program (MTPIP) for national projects and in the Regional Development Investment Plan (RDIP) for regional and provincial projects;
  - b. For infrastructure projects requiring advanced engineering or construction technologies or whose intellectual property rights belong to private companies;
  - c. For infrastructure projects where design, equipment, plant and construction can be provided exclusively by a company or where manufacturer's know-how is important in the construction of such facility; or
  - d. For small projects where there are previously approved drawings or standardized designs and an innovation in design and construction methods under the design and build scheme will result in lower costs and higher quality projects. Examples of these are school buildings, rural health units, among others.
- 5.2. All design and build projects shall be included in the Annual Procurement Plan (APP) of the procuring entity concerned and shall be subject to prior approval by the Head of the Procuring Entity or his/her duly authorized representative.

**6. CREATION OF DESIGN and BUILD COMMITTEE**

The procuring entity may create a Design and Build Committee (DBC) composed of highly technical personnel experienced in the field of architecture, engineering and construction in the particular type of project to be bid. The DBC shall assist the project management office (PMO) in the preparation of the conceptual design and performance specifications and parameters, review of detailed engineering design and supervision of the project. It shall, likewise, assist the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) in the evaluation of technical proposals in accordance with the criteria set in the Bidding Documents.

**7. PRELIMINARY DESIGN AND CONSTRUCTION STUDIES**

No bidding and award of design and build contracts shall be made unless the required preliminary design and construction studies have been sufficiently carried out and duly approved by the Head of the Procuring Entity that shall include, among others, the following:

- i. Project Description
- ii. Conceptual Design
- iii. Performance Specifications and Parameters
- iv. Preliminary Survey and Mapping
- v. Preliminary Investigations
- vi. Utility Locations
- vii. Approved Budget for the Contract
- viii. Proposed Design and Construction Schedule
- ix. Minimum requirements for a Construction Safety and Health Program for the project being considered
- x. Tender/Bidding Documents, including Instructions to Bidders and Conditions of Contract

The above data are for reference only. The procuring entity does not guarantee that these data are fully correct, up to date, and applicable to the project at hand. The contractor is responsible for the accuracy and applicability of all data, including the above, that it will use in its design and build proposal and services.

The acquisition of right-of-way and the conduct of eminent domain proceedings shall still be the responsibility of the procuring entity, which shall include a preliminary budget for this purpose.

**8. DETAILED ENGINEERING REQUIREMENTS**

- 8.1. Upon award of the design and build contract, the winning bidder shall be responsible for the preparation and submission of all necessary detailed engineering investigations, surveys and designs in accordance with the provisions of Annex "A" of this IRR (with the exception of the Bidding Documents and the ABC).
- 8.2. The procuring entity shall ensure that all the necessary schedules with regard to the submission, confirmation and approval of the detailed engineering

design and the details of the construction methods and procedures shall be included in the contract documents.

- 8.3. The procuring entity shall review, order rectification, and approve or disapprove – for implementation only - the submitted plans within these schedules. All instructions for rectification shall be in writing stating the reasons for such rectification. The design and build contractor shall be solely responsible for the integrity of the detailed engineering design and the performance of the structure irrespective of the approval/confirmation by the procuring entity.

## **9. ELIGIBILITY REQUIREMENTS**

- 9.1. The eligibility requirements for Design and Build infrastructure projects shall comply with the applicable provisions of Sections 23-24 of IRR.

- 9.2. A modified set of requirements integrating eligibility documents and criteria for infrastructure projects and consulting services shall be adopted, as follows:

i. Class "A" Documents (Legal, Technical and Financial Documents) and Class "B" Documents

The prospective bidder shall submit all the required Class "A" and Class "B" documents for infrastructure projects and the following:

- a) relevant statements of all on-going, completed, awarded but not yet started design/design and build related contracts, curriculum vitae of key staff, partners or principal officers; and
- b) valid licenses issued by the Professional Regulatory Commission (PRC) for design professionals in accordance with the provisions under Section 24.1(a)(iv)<sup>13</sup> of this IRR.

ii. Eligibility Criteria

- a) The eligibility of design and build contractors shall be based on the legal, technical and financial requirements abovementioned. In the technical requirements, the design and build contractor (as solo or in joint venture/consortia) should be able to comply with the experience requirement under the IRR of R.A. 9184, where one of the parties (in a joint venture/consortia) should have at least one similar project, both in design and construction, with at least 50% of the cost of the ABC.
- b) If the bidder has no experience in design and build projects on its own it may enter into subcontracting, partnerships, or joint

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<sup>13</sup> Amended through GPPB Resolution 06-2009, dated 30 September 2009, published in the Manila Times on 20 October 2009.

venture with design or engineering firms for the design portion of the contract.

- c) The relevant provisions under Section 23.5.2<sup>14</sup> of the IRR of R.A. 9184 on eligibility requirements shall be observed, with the following exceptions:

Joint ventures/consortia among Filipino contractors and consultants or among Filipino contractors and foreign consultants shall be allowed subject to pertinent laws and the relevant provisions of the IRR of R.A. 9184. The joint venture/consortia shall be jointly and severally responsible for the obligations and the civil liabilities arising from the design and build contract: *Provided, however,* That Filipino ownership or interest thereof shall be at least seventy five percent (75%): *Provided further,* That joint ventures/consortia in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by Filipinos and that Filipino ownership or interest shall not be less than twenty-five percent (25%): *Provided, finally,* that when the design services in which the joint venture wishes to engage involve the practice of professions regulated by law, all those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions and where foreign designers are required, the foreign designer must be authorized by the appropriate Philippine Government professional regulatory body to engage in the practice of those professions and allied professions.

## **10. SUBMISSION AND RECEIPT OF BIDS**

10.1. In the submission of bids, the first envelope (Technical Proposal) shall contain all the required documents for infrastructure projects under Section 25.2(b)<sup>15</sup> of the IRR of R.A 9184 and the following additional documents:

- i. Preliminary Conceptual Design Plans in accordance with the degree of details specified by the procuring entity;
- ii. Design and construction methods;
- iii. List of design and construction personnel, to be assigned to the contract to be bid, with their complete qualification and experience data; and
- iv. Value engineering analysis of design and construction method.

10.2. The second envelope (Financial Proposal) shall contain all the required documents for infrastructure projects under Section 25.3<sup>16</sup> of the IRR of R.A 9184 and the following additional documents:

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

- i. Lump sum bid prices, which shall include the detailed engineering cost, in the prescribed Bid Form;
- ii. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid; and
- iii. Cash flow by the quarter and payments schedule.

## **11. BID EVALUATION**

For the detailed evaluation of the design and build proposals a two-step procedure shall be adopted by the BAC, which may be undertaken with the assistance of the DBC.

### **11.1. First-Step Procedure:**

- i. The first step of the evaluation shall involve the review of the preliminary conceptual designs and track record submitted by the contractor as indicated in the Bidding Documents using a non-discretionary "pass/fail" criteria that involve compliance with the following requirements:
  - a. Adherence of preliminary design plans to the required performance specifications and parameters and degree of details;
  - b. Concept of approach and methodology for detailed engineering, design and construction with emphasis on the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of interpretation of project problems, risks, and suggested solutions;
  - c. Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;
- ii. For complex or unique undertakings, such as those involving highly specialized or advanced engineering technology, eligible bidders may be required, at the option of the agency concerned, to make an oral presentation within fifteen (15) calendar days after the deadline for submission of technical proposals.

### **11.2. Second-Step Procedure:**

Only those bids that passed the above criteria shall be subjected to the second step of evaluation.

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<sup>16</sup> *Ibid.*

The BAC shall open the financial proposal of each "passed" bidder and shall evaluate it using non-discretionary criteria - including arithmetical corrections for computational errors - as stated in the Bidding Documents, and thus determine the correct total calculated bid prices. The BAC shall automatically disqualify any total calculated bid price which exceeds the ABC. The total calculated bid prices (not exceeding the ABC) shall be ranked, in ascending order, from lowest to highest. The bid with the lowest total calculated bid price shall be identified as the Lowest Calculated Bid (LCB).

## **12. POST-QUALIFICATION and AWARD OF THE CONTRACT**

- 12.1. The LCB shall be subject to post-qualification in accordance with Section 34, Rule X of this IRR to determine its responsiveness to the eligibility and bid requirements. If after post-qualification the Lowest Calculated Bid is determined to be post-qualified it shall be considered the Lowest Calculated and Responsive Bid (LCRB) and the contract shall be awarded to the bidder. In case of post-disqualification of the LCB, the procedure under Section 34 shall also be followed.
- 12.2. The Head of the Procuring Entity shall approve or disapprove the recommendations of the BAC within a period not exceeding seven (7) calendar days from the determination and declaration by the BAC of the LCRB.
- 12.3. The Head of the Procuring Entity concerned shall award the contract to the said bidder pursuant to the provisions of Section 37, Rule XI of this IRR.

## **13. CONTRACT IMPLEMENTATION**

As a rule, contract implementation guidelines for the procurement of infrastructure projects shall comply with Annex "E" of this IRR. The following provisions shall supplement these procedures:

- 13.1. No works shall commence unless the contractor has submitted the required documentary requirements and the procuring entity has given written approval. Work execution shall be in accordance with reviewed and approved documents.
- 13.2. The contractor shall be responsible for obtaining all necessary information as to risks, contingencies and other circumstances which may affect the works and shall prepare and submit all necessary documents specified by the procuring entity to meet all regulatory approvals as specified in the contract documents.
- 13.3. The Contractor shall submit a detailed program of work within fourteen (14) calendar days after the issuance of the Notice to Proceed for approval by the procuring entity that shall include, among others:
  - i. The order in which it intends to carry out the work including anticipated timing for each stage of design/detailed engineering and construction;

- ii. Periods for review of specific outputs and any other submissions and approvals;
  - iii. Sequence of timing for inspections and tests as specified in the contract documents;
  - iv. General description of the design and construction methods to be adopted;
  - v. Number and names of personnel to be assigned for each stage of the work;
  - vi. List of equipment required on site for each major stage of the work; and
  - vii. Description of the quality control system to be utilized for the project.
- 13.4. Any errors, omissions, inconsistencies, inadequacies or failure submitted by the contractor that do not comply with the requirements shall be rectified, resubmitted and reviewed at the contractor's cost. If the Contractor wishes to modify any design or document which has been previously submitted, reviewed and approved, the contractor shall notify the procuring entity within a reasonable period of time and shall shoulder the cost of such changes.
- 13.5. As a rule, changes in design and construction requirements shall be limited only to those that have not been anticipated in the contract documents prior to contract signing and approval. The following guidelines shall govern approval for change or variation orders:
- i. Change Orders resulting from design errors, omissions or non-conformance with the performance specifications and parameters and the contract documents by the contractor shall be implemented by the contractor at no additional cost to the procuring entity.
  - ii. Provided that the contractor suffers delay and/or incurs costs due to changes or errors in the procuring entity's performance specifications and parameters, he shall be entitled to either one of the following:
    - a. an extension of time for any such delays under Section 10 of Annex "E"; or
    - b. payment for such costs as specified in the contract documents, provided, that the cumulative amount of the variation order does not exceed ten percent (10%) of the original contract price.
- 13.6. The contract documents shall include the manner and schedule of payment specifying the estimated contract amount and installments in which the contract price will be paid.
- 13.7. The contractor shall be entitled to advance payment subject to the provisions of Section 4 of Annex "E".



- 13.8. The procuring entity shall define the quality control procedures for the design and construction in accordance with agency guidelines and shall issue the proper certificates of acceptance for sections of the works or the whole of the works as provided for in the contract documents.
- 13.9. The contractor shall provide all necessary equipment, personnel, instruments, documents and others to carry out specified tests.
- 13.10. All design and build projects shall have a minimum Defects Liability Period of one (1) year after contract completion or as provided for in the contract documents. This is without prejudice, however, to the liabilities imposed upon the engineer/architect who drew up the plans and specification for a building sanctioned under Section 1723 of the New Civil Code of the Philippines.
- 13.11. The contractor shall be held liable for design and structural defects and/or failure of the completed project within the warranty periods specified in Section 62.2.3.2<sup>17</sup> of the IRR.

#### **14. AMENDMENTS AND FORMS**

In the implementation of these guidelines, the GPPB may issue additional guidelines or introduce modifications thereto through the amendment of its specific provisions as the need arises, as well as, formulate, approve and disseminate standard Bidding Documents, forms and evaluation documents, whenever necessary.

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<sup>17</sup> *Ibid.*

**ANNEX "H"**  
**THRESHOLDS FOR SHOPPING AND SMALL VALUE PROCUREMENT**

1. Shopping [Section 52.1. (a)]. When there is an unforeseen contingency requiring immediate purchase, the amount shall not exceed the following:
  - a) For NGAs, GOCCs, GFIs, and SUCs, One Hundred Thousand Pesos (P100,000).
  - b) For LGUs, in accordance with the following schedule:

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

In the case of *barangays*, Fifty Thousand Pesos (P50,000).

2. Shopping [Section 52.1. (b)] and Small Value Procurement [Section 53.9]. Procurement shall not exceed the following:
  - a) For NGAs, GOCCs, GFIs, and SUCs, Five Hundred Thousand Pesos (P500,000).
  - b) For LGUs, in accordance with the following schedule:

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

In the case of *barangays*, Fifty Thousand Pesos (P50,000).

3. For Foreign-funded Procurement, the thresholds shall be determined in each case, taking into account the nature of the goods, works, or assignment, by agreement between the GOP and the foreign government/foreign or international financing institution.