

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

**RULE I**  
**GENERAL PROVISIONS**

**Section 1. Short Title and Purpose**

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

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

**Section 2. Declaration of Policy**

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

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

In case of doubt in the application, interpretation, and construction of any of the provisions under RA No. 12009 and this IRR, the same shall be resolved in favor of government procurement.

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

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

- a) Transparency in the procurement process by providing access to all related information consistent with open contracting practices and

standards that enable disclosure of data and facilitates information sharing related to all pertinent stages of procurement, as the case may be, to foster public trust by ensuring that all stakeholders have access to procurement information;

- b) Competitiveness by ensuring equal opportunity for all eligible and qualified suppliers, manufacturers, distributors, contractors, consultants, and service providers, whether public or private;
- c) Efficiency by implementing an organized, uniform, and straightforward procurement process through the use of emerging technologies and innovative solutions to attract a broader range of bidders and improve quality and cost-effectiveness in government procurement;
- d) Proportionality by ensuring that the conditions and parameters in the development of requirements, choice of procurement mode, and implementation of contracts shall be reasonably proportional to the needs and circumstances of the Procuring Entity, and the nature, scale and complexity of the project to be procured to ensure fair competition;
- e) Accountability where public officials and personnel take responsibility for their actions, decisions, and performance in the use of public resources and adhere to ethical standards. When warranted by circumstances, public officials and personnel directly or indirectly involved in the procurement process and in the implementation of contracts are investigated and held accountable for their actions, in accordance with applicable laws, rules, and regulations;
- f) Participatory procurement through public monitoring of the procurement process and the implementation of contracts to guarantee that every step is in accordance with the provisions of the Act and this IRR, and to ensure prudent and judicious use of government resources;
- g) Sustainability in the procurement process which covers the whole life cycle of a property, ensures value for money and maximum benefits to society and the economy, and engenders minimal impact to the environment; and
- h) Professionalism in procurement through the development of qualification standards and a competency and certification framework for procurement practitioners, and the adoption of a code of ethics that shall be observed by public procurement professionals.

## **Section 4. Scope and Application**

- 4.1 This IRR shall apply to all procurement by any branch, agency, department, bureau, office, or instrumentality of the GoP, including GOCCs, GFIs, SUCs, and LGUs.
- 4.2 Any treaty or international or executive agreement affecting the subject matter of the Act and this IRR to which the Philippine government is a signatory shall be observed.
  - 4.2.1 In case of conflict between the terms of the treaty or international or executive agreement and this IRR, the former shall prevail.
  - 4.2.2 In case the treaty or international or executive agreement does not expressly provide for a different procurement rule on foreign-funded procurement of Goods, Infrastructure Projects, and Consulting Services by the GoP, the Act and this IRR shall apply.

The GoP negotiating panel shall, as its default position, espouse adherence to the Act and this IRR, in all foreign-funded procurement. If the treaty or international or executive agreement states otherwise, then the negotiating panel shall ensure that the reasons for the adoption of a different rule or mode of procurement are clearly reflected in the records of discussion.

- 4.3 The Act and this IRR shall not apply to the following activities:

- a) Procurement of Goods, Infrastructure Projects, and Consulting Services funded from foreign grants covered by RA No. 8182, as amended by RA No. 8555, entitled "An Act Excluding Official Development Assistance (ODA) from the Foreign Debt Limit in order to Facilitate the Absorption and Optimize the Utilization of ODA Resources, Amending for the Purpose Paragraph 1, Section 2 of RA No. 4860, as amended," unless the GoP and the foreign grantor, or foreign or international financing institution agree otherwise;
- b) Acquisition of real property, which shall be governed by RA No. 10752, entitled "The Right of Way Act," and other applicable laws, rules, and regulations; and
- c) Public-private sector infrastructure or development projects and other procurement covered by RA No. 11966, entitled "Public-Private Partnership Code of the Philippines;" Provided, however, That for the portions financed by the GoP, the provisions of the Act and this IRR shall apply.

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

- a) Direct assistance, in cash or in kind, to beneficiaries in accordance with the existing laws, rules, and regulations;
- b) Participation in local or foreign scholarships, trainings, continuing education, conferences, seminars, or similar activities, including regular assessment or review programs and strategic planning sessions to meet agency performance targets that shall be governed by applicable Commission on Audit (COA), Civil Service Commission (CSC), and Department of Budget and Management (DBM) rules and regulations;
- c) Engagement of Contract of Service (COS) and Job Order (JO) worker; and
- d) Disposal of government properties, unless specified in the Bidding Documents or Requests for Quotations or Proposals, as the case may be.

## **Section 5. Definition of Terms**

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

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

For foreign-funded procurement, the ABC refers to the cost estimate prepared by the Procuring Entity and approved by the foreign government, or foreign or international financing institution as specified in the treaty or international or executive agreement;

- b) Beneficial Owner refers to a natural person who: (i) ultimately owns or dominantly influences the management or policies of the juridical entity; or (ii) exercises ultimate effective control over the juridical entity;
- c) Bid refers to a signed offer, proposal, or quotation submitted by a supplier, manufacturer, distributor, contractor, consultant, or service provider in response to the requirements of the Procuring Entity as stated in the Bidding Documents;
- d) Bidder refers to a supplier, manufacturer, distributor, contractor, consultant, and service provider, whether public or private, who submits a Bid in response to the requirements of the Procuring Entity as stated in the Bidding Documents;
- e) Bidding Documents refer to documents issued by the Procuring Entity as the basis for Bids, furnishing all information necessary to prospective bidder to prepare a Bid for the Goods, Infrastructure Projects, and Consulting Services required by the Procuring Entity;
- f) Bids and Awards Committee (BAC) refers to the Committee established in accordance with Rule V of this IRR;
- g) Blacklisting refers to an administrative penalty imposed by the HoPE which prohibits a person or an entity, including its affiliates, from participating in all government procurement activities during the period of disqualification. The rules on Blacklisting are included in Rule XXI of this IRR;
- h) Common-Use Supplies and Equipment (CSE) refer to Goods, as defined under this Section, that are used repetitively in the day-to-day operations of Procuring Entities in the performance of their functions and are included in the Electronic Catalogue of the Philippine Government Electronic Procurement System (PhilGEPS). Goods that do not fall under this definition are Non-CSE;
- i) Consulting Services refer to services for Infrastructure Projects and other types of projects or activities of the government requiring adequate external technical and professional expertise that are beyond the capability or capacity of the government to undertake, such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other legal and technical services or special studies;

- j) End-User or Implementing Unit refers to the employee or organic office within the organization of the Procuring Entity that identifies, plans, prepares, designs and implements the procurement project based on the requirements or needs of the agency in accordance with its mandate. In case the Implementing Unit is different from the End-User Unit, the authority, functions, roles and responsibilities of both units shall be defined by the Procuring Entity;
- k) Environmental Impact refers to the direct and indirect consequences that a product, service, or activity has on ecological and environmental integrity. This includes implications, such as air and water pollution, climate change, waste disposal, and resource depletion;
- l) Financial Eligibility refers to having the financial capacity to manufacture, distribute, or deliver the Goods, Infrastructure Projects, and Consulting Services being procured;
- m) Fit-for-Purpose refers to an approach to procurement that applies the most suitable mechanism or strategy designed to address the specific needs of the Procuring Entity and each project, while promoting flexibility and responsiveness to different conditions and scenarios, based on factors or situations, such as, but not limited to, the nature and complexity of the project, market condition and readiness, urgency or risks, in order to ensure and achieve value for money;
- n) Goods refer to (i) all items, supplies, and materials, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity; or (ii) general support services which pertain to all types of services except Consulting Services and Infrastructure Projects, such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services. Personnel Services or individual COS or JO engagements do not fall under this definition;
- o) Green Criteria refers to a set of standards and specifications that prioritizes environmental sustainability and is designed to assess and select goods and services based on their environmental impact throughout their life cycle, as reflected in the procurement documents;
- p) GPPB refers to the Government Procurement Policy Board established in accordance with Rule XIX of this IRR;

- q) Head of the Procuring Entity (HoPE) refers to: (i) the head of the agency or body, or the duly authorized official, for NGAs, constitutional commissions or offices, and other branches of government; (ii) the governing board or the duly authorized official, for GOCCs, GFIs and SUCs; or (iii) the local chief executive, for LGUs; Provided, however, That in a department, bureau, office, or agency where the procurement is decentralized, the head of each decentralized unit shall be considered as the HoPE, subject to the limitations and authority delegated by the head of the department, bureau, office, or agency;
- r) Infrastructure Projects include the construction, improvement, rehabilitation, demolition, repair, restoration, or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. For purposes of, and throughout this IRR, the term "Infrastructure Projects" shall have the same meaning as, and shall be used interchangeably with, "civil works" or "works;"
- s) Jury Duty refers to a responsibility in which the BAC, Technical Working Group (TWG), and Secretariat members, including the End-User or Implementing Unit, give utmost priority to procurement assignments over all other duties and responsibilities until the requirements for the procurement at hand are completed;
- t) Legal Eligibility refers to having the legal capacity to act as an entity as evidenced by permits, licenses, and/or registrations required by law to engage in the business of manufacturing, distributing, or delivering the Goods, Infrastructure Projects, or Consulting Services being procured;
- u) Life Cycle Cost refers to the total cost of ownership over the entire life span of an asset covering its acquisition, operation, maintenance, and disposal;
- v) Multi-Year Contractual Authority (MYCA) refers to the authority given to the Procuring Entity to procure multi-year projects in accordance with the form and conditions set by the DBM;
- w) Philippine Government Electronic Procurement System (PhilGEPS) refers to the single electronic procurement portal managed by the Procurement Service-DBM (PS-DBM) as provided in Section 20 of this IRR;

- x) Philippine Products and Services refer to local goods, articles, materials, supplies, services, and intangible products which may be:
  - i) Unmanufactured goods, articles, materials, or supplies wholly obtained or produced in the Philippines;
  - ii) Any good, article, material, and supply produced, manufactured, or assembled in the Philippines which has a minimum local content as may be determined by the Department of Trade and Industry (DTI);
  - iii) Services, which refer to the delivery of value or intangible acts or uses through high-level skills, expertise, labor, or some form of knowledge, technology, or process-intensive activities; or
  - iv) Intangible products, which refer to properties without physical existence including, but not limited to, computer software and products of the creative industry.

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

- y) Portal refers to a website that integrates a wide variety of contents for the purpose of attracting and aggregating multiple users together in a central virtual space;
  - z) Procurement refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. In the case of a project involving mixed procurement, the nature of the procurement, i.e., Goods, Infrastructure Projects, or Consulting Services, shall be determined based on the primary purpose of the project. Procurement shall also include the lease of goods and real estate. With respect to real property, the acquisition thereof shall be governed by the provisions of RA No. 10752 and other applicable laws, rules, and regulations;
- aa) Procuring Entity refers to any branch, department, bureau, office, agency, or instrumentality of the government, including SUCs, GOCCs, GFIs, and LGUs procuring Goods, Infrastructure Projects, and Consulting Services;
  - bb) Technical Eligibility refers to having the experience or expertise to undertake the services, manufacturing, distribution, or delivery of the

Goods, Infrastructure Projects, and Consulting Services being procured; and

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

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

- 6.1 To systematize the procurement process, avoid confusion, and ensure transparency, the procurement process, including the forms to be used, shall be standardized insofar as practicable.
- 6.2 For this purpose, the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which, once issued shall be mandatory upon all Procuring Entities. However, whenever necessary, to suit the particular needs of the Procuring Entity, modifications may be made specifically for major and specialized procurement, subject to the approval of the GPPB.
- 6.3 To capture the prescribed policies and procedures in this IRR, the decision tree to guide Procuring Entities on which mode of procurement is the most fit for their desired purpose shall be subsequently issued by the GPPB.

## **RULE II STRATEGIC PROCUREMENT PLANNING**

### **Section 7. Strategic Procurement Planning and Budgeting Linkage**

- 7.1 All procurement shall be undertaken with proper and sufficient planning and preparation to ensure sound procurement decisions, taking into consideration, among others, the need of the Procuring Entity, relevance, and appropriateness of the project, value for money, and associated risks of the project. This includes the conduct of supply positioning, analysis of available modes of procurement, risk management, and disposal procedures as may be applicable.
- 7.2 Procuring Entities shall likewise implement a procurement strategy that includes Fit-for-Purpose and Proportional approaches, such that the conditions and parameters in the development of requirements, choice of procurement mode, and implementation of contracts shall be reasonably proportional to the needs of the Procuring Entity and the nature of the project to be procured. Such strategy adopted shall also consider the whole

life cycle of a procurement project, including its environmental impact, and shall aim to achieve value for money.

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

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

7.4 The Procuring Entity shall ensure that the project has minimal economic, social, and environmental risks or negative impacts throughout its life cycle, consistent with Sections 13, 72, 73, and 75 of this IRR. In addition, the procurement of Goods must consider responsible and sustainable consumption and production practices, as well as comply with national policies.

In developing its disposal requirements for properties that reached the end of their useful life, the Procuring Entity shall consider various measures, such as but not limited to, rehabilitation, condemnation or destruction of properties, transfer to other government agencies, barter, donation, return to supplier or vendor, trade-in, sale to government officials or employees, public auction, negotiated sale, sale of junk or scrap, recycling, and direct negotiation, consistent with applicable laws, rules, and regulations on disposal of government properties.

7.5 For subcontracting arrangements, which are applicable only to Goods and Infrastructure Projects, the following rules shall apply to locally-funded projects and to projects financed through ODA, except those covered by

treaty, or international, or executive agreements which shall be governed by Section 4.2 of this IRR.

7.5.1 The approval of the HoPE, upon recommendation by the End-User or Implementing Unit, shall be required for subcontracting. The approval shall include the determination of whether the eligibility documents of the subcontractor will be required as part of the Bid or submitted before the issuance of the Notice of Award.

7.5.1.1 The subcontracted portion of the contract shall be subject to the approval of the HoPE and the following conditions:

- a) The subcontracted portion shall not exceed twenty percent (20%) for Goods, and fifty percent (50%) for Infrastructure Projects, or a different percentage on a per project basis as approved by the GPPB. The threshold percentages fixed herein shall be subject to the periodic review and adjustments as may be deemed appropriate by the GPPB; and
- b) The subcontracted portion shall be limited to components that are not deemed "significant or material" to the project as determined by the Procuring Entity;

7.5.2 Subcontracting arrangement, if allowed, including the time of submission of the eligibility documents of the subcontractor, shall be disclosed in the Bidding Documents;

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

| Failure of a subcontractor to meet the eligibility criteria does not affect the eligibility of the general contractor for the procurement project. In such case, the portion intended to be subcontracted to the ineligible subcontractor shall be assumed by the general contractor;

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

7.5.5 The general contractor and the subcontractor are obliged to comply with the provisions of the contract and shall share liability, jointly and severally, in cases of violation of safety standards or other labor standards insofar as the subcontracted portion is concerned; and

7.5.6 For the purpose of post-qualification in accordance with Section 63 of this IRR, the value of the entire completed and accepted project,

including the subcontracted portion, shall be credited as experience of the general contractor. In the case of the subcontractor, the following rules shall apply:

- 7.5.6.1 The subcontractor shall get credit for one hundred percent (100%) of the value of the subcontracted portion of the project performed;
- 7.5.6.2 Subcontractors shall be eligible to concessional windows of GFIs that treat receivables from the government as loan security; the receivables of subcontractors due from their general contractor shall similarly be accepted as loan security by GFIs; and
- 7.5.6.3 Contract performance monitoring, such as the use of Constructors Performance Evaluation System (CPES), among others, shall also be mandatorily applied to the work experience of the subcontractors.

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

7.7 All procurement should be within the approved budget of the Procuring Entity.

Consistent with the government fiscal discipline measures, only those considered crucial to the efficient discharge of the functions of the agency shall be included in the Annual Procurement Plan (APP) for purposes of planning and budgeting.

7.7.1 In the preparation of the Indicative APP to support the agency budget proposal, the End-User or Implementing Units of the Procuring Entity shall formulate their respective Project Procurement Management Plans (PPMPs) covering their programs, activities, and projects (PAPs). The PPMP shall include the information on:

- a) Whether the implementation of the PAPs will require procurement or undertaken by administration;

- b) Type and objective of the project to be procured;
- c) Quantity and size of the project to be procured;
- d) The procurement modes to be adopted;
- e) The schedule for each procurement activity;
- f) The estimated budget for the contract; and
- g) Technical Specifications, Scope of Work, or Terms of Reference, as the case may be, for each project being proposed.

Based on the specific needs, the End-User or Implementing Units or the Procuring Entity shall be responsible for the preparation of all documents necessary for the procurement activity, including but shall not be limited to, technical specifications, scope of work, or terms of reference.

- 7.7.2 The Indicative PPMPs shall be submitted to the relevant offices of the Procuring Entity for evaluation of their merit for inclusion in the budget proposal. The Indicative PPMPs approved for inclusion in the budget proposal shall be forwarded to the BAC Secretariat for consolidation into an Indicative APP.

The Indicative APP shall be submitted to the BAC for its final recommendation to the HoPE on the appropriate mode of procurement. For this purpose, the Indicative APP shall include the following:

- a) Name of procurement project;
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- b) End-User or Implementing Unit;
- c) General description of the procurement project;
- d) Procurement modes to be adopted and indication if the procurement tasks are to be outsourced;
- e) Criteria for bid evaluation including sustainability and any domestic preference;
- f) Schedule of identified procurement activities;
- g) Source of funds;

- h) ABC;
- i) Indication whether the project shall be undertaken through EPA;
- j) Procurement strategies or tools to be adopted, if any; and
- k) Other relevant descriptions of the procurement project, if applicable.

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  - 7.7.3 Upon submission of the National Expenditure Program (NEP) or proposed Corporate Operating Budget or Local Expenditure Program to Congress, governing board, or local *Sanggunian*, as the case may be, the End-User or Implementing Unit shall revise the PPMPs to reflect the budgetary allocation for their respective PAPs.
  - 7.7.4 For the purpose of EPAs, the revised PPMPs shall be consolidated into an updated Indicative APP which shall be posted on the website of the Procuring Entity.
  - 7.7.5 As soon as the GAA, corporate operating budget, or appropriation ordinance, as the case may be, becomes final, the End-User or Implementing Unit shall finalize the PPMPs to reflect the authorized budgetary allocation for their respective PAPs. The finalized PPMPs shall be submitted to the BAC Secretariat for consolidation into the final APP, which shall be recommended by the BAC for approval of the HoPE. The approved final APP shall be posted on the website of the Procuring Entity and submitted to the GPPB on or before the end of January of the budget year.
- 7.8 No government procurement shall be undertaken unless it is in accordance with the approved Indicative APP or final APP of the Procuring Entity, as the case may be.
- 7.9 Proposal for additional PPMPs or changes to the PPMPs may be undertaken as often as necessary.

The End-User or Implementing Units of the Procuring Entity shall be responsible for the preparation of the new or revised PPMPs, while the BAC Secretariat shall incorporate the approved PPMPs into the APP, to be recommended by the BAC for approval of the HoPE.

## **Section 8. Detailed Engineering for the Procurement of Infrastructure Projects**

- 8.1 With the exception of an Infrastructure Project under a design-and-build scheme, no bidding and award of contract for Infrastructure Projects shall be made unless the detailed engineering investigations, surveys, and designs for the project which shall consider among others, the impact on the environment, have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the HoPE concerned or the duly authorized representative, pursuant to the recommendation of the End-User or Implementing Unit, and the acquisition of the required right-of-way for the project pursuant to RA No. 10752 has been accomplished.
- 8.1.1 In case of projects with pending acquisition of right-of-way, site, or location, the procurement process may commence, but no award of contract shall be made until an authority or permit to enter is issued by the property owner; or a notarized deed of sale or deed of donation is executed in favor of the government; or a writ of possession is issued by a court of competent jurisdiction, as the case may be.
- 8.2 Detailed engineering shall proceed only on the basis of the feasibility or preliminary engineering study made which establishes the technical viability of the project and conformance to land use and zoning guidelines prescribed by existing laws. The findings contained in the feasibility study, if undertaken for the project, shall be examined. If, in the course of this exercise, it is found that amendments would be desirable in the design standards of principal features, as proposed, specific recommendations for such changes shall be supported by detailed justifications, including their effects on the cost, and the economic justification, if necessary.
- 8.2.1 A schedule of detailed engineering activities shall include the following:
- a) Survey;
  - b) Site Investigation;
  - c) Soils and Foundation Investigation;
  - d) Construction Materials Investigation;
  - e) Preparation of Design Plans;
  - f) Preparation of Technical Specifications;

- g) Preparation of Quantity and Cost Estimates;
- h) Preparation of Scope of Work;
- i) Preparation of Proposed Construction Schedule (and estimated Cash Flow for projects with Schedule over six (6) months;
- j) Preparation of Site or Right-of-Way Plans including Schedule of Acquisition;
- k) Preparation of Utility Relocation Plan;
- l) Preparation and Submission of Design Report;
- m) Environmental Impact Statement for critical project, as defined by the Department of Environment and Natural Resources;
- n) Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered;
- o) Value Engineering Studies;
- p) Preparation of Bidding Documents; and
- q) Preparation of report on asset climate hazards, risk assessment, disaster response strategies, and readiness planning.

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

- a) Design Standards which shall be in accordance with appropriate laws, rules, regulations, and accepted detailed engineering practices adopted by the Procuring Entity. Design standards for structures shall take into account, among others, geological hazards, seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage, and the vulnerability of the area to natural disasters.
- b) Field Surveys and Investigations which may include aerial, geotechnical, hydrographic, topographic, hydrologic, sub-surface, remote-sensing, monumenting, and other surveys shall be carried out in accordance with the design guidelines, criteria, and standards adopted by the Procuring Entity. All survey and investigation works shall be prepared in a manner satisfactory to carry out accurate design

and production of plans that will permit quantity estimates to be made within plus or minus ten percent (+/-10%) of the final quantities of the completed structure. Survey must follow standards set by relevant government agencies.

- c) Contract Plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the Procuring Entity, incorporating at least the following:
  - i) Site development plan;
  - ii) Plans and profile sheet;
  - iii) Typical Sections and details;
  - iv) Drainage details where applicable;
  - v) Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed; and
  - vi) Other details which may be required by the HoPE.
- d) 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 shall be prepared to cover specifications for 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.
- f) Unit Prices 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) ABC as determined in accordance with this IRR.
- h) Bidding Documents prepared in accordance with this IRR.
- i) Before implementing any project, the necessary Scope of Work shall be prepared and submitted for approval. In no case shall construction funds be remitted to field offices nor construction work on a project be

started before the Scope of Work is approved, in accordance with existing laws.

No Scope of Work for any project shall be approved without detailed architectural and engineering design. The Scope of Work shall include, among others, estimates of the work, items, quantities, and costs and a Program Evaluation and Review Technique (PERT) and Critical Path Method (CPM), Precedence Diagram Method (PDM) or any other project management tool to monitor and supervise the project activities. The Scope 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) In the preparation of the Bidding Documents, the Procuring Entity shall make an estimate of the actual number of working days required to complete the project through PERT and CPM or PDM analysis of the project activities and corrected for holidays and weekends. Likewise, the Procuring Entity shall make an estimate of the number of rainy or unworkable days considered unfavorable for the prosecution of the works at the site, based on the records of the Philippine Atmospheric, Geophysical and Astronomical Services Administration (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 or unworkable days considered unfavorable for the prosecution of the works at the site shall be made known before the date of bidding, when available, through the Instructions to Bidders for the purpose of guiding the contractor in preparing its bid and as reference to both the GoP and winning contractors taking action on the requests for time extensions. Without the estimated number of rainy or unworkable days established before the bidding date and made known to all participating bidders, the contract time is presumed to have excluded the unfavorable conditions.
- k) The warranty period, as required by the Procuring Entity for the type of project, shall be specified in the Bidding Documents.
- l) For major projects, as specified by the Procuring Entity, value engineering shall be conducted according to accepted standards and practices. Value engineering shall analyze alternative schemes of achieving the project objectives to delete or reduce non-essential features and lessen the life cycle costs of the projects without sacrificing the quality and integrity of the structure while maintaining its essential function, performance, and safety.

- m) Site or Right-of-Way Acquisition Plans and Resettlement Action Plans shall be prepared based on parcellary surveys and socio-economic surveys of households affected by the project.
- 8.4 Since the contracts are fixed price contracts, the ABC to be bid shall provide for the projected movements of construction costs over the construction period considering the projected inflation and foreign exchange rates as approved by the Development Budget Coordination Committee. It shall also show the local and foreign currency requirements, as the case may be.
- 8.5 For projects to be implemented in phases, the Procuring Entity shall ensure that there is a clear delineation of work for each phase, which must be usable and structurally sound. It shall also ensure the conduct of the detailed engineering activities for each phase, as provided by this IRR.
- 8.6 As a requirement for the procurement of Infrastructure Projects, the concerned End-User or Implementing Unit or consultants who prepared and approved, as the case may be, the detailed architecture and engineering design shall issue a certification that the detailed architecture and engineering surveys and designs have been conducted according to the prescribed agency standards and specifications in conformance with the provisions of this IRR and that the detailed architecture and engineering design outputs are adequate for the procurement at hand. The approval by the authorized government officials of the detailed architecture and engineering surveys and designs undertaken by the End-user or Implementing Unit or consultants neither diminishes the responsibility of the latter for the technical integrity of the surveys and designs nor transfers any part of that responsibility to the approving officials.
- 8.7 The above rules shall apply to the implementation of Infrastructure Projects under normal or ordinary conditions. However, under emergency or extraordinary cases involving calamities and disaster as declared by the President or as may be issued by the local *Sanggunian* upon the recommendation of the Local Disaster Risk Reduction and Management Office, where time is of the essence to save lives and properties, and restore damaged Infrastructure, detailed engineering works shall be conducted in accordance with the guidelines and procedures, as prescribed by the head of the appropriate infrastructure agency, as the case maybe, to enable a quick response to said cases, while maintaining the safety and integrity of the structure.
- 8.8 Procuring Entities may consider an architectural design that is well-curated and aesthetically pleasing to ensure that the Infrastructure Project not only meets functional requirements but also contributes to its overall appeal and architectural integrity.

## **Section 9. Multi-Year Contracting**

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

The MYCA is issued by the DBM for multi-year locally-funded projects in order to authorize the Procuring Entity to enter into multi-year contracts.

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

9.1.1 NGAs including SUCs, GOCCs, and GFIs shall secure a MYCA from the DBM prior to the commencement of any procurement activity for multi-year projects which are fully funded under the GAA.

9.1.2 SUCs, GOCCs and GFIs implementing multi-year projects which are partially funded from both their internally generated income and the GAA shall secure prior authority from their respective governing boards and MYCA from the DBM, in such amounts proportionate to the funding provision from each source, before commencing procurement activities.

9.1.3 SUCs, GOCCs and GFIs implementing multi-year projects which are fully funded by their internally generated income shall secure prior authority from their respective governing boards before commencing procurement activities.

9.1.4 LGUs shall secure any equivalent document issued by their respective *Sanggunian* authorizing them to enter into multi-year contracts, as may be applicable.

## **Section 10. Market Scoping**

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

10.2 Market scoping may include the following activities:

- a) Consultations with suppliers, contractors, consultants, or professional associations or groups to determine available Goods, equipment and

services, including applicable approaches, methods and strategies to achieve successful procurement;

- b) Participation in summits, fora, or conferences for exposure, knowledge acquisition, determination of latest technology and innovation;
- c) Evaluation of market reviews or analysis of technical, financial and scientific reports;
- d) Review of product or service brochures and marketing materials, industry journals and publications, or other related materials and publications to explore appropriate options;
- e) Price sourcing for quotations or cost estimates from suppliers, contractors, or consultants to determine appropriate costs and the relevant factors and conditions affecting towards of the ABC;
- f) Use of relevant data from the PhilGEPS or agency websites to serve as a guide or reference; or
- g) Any analogous activity for the purpose of gathering relevant market information.

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

The conduct of Market Scoping shall observe the principle of Proportionality.

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

- 10.4.1 Proper cost estimates involve factors, such as direct and indirect costs, contingencies, and other associated costs, while factoring in cost trends, inflation, life cycle cost, and procurement modes.
- 10.4.2 Project Design and Specifications, in relation to Section 11 of this IRR, must align with relevant characteristics, performance or

functionality requirements, or product or service standards specified by appropriate government entities or similar international bodies. Industry standards and best practices may be considered to ensure compatibility with market capabilities, including environmental and climate risk factors, to address the needs of the Procuring Entity.

- 10.4.3 Technical criteria for evaluating the bids based on performance, safety, quality, expertise, financial stability, and past performance. It may also include scoring for climate resilience and environmental performance.
  - 10.4.4 Delivery lead time involves assessing supply chain, market availability and capability, including logistics systems to ensure timely delivery and readiness to meet the specific needs and requirements of the Procuring Entity.
  - 10.4.5 Storage or warehousing requirements, in relation to Section 19 of this IRR, involve identifying the specific needs of the Procuring Entity, market options for warehousing, logistics and security, while considering specific conditions like temperature, humidity, and handling needs.
- 10.5 The End-User or Implementing Unit of the Procuring Entity shall maintain a record of the market scoping results to guide in the project review and future procurement planning of the Procuring Entity.
- 10.6 The Procuring Entity may also consider consulting with local suppliers to promote inclusivity and foster economic development.

## **Section 11. Specifications**

- 11.1 Giving due consideration to the technical and quality characteristics, including sustainability, specifications to be developed by the End-User or Implementing Unit for the procurement of Goods, as well as the goods component of Infrastructure Projects and Consulting Services, shall be based on any or a combination of (i) performance or functionality requirements; (ii) product or service standards specified by appropriate government entities or similar international bodies; or (iii) industry standards and best practices.
- 11.2 Reference to brand name shall not be allowed except for reasons of technical compatibility, interoperability, servicing, maintenance, or preservation of supplier warranty in order to keep the performance, functionality, and useful life of the equipment, in which case, the Procuring Entity shall indicate the reasons or justifications for availing of the

exception as part of the Technical Specifications, Scope of Work, or Terms of Reference, as the case may be.

## **Section 12. Early Procurement Activities**

- 12.1 For Goods to be delivered, Infrastructure Projects to be implemented, and Consulting Services to be rendered in the following fiscal year, Procuring Entities are authorized to undertake EPA, short of award, as soon as the NEP, Local Expenditure Program, or proposed Corporate Operating Budget is submitted to the Congress, *Sanggunian*, or Governing Board, respectively, pending the approval of the funding thereof under the GAA, corporate operating budget, appropriation ordinance or loan agreements in the case of Foreign-Assisted Projects (FAPs), as the case may be, subject to guidelines issued for the purpose.
- 12.2 The conduct of EPA shall be made only upon approval of the Indicative APP by the HoPE, and subject to the guidelines issued by the GPPB.
- 12.3 For EPA, the ABC shall not exceed the amount specified in the approved Indicative APP prepared in accordance with Section 7 of this IRR.
- 12.4 No award of contract shall be made until the approval and effectivity of the appropriate funding, under the GAA, corporate operating budget, appropriation ordinance, or loan agreement, as the case may be. The HoPE shall also approve the final APP before the award of the contract is made.
- 12.5 In case of projects requiring acquisition of right-of-way, no award of contract shall likewise be made until an authority or permit to enter is issued by the property owner; or a notarized deed of sale or deed of donation is executed in favor of the government; or a writ of possession is issued by a court of competent jurisdiction, as the case may be.

## **Section 13. Life cycle Assessment and Life cycle Cost Analysis**

- 13.1 To further support strategic procurement management and ensure smart and prudent use of government resources, Procuring Entities shall apply Life cycle Assessment (LCA) and Life cycle Cost Analysis (LCCA), as may be applicable, in project planning, eligibility and selection criteria, or contract implementation; Provided, That the implementation of the LCCA and LCA shall be subject to the guidelines issued by the GPPB.
- 13.2 Procuring Entities shall apply LCA to evaluate the potential environmental and social impacts of Goods, including the goods component of Infrastructure Projects, or Consulting Services throughout their entire life cycle, from raw material extraction and manufacturing to transportation,

usage, and disposal. Procuring Entities shall use LCA to:

- a) Assess the potential environmental and social impacts of Goods;
- b) Prioritize the most significant risks and opportunities for mitigation;
- c) Determine the winning bidder in the bid evaluation phase; and
- d) Establish criteria for comparing potential market solutions.

13.3 Procuring Entities shall apply LCCA to calculate the total cost of acquisition, operation, maintenance, disposal, and to identify the evaluation criteria of the project or asset to enable Procuring Entities to determine long-term financial implications of their procurement projects, allowing them to select the most cost-effective approach that results in savings and financial sustainability of projects. The Procuring Entities shall apply the LCCA to:

- a) The procurement planning phase to evaluate different market solutions to meet the procurement need and calculate the budget proposal;
- b) The bid evaluation phase to determine the winning bidder; and
- c) The contract implementation phase to monitor the compliance of suppliers with environmental requirements prescribed in the contract.

13.4 Procuring Entities shall set a transparent methodology that outlines the data needed and calculation methodology to be used when conducting an LCCA or LCA, as may be applicable, for Goods, including the goods component of Infrastructure Projects, or Consulting Services, to ensure comparability and fairness among bidders, with due consideration on the significance of the potential environmental impacts, bidder's ability to provide the information requested for bid evaluation and feasibility of verifying compliance during contract implementation.

13.5 Procuring Entities shall primarily be guided by the principle of proportionality and the Fit-for-Purpose approach when deciding whether to apply LCA and LCCA to a specific procurement project.

13.6 The GPPB shall issue detailed guidelines and tools on the application of LCA and LCCA to ensure consistency across government procurement activities.

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

14.1 In preparing for a procurement project, Procuring Entities may consider employing the design-and-build scheme as a procurement approach whereby a single contractor is responsible for both design and construction of the government building or Infrastructure, which allows quality assurance, effective cost and schedule management, and improved energy efficiency and environmental impact.

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

## **Section 15. Engagement of a Procurement Agent**

15.1 As part of strategic procurement planning, the HoPE may authorize the engagement of a government Procurement Agent, which shall undertake the functions of the BAC, if the Procuring Entity does not have the capability or proficiency to undertake a particular procurement; Provided, That the Procuring Entity cannot delegate the issuance of the Notice of Award and the award of contract to the Procurement Agent; and there shall be no transfer of funds to the Procurement Agent, except for the payment of service fee for services rendered as Procurement Agent, if applicable.

15.2 The engagement of a Procurement Agent shall be further subject to the following mandatory conditions:

- a) The engagement shall be made on a per project basis;
- b) The engagement shall be limited to procurement undertaken through Competitive Bidding; Provided, That in instances where the Procuring Entity lacks sufficient qualified personnel to constitute its own BAC, the Procuring Entity may engage a Procurement Agent to undertake other modes of procurement;
- c) The Procurement Agent should be another government agency expert in the field which is the subject of procurement. This shall be expressly provided in the Memorandum of Agreement (MOA) with the Procuring Entity.

For purposes of the foregoing requirement, the government agency shall be deemed as an expert if: (i) it has successfully awarded at

least two (2) similar contracts, each valued at no less than fifty percent (50%) of the ABC of the current procurement project, or (ii) if the subject matter of the procurement is directly related to the core mandate of the Procurement Agent;

- d) At least one (1) representative from the Procuring Entity shall be designated as a member of the TWG of the Procurement Agent to ensure that the technical specifications or terms of reference of the Procuring Entity are properly reflected in the bidding documents;
- e) A representative from the Procuring Entity shall be designated as a provisional member of the BAC of the Procurement Agent;
- f) The engagement shall be covered by a MOA that is executed between the Procuring Entity and the Procurement Agent, providing the details of the project to be procured; the accountabilities and obligations of the two (2) parties; the ABC; services fees, if applicable; and such other details as may be necessary;

The MOA shall be executed and become effective within six (6) months before the end of the validity of the relevant appropriations as authorized in the applicable appropriations law, or in the corporate operating budgets or appropriations ordinances, in the case of GOCCs, GFIs, and LGUs, respectively. In no case shall the undertakings of the MOA contravene the provisions of this Section; and

- g) The Procurement Agent shall not transfer, delegate, or assign, in whole or in part, the performance of its obligations to any other entity.

15.3 Procuring Entities with existing MOAs or contracts entered into prior to the effectivity of RA No. 12009 and this IRR shall remain valid, subject to the provisions of this Section.

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

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

16.2 The Framework Agreement shall be in the nature of an option contract between the Procuring Entity and the bidder that stipulates the terms and conditions to be applied in subsequent contracts for the procurement of Goods, Infrastructure Projects, and Consulting Services with a single or

multiple contractor, manufacturer, supplier, distributor, consultant, and service provider, subject to the guidelines to be issued by the GPPB.

## **Section 17. Pooled Procurement**

17.1 Procuring Entities shall consider the advantages of a Pooled Procurement mechanism as a procurement strategy to assess their procurement needs and identify opportunities to achieve greater value for money and procurement efficiency through demand aggregation. It also aims to improve quality standards by combining technical capacity and increases the availability and sustainability of supplies. Pooled Procurement is undertaken through the collaboration of Procuring Entities to consolidate their requirements into a single, joint, bulk, or group procurement.

17.2 Procedure for Pooled Procurement may include the following:

17.2.1 Procuring Entity may invite, in writing, or through posting on its official website, social media platform, or other channels authorized by the GPPB, other Procuring Entities to pool their procurements of Non-CSE, Infrastructure Projects, or Consulting Services. Interested Procuring Entities shall signify their intention to join the Pooled Procurement within the period specified in the invitation.

17.2.2 The Collaborating Procuring Entities (CPE) shall designate the Lead Procuring Entity (LPE) that has the capacity to conduct the entire procurement process, from planning to post-qualification, including the consolidation of the procurement requirements for the Pooled Procurement project.

17.2.3 The LPE and CPEs shall enter into a MOA which shall include, but not limited to, the following details:

- a) ABC for the Pooled Procurement project;
- b) Scope and limitations of the procurement project;
- c) The designation of the roles and responsibilities of each CPE, including the LPE, as well as the composition of the BAC.
- d) The BAC of the LPE, which includes representatives from the CPEs based on their proportional interests shall conduct the bidding process for the pooled procurement project;
- e) Quantity or scope of the project to be procured;

- f) Cost sharing among the CPEs for administrative and other expenses, as may be applicable;
- g) Distribution and delivery schedule, including terms of payment;
- h) Mechanisms for resolving any disputes; and
- i) Other terms and conditions as may be necessary for the proper implementation of the agreement.

- 17.2.4 Procuring Entities shall identify the items applicable for Pooled Procurement in their respective APPs.
- 17.2.5 The Pooled Procurement project shall only be conducted by the LPE on a per project basis.
- 17.2.6 The BAC of the LPE shall recommend the award of contract to the HoPEs of the CPEs, including the LPE.
- 17.2.7 The CPEs shall separately issue the Notice of Award, execute the Contract with the winning bidder, and issue a Notice to Proceed.
- 17.2.8 The CPEs shall be responsible for contract implementation arrangements and other post-award procurement functions, such as but not limited to payment, extension of delivery, contract amendments or termination, amendment to order, and variation order, as the case may be, including payment, subject to the rules stipulated in this IRR.
- 17.2.9 No transfer of funds for payment under the contract related to the Pooled Procurement shall be made by the CPEs to the LPE.

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

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

However, the renewed contract may exceed one (1) year for the following procurement projects and such other projects as may be identified by the GPPB:

- 18.1.1 Rental of office space; and
- 18.1.2 Telecommunication requirements.

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

18.2.1 For this purpose, regular and recurring services refer to the following:

- a) Those which by their nature are necessary to the day-to-day operations of the Procuring Entity such as (i) janitorial services; (ii) security services; (iii) telecommunication requirements; (iv) supply of drinking water; (v) rental of office space, or lease of venue, and equipment; (vi) fuel fleet card services; (vii) water supply and distribution services (viii) electricity distribution; and (ix) other services as may be determined by the DBM;
- b) Services that, by their nature, are deemed essential, indispensable, or necessary to the day-to-day operations of the Procuring Entity; and
- c) Services that have been procured repeatedly by the Procuring Entity over the past three (3) years.

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

- a) An assessment to justify the suitability of renewal instead of the conduct of another procurement; and
- b) A performance evaluation conducted showing satisfactory performance by the service provider.

18.3 Additionally, the Procuring Entity shall ensure the following:

18.3.1 The original contract covering the regular and recurring services was awarded in accordance with RA No. 12009 and this IRR, and other related issuances.

However, the renewal of contracts entered into prior to the effectivity of RA No. 12009 and this IRR shall still be allowed under this Section;

- 18.3.2 The service provider must not be a Blacklisted Entity at the time of the conduct of the performance evaluation until the signing of the renewal contract;
- 18.3.3 The submission of updated documentary requirements and performance security by the service provider; and
- 18.3.4 Funds are available for the renewal of contracts in accordance with existing budgeting, accounting, and auditing laws, rules and regulations.

## **Section 19. Warehousing and Inventory System**

- 19.1 For efficient planning for the storage and tracking of procured Goods, Procuring Entities may adopt a general system of warehousing and cloud-based inventory of procured Goods, as may be necessary depending on the type, nature, and volume of procurement undertaken by the Procuring Entity and subject to the availability of funds in accordance with applicable budgeting, accounting, and auditing rules and regulations.
- 19.2 The Procuring Entity, whenever applicable, shall develop guidelines for its warehousing functions ensuring auditable systems that promote integrity and efficiency, and shall establish a compliance framework mandating training, audits, and transparent reporting. These guidelines shall set standards and provisions to protect and safeguard all acquired properties whether through procurement, transfer, or any other mode of acquisition being stored in the warehouse facilities in order to:
  - 19.2.1 Ensure proper tracking, storage, and management of procured Goods;
  - 19.2.2 Verify the accuracy and integrity of inventory records; and
  - 19.2.3 Promote transparent reporting on warehousing and inventory activities.
- 19.3 The adoption of cloud-based inventory by NGAs, GOCCs, GFIs, SUCs, and LGUs shall be done in consultation with the Department of Information and Communications Technology (DICT) to ensure that the risks and vulnerabilities associated with data storage are adequately addressed through proper and effective security protocols.

## **RULE III** **PROCUREMENT BY ELECTRONIC MEANS**

### **Section 20. Procurement by Electronic Means**

#### **20.1 The Philippine Government Electronic Procurement System**

- 20.1.1 To promote greater transparency, accountability, operational efficiency, and value for money, the PhilGEPS shall be the single electronic procurement portal that shall serve as the primary source of information and channel in the conduct of all procurement activities of the government. The PhilGEPS shall maintain an integrated system that covers procurement planning until payment. The PhilGEPS shall be managed by the PS-DBM.
- 20.1.2 To take advantage of the significant built-in efficiencies of the PhilGEPS and the volume discounts inherent in bulk purchasing, through the centralized procurement undertaken by the PS-DBM, all Procuring Entities shall utilize the PhilGEPS for the procurement of CSE.
- 20.1.3 The PhilGEPS shall continuously adopt emerging technologies and innovative solutions.

#### **20.2 Features of the PhilGEPS**

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

##### **20.2.1 Electronic Bulletin Board**

- a) The Electronic Bulletin Board allows Procuring Entities to post procurement opportunities, notices, bidding results, awards, and related information.
- b) Procuring Entities shall post the Invitation to Bid for the procurement of Goods and Infrastructure Projects or the Request for Expression of Interest for Consulting Services in the Electronic Bulletin Board in accordance with Section 50 of this IRR.

##### **20.2.2 Electronic Catalogue**

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

### **20.2.3 Virtual Store**

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

### **20.2.4 Electronic Marketplace**

- a) The Electronic Marketplace is a feature that allows Procuring Entities registered with the PhilGEPS to search, view, compare, select, and purchase Goods from qualified suppliers who meet legal, technical, and financial requirements.
- b) The Electronic Marketplace allows registered and qualified merchants to present their goods in the platform, whether as a result of a procurement activity, consignment, or any appropriate contractual arrangement, from which Procuring Entities may choose based on their needs and requirements and within their ABC.

### **20.2.5 Electronic Bidding**

The Electronic Bidding facility shall cover the entire procurement process including procurement planning, posting of bid opportunities and bidding documents, pre-bid conference, receipt and opening of bids, evaluation of bids, post-qualification, recommendation and award of contract, contract management and implementation, and payment, which shall be applicable to Goods, Infrastructure Projects and Consulting Services, in accordance with the guidelines issued by the GPPB.

### **20.2.6 Electronic Small Value Procurement**

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

### **20.2.7 Electronic Reverse Auction**

This refers to an auction feature where a Procuring Entity registered with the PhilGEPS can issue an invitation to suppliers to submit bids on a specific date, time, and duration, relative to specific goods and services, based on defined specifications for design, quantity, quality, delivery, and related terms and conditions, and compete by outbidding each other through lower

offers or amounts they are willing to accept. At the close of the reverse auction duration, to be defined by the Procuring Entity, the procurement contract shall be awarded to the lowest complying bid.

#### 20.2.8 Electronic Payment

- a) The PhilGEPS shall utilize an inclusive digital payment system, offering various methods using electronic channels for government purchases of CSE through the Virtual Store or the Electronic Marketplace, as well as other transactions facilitated through the PhilGEPS. These options include stored value credits in electronic wallets, direct electronic payments, credit card transactions, and other methods recognized and supervised by the Bangko Sentral ng Pilipinas (BSP).
- b) The system shall have a feature that allows the processing and approval of requests for payment upon delivery of Goods or services and shall have the ability to interface with the designated bank of the Procuring Entity and merchants to support the electronic transfer of funds.

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

- a) The PhilGEPS shall have a centralized electronic database of all manufacturers, suppliers, distributors, contractors and consultants, and service providers registered under the system.
- b) Registration shall entail the submission of the requirements specified by the PS-DBM. Submission of these requirements shall be done online at the PhilGEPS website. The PhilGEPS Certificate of Registration (Platinum Membership) shall be effective for one year and may be either renewed, in case of expiration, or updated within the period of its validity; Provided, That the manufacturer, supplier, distributor, contractor, consultant, or service provider concerned maintains its registration records current and updated at least once a year, or more frequently as may be necessary.
- c) The PhilGEPS shall deny registration to or exclude from the registry any party that is found to have willfully misrepresented any of the information provided in the application for registration

or that has been imposed with the penalty of blacklisting in accordance with Sections 100 and 101 of this IRR, including foreign government, foreign or international financing institution whose blacklisting rules have been recognized by the GPPB.

- d) A manufacturer, supplier, distributor, contractor, consultant, or service provider applying for registration shall be required to provide an email address to which all communications from the BAC and the Procuring Entity shall be sent. The email address provided shall be considered as such applicant's recorded contact information.
- e) A manufacturer, supplier, distributor, contractor, consultant, or service provider duly registered with the PhilGEPS may participate in a procurement activity undertaken by any Procuring Entity; Provided, That it is the obligation of the said manufacturer, supplier, distributor, contractor, consultant, or service provider to maintain its registration valid and updated in accordance with the provisions of this IRR, and its registration type is appropriate and relevant to the particular type of procurement.

20.2.9.1 All manufacturers, suppliers, distributors, contractors, consultants, and service providers shall upload and maintain in PhilGEPS a valid and updated file of the following eligibility documents:

- a) Registration certificate from the Securities and Exchange Commission (SEC) for corporations and partnerships, the DTI for sole proprietorships, or the Cooperative Development Authority (CDA) for cooperatives;
- b) For corporations, an updated General Information Sheet reflecting the beneficial ownership information duly submitted to the SEC in accordance with its annual reportorial requirements;
- c) Mayor's Permit or Business Permit or its Equivalent Document;
- d) Tax clearance, as finally reviewed and approved by the Bureau of Internal Revenue (BIR);

- e) Philippine Contractors Accreditation Board (PCAB) License and Registration of contractors; and
- f) Audited Financial Statements (AFS), stamped “Received” by the BIR or its duly accredited and authorized institutions for Manual submission. For online submission, an email confirmation from the BIR in lieu of the manual “Received” stamping under Revenue Memorandum Circular No. 49-2020 or subsequent relevant issuances.

20.2.9.2 For Foreign Bidders, the foregoing documents may be substituted by the appropriate equivalent documents in English, if any, issued by the country of the bidder concerned. Otherwise, it must be accompanied by a translation of the documents in English issued by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder’s country; and shall be authenticated by the appropriate Philippine foreign service establishment or post, or the equivalent office having jurisdiction over the foreign bidder’s affairs in the Philippines.

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

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

These documents shall be accompanied by a Sworn Declaration of Compliance stating that the documents submitted are complete and authentic copies of the original, and all statements and information provided therein are true and correct. The PhilGEPS shall

process the same in accordance with the guidelines of the GoP – Official Merchants Registry (OMR) and shall issue a Certificate of Registration (Platinum Membership) within seven (7) calendar days from receipt of the application and complete supporting documents. The said Certificate shall include the following declarations by the bidder:

- a) The authenticity, genuineness, validity, and completeness of the copy;
- b) The veracity of the statements and information contained therein;
- c) That the Certificate is neither a guarantee that the named registrant will be declared eligible without first being determined to be such, nor is it evidence that the registrant has passed the bid evaluation and post-qualification stages; and
- d) That any finding of concealment, falsification, or misrepresentation of any of the eligibility documents submitted, or the contents thereof shall be a ground for disqualification of the Bidder to further participate in the bidding process, without prejudice to the imposition of appropriate administrative, civil and criminal penalty in accordance with law.

For the purpose of maintaining the validity of the Certificate of Registration and Membership, bidders shall ensure that all their eligibility documents mentioned in this Section are current and updated. Failure by the prospective bidder to update its eligibility documents shall result in the automatic suspension of its Certificate until such time that all of the expired eligibility documents have been updated.

#### 20.2.10 Open Data

The PhilGEPS shall develop an open data platform that allows publication of relevant procurement information and data to promote transparency and facilitate public monitoring of the procurement process.

## 20.3 Use of the PhilGEPS

- 20.3.1 All Procuring Entities are mandated to fully use the PhilGEPS and its features in accordance with the policies, rules, regulations, and procedures prescribed by this IRR and adopted by the GPPB. All Procuring Entities shall register with the PhilGEPS and undertake measures to ensure their access to an online network to facilitate the open, speedy and efficient online transmission, conveyance and use of electronic data messages or electronic documents.
- 20.3.2 In case of silence or ambiguity of the provisions in this Section, the manual procedures and processes of procurement contained in the Act and this IRR shall apply.
- 20.3.3 The PhilGEPS shall allow observers, duly authorized by the BAC, to monitor the procurement proceedings online; Provided, That such observers do not have any direct or indirect interest in the procurement project as prescribed in Section 43 of this IRR.

## Section 21. Electronic Payment

The electronic and uniform payment system to be used by the Procuring Entities and suppliers, manufacturers, distributors, contractors, consultants, and service providers shall be defined in the context of the Integrated Financial Management Information System to be developed by the DBM, COA, and Department of Finance.

## Section 22. Security, Integrity, and Confidentiality

- 22.1 The PhilGEPS shall ensure the security, integrity, and confidentiality of documents submitted, stored, and managed through the system. It shall include features that provide for an audit trail of electronic transactions and allow the COA to verify the security and integrity of the system at any time.
- 22.2 The PhilGEPS shall incorporate the following features, which shall be periodically upgraded to keep abreast with developments in technology:
  - 22.2.1 The PhilGEPS shall include a feature that provides for an audit trail for online transactions and allows the COA to verify the security and integrity of the system at any time.
  - 22.2.2 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 Entities shall be

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

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

Notwithstanding the provisions of RA No. 10173, entitled “Data Privacy Act of 2012”, the GPPB is hereby authorized to promulgate rules to ensure the interconnectivity of the following government databases:

- a) PhilGEPS in relation to the GoP-OMR;
- b) DTI on its database relating to business registration, list of all ongoing projects in public and private sector, and records of priority domestic goods and services;
- c) Construction Industry Authority of the Philippines (CIAP) on the CPES and the PCAB on the licensing of contractors;
- d) All LGUs on their issuance of permits and licenses;
- e) BIR on tax returns and clearance;
- f) SEC and CDA on mandatory submissions of all registered enterprises and beneficial ownership information;
- g) Insurance Commission (IC) on the list of identified surety companies providing callable-on-demand surety contracts;
- h) Procuring Entities with established electronic procurement systems and websites on the status of projects, contracts, and performance of its respective winning bidders; and
- i) Other relevant government agencies, as may be determined by the GPPB.

Provided, That the GPPB shall coordinate with the DICT, PS-DBM, DTI, CIAP, LGUs, BIR, SEC, CDA, IC, and other relevant government agencies to ensure the seamless implementation of this Section; through cross-platform interoperability using standardized protocols. These protocols shall enable a secure and efficient, and real-time data sharing across systems, ensuring compatibility and integration of government databases and platforms. Provided, further, That at all times, the sharing of information between and among government agencies and instrumentalities shall protect trade secrets and promote competition.

## **Section 24. Procurement Data Analytics**

The GPPB, through its Technical Support Office (TSO), shall analyze the data obtained from the PhilGEPS and submitted procurement reports to ensure disclosure of information related to the procurement process. The GPPB shall publish an annual report on its website for the following purposes:

- a) Assist Procuring Entities in the strategic planning of their procurement projects;
- b) Assist oversight bodies in formulating and implementing data-driven effective procurement policies and rules pursuant to the State policy under Section 2 of this Act;
- c) Assist government agencies in identifying and detecting patterns that could help deter or mitigate fraud and non-competitive practices; and
- d) Facilitate public awareness, active participation, and monitoring of government procurement processes.

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

- a) Total number of procurement notices posted;
- b) Total number and amount of contracts awarded for all types of procurement;
- c) Number of procurements using framework agreement strategy;
- d) Number and amount of procurements with green specifications;
- e) List of suppliers offering materials and supplies produced and manufactured in the Philippines;
- f) Number and amount of contracts awarded to Micro, Small, and Medium Enterprises (MSMEs) by industry sector, and women owned enterprise; and
- i) Other relevant data as may be deemed necessary.

The GPPB, through its TSO, will provide relevant agencies with access to data sourced from the PhilGEPS to identify patterns such as bid rigging, anti-competitive practices, and other pertinent trends.

## **Section 25. Maintenance, Update, and Backup**

- 25.1 The PhilGEPS shall undertake periodic maintenance and upgrading of the system. It shall formulate a business continuity plan which shall include features such as, but not limited to, the establishment of backup sites, and regular backup of all information to maintain the integrity of the system and minimize risks of halts or interruptions in operation.
- 25.2 The PhilGEPS shall ensure that all data is protected and prevent interruptions in the operations. Preventive maintenance shall be done on a regular basis to maintain accessibility at all times. An advisory shall be issued to notify the Procuring Entity, merchants, and other stakeholders in advance prior to the scheduled maintenance.
- 25.3 The PhilGEPS shall adopt the latest technologies and innovations for better optimization of the system.
- 25.4 The PS-DBM shall establish and implement backup and retention policies for PhilGEPS, including all its features and modules, to ensure a more stable system.

## **RULE IV** **MODES OF PROCUREMENT**

### **Section 26. Modes of Procurement**

- 26.1 The Procuring Entity shall adopt any of the following modes of procurement consistent with the Fit-for-Purpose procurement approach:
  - a) Competitive Bidding;
  - b) Limited Source Bidding;
  - c) Competitive Dialogue;
  - d) Unsolicited Offer with Bid Matching;
  - e) Direct Contracting;
  - f) Direct Acquisition;
  - g) Repeat Order;
  - h) Small Value Procurement;
  - i) Negotiated Procurement;

- j) Direct Sales; and
  - k) Direct Procurement for Science, Technology and Innovation.
- 26.2 In addition to the specific terms and conditions for the application of each mode of procurement provided hereunder, the detailed procedure for each mode of procurement shall be provided in the manual to be issued by the GPPB.
- 26.3 The GPPB is authorized to approve changes in the procurement process to adapt to improvements in modern and emerging technologies; Provided, That such modifications are consistent with the provisions of Section 3 of this IRR.
- 26.4 Except for Competitive Bidding, Limited Source Bidding, Competitive Dialogue, and Unsolicited Offer with Bid Matching, the BAC may delegate the conduct of procurement activities for the other modes of procurement to the End-User or Implementing Unit, or the Procurement Unit of the Procuring Entity.

## **Section 27. Competitive Bidding**

- 27.1 Competitive Bidding is a mode of procurement which is open to participation by any eligible bidder, and which consists of the following processes:
- a) Publication;
  - b) Pre-bid conference;
  - c) Eligibility screening of prospective bidders;
  - d) Receipt and opening of bids;
  - e) Evaluation of bids;
  - f) Post-qualification; and
  - g) Award of contract.

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

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

## **Section 28. Limited Source Bidding**

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

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

- a) Procurement of highly specialized or complex types of Goods, and Consulting Services which are known to be obtainable only from a limited number of sources.
- b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole.
- c) Procurement of highly specialized infrastructure projects involving and affecting national security.

28.3 The pre-selected suppliers, contractors, or consultants shall be those appearing on a list maintained by the relevant government authority that has expertise in the type of procurement concerned. The list of pre-selected suppliers, contractors, or consultants shall be updated periodically. A copy of such list or any amendment thereto shall be submitted to the GPPB through its TSO for collation and publication on its website.

The function of the GPPB-TSO shall partake of a ministerial nature and shall not include the validation of the qualifications of the suppliers, contractors, or consultants contained in the list.

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

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

- a) Capability and resources of the bidders to perform the contract, taking into account their experience and past performance on similar contracts;
- b) Capabilities with respect to personnel equipment or manufacturing facilities;
- c) Financial position; and
- d) Good standing with respect to its affiliation, and must not be related to any adverse groups, local or international, nor involved in any criminal activities which may affect its legal, financial, or technical capacity to undertake the project, as determined by the Procuring Entity.

28.5 Except for the publication requirement under Section 50, the Procuring Entity shall observe the procedure for Competitive Bidding and may adopt reduced timelines within the total maximum period prescribed in this IRR.

## **Section 29. Competitive Dialogue**

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

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

- a) The procurement includes innovative design or solutions involving procurement of complex purchases such as, but not limited to, intellectual services, major information communications technology projects, or sophisticated products that may refer to goods or services, which in order to be produced or offered, would require a high level of technology, human capital, competencies or facility;
- b) The contract requires prior negotiations with the suppliers, manufacturers, distributors, contractors, consultants, and service providers because of specific circumstances related to nature, complexity, legal and financial issues, or risks attached to the procurement; or

- c) The Technical Specifications cannot be sufficiently established or precisely defined by the Procuring Entity.
- 29.3 Apart from the mandatory contents prescribed for publication in Section 50, the Procuring Entity that resorts to Competitive Dialogue shall provide the preliminary technical specifications of the project with minimum requirements, which may be in the form of relevant characteristics, or performance or functionality requirements, including the award criterion during the second stage of the bidding process, in the Invitation to Bid or Request for Expression of Interest.
- 29.4 Competitive Dialogue has two distinct stages:
- 29.4.1 The first stage where the eligibility requirements and initial technical proposals of interested suppliers, contractors, or consultants are evaluated, followed by the dialogue proper. The first stage shall involve the following activities:
- a) Prospective bidders shall submit their initial technical proposals, as well as their legal, technical, and financial eligibility requirements, within the deadline prescribed in the Bidding Documents not exceeding the following maximum periods counted from the last day of posting of the Invitation to Bid or Request for Expression of Interest:
    - i) For Goods, forty-five (45) calendar days.
    - ii) For Infrastructure Projects, sixty-five (65) calendar days.
    - iii) For Consulting Services, seventy-five (75) calendar days.

The BAC shall first determine the eligibility of the prospective bidders in accordance with Section 52 of this IRR, and the initial technical proposals shall be evaluated using a “pass or fail” criterion to determine whether the same meet the minimum technical requirements of the Procuring Entity. Eligible bidders whose technical proposals meet the required minimum standards shall then be invited to participate in the dialogue.
  - b) For the procurement of Consulting Services, the short-listing procedure under Section 53 of this IRR shall be conducted

during the first stage as described in the preceding paragraph.

- c) The BAC shall conduct a dialogue, either jointly or separately among participants to determine, identify, describe, define, and finalize the technical components and specifications of the project, Scope of Work, design, value engineering, Terms of Reference, key personnel, manpower requirements and appropriate expertise, including sustainability aspects in the procurement of Goods, Infrastructure, and Consulting Services.
- d) The dialogue may include contract terms and conditions, particularly payment terms and advance payment, delivery instructions, warranties, and inspection and testing.
- e) The BAC shall ensure that all bidders participating in the dialogue are treated equally and fairly, and it shall not provide information in a manner which may discriminate, give undue advantage to, or otherwise favor some participating bidders over others. The BAC shall not reveal or disclose any confidential information received during the course of the dialogue to any participating bidder unless with the express consent of the owner of the confidential information. Such consent or agreement to disclose confidential information shall be limited to the communication of specific information and shall not take the form of a general waiver.

29.4.2 The second stage where the final technical and financial proposals of the remaining participants are submitted and evaluated under a competitive bidding procedure using Lowest Calculated Responsive Bid (LCRB), Most Economically Advantageous Responsive Bid (MEARB), Most Advantageous Responsive Bid (MARB) or Highest Rated Responsive Bid (HRRB). The second stage shall involve the following activities:

- a) Within ten (10) calendar days from finalization of the Technical Specifications, Scope of Work or Terms of Reference, as the case may be, under the first stage, copies of the same, as well as the criteria for qualitative rating if applicable, shall be issued to all bidders that participated in the dialogue; and
- b) Bidders shall submit their revised technical proposals as well as their financial proposals in two (2) separate sealed envelopes within a period not exceeding twenty (20) calendar

days from issuance of the finalized Technical Specifications, Scope of Work, or Terms of Reference, as the case may be. The contract shall be awarded to the bidder declared as the LCRB, MEARB, MARB or HRRB, following the applicable bid evaluation and post-qualification procedures under Sections 61, 62, and 63 of this IRR.

## **Section 30. Unsolicited Offer with Bid Matching**

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

The "Original Offeror" refers to the entity that initially submitted an unsolicited offer and whose proposal has been determined by the Procuring Entity as necessary and involves a new concept or technology, subject to the procedure outlined in this IRR.

- a) As determined by the HoPE, the procurement involves a new concept or technology in any of the following instances:
  - i) Offers a substantial improvement over existing solutions, demonstrated through verifiable data, proof of concept, or technical studies;
  - ii) Incorporates features promoting emerging technology and sustainable solutions;
  - iii) Involves state-of-the-art technology, as certified by a recognized independent agency with expertise in the field; or
  - iv) Provides significant benefits to the procuring entity in terms of efficiency, cost, or outcome.
- b) The Procuring Entity has invited comparative or competitive bids which refer to offers submitted by the bidders through Competitive Bidding in response to a call for offers by way of Invitation to Bid or Request for Expression of Interest.

30.2 For the unsolicited offer to be considered for evaluation by the Procuring Entity, the manufacturer, distributor, supplier, or consultant shall submit the following:

- a) Details of the new concept or technology which shall contain the following information:

- i) A basic description of the new concept or technology in compliance with sub-section 30.1(a), including but not limited to its purpose, unique features, and potential applications;
  - ii) The expected output or outcome, clearly demonstrating the advantages and improvements of the Goods and Consulting Services being offered compared to existing solutions;
  - iii) A detailed cost-benefit analysis comparing the new concept or technology with available alternatives in terms of efficiency, quality, and overall value for money; and
  - iv) The proposed contract cost, with supporting detailed computations and justifications, which shall serve as the indicative ABC for purposes of eligibility checking and bid matching.
- b) Proof of concept, or equivalent document or sample to validate the feasibility and effectiveness of the proposed technology or solution.
  - c) The proponent must submit the necessary legal, technical, and financial eligibility documents as prescribed under Section 52 of this IRR.
  - d) The proponent must include detailed proposed terms and conditions for the offer, which should address project timelines, deliverables, warranties, and other relevant contractual provisions which includes consent to allow the Procuring Entity and other bidders to use the entire offer document for the purpose of bid matching notwithstanding the provisions of RA No. 8293, otherwise known as the Intellectual Property Code of the Philippines, as amended.

30.3 Within twenty (20) calendar days from receipt of the unsolicited offer, the Procuring Entity shall assess whether the project being offered is necessary pursuant to its nature, function and responsibilities. If the need is determined, the Procuring Entity shall notify the offeror within the same twenty (20) day period that it shall conduct the evaluation of the offer upon the submission of complete documentary requirements pursuant to Section 30.2 within thirty (30) calendar days from notice. Resubmission due to lacking requirements shall be considered as a new submission, subject to the first in time, stronger in right approach, as provided in the succeeding sub-section.

The offer shall be deemed rejected if the Procuring Entity did not act on the offer within the twenty (20)-day period, or if the offeror failed to submit

complete documentary requirements within the thirty-day period as prescribed in the preceding paragraph.

The offeror may still withdraw its unsolicited offer within five (5) calendar days from receipt of the notice from the Procuring Entity. If the offer is withdrawn after such period, the offeror shall not be allowed to participate in any procurement opportunity of the Procuring Entity for a period of one (1) year on the first offense, two (2) years on the second offense, and perpetually on the third offense.

30.4 In case the Procuring Entity receives more than one unsolicited offer with complete documentary requirements involving the same or similar new concept or technology, the first in time, stronger in right approach shall be applied in determining the original offeror. All other offers shall be rejected without prejudice to the participation by the other offerors in the competitive bidding under this mode.

30.5 The Procuring Entity, through the End-User or Implementing Unit, shall conduct an evaluation of the submitted requirements to determine if the project being offered involves a new concept or technology in accordance with Section 30.1(a). The Procuring Entity shall complete the entire evaluation process within sixty (60) calendar days, unless extended by the HoPE for justifiable reasons not exceeding thirty (30) calendar days.

During the evaluation process, the Procuring Entity shall likewise verify, validate, and ascertain the legal, technical, and financial eligibility of the offeror; and determine if funds are available to meet the offer, subject to budgeting, accounting, and auditing laws, rules, and regulations.

The Procuring Entity shall notify the offeror of the results of the evaluation. In case of favorable evaluation results, the Procuring Entity shall inform the offeror in the same notice that negotiation shall commence at a specified date within five (5) calendar days from receipt of notice.

30.6 The Procuring Entity shall negotiate with the offeror on the project scope, price, implementation arrangements, and the terms and conditions of the ensuing contract, among others, and discuss budget availability and related issues, if any. The Procuring Entity shall complete the negotiation with the offeror within fifteen (15) calendar days from the commencement thereof.

If the negotiation is unsuccessful, the Procuring Entity shall declare a failure of negotiation, resulting in the termination of the procurement activity.

If the negotiation is successful, the Procuring Entity shall issue a certification conferring original offeror status to the offeror. Such status confirms the offeror's responsiveness to the legal, technical, and financial requirements of the proposed project. The offeror shall submit the appropriate bid security pursuant to Section 56 of this IRR within ten (10) calendar days from receipt of the certification conferring original offeror status.

After appropriate funds are secured for the purpose, the Procuring Entity shall ensure that the particular Goods or Consulting Services are included in the APP.

30.7 Within thirty (30) calendar days from the conferment of the original offeror status, the Procuring Entity shall publish an Invitation to Bid for comparative or competitive bids against the negotiated original offer. The comparative or competitive bids shall be composed of the technical proposal that complies with the technical specifications or terms of reference of the negotiated original offer, and the financial proposal. The comparative or competitive bid that complies with the technical component of the negotiated original offer and with the lowest price proposal shall be declared as the Lowest Comparative or Competitive Bid (LCCB), subject to post-qualification pursuant to Section 63 of this IRR. If the LCCB passes all the criteria for post-qualification, it shall be declared as the Lowest Comparative or Competitive Responsive Bid (LCCRB).

30.8 Within fifteen (15) calendar days from determination of the LCCRB, the original offeror may match the offer of the LCCRB or submit a lower price proposal.

The contract shall be awarded to the original offeror if:

- a) No comparative or competitive bid is received within the period prescribed in the IRR;
- b) The bids submitted by the comparative offerors failed at bid opening; or
- c) The original offeror matched or submits a lower price proposal against the comparative or competitive bid.

In case the original offeror is unable to match the offer of the LCCRB or submit a lower price proposal, the contract shall be awarded to the bidder with the LCCRB.

## **Section 31. Direct Contracting**

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

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

- a) When the goods are proprietary in nature, which can only be obtained from the proprietary source; or when patents, trade secrets, and copyrights prohibit others from manufacturing the same item, as supported by relevant documentary evidence issued by competent authority;
- b) When the procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a service provider to guarantee its project performance, in accordance with the provisions of the contract, as determined by the End-User or Implementing Unit; or
- c) When it is 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 government.

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

- a) The BAC shall prepare the Request for Quotation (RFQ) or pro-forma invoice together with the terms and conditions of sale and shall send the same to the identified direct supplier.
- b) Simplified negotiations on the terms and conditions of the contract may, at the option of the Procuring Entity, be conducted by the BAC to ensure that the supplier is technically, legally, and financially capable to deliver the Goods at the most advantageous price and contract for the Government.
- c) The BAC shall recommend to the HoPE the award of contract in favor of the supplier. The award of contract shall be made in accordance with Section 66 of this IRR.

## **Section 32. Direct Acquisition**

32.1 Direct Acquisition is a mode of procurement of CSE not available in the PS-DBM, Non-CSE, and services with ABC not exceeding Two Hundred Thousand Pesos (₱200,000.00), where the Procuring Entity, without need to conduct a canvass or request for quotations, may procure directly from any known and reputable sources. Goods covered under this mode may be procured from stores, such as but not limited to, department store, depot, fast food chain, grocery and supermarket, wholesale and retail store, convenience store, clothing and apparel store, bookstore, drugstore and pharmacy, automotive parts and accessories store, construction and hardware store, and online stores. Services may be procured from service providers, such as but not limited to, furniture repair, automotive service, restoration service, machine and fabrication, and other related services.

32.2 Procurement of goods and services through Direct Acquisition shall be reflected in the APP.

Goods to be procured through Direct Acquisition and paid using petty cash, or by way of reimbursements, including foreseeable emergencies, which cannot be itemized, shall be identified as Miscellaneous Items in the APP.

The use of the Petty Cash Fund as a type of disbursement shall be in accordance with the COA Circular No. 2012-001 dated 14 June 2012, and subsequent relevant rules and regulations.

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

- a) The Suppliers are registered with the PhilGEPS as verified from the PhilGEPS website;
- b) The goods are available in electronic commerce platforms for delivery or pick up at such date and time identified by the Procuring Entity; and
- c) The goods are readily available off-the-shelf and can be picked up or delivered immediately.

Provided, That Procuring Entities shall procure only from sources that issue invoices compliant with the rules of the BIR or other documents evidencing delivery and payment acceptable to the COA.

## **Section 33. Repeat Order**

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

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

- a) The unit price must be equal to or lower than that provided in the original contract and the prevailing market price;
- b) The Repeat Order shall be availed of only within six (6) months from the date of the notice to proceed arising from the original contract, except in cases duly approved by the GPPB; and
- c) The Repeat Order shall not exceed twenty-five percent (25%) of the quantity of each item in the original contract. In order to comply with this requirement, the goods procured under the original contract must be:
  - i. Quantifiable;
  - ii. Divisible; and
  - iii. Consisting of at least four (4) units per item.

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

- a) Upon determination of the need to replenish the Goods earlier procured through Competitive Bidding, Limited Source Bidding, Competitive Dialogue, or Unsolicited Offer with Bid Matching, the End-User or Implementing Unit shall prepare the necessary Purchase Request for the procurement of additional Goods, upon confirmation of the following:
  - i) The unit price of the Goods to be reordered must be equal or lower than that provided in the original contract; and
  - ii) The unit price of the Goods to be reordered is lower than the prevailing market price.

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

## **Section 34. Small Value Procurement**

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

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

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

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

For Barangays ₱100,000

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

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

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

- a) The End-User or Implementing Unit shall submit a request for SVP to the BAC. The request shall indicate the Technical Specifications, Scope of Work, Terms of Reference, as the case may be, ABC and other terms and conditions.
- b) Except for those with ABCs equal to Two Hundred Thousand Pesos (₱200,000.00) and below which shall not require posting, RFQ or Request for Proposal (RFP) shall be posted for a period of three (3)

calendar days on the PhilGEPS website, website of the Procuring Entity, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity.

- c) The BAC shall prepare and send the RFQs or RFPs to at least three (3) suppliers, contractors or consultants of known qualifications, as the case may be. Apart from the intended recipients of the RFQs or RFPs, those who responded to any of the required postings shall be allowed to participate. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.
- d) In case no price quotation is received from the suppliers, the Procuring Entity may extend the deadline for submission of price quotation until receipt of at least a single price quotation; but the extension shall not go beyond the validity of the corresponding appropriations.
- e) Pre-bid conference may be conducted at the discretion of the BAC in order to explain the requirements, terms, and conditions stipulated in the RFQ or RFP.
- f) After the deadline for submission of quotations or proposals, an Abstract of Quotations or Ratings shall be prepared setting forth the names of those who responded to the RFQ or RFP, and their corresponding price quotations or ratings.
- g) The BAC shall recommend to the HoPE the award of a contract in favor of the supplier, contractor, or consultant with the LCRB, MEARB, MARB or HRRB. In case of approval, the HoPE shall immediately enter into contract with the said supplier, contractor, or consultant.

### **Section 35. Negotiated Procurement**

Negotiated Procurement is a mode 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.

Negotiated Procurement shall be allowed only in the following instances:

**35.1 Two Failed Biddings.** Where there have been two (2) failures of bidding in the case of Competitive Bidding, Limited Source Bidding or Competitive Dialogue for the second time, as provided in Section 64 of this IRR.

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

- a) The BAC shall conduct mandatory review of the terms, conditions, specifications, and cost estimates. Thereafter, the BAC, based on its findings, as assisted by its Secretariat, TWG and End-User or Implementing Unit may revise and agree on the technical, legal, and financial eligibility requirements and technical specifications or terms of reference, 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. In case no revision of the eligibility document covered by Section 52 of this IRR is found necessary by the BAC after the conduct of the mandatory review, the submission of the PhilGEPS Certificate of Registration and Membership in accordance with Section 52 of this IRR shall likewise be mandatory;
- b) The BAC shall invite at least three (3) suppliers, contractors or consultants, including those disqualified in previous biddings for the project, for negotiations to ensure effective competition. This, notwithstanding, those who responded through any of the required postings shall be allowed to participate. Even if only one (1) bidder responds to such invitation or posting, the BAC shall proceed with the negotiation subject to the rules prescribed hereunder;
- c) Any requirements, guidelines, documents, clarifications, or other information relative to the negotiations that are communicated by the BAC to a supplier, contractor, or consultant shall be communicated on an equal basis to all other suppliers, contractors, or consultants engaging in negotiations with the BAC relative to the procurement. The prospective bidders shall be given equal time and opportunity to negotiate and discuss the technical and financial requirements of the project to be able to submit a responsive quotation or proposal;
- d) Following completion of the negotiations, the BAC shall request all suppliers, contractors, or consultants in the proceedings to submit, on a specified date, a best offer based on the final technical and financial requirements; and
- e) The BAC shall recommend the award of contract to the HoPE in favor of the supplier, contractor or consultant determined

to have the Single or Lowest Calculated and Responsive Bid (S/LCRB) or Most Economically Advantageous and Responsive Quotation (MEARQ) for Goods and Infrastructure Projects or Single or Highest Rated and Responsive Proposal (S/HRRP) for Consulting Services. The award of contract shall be made in accordance with Section 66 of this IRR.

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

- a) Imminent danger to life or property during a state of calamity;
- b) When time is of the essence arising from natural or man-made calamities; or
- c) Other causes where immediate action is necessary:
  - i) To prevent damage to or loss of life or property, or
  - ii) To restore vital public services, infrastructure facilities and other public utilities.
- d) The instances or situations where the foregoing conditions may be applied include the provision of immediate response and initial recovery steps to avoid loss of life, injury, disease and other negative effects on human, physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and environmental degradation.

35.2.1 The documentary requirements, such as expired Mayor's permit with Official Receipt for the renewal application and Unnotarized Omnibus Sworn Statement are accepted as basis for award, and subject to the submission after the award of the Contract, but before payment.

35.2.2 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 Armed Forces of the Philippines (AFP).

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

- a) The HoPE may delegate to either the BAC or the End-User or Implementing Unit or any other appropriate bureau, committee, support or procuring unit the authority to directly negotiate with a legally, technically, and financially capable supplier, contractor, or consultant for procurement undertaken through any of the allowable instances of Negotiated Procurement (Emergency Cases) under this Section.
- b) The End-User or Implementing Unit or the duly authorized official or personnel shall submit a request to the BAC or the HoPE, as the case may be, accompanied by appropriate supporting documents identifying the emergency sought to be addressed, and the necessary Goods, Infrastructure Projects or Consulting Services (e.g., Technical Specifications, Scope of Work or Terms of Reference) that have to be procured to address the emergency.
- c) The BAC or the End-User or Implementing Unit or any other appropriate bureau, committee, support or procuring unit shall recommend to the HoPE the necessary revisions of the APP to cover the Procurement Project that will be subject to Negotiated Procurement (Emergency Cases) under this Section subject to the validation by the appropriate office in the Procuring Entity that there are funds in the budget to cover for the same.
- d) After conducting the negotiations with a legally, technically, and financially capable supplier, contractor, or consultant, the HoPE, upon recommendation of the BAC or the End-User or Implementing Unit or any other appropriate bureau, committee, support or procuring unit authorized for the purpose shall immediately award the contract to the supplier, contractor or consultant.

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

35.3.1 This mode of Negotiated Procurement may be resorted to in any of the following instances:

- a) The contract, previously awarded through Competitive Bidding Competitive Dialogue, Limited Source Bidding, or Small Value Procurement has been rescinded or terminated for causes provided for in the contract and existing laws; and
- b) Where immediate action is necessary:
  - i) To prevent damage to or loss of life or property, or
  - ii) To restore vital public services, infrastructure facilities and other utilities

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

- a) The BAC shall post-qualify and negotiate with the second Lowest Calculated (LC)/Most Economically Advantageous (MEA)/Highest Rated (HR)/Most Advantageous (MA) Bidder for the project under consideration at the said bidder's own original bid price, applicable to the remaining works to be done. Authority to negotiate contracts for projects under the foregoing exceptional cases shall be subject to prior approval by the HoPE concerned.
- b) If negotiation fails, then the BAC shall post-qualify and negotiate with the next LC or MEA or HR or MAB at the said bidder's own original bid price.
- c) If the negotiation fails another time, the process is repeated until all the bidders from the previous bidding have been considered.
- d) If the negotiation fails and there is no bidder left from the previous bidding or if the original awardee is a Single Calculated Responsive Bidder (SCRB) or Single Rated Responsive Bidder (SRRB), the Procuring Entity may opt to take over the contract by Administration or conduct another negotiation by inviting at least three (3) suppliers, contractors or consultants to submit their bids, or resort to any other appropriate mode of procurement.

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

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

- a) That the original contract is the result of a Competitive Bidding, Competitive Dialogue, and Limited Source Bidding;
- b) The subject contract to be negotiated has similar or related Scope of Work or Terms of Reference;
- c) It is within the contracting capacity of the contractor or consultant;
- d) For Infrastructure Projects, in determining the Single Largest Completed Contract (SLCC), Net Financial Contracting Capacity (NFCC), and PCAB license, the sum of the value of the remaining works for the existing contract and the ABC of the contiguous or adjacent work shall be considered;
- e) The contractor or consultant uses the same prices or lower unit prices as in the original contract less mobilization cost;
- f) The amount involved does not exceed the amount of the ongoing project;
- g) The contractor or consultant has no negative slippage or delay in the original contract; and
- h) The negotiations for the procurement commenced before the expiry of the original contract.

35.4.1 In Infrastructure Projects, the phrase adjacent or contiguous refers to projects that are in actual physical contact with each other or in the immediate vicinity such that the required equipment and other resources can easily be mobilized; while in Consulting Services, it pertains to the linkage or

relationship of the subject matters, outputs or deliverables required.

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

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

- a) The Servicing Agency has certified that it has the mandate and absorptive capacity to undertake the project, and the Procuring Entity has validated the same;
- b) The Servicing Agency owns or has access to the necessary tools and equipment required for the project;
- c) Sub-contracting is not allowed. However, the Servicing Agency may implement the Infrastructure Project in-house, by job-order, or through the *pakyaw* contracting system; and
- d) For procurement of Infrastructure Projects, the Servicing Agency must have a track record of having completed, or supervised a project, by Administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand.

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

- a) It shall secure a certificate from the relevant officer of the Servicing Agency that the latter complies with all the foregoing conditions.
- b) Based on the assessment and recommendation of the End-User or Implementing Unit, the BAC shall issue a Resolution recommending the use of Agency-to-Agency Agreement to the HoPE.
- c) In case of approval, the HoPE shall enter into a MOA with the Servicing Agency.

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

- a) Infrastructure Projects undertaken through the AFP Corps of Engineers which shall continue to be governed by the Guidelines on implementation of Infrastructure Projects undertaken by the AFP Corps of Engineers;
- b) Procurement of Printing Services from recognized government printers shall be governed by their respective charter; and
- c) Procurement of Goods from the PS-DBM which is tasked with centralized procurement of commonly used Goods for the government in accordance with Section 40 of this IRR.

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

- a) Work of art; commissioned work or services for creative design or a specific artist skill (e.g., singer, performer, poet, writer, painter, sculptor, etc.);
- b) Restorative works for the conservation of historical and culturally significant structures and artworks;
- c) Scientific, academic, scholarly work or research, or legal services;
- d) Highly specialized life-saving medical and biotech equipment and devices, medicine, supplies, materials, tools and consumables, as certified by the Department of Health (DOH);
- e) Scientific, technical, economic, business, trade or legal journal, magazine, paper, subscription, or other exclusive statistical publications and references; or
- f) Media documentation, advertisement, or announcement through television, radio, newspaper, internet, and other communication media.

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

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

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

**35.7 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; Provided, That in both instances, trust and confidence are the primary considerations for the hiring of the consultant: Provided, however, That the term of the individual consultant shall, at the most, be on a yearly basis, renewable at the option of the appointing HoPE, but in no case shall exceed the term of the latter.

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

- a) The BAC shall undertake the negotiation with the individual consultant based on the Terms of Reference prepared by the End-User or Implementing Unit. Considering the nature of the consultancy work, the negotiations need not be elaborate, it is enough that the BAC has validated that the individual is legally, technically and financially capable to undertake and fulfill the consultancy work based on the Terms of Reference.
- b) The BAC shall recommend to the HoPE the award of contract to the individual consultant. The award of contract shall be made in accordance with Section 66 of this IRR.

**35.8 Defense Cooperation Agreements and Inventory-Based Items.** The Secretary of the Department of National Defense

(DND) may directly negotiate with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations when the procurement involves major defense equipment or materiel or defense-related consultancy services, subject to the following conditions:

- a) The Secretary of the DND has deemed it necessary in order to protect the interest of the country;
- b) The expertise or capability required is not locally available; and
- c) The defense equipment or materiel or defense related consultancy services to be procured under these modes included in the AFP Modernization Program previously approved by the President of the Philippines.

35.8.1 In the interest of national security, the Secretary of the DND, or any of his authorized representative may also directly negotiate with a supplier or manufacturer in procuring inventory-based items, pertaining to major defense equipment or materiel, which are not necessarily limited to those under the AFP Modernization Program, subject to the following conditions:

- a) Direct negotiation will address compatibility, interoperability, and sustainability;
- b) The supplier or manufacturer has fully and satisfactorily implemented a contract of the same item with the DND, any of its bureaus or attached agencies, or law enforcement agencies; and
- c) The supplier or manufacturer shall provide performance security in accordance with the Act.

35.8.2 The Law Enforcement Agencies (LEA) may utilize this mode when the aforementioned conditions are met.

The LEAs are as follows:

- a) Philippine National Police (PNP), including the PNP Maritime Group (PNP-MG), and the PNP Aviation Security Group (PNP-AVSEGROUP);

- b) Philippine Drug Enforcement Agency (PDEA);
- c) Bureau of Immigration (BI);
- d) Office for Transportation Security (OTS);
- e) Bureau of Fire Protection (BFP);
- f) National Bureau of Investigation (NBI);
- g) Presidential Security Group (PSG);
- h) National Police Commission (NAPOLCOM);
- i) Bureau of Jail Management and Penology (BJMP);
- j) Bureau of Corrections (BuCor); and
- k) Philippine Coast Guard (PCG).

The GPPB shall issue the guidelines for the implementation under this type of negotiated procurement with respect to the LEAs.

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

35.9.1 For purposes of this type of negotiated procurement, the following terms are defined as:

- a) Real Property refers to land and buildings (office spaces or units) and constructions of all kinds attached to the land or ground.
- b) Venue refers to training centers, convention halls, hotels, and similar establishments catering to trainings, seminars,

conferences, conventions, symposia and similar gatherings requiring the official participation of government officials and employees. This may include meals and accommodation depending on the requirements of the Procuring Entity.

- c) Lessee refers to any government agency temporarily occupying real property on the basis of a contract executed with the private individual, partnership, cooperative, association, or corporation having absolute ownership over or legal authority to lease out the subject real property or venue.
- d) Lessor refers to any government agency or private individual, partnership, cooperative, association, or corporation having absolute ownership over or legal authority to lease out the subject real property or venue.

35.9.2 Under this mode, the following conditions must be present:

- a) The location of the real property or venue to be leased should have been meticulously selected by the Procuring Entity after taking consideration, among others, the need for prudence and economy in government service and the suitability of the area in relation to the mandate of the office, and its accessibility to its stakeholders. For lease of venue, other factors, such as the nature of the event or the level of security in the proposed location, may also be taken into account.
- b) The ABC shall be supported by a canvass, based on either the average or the midpoint of the prevailing lease rates for real property or venue, from at least three (3) lessors within the vicinity of the selected location complying with the minimum criteria and technical requirements of the End-User or Implementing Unit. In no case shall the rental rates, including additional expenses, such as but not limited to association dues in the case of lease of real property, exceed the ABC.
- c) As a general rule, rental rates are considered reasonable when they represent or approximate the value of what the lessee gets in terms of accommodation, facility, amenities, and convenience from the leased real property or venue, and the lessor gets an equitable return of capital or investment.

- d) The technical requirements shall be prepared by the End-User or Implementing Unit taking into consideration the rating factors to be issued by the GPPB.
- e) Pursuant to Annex "E" of COA Circular No. 2012-003 and subject to subsequent issuances, lease of expensive or luxury venues for meetings or seminars and other official functions shall not be allowed, unless for government-sponsored international conventions, meetings and the like where holding of activities in a four (4) or five (5)-star hotel or venue should be supported by justifications.

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

- a) For Real Property:
  - i) The BAC shall invite at least three (3) prospective lessors to submit sealed price quotations or password-protected price quotations in compressed archive folders, in case of electronic submission of price quotations.
  - ii) The deadline for the submission of quotations may be extended until the BAC or Procurement Unit determines that quotation/s received is/are compliant with the requirements of the project.
  - iii) The price quotations shall be opened immediately after the deadline for submission of quotations to determine the Lowest Calculated Quotation (LCQ), Most Economically Advantageous Quotation (MEAQ) or Most Advantageous Quotation (MAQ). Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.
  - iv) For electronic submission of price quotations, the passwords for accessing the same will be disclosed by the prospective Lessors on a specified date which may be done in person or face-to-face through videoconferencing, webcasting or similar technology.
  - v) The real property being offered by the Lessor with the S/LCQ, MEAQ or MAQ shall be rated in accordance with the technical specifications, and the reasonableness of

its price quotation shall be determined in accordance with the methodology prescribed in the Guidelines.

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

b) For Venue:

- i) The BAC shall send the RFQ to at least three (3) venues within the vicinity of the selected location. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.
- ii) The deadline for the submission of quotations may be extended until the BAC or Procurement Unit determines that quotation/s received is/are compliant with the requirements of the project.
- iii) The venue being offered by the lessor with the LCQ shall then be rated in accordance with the technical specifications prepared pursuant to the Guidelines. Compliance rating with technical specifications may be conducted through ocular inspection, interviews, or other forms of due diligence.
- iv) Upon determination of the responsiveness of the quotation, the BAC shall recommend to the HoPE the award of contract in favor of the lessor with the S/LCRQ. The award of contract shall be made in accordance with Section 66 of this IRR.

**35.10 Non-Government Organization (NGO) Participation.** When an appropriation law or ordinance earmarks an amount to be specifically contracted out to NGOs, the Procuring Entity may enter into a MOA with an NGO, subject to the guidelines to be issued by the GPPB for the purpose.

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

- a) NGO refers to a non-stock, non-profit domestic corporation duly registered with the SEC or a cooperative duly registered with the CDA committed to the task of socio-economic development and established primarily for providing goods and services to the public.
- b) The selected NGO shall keep and maintain separate bank accounts and accounting records in accordance with generally accepted accounting rules and principles, subject to visitorial audit and examination by the Procuring Entity or the COA.

**35.10.2** Under this type of Negotiated Procurement, the following procedure shall be observed:

- a) To ensure transparency in the selection of NGO through Negotiated Procurement, posting shall be done in accordance with Section 50 of this IRR.
- b) After the required posting period, the Procuring Entity shall invite at least three (3) prospective NGOs to submit sealed price quotations or password-protected price quotations in compressed archive folders, in case of electronic submission of price quotations.
- c) The Procuring Entity shall likewise require submission of the complete project proposal together with designs, plans, blueprints, budgets and charts, if necessary.
- d) On the date specified in the notice, the Procuring Entity shall open the price quotations and determine the S/LCQ, MEAQ, or MAQ. For electronic submission of price quotations, the passwords for accessing the same shall be disclosed on a specified date by the NGOs to the Procuring Entity either in person or online through videoconferencing, webcasting or similar technology. Consistent with the nature of an NGO, no profit should be included in its bid. The procuring entity shall ensure that the S/LCQ, MEAQ, or MAQ does not include any profit margin or mark-up.
- e) After determination of the responsiveness to the technical requirements, the BAC shall recommend to the HoPE the award of contract to the S/LCRQ, MEARQ, or MARQ.

**35.11 Community Participation.** The Procuring Entity may directly purchase Goods, including agricultural and fishery products from

local farmers and fisherfolk, and directly negotiate simple Infrastructure Projects with local communities or social groups (CSG) or members thereof, subject to the guidelines to be issued by the GPPB.

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

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

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

- a) The End-User or Implementing Unit shall identify project proposals in line with the Procurement Entity's strategic plan, key results areas, and major final outputs that will be sustainable if implemented with the participation of the CSG or members thereof, or where their engagement will lead to the achievement of specific social objectives. The procurement mode to be reflected in the APP shall be Negotiated Procurement (Community Participation) pursuant to this IRR.
- b) The objectives, requirements, and target community for the community-based project shall be identified by the End-User or Implementing Unit. The project requirements shall include a brief description of the Goods or Simple Infrastructure Projects to be procured, the Technical Specifications or Scope of Work, the ABC, the manner and deadline for submission of quotations, the terms and conditions of the project, and other necessary information.

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

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

- a) Conduct prior consultation with the local communities through CSG or members thereof before implementation of any Community-based Project;
- b) Secure any prior approval from the LGU as may be required under Section 27 of RA No. 7160 or the Local Government Code of 1991 and its IRR or other laws and issuances;
- c) Consider the peculiar needs and situations of Indigenous Peoples and those located in conflict-afflicted areas that are included in the target community for the implementation of Community-based Project; and

- d) Determine the necessity of undertaking activities for social preparation and capacity development of the target community prior to the implementation of Community-based Projects.

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

- a) Small quantities of off-the-shelf goods exclusively used in education and health;
- b) Specialized products where the number of suppliers is limited, such as vaccines;
- c) Goods and Consulting Services involving advanced technologies, techniques, and innovations not locally available as certified by the DTI, when it is most advantageous to the Procuring Entity; or
- d) Goods for critical public health priorities as determined and certified by the DOH.

**35.13 Direct Retail Purchase of Petroleum Fuel, Oil and Lubricant Products, Electronic Charging Devices, and Online Subscriptions.** Direct retail purchase of petroleum fuel, oil and lubricant (POL) products, Electronic Charging Devices, and online subscriptions not available in the PS-DBM may be made by the End-User or Implementing Units delegated to procure the same from identified direct suppliers or service providers, where said goods and services are required by a Procuring Entity for the efficient discharge of its principal functions or day-to-day operations.

35.13.1 Online subscriptions include:

- a) Computer software and applications, such as video conferencing applications, computer-aided design and drafting applications, office productivity tools, and system protection software;
- b) Electronic publications, reference materials and journals;

- c) Off-the-shelf software and applications, except internet and cloud computing services; and
- d) Web-based services.

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

35.13.2 The purchase of POL products, Electronic Charging Devices and online subscriptions can be contracted by the End-User or Implementing Unit to any available direct suppliers or service providers under the following conditions:

- a) For petroleum fuel (gasoline, diesel, and kerosene), oil and lubricants, and Electronic Charging Devices
  - i) Direct purchase must be made from any available retailers, dealers or gas stations at retail pump price;
  - ii) The requirement must be intended to be used for any official government vehicles and equipment for immediate consumption; and
  - iii) Payment may be made through cash advance, reimbursement or other allowable payment modalities subject to pertinent auditing and accounting rules and regulations.

b) For Online subscriptions:

- i) Direct purchase shall be made for online subscription where no local provider is available;
- ii) The maximum amount for the ABC shall be One Million Pesos (₱1,000,000). Provided, That if the online subscription to be directly purchased would require an ABC beyond the aforementioned amount, the ABC may be increased but not exceeding Five Million Pesos (₱5,000,000) and subject to prior approval of the HoPE;
- iii) Justification shall be provided by the End-User or Implementing Unit on its need to directly purchase

a specific online subscription to the HoPE. Thus, it shall:

- a) Submit a report indicating that no local provider is available; and
- b) Prepare a comparative matrix and evaluation showing that the preferred specific online subscription is better than any other similar online subscriptions available locally or that there is no suitable substitute in the local market that can be obtained at more advantageous terms;
- iv) Payment for online subscription may be made through a government purchase card or direct electronic payment using credit card or other forms of online payment, subject to pertinent budgeting, accounting and auditing rules.

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

- a) The End-User or Implementing Unit delegated to directly purchase POL products, and online subscriptions shall determine the supplier or service provider capable of delivering the required POL products, and online subscriptions at retail pump price or at the most reasonable retail price, as the case may be.
- b) Taking into account the usual trade and business practices being observed in the industry and the requirements and other reasonable considerations identified by the End-User or Implementing Unit, direct retail purchase of the required POL products, or online subscriptions shall be carried out in accordance with pertinent accounting principles and practices as well as of sound management and fiscal administration provided that they do not contravene existing laws and regulations applicable to financial transactions.
- c) The End-User or Implementing Unit shall carefully review the terms and conditions or similar agreements which shall contain a provision on compensation for

losses incurred caused by delays of the supplier or service provider.

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  - d) The Procuring Entity shall require the submission of a warranty security based on the End-User or Implementing Unit's determination that the terms and conditions or similar agreements do not provide corrective actions to be undertaken by the supplier or service provider on any noted defects in the procured online subscription.
  - |
    - e) The End-User or Implementing Unit shall post the electronic copy of the payment confirmation receipt and agreed terms and conditions or similar agreements for the direct purchase of online subscription as equivalent documents of the Notice of Award, and contract or purchase order, respectively.

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

- a) The Procuring Entity has requested the GPPB for the use of Negotiated Procurement of Goods, Infrastructure Projects or Consulting Services with utmost necessity and justification;
- b) The GPPB shall have findings that any of the existing modes of procurement will be impossible or defeats the purpose of the procurement;
- c) The Goods, Infrastructure Projects or Consulting Services are better identified by the Procuring Entity on its distinctiveness and uniqueness to a procurement program, activity or project; and
- d) Other circumstances that may be identified by the GPPB which justify the addition of a new type of Negotiated Procurement that will address the concerns of one or more government agencies.

## **Section 36. Direct Sales**

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

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

- a) The procurement project is included in the approved APP of the Procuring Entity;
- b) The original Non-CSE was procured and awarded through Competitive Bidding, Limited Source Bidding, Competitive Dialogue or Unsolicited Offer with Bid Matching;
- c) The government agency that originally procured the Non-CSE has inspected and accepted the same, and has issued a certification that the supplier has satisfactorily performed its obligations under the contract;
- d) The procurement for the same Non-CSE by the Procuring Entity shall only be initiated once within six (6) months from the acceptance of the Non-CSE by the original government agency;
- e) The contract to be executed between the Procuring Entity and the supplier must be within the amount of the contract executed with the original government agency, and that the supplier must offer the Non-CSE to the Procuring Entity at the same or lower unit price offered to the original government agency; and
- f) The supplier agreed to the terms offered by the Procuring Entity and remains legally, technically, and financially capable to undertake the contract with the Procuring Entity.

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

- a) The original government agency, when requested by the Procuring Entity, shall provide a copy of the original procurement documents and papers, such as but not limited to, the actual Bidding Documents, Notice of Award, signed contract or Purchase Order, Notice to Proceed, Inspection and Acceptance Report, Certificate of Satisfactory Performance and Completion, and other relevant documents;
- b) The End-User or Implementing Unit shall carefully review the procurement documents obtained from the original government agency, and prepare the necessary Purchase Request for the procurement of the goods;
- c) Direct Sales Request (DSR) shall be issued by the Procuring Entity to the supplier. In the event of acceptance by the supplier,

the same shall be made in writing and communicated to the Procuring Entity within five (5) calendar days from receipt of the request. The acceptance shall contain a statement of compliance with the technical requirements stated in the DSR, computation of the NFCC, and the supplier's offer which must be the same or lower unit price as in the original contract, and accompanied by a copy of its valid and updated PhilGEPS Certificate of Registration (Platinum Membership); otherwise, the supplier shall notify the Procuring Entity in writing of its non-acceptance of the request within the same period; and

- d) When all the conditions are present, the BAC of the Procuring Entity shall recommend to the HoPE the award of contract through Direct Sales to the supplier. The award of contract shall be made in accordance with Section 66 of this IRR.

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

37.1 Direct Procurement for Science, Technology and Innovation is a mode of procurement where the Procuring Entity may procure the following goods and services directly from a legally, technically, and financially capable manufacturer or supplier, or from a qualified startup business:

- a) Supplies, materials, equipment, and related services to be used actually, exclusively, and directly in the conduct of research and development projects or activities;
- b) Goods which include products of a commissioned task by a Procuring Entity which were processed, developed, and manufactured in satisfaction of its needs and requirements. These include: (i) pre-commercial goods and services that involve early market engagement to stimulate the development of new goods and services that meet specific government needs; and (ii) goods to be manufactured by qualified startup businesses alongside the thrust to develop and support new and startup businesses.

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

- c) Other goods analogous to the foregoing.

The GPPB, in coordination with the National Innovation Council (NIC), shall develop procurement policies encompassing the entire research, innovation, and enterprise ecosystem, consistent with the principles under Section 3 of this IRR. To foster innovation, relevant government agencies shall expedite the release of goods used in and documents necessary for Science, Technology, and Innovation.

The GPPB shall likewise issue the guidelines on the implementation of this mode of procurement.

### **Section 38. Video Recording of All Procurement-Related Conferences for Competitive Bidding**

38.1 To enhance the transparency of the procurement process, the Procuring Entity shall keep a video recording of all procurement-related conferences for Competitive Bidding, which includes pre-procurement conference, pre-bid conference, bid opening, and other meetings of the BAC. All procurement-related conferences for Competitive Bidding shall not commence without a video recording initiated by the BAC.

38.2 The Procuring Entity shall also livestream the preliminary examination and the opening of the bids to the public on its website, social media account, or any other form of livestreaming services.

The GPPB, in coordination with the DICT, shall issue specific guidelines on the conduct of the livestream requirement under this provision.

38.3 The mandatory video recording shall only apply to the procurement of Goods costing above Ten Million Pesos (₱10,000,000.00), Infrastructure Projects costing above Twenty Million Pesos (₱20,000,000.00), and Consulting Services costing above Five Million Pesos (₱5,000,000.00) using Competitive Bidding as the mode of procurement.

38.4 The Procuring Entity shall ensure that copies of the video recording shall be stored for not less than five (5) years and shall be made available to the public upon request and payment of a fee fixed by the Procuring Entity, subject to existing budgeting, accounting, and auditing laws, rules, and regulations.

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

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

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

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

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

## **Section 40. Procurement of CSE**

40.1 All NGAs, GOCCs, GFIs, SUCs, and LGUs shall procure CSE only from the PS-DBM, subject to its availability.

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

- a) If the CSE is unavailable due to zero inventory, in which case the Procuring Entity shall secure a Certificate of Non-Availability of Stocks by downloading from the PhilGEPS Electronic Catalogue;
- b) If the technical specifications of the CSE are not sufficient to meet the Procuring Entity's specific needs and requirements, in which case the PE shall secure a complete list of technical specifications of all CSE items by downloading from the PhilGEPS Electronic Catalogue;
- c) If the available stock of the CSE is not sufficient to meet the required quantity of the Procuring Entity, in which case the Procuring Entity shall generate and download the current Stock Position Report from the PhilGEPS Electronic Catalogue showing the available stock at the specific time and date of access; and
- d) When the BAC, upon recommendation of the End-User or Implementing Unit, has resolved that the procurement from other

sources is for reasons of efficiency, practicality, or economic viability. To support this, the End-User or Implementing Unit shall submit its written recommendation to the BAC identifying the specific reason and providing justifications thereof. To ensure proper monitoring of this instance, which could aid the PS-DBM in addressing gaps in supply chain and inventory management, the Procuring Entity shall inform the PS-DBM by filling out and submitting an online form available in the PhilGEPS Electronic Catalogue. In assessing the existence of the foregoing reasons, Procuring Entities may refer to the following instances:

- i) Inefficiency – Procurement from the PS-DBM will require extensive time and effort on the part of the Procuring Entity leading to wastage, delays or errors compared to conventional procurement methods.
- ii) Impracticality – Procurement from the PS-DBM will be excessively difficult due to an unforeseen event or a lack of feasible means or access, which includes no internet connectivity or geographical limitations.
- iii) Economic Non-viability – Procurement from the PS is not sustainable since it will not result in realized savings for the government in the long-term. This may pertain to the cost where it would be more expensive, or non-cost factors such as issues in product quality and life cycle cost considerations.

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

The PS-DBM may use the modes of procurement enumerated under Rule IV of this IRR, or deal directly with manufacturers or exclusive distributors whether to gain access to the supply or to obtain the rights to sell, distribute, or otherwise deliver the CSE to Procuring Entities through consignment or any appropriate contractual arrangement; Provided, That these manufacturers or exclusive distributors comply with the requirements set by PS-DBM to determine their legal, technical, and financial capacity in providing the required goods or services; Provided, further, That such requirements shall be set or formulated to ensure that

the goods or services are obtained from reliable sources, of the best quality, and at the most advantageous price for the whole of government.

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

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

40.5 PS DBM, which is primarily tasked with the centralized procurement of CSE for the government in accordance with Letter of Instructions No. 755, s. 1978, EO No. 359, s. of 1989, and Administrative Order No. 17, s. of 2011, shall develop the parameters in the identification, expansion, and definition of requirements and specifications of CSE through the conduct of market scoping, market survey, and market availability.

40.5.1 For goods to be classified as CSE, the following conditions shall be met:

- a) The goods, material, supply, equipment, or service is used repetitively or frequently in the day-to-day operations of Procuring Entities in the performance of their functions;
- b) Publication by the PS-DBM of the list of CSE, with available classification, description, and other relevant information, once in the Official Gazette or in a newspaper of general circulation; and
- c) Posting of the CSE and its complete technical specifications in the PhilGEPS Electronic Catalogue.

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

- a) Identification and review of technical specifications for CSE.

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

The PS-DBM shall also specify the means of verification of the CSE, to ensure conformity with the technical specifications in accordance with applicable laws and standards.

- b) Expansion or reduction of the list of CSE.

The PS-DBM shall regularly study, review, and rationalize the list of CSE to develop the appropriate strategy on how to procure them. Depending on market availability and needs of the agencies, the PS-DBM may add or delist items in the list of CSE. The PS-DBM shall submit a report to the GPPB of any modification to the list of CSE.

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

### **SECTION 41. The BAC and its Composition**

#### **41.1 BAC Structure**

41.1.1 The Procuring Entity shall establish in its head office a BAC to undertake the functions specified in this IRR; Provided, however, That in a department, bureau, office, or agency where the procurement is decentralized, the head of each decentralized unit, which is individually considered as a Procuring Entity, shall be considered as the HoPE, subject to the limitations and authority delegated by the head of the department, bureau, office or agency.

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

## 41.2 BAC Composition

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

41.2.2 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) Chairperson, who is at least a third (3rd) ranking permanent official of the Procuring Entity;
- b) An officer, who is at least a fifth (5th) ranking permanent official, or if not available, an officer of the next lower rank with knowledge, experience and/or expertise in procurement who, to the extent 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 (3rd) ranking permanent personnel or if not available, an officer of the next lower rank;
- c) An officer, who is at least a fifth (5th) ranking permanent official, or if not available, an officer of the next lower rank 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 (3rd) ranking permanent personnel or if not available, an officer of the next lower rank;

### Provisional Members

- a) 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
- b) A representative from the end-user or implementing unit who has knowledge of procurement laws and procedures.

The Chairperson and the Vice-Chairperson shall also be designated by the HoPE. Moreover, the Vice-Chairperson 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.

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

a) For Provinces, Cities, and Municipalities

- i) 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
- ii) A representative from the end user unit.

The Chairperson and Vice-Chairperson shall be designated by the Local Chief Executive. The Chairperson of the BAC shall be at least a third (3rd) ranking permanent official of the Procuring Entity. The members of the BAC shall be personnel occupying plantilla positions of the Procuring Entity concerned.

b) For *Barangays*:

i) For *Sangguniang Barangay*

- 1) The BAC shall be composed of at least five (5) or seven (7) regular members of the *Sangguniang Barangay*, except the Punong Barangay. 1) The BAC shall be composed of five (5) or seven (7) regular members of the *Sangguniang Barangay*, except the Punong Barangay.
- 2) The Punong Barangay, being the Local Chief Executive, shall designate the Chairperson, Vice-Chairperson, and members of the BAC.

ii) For *Sangguniang Kabataan (SK)*

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

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

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

41.2.5 In no case shall the HoPE or the approving authority be a member of the BAC. The Chief Accountant, and the Local Treasurer in the case of LGUs, cannot be a regular member of the BAC.

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

For transfer of knowledge and experience, membership in the BAC shall allow for staggered designations.

## **Section 42. Functions of the BAC**

42.1 The BAC shall have the following functions:

- a) Recommend to the HoPE the use of any of the modes of procurement as provided in Rule IV of this IRR;
- b) Publish or post the Invitation to Bid or Request for Expressions of Interest;
- c) Conduct pre-procurement and pre-bid conferences;

- d) Determine the eligibility of prospective bidders;
- e) Receive and open bids;
- f) Conduct the evaluation of bids;
- g) Undertake post-qualification proceedings;
- h) Resolve requests for reconsideration;
- i) Recommend award of contracts to the HoPE or the duly authorized representative; Provided, That in the event the HoPE 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;
- j) Recommend the imposition of sanctions in accordance with Rule XXI of this IRR;
- k) Prepare a procurement monitoring report that shall be approved and submitted by the HoPE to the GPPB on a semestral basis. The contents and coverage of this report shall be in the form prescribed by the GPPB provided in this IRR; and
- l) Perform such other related functions as may be necessary, including the creation of a TWG, as affirmed by the HoPE in an appropriate order, from a pool of technical, financial, and/or legal experts to assist in the following procurement processes, such as but not limited to:
  - i) Review of the Technical Specifications, Scope of Work, and Terms of Reference;
  - ii) Review of Bidding Documents;
  - iii) Short-listing of Consultants;
  - iv) Eligibility Screening;
  - v) Evaluation of Bids;
  - vi) Post-Qualification; and
  - vii) Resolution of Request for Reconsideration.

## 42.2 Quorum

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

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

## 42.3 Meetings

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

## **Section 43. Observers**

43.1 To enhance the transparency of the process, the BAC shall, during the eligibility checking, short-listing, pre-bid conference, preliminary examination of bids, bid evaluation, and post-qualification, invite, in addition to the representative of the COA, at least two (2) observers, who shall have no voting rights, to sit in its proceedings where:

43.1.1 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 CIAP, such as but not limited to the following:
  - i) Philippine Constructors Association, Inc.; or
  - ii) National Constructors Association of the Philippines, Inc.
- 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 (PRC) or the Supreme Court, such as but not limited to:

- i) Philippine Institute of Civil Engineers;
- ii) Philippine Institute of Certified Public Accountants; or
- iii) Confederation of Filipino Consulting Organizations.

43.1.2 The other observer shall come from a civil society organization (CSO) or people's organization (PO), as the case may be; Provided, That they do not have any direct or indirect interest in the procurement project. The private group or CSO or PO shall be duly registered with the SEC or the CDA, as the case may be, and the observers therefrom shall meet the following qualifications:

- a) Knowledge, experience or expertise in procurement or in the subject matter of the procurement;
- b) Absence of actual or potential conflict of interest in the procurement project; and
- c) Any other relevant criteria that may be determined by the GPPB.

43.2 Observers shall be invited at least five (5) calendar days before the date of the procurement stage or activity. The absence of observers will not nullify the BAC proceedings; Provided, That they have been duly invited in writing. In the event that a procurement activity has to be postponed, the observers shall be notified immediately of the change in schedule.

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

43.4 The observers shall have the following responsibilities:

- a) To prepare the report covering the observations of the actual proceedings they are concerned with and have attended to, either jointly or separately indicating their observations made on the procurement activities conducted by the BAC for submission to the HoPE, copy furnished the BAC Chairperson. The report shall assess

the extent of the BAC's compliance with the provisions of this IRR and areas of improvement in the BAC's proceedings;

- b) To submit their report to the HoPE, PhilGEPS, and COA and furnish a copy to the GPPB and the Office of the Ombudsman or Resident Ombudsman. If no report is submitted by the observer within seven (7) calendar days after each procurement activity, it is presumed that the bidding activity conducted by the BAC followed the correct procedure; and
- c) To immediately inhibit from participating in the procurement activity and notify in writing the Procuring Entity concerned in case of any actual or potential interest in the procurement project.

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

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

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

## **Section 44. Procurement Unit**

44.1 There shall be a procurement unit, division, or office in each Procuring Entity which shall serve as Secretariat to the BAC and perform other functions related to procurement as may be delegated by the HoPE. The creation of the procurement unit, division, or office shall be subject to the standards and guidelines prescribed by the DBM.

44.2 Pending the creation or in the absence of a procurement unit, an *ad hoc* BAC Secretariat may be designated by the HoPE.

44.3 The Secretariat shall have the following functions and responsibilities:

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

- b) Organize and make all necessary arrangements for BAC and the TWG meetings and conferences;
  - c) Prepare minutes of meetings and resolutions of the BAC;
  - d) Take custody of procurement documents and other records and ensure that all procurements undertaken by the Procuring Entity are properly documented;
  - e) Manage the sale and distribution of Bidding Documents to interested bidders;
  - f) Publish 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 prepare the APP; and
  - j) Act as the central channel of communications for the BAC with End-User or Implementing Units, Project Management Offices (PMO), other units of the line agency, other government agencies, providers of Goods, Infrastructure Projects, and Consulting Services, Observers, and the general public.
- 44.4 The head of the Secretariat in central offices shall be at least a fifth (5th) ranking permanent employee or, if not available, a permanent employee of lower rank; or shall be at least a third (3rd) ranking permanent employee in bureaus, regional offices and sub-regional, or district offices, or if not available, a permanent employee of lower rank. In addition to integrity, HoPEs shall consider procurement proficiency as a factor in designating the head of the Secretariat and Procurement Unit.

## **Section 45. Honoraria**

The Procuring Entity may grant payment of honoraria to all members of the BAC, regardless of position, TWG, and ad hoc Secretariat, in an amount not exceeding thirty percent (30%) of their respective basic monthly salaries, subject to availability of funds, which may be sourced from fees collected by the BAC in relation to its procurement activities. Undersecretaries and Assistant secretaries, including those of equivalent ranks, who are designated

as Chairperson or members of the BAC, shall be entitled to honoraria. Provided, however, That officials and employees whose organic functions are primarily related to procurement are not entitled to honoraria. The DBM shall issue the necessary guidelines for this purpose and may determine other sources of funds to implement the grant of honoraria.

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

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

- 46.1 The DBM shall create procurement positions in the government based on the qualification standards recommended by the GPPB and approved by the CSC.
- 46.2 The GPPB shall ensure the professionalization of procurement practitioners and for this purpose, shall develop the following:
  - a) A competency framework to identify the skills, knowledge, and attribute of each of the procurement positions;
  - b) A certification framework to upscale procurement competencies and ensure continued professional development;
  - c) A code of ethics for public procurement professionals; and
  - d) An inclusive capacity development program, which may incorporate secondment opportunities to facilitate knowledge-sharing and skill enhancement across government agencies and international counterparts, in order to enhance accountability of all procurement practitioners, both from the public and private sectors, promote supplier diversity, promote competition, and optimize efficiency and value for money.
- 46.3 The PRC, in consultation with the GPPB, shall establish, administer, and regulate a professional licensing program and the continuing education of public procurement professionals as a requirement for holding a procurement position in government.
- 46.4 Separate Guidelines may be issued by the GPPB, CSC, and PRC to further implement this Section.

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

### **Section 47. Form and Content of Bidding Documents**

47.1 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) ABC;
- b) Invitation to Bid or Request for Expression of Interest, as the case may be;
- c) Instructions to Bidders, including documents comprising the bid, criteria for eligibility, bid evaluation methodology or criteria in accordance with the Act, and post-qualification, the weight assigned to each criterion and the quality-price ratio if the contract is to be awarded to the MEARB or HRRB or specify if the contract is to be awarded to the LCRB or MARB as the case may be, the quality allocation if awarded to the MARB, as well as the date, time, and place of the pre-bid conference, where applicable, submission of bids and opening of bids;
- d) Technical Specifications, Terms of Reference, or Scope of Work, as may be applicable;
- e) Eligibility Requirements;
- f) Environmental criteria and specifications in relation to Section 73 of this IRR;
- g) Plans or drawings;
- h) Bid Form, Price Schedule, and List of Goods or Bill of Quantities;
- i) Delivery Time or Completion Schedule;
- j) Form and Amount of Bid Security;
- k) Form and Amount of Performance Security and Warranty;
- l) Form of Contract, and General and Special Conditions of Contract; and

- m) Additional documentary requirements or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

Based on specific needs, the End-User or Implementing Unit of the Procuring Entity shall be responsible for the preparation of all documents necessary for the procurement activity including, but shall not be limited to, the technical specifications, scope of work, or terms of reference.

47.2 The specifications and other terms in the Bidding Documents shall reflect the necessary specifications required to meet the needs of the Procuring Entity in clear and unambiguous terms.

In mixed procurements, the Procuring Entity shall specify in the Bidding Documents the requirements, criteria, and other conditions of the bidding procedures and of the ensuing contract as applicable to each component of the project. In the preparation of Bidding Documents, the Procuring Entity shall ensure compliance with existing laws, rules, and regulations, especially those concerning licenses and permits required for the project, in accordance with Section 63 of this IRR.

47.3 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 available from the time the Invitation to Bid or Request for Expression of Interest is first published until the deadline for the submission and receipt of bids.

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

47.5 Bidding Documents fee may be refunded in accordance with the guidelines to be issued by the GPPB, based on the grounds provided for under Section 70 of the Act and this IRR.

## **Section 48. Access to Information**

48.1 In all stages of the preparation of the Bidding Documents, the Procuring Entity shall ensure equal access to information. Prior to their official

release to prospective bidders, no aspect of the Bidding Documents shall be divulged or released to any prospective bidder or person having direct or indirect interest in the project to be procured, or to any party, except those officially authorized in the handling of the documents.

- 48.2 Individuals authorized to handle procurement documents under this Section shall refer to the BAC Chairperson, BAC Members, BAC Secretariat, TWG, and representatives from the End-User or Implementing Unit, among others, involved in the project at hand.
- 48.3 In procurements involving and affecting national security, the disclosure of the specific components of the procurement documents, such as the technical specifications, requirements, and components, shall be dependent upon the HoPE, having due regard to the nature, classification, sensitivity, and confidentiality of the relevant documents in relation to the purpose and reason for the request.

## **RULE VII** **INVITATION TO BID**

### **Section 49. Pre-Procurement Conference**

- 49.1 Prior to the publication of the Invitation to Bid or Request for Expression of Interest, the BAC is mandated to hold a pre-procurement conference on each and every procurement. However, the holding of a pre-procurement conference is optional for procurement of Goods costing Five Million Pesos (₱5,000,000.00) and below, procurement of Infrastructure Projects costing Ten Million Pesos (₱10,000,000.00) and below, and procurement of Consulting Services costing Two Million Pesos (₱2,000,000.00) and below.

The pre-procurement conference shall be attended by the BAC, TWG, the Secretariat, the End-User or Implementing Unit, including consultants hired by the Procuring Entity who prepared the draft Bidding Documents. 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 PPMP and APP;
- c) Determine the readiness of the procurement at hand, including, among other aspects, the following:

- i) Availability of appropriations for the procurement activity in the GAA, appropriation ordinance, corporate operating budget, or loan agreement, as the case may be. In the case of EPA, the inclusion of the procurement project in the proposed funding source, i.e., NEP, proposed corporate operating budget, or local expenditure program, as may be applicable;
  - 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 right-of-way site or location, and the possession of affected properties, subject to Section 8 of this IRR.
- d) Review, modify and agree on the criteria for eligibility screening, evaluation, post-qualification. For the procurement of Goods, Infrastructure Projects, and Consulting Services the BAC, based on the recommendation of the End-User or Implementing Unit, shall finally determine whether the contract will be awarded to the LCRB, MEARB, MARB, or HRRB;
  - e) Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities; and
  - f) Emphasize the importance of and agree on measures to ensure confidentiality, subject to Section 48 of this IRR, and the applicable sanctions and penalties.

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

LCRB shall be used in the procurement of Goods and Infrastructure Projects where the considerations for the award of contract are the eligibility of the bidder, the responsiveness of its bid to the technical requirements, and the lowest financial bid.

MEARB shall be used in the procurement of Goods or Infrastructure Projects where the considerations for the award of contract are the eligibility of the bidder, and the responsiveness of its bid to the technical requirements; and the determination of the most economically

advantageous bid in reference to the quality-price ratio allocated to the technical and financial components of the bid.

MARB shall be used in the procurement of Goods or Infrastructure Projects where the considerations for the award of contract are the eligibility of the bidder, the responsiveness of its bid to the technical requirements, and the most advantageous bid in reference to the highest rated offer based on the quality component of the bid.

HRRB shall be used in the procurement of Consulting Services where the considerations for the award of contract are the eligibility and qualifications of the bidder, the responsiveness of its bid to the technical requirements, and the highest rated offer in reference to the weighted quality-cost criteria for Quality-Cost Based Evaluation, or the highest rated technical proposal for Quality-Based Evaluation.

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

50.1 In line with the principles of transparency and competitiveness and to ensure the widest possible dissemination thereof, all invitations to bid shall be published continuously by the Procuring Entity.

50.1.1 Such publication shall be made by posting on the website or social media platforms of the Procuring Entity, if available, or such other channels as may be authorized by the GPPB.

50.1.2 For justifiable reasons, Procuring Entities that cannot publish procurement opportunities on its website, social media platform, or such other channels authorized by the GPPB shall publish its invitation to bid, at least once, in a newspaper of general nationwide circulation.

50.2 Contents of the Invitation to Bid or Request for Expression of Interest.

The Invitation to Bid or 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 procurement project, and a brief description of the goods to be procured;
  - ii) Infrastructure Projects, the name and location of the procurement project, 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 procurement project, a general description of the project and other important or relevant information;
- b) The identification and number of lots or items specific to the bidding, as well as the basis of evaluation of the project, lots, or items, where applicable;
- c) 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;
- d) For the procurement of Goods and Infrastructure Projects, whether the contract will be awarded to the LCRB, MEARB or MARB. For the procurement of Consulting Services, the contract will be awarded to the HRRB;
- e) If the contract is to be awarded to the MEARB or HRRB, the criteria to be used in assessing the bid, the weight or score assigned by the Procuring Entity to each criterion, and the quality-price ratio to determine the award;
- f) If the contract is to be awarded to the MARB, the criteria to be used in assessing the bid, and the weight or score assigned by the Procuring Entity to each criterion;
- g) For the procurement of Consulting Services, the type of procedure to evaluate the bid, whether Quality-Based or Quality-Cost Based Evaluation procedure;
- h) 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;
- i) ABC for the project, lot, or item to be bid;
- j) The source of funding;
- k) The place, time and website where the Bidding Documents may be secured or downloaded, and, where required, the price of the Bidding Documents, in accordance with Section 47.4 of this IRR;

- l) The contract duration or delivery schedule;
- m) The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned Procuring Entity, as well as its designated contact person;
- n) Bid security requirement;
- o) Such other necessary information deemed relevant by the Procuring Entity; and
- p) For electronic bid submission, the Invitation to Bid, including the Bidding Documents shall clearly state whether the PE shall allow the submission and receipt of bids through electronic means.

**50.3 Publication of the Invitation to Bid or Request for Expression of Interest.**

**50.3.1 For Competitive bidding, Competitive Dialogue, and Unsolicited Offer with Bid Matching, the Invitation to Bid or Request for Expression of Interest shall be:**

- a) Posted at any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned for seven (7) calendar days as certified by the head of the BAC Secretariat of the Procuring Entity concerned; and
- 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 the date of advertisement.

**50.3.2 For the following modes, the BAC, through its Secretariat, shall post the invitation or request for submission of price quotations/proposals 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 at least three (3) calendar days:**

- a) Limited Source Bidding under Section 28;
- b) Two Failed Biddings under Section 35.1;
- c) Small Value Procurement (For ABC above Two Hundred Thousand Pesos (₱200,000.00)) under Section 35.9; and

d) NGO Participation under Section 35.11.

Other modes not enumerated herein shall not be required to comply with the publication of requirements.

- 50.3.3 Pending the mandatory implementation of the electronic bidding facility of the PhilGEPS, if the Procuring Entity will allow electronic bid submission, the highest official managing the Information Technology system of the agency shall issue a Certification based on the prescribed form of the GPPB.

The said Certification shall be submitted to the GPPB-TSO prior to posting of the Bidding Documents allowing for electronic submission and receipt of bids.

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

- 51.1 For procurement projects to be bid through competitive selection such as competitive bidding, competitive dialogue, limited source bidding, and unsolicited offer with bid matching, with an ABC of Three Million Pesos (₱3,000,000.00) or more, the BAC shall conduct at least one (1) pre-bid conference to clarify or explain any of the requirements, terms, conditions, and specifications stipulated in the Bidding Documents. For procurement projects with an ABC of less than Three Million Pesos (₱3,000,000), 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.

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

- 51.3 The pre-bid conference shall discuss, clarify, and explain, among other things, the eligibility requirements and the technical and financial components of the procurement project, including questions and clarifications raised by the prospective bidders before and during the pre-bid conference.

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

- a) The BAC shall discuss the requirements for a particular procurement project, as stated in the Bidding Documents. The BAC may also conduct

a walk-through and presentation of the documents required, including the presentation of sample documents, mathematical computations, or the manner of filling up forms, as the case may be. The BAC shall not merely rely on the questions raised by the prospective bidders but must initiate discussions on the requirements of the project.

- b) The BAC shall likewise discuss the common reasons for bidders' disqualifications based on its experiences in previous procurement projects. Accordingly, the BAC shall present and explain the ways to prevent similar occasions of disqualification.

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

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

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

## 51.5 Bid Bulletins

51.5.1 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 Bid Bulletin, duly signed by the BAC Chairperson, 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.

51.5.2 For purposes of clarifying or modifying any provision of the Bidding Documents, Bid Bulletins may be issued upon the Procuring Entity's initiative 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.

51.5.3 Any Bid Bulletin issued by the BAC shall also be posted in the PhilGEPS, in any conspicuous place in the premises of the Procuring Entity, and on the website or social media platforms of the Procuring Entity, if available, or such other channels as may be authorized by the GPPB. It shall be the responsibility of all those who have properly secured the Bidding Documents to inquire and secure Bid Bulletins that may be issued by the BAC. However, bidders who have submitted bids before the issuance of the Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with Section 55 of this IRR.

## **RULE VIII** **RECEIPT AND OPENING OF BIDS**

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

52.1 For purposes of determining the eligibility of bidders using the criteria stated in Section 52.4 of this IRR, the prospective bidder shall submit its valid and updated PhilGEPS Certificate of Registration (Platinum Membership) pursuant to the requirements provided in Section 20 of this IRR.

To ensure that the prospective bidder is technically and financially capable to undertake the procurement project, the BAC shall also require the submission of the following documents using the forms prescribed in the Bidding Documents:

- a) Statement of the bidder of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the procurement project;
- b) For Goods and Infrastructure Projects, Statement of the bidder's SLCC similar to the procurement project, except under conditions provided for in Sections 52.4.1.3 and 52.4.2.4 of this IRR, within the relevant period as provided in the Bidding Documents in the case of Goods;
- c) For Goods and Infrastructure Projects, the bidder's computation of NFCC. However, in the case of procurement of Goods, a bidder may

submit a committed Line of Credit from a bank, in lieu of its NFCC computation; and

- d) For Consulting Services, a statement of the consultant specifying its nationality and confirming that those who will actually perform the service are registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions, including their respective curriculum vitae.

To facilitate the determination of eligibility, the BAC of a Procuring Entity shall use the contents of the PhilGEPS electronic registry of manufacturers, suppliers, distributors, contractors, or consultants, in accordance with Section 20 of this IRR.

52.2 In case the prospective bidder is a joint venture, the following documents shall be required:

- a) For Goods and Consulting Services, a valid joint venture agreement (JVA), in case the joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners should be included in the bid, stating that they will enter into and abide by the provisions of the JVA in the event that the bid is successful. Failure to enter into a joint venture in the event of a contract award shall be a ground for the forfeiture of the bid security.
- b) For Infrastructure Projects, JV bidders shall submit a JVA in accordance with RA No. 4566 or the "Contractors' License Law" and its IRR.

Each partner of the joint venture shall submit their respective PhilGEPS Certificates of Registration in accordance with Section 20.2.9.1 of this IRR. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance; Provided, That the partner responsible to submit the NFCC shall likewise submit the Statement of all of its ongoing contracts.

52.3 In the case of foreign bidders, the eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in a foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign

service establishment or post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines.

However, for Contracting Parties to the Apostille Convention, the documents shall be authenticated through an apostille by the Competent Authority, as defined in Section 20.9.2 of this IRR, except for countries identified by the DFA that will still require legalization (red ribbon) by the relevant Embassy or Consulate.

## 52.4 Eligibility Criteria

### 52.4.1 For the procurement of Goods:

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

- a) Duly licensed Filipino citizens or sole proprietorships;
- b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
- c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
- d) Cooperatives duly organized under the laws of the Philippines; or
- e) Persons or entities forming themselves into a joint venture, i.e., a group of two (2) or more persons or entities that intend to be jointly and severally 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; Provided further, That the primary purpose of each member of the joint venture must be similar or related to the requirement of the project to be bid out.

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

- 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, 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.
- 52.4.1.3 The bidder must have completed, within a period of ten (10) years from the submission of the bid, unless a shorter period is indicated in the Invitation to Bid, an SLCC that is similar to the procurement project to be bid, and whose value, adjusted to current prices using the Philippine Statistics Authority (PSA) consumer price indices, must be at least fifty percent (50%) of the ABC.

If the Procuring Entity determines that it is necessary to adopt a different SLCC requirement to ensure broader bidder participation while establishing their technical capacity, it may allow bidders to present a combination of contracts completed within the same period, provided their total value is at least fifty percent (50%) of the ABC, thus:

- a) The bidder should have completed at least one (1) similar contract amounting to at least 25% of the ABC; and
- b) The bidder should have completed other contracts, whether similar or not, with an aggregate amount of at least 25% of the ABC.

For this purpose, the Procuring Entity may clarify in the Bidding Documents the definition or description of what it considers to be a similar project, which must be germane to the kind, class, or genus of goods or services to be procured guided by the principle of proportionality and fit-for-purpose approach.

52.4.1.4 The computation of a bidder's NFCC must be at least equal to the ABC to be bid, calculated as follows:

NFCC = [(Current assets minus current liabilities) (15)] 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 procurement project.

The values of the domestic bidder's current assets and current liabilities shall be based on the latest AFS submitted to the BIR.

For the purpose of computing the foreign bidders' NFCC, the value of the current assets and current liabilities shall be based on their AFS prepared in accordance with international financial reporting standards.

52.4.1.5 If the bidder submits a committed Line of Credit, it must be at least equal to ten percent (10%) of the ABC to be bid; Provided, That if the same is issued by a foreign bank, it shall be confirmed or authenticated by a local bank.

#### 52.4.2 For the procurement of Infrastructure Projects:

52.4.2.1 The following persons or entities shall be allowed to participate in the bidding for Infrastructure Projects:

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

e) Persons or entities forming themselves into a joint venture, i.e., a group of two (2) or more persons or entities that intend to be jointly and severally responsible or liable for a particular contract; Provided, however, That in accordance with EO No. 65, s. 2018, Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%); Provided, further, That joint ventures in which Filipino ownership or interest is less than sixty percent (60%) may be eligible where the structures to be built require the application of techniques or technologies which are not adequately possessed by a person or entity meeting the sixty percent (60%) Filipino ownership requirement; Provided, furthermore, 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; Provided, finally, That the primary purpose of each member of the joint venture must be similar or related to the requirement of the project to be bid out.

52.4.2.2 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.

52.4.2.3 In accordance with RA No. 4566 or the "Contractors' License Law" as amended by RA No. 11711 or "An Act Further Amending Republic Act No. 4566", the persons or entities enumerated in Section 52 of this IRR may participate in the procurement of Infrastructure Projects if it has been issued a license by the PCAB to engage or act as a contractor.

52.4.2.4 The bidder must have completed an SLCC that is similar to the procurement project to be bid, and whose value, adjusted to current prices using the PSA consumer price indices, must be at least fifty percent (50%) of the ABC to be bid; Provided, That any change to the fifty percent (50%) requirement may be allowed, subject to the recommendation of the Procuring Entity, which shall be submitted to the GPPB for consideration; Provided,

further, That contractors under Small A and Small B categories without similar experience on the procurement project to be bid may be allowed to bid if the cost of such contract is not more than the Allowable Range of Contract Cost of their registration based on the guidelines as prescribed by the PCAB.

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

Moreover, a contract shall be considered similar to the procurement project if it has the same major categories of work. The Procuring Entity may clarify in the Bidding Documents what is regarded as major categories of work guided by the principle of proportionality and fit-for-purpose approach.

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

52.4.2.6 The computation of a bidder's NFCC must be at least equal to the ABC to be bid, calculated as follows:

NFCC = [(Current assets minus current liabilities) (15)] 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 procurement project to be bid; Provided, That a different formula may be adopted subject to the recommendation of the Procuring Entity, which shall be submitted to the GPPB for consideration.

The value of the domestic bidder's current assets and current liabilities shall be based on the latest AFS submitted to the BIR.

For the purpose of computing the foreign bidders' NFCC, the value of the current assets and current liabilities shall be based on their AFS prepared in

accordance with international financial reporting standards.

#### 52.4.3 For the Procurement of Consulting Services

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

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

52.4.3.2 When the procurement of Consulting Services involves 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 fields.

52.4.3.3 In order to manifest trust and confidence in and promote the development of Filipino consultancy, foreign consultants may be hired in the event Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, as determined by the HoPE subject to the submission of the documents in accordance with Section 66 of this IRR.

52.5 GOCCs may be eligible to participate in public procurement if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not attached agencies of the Procuring Entity. The GPPB shall promulgate the necessary guidelines for this provision.

52.6 The Procuring Entity can reassess a bidder's qualifications at any stage of the procurement process if there are reasonable grounds to believe that a misrepresentation has been made by the said bidder or if there has been a change in the bidder's capability to undertake the project from the time it submitted its eligibility requirements. If any false information or changes affecting eligibility are found, the bidder shall be disqualified from obtaining an award or implementing the contract, as the case may be, subject to the applicable rules under this IRR.

## **Section 53. Short-Listing for Consulting Services**

### **53.1 Short-Listing of Prospective Bidders**

53.1.1 For the procurement of Consulting Services, the Procuring Entity concerned shall consider for short-listing only those consultants whose contracts, as identified in the eligibility documents submitted for registration, are similar in nature and complexity to the procurement project, based on the Request for Expression of Interest.

53.1.2 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 only one (1) or 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. The short-listed bidders shall then be required to pay the fee for the Bidding Documents, if applicable, subject to the provisions of Section 47 of this IRR.

53.1.3 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 procurement project 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 in relation to the extent and complexity of the undertaking; and
- c) Current workload relative to capacity.

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

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

54.1 Bidders shall submit their bids through their respective duly authorized representatives using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, or in appropriate documents and file format for electronic bid submission as per the relevant Guidelines, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under Section 52 of this IRR, and the second shall contain the financial component of the bid.

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

a) For the procurement of Goods:

- i) PhilGEPS Certificate of Registration (Platinum Membership) in accordance with Section 20 of this IRR. Procurement to be performed overseas shall be subject to the Guidelines issued by the GPPB.
- ii) Statement of all ongoing government and private contracts;
- iii) Statement of SLCC;
- iv) NFCC Computation or committed Line of Credit;
- v) JVA or the duly notarized statement in accordance with Section 52.1(b) of this IRR, if applicable;
- vi) Bid security in the prescribed form, amount and validity period;

- vii) Technical Specifications, which may include production or delivery schedule, manpower requirements, or after-sales service or parts, if applicable;
- viii) Omnibus Sworn Statement in accordance with Section 54.3 of this IRR; and
- ix) For foreign bidders claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos, a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item or product.

b) For the procurement of Infrastructure Projects:

- i) PhilGEPS Certificate of Registration (Platinum Membership) in accordance with Section 20 of this IRR. Procurement to be performed overseas shall be subject to the Guidelines issued by the GPPB.
- ii) PCAB License and Registration, in case of JV;
- iii) Statement of all ongoing government and private contracts;
- iv) Statement of SLCC;
- v) NFCC Computation;
- vi) JVA, if applicable;
- vii) Bid security in the prescribed form, amount and validity period;
- viii) Project Requirements, which shall include the following:
  - 1) Organizational chart for the procurement project to be bid;
  - 2) List of contractor's personnel (e.g., Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the procurement project to be bid, with their complete qualifications and experience data;
  - 3) List of contractor's major equipment units which are owned, leased, or under purchase agreements, supported by proof of ownership or certification of

availability of equipment from the equipment lessor or vendor for the duration of the project, as the case may be; and

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

c) For the procurement of Consulting Services:

- i) The bid security in the prescribed form, amount, and validity period;
- ii) Organizational chart for the procurement project to be bid;
- iii) List of completed and ongoing projects;
- iv) Approach, work plan, and schedule: Provided, however, That for architectural design, submission of architectural plans and designs shall not be required during the consultant's selection process;
- v) List of key personnel to be assigned to the project, with their complete qualification and experience data;
- vi) Omnibus Sworn Statement in accordance with Section 54 of this IRR; and
- vii) PhilGEPS Certificate of Registration (Platinum Membership) in accordance with Section 20 of this IRR. Procurement to be performed overseas shall be subject to the Guidelines issued by the GPPB.

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

- a) The signatory is the duly authorized representative of the prospective bidder, and is granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, to sign, and execute the ensuing contract accompanied by the duly notarized Special Power of Attorney, Board or Partnership Resolution, or Secretary's Certificate, whichever is applicable;
- b) It is not "blacklisted" or barred from bidding by the GoP or any of its agencies, offices, corporations, or LGUs, including foreign government, or foreign or international financing institutions whose

blacklisting rules have been recognized by the GPPB; by itself or by relation, membership, association, affiliation, or controlling interest with another blacklisted person or entity;

- c) 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;
- d) It is authorizing the HoPE or its duly authorized representative/s to verify all the documents submitted;
- e) It complies with the disclosure provisions under Sections 81 and 82 of the Act and this IRR, in relation to other provisions of RA No. 3019;
- f) It complies with existing labor laws and standards;
- g) It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs;
- h) It did not give or pay, directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity; and
- i) In case of advance payment was made or given, failure to perform or deliver any of the obligations and undertakings in the contract shall be sufficient grounds to constitute criminal liability under existing laws.

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

54.5 Bids shall be received by the BAC on the date, time, and place specified in the Invitation to Bid or Request for Expression of Interest. The following periods from the last day of posting of the Invitation to Bid or 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:

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

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

- 54.6 Bids, including the eligibility requirements under Section 52.1 of this IRR, submitted after the deadline shall not be accepted by the BAC. The BAC shall record in the minutes of the meeting of the submission and opening of bids, the bidder's name, its representative, and the time the late bid was submitted.
- 54.7 To ensure transparency and accurate representation of the bid submission, the BAC Secretariat shall notify in writing all bidders whose bids it has received through mail at its PhilGEPS-registered physical address or official e-mail address. The notice shall be issued within seven (7) calendar days from the date of the bid opening.
- 54.8 The original copy of the bid form shall be typewritten or written in ink and shall be signed by the bidder or its duly authorized representative.
- 54.9 Unsealed or unmarked bid envelopes, or in case of electronic bid submission, Bidding Documents not in compressed archive folders and are not password-protected, shall be rejected. However, bid envelopes that are not properly sealed and marked or not properly compressed and password-protected, as required in the Bidding Documents, shall be accepted; Provided, That the bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The BAC shall assume no responsibility for misplaced or lost contents of the improperly sealed or marked bid or improperly compressed or password-protected folder, or for its premature opening.

## **Section 55. Modification and Withdrawal of Bids**

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

modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened.

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

55.2 Bidders may, through a letter, withdraw their bids before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline shall be subject to appropriate sanctions as prescribed in this IRR. Bidders may also express their intention not to participate in the bidding through a letter which should reach and be stamped received by the BAC before the deadline for the receipt of bids. Bidders that withdraw their bids shall no longer be allowed to submit another bid for the same contract directly or indirectly.

## **Section 56. Bid Security**

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

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

<b>Form of Bid Security</b>	<b>Amount of Bid Security (Not less than the required percentage of the ABC)</b>
a) Cash, or cashier's or manager's check issued by a bank. For biddings conducted by LGUs, the cashier's or manager's check may be issued by other	Two percent (2%)

banks certified by the BSP as authorized to issue such financial instrument.	
b) Bank draft or guarantee, or irrevocable Letter of Credit issued by a bank; Provided, however, That it shall be confirmed or authenticated by a bank, if issued by a foreign bank.  For biddings conducted by LGUs, bank draft or guarantee, or irrevocable Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Five percent (5%)
c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Five percent (5%)

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

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

56.5 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 LCRB, MEARB, MARB, or HRRB, 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 request for reconsideration and/or protest.

56.6 A Bid Securing Declaration is an undertaking which states, among others, that the bidder shall enter into contract with the Procuring Entity and furnish the required performance security within ten (10) calendar days, as indicated in the Bidding Documents, from receipt of the Notice of Award, and commits to pay the corresponding amount as fine and be

automatically disqualified from bidding of any procurement contract of any Procuring Entity for a period of time, upon receipt of the Blacklisting Order, in the event it violates any of the conditions stated therein as required in the guidelines issued by the GPPB.

- 56.7 In no case shall the 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 57.2 of this IRR. In case the bidder is required to extend its bid validity for grounds as provided in this IRR, the bidder may, at its discretion, substitute a Bid Securing Declaration as a replacement for its bid security; Provided, That the option to substitute is indicated in the bidding documents.

## **Section 57. Bid Validity**

- 57.1 Bids and bid securities shall be valid for a reasonable period as determined by the HoPE 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.
- 57.2 Should it become necessary to extend the validity of the bids and the bid securities beyond one hundred twenty (120) calendar days, the Procuring Entity concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security.

## **Section 58. Bid Opening**

58.1 The BAC shall open the bids immediately after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the Bidding Documents.

58.2 The manner of opening of the bids for Goods and Infrastructure Projects shall depend on the award criterion to be adopted, as follows:

- a) For LCRB, the BAC shall open the technical and financial proposals on the same day; and
- b) For MEARB or MARB, only the technical proposals shall be opened while the financial proposals shall remain unopened and be secured by the BAC until the specified time of their opening as indicated in the Bidding Documents. Only the financial proposals of the bidders who have met the minimum technical score for MEARB or the highest technical score for MARB shall be opened.

58.3 For electronic bid submission, if applicable, the passwords for accessing the Bidding Documents will be disclosed by the Bidders only during the actual bid opening which may be done in person or through videoconferencing, webcasting, or similar technology.

58.4 In case the bids cannot be opened as scheduled due to justifiable reasons, the BAC shall secure the bids submitted and reschedule the opening of bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted on the PhilGEPS website and the website of the Procuring Entity concerned.

58.5 The bidders or their duly authorized representatives may attend the opening of bids. The BAC shall ensure the integrity, security, and confidentiality of all submitted bids. The abstract of bids as read, and the minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover the cost of materials.

## **RULE IX** **BID EVALUATION**

### **Section 59. Preliminary Examination of Bids**

59.1 Prior to bid evaluation, the BAC shall open the first bid envelopes in public to determine each bidder's compliance with the documents required to be submitted for the eligibility and technical requirements, as prescribed in this IRR. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass or fail" criterion, as stated in the Instructions to Bidders. If a bidder submitted 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 first bid envelope as "passed."

Receipt of the scanned copies of the first bid envelope with the required forms prescribed in this IRR, which are for online or electronic bid submission, shall be considered as compliant with the requirements of the said bid submission, subject to the submission of the original copies of the following:

- a) Bid Securing Declaration, or other forms of bid security, excluding cash; and
- b) Omnibus Sworn Statement.

These forms shall be submitted by the bidder during the post-qualification stage.

The non-submission of these forms within the prescribed period shall render the bid submission as non-compliant and shall result in the post-disqualification of the bidder.

- 59.2 Immediately after determining compliance with the requirements in the first bid envelope, the BAC shall open the second bid envelope of each remaining eligible bidder whose technical proposal contained in the first bid envelope was rated "passed." The second bid envelope of each compliant bidder shall be opened within the same day, except as provided under Sections 58 and 62 of this IRR. In case any of the requirements in the second bid envelope of a particular bid is missing, incomplete, or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid concerned as "failed." Only bids determined to contain all the bid requirements for both components shall be rated "passed" and immediately considered for evaluation and comparison.

Receipt of the scanned copies of the second bid envelope with the required forms such as the duly signed bid form, price schedules, or other forms prescribed in this IRR, for electronic or online bid submission, shall be considered as compliant with the requirements of the said bid submission.

- 59.3 For the procurement of Goods and Infrastructure Projects using MEARB as award criteria, the detailed implementation of the procedure specified in this Section shall be provided in Sections 61.3 to 61.8 of this IRR.

- 59.4 For the procurement of Consulting Services, the detailed implementation of the procedure specified in this Section shall be as provided in Section 62 of this IRR.

## **Section 60. Ceiling for Bid Prices**

- 60.1 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.

- 60.2 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 Infrastructure Projects) and reflect the quality, supervision and risk and inflationary factors, as well as prevailing market prices, associated with the types of Goods or Infrastructure Projects to be procured;
- c) The Procuring Entity has trained cost estimators in 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 the ABC and the engineer's or Procuring Entity's estimate; and
- e) The Procuring Entity has established a monitoring and evaluation system for contract implementation to provide feedback on actual total costs of Goods and Infrastructure Projects.

However, the GoP and the foreign government, or foreign or international financing institutions may agree to waive the foregoing conditions.

## **Section 61. Bid Evaluation for the Procurement of Goods and Infrastructure Projects**

61.1 Members of the BAC, its staff and personnel, Secretariat, and TWG, as well as Observers, 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 the bidder in writing for clarification of its bid. All responses to requests for clarification shall be in writing.

61.2 For the procurement of Goods and Infrastructure Projects, the BAC shall evaluate the financial component of the bids to determine the lowest calculated bid (LCB) using the following steps:

- 61.2.1 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.

However, when no price or a zero (0) or a dash (-) is indicated in a required item in the bid form, the same shall be construed that it is being offered for free to the Government, except those required by law or regulations to be provided for; and

- b) Arithmetical corrections. The BAC shall 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. Any adjustment shall be calculated in monetary terms to determine the calculated prices.

61.2.2 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, if applicable, which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for the bid evaluation and comparison.

61.2.3 In case of discrepancies between: (i) bid prices in figures and in words, the latter shall prevail; (ii) total price per item and unit price for the item as extended or multiplied by the quantity of that item, the latter shall prevail; (iii) stated total price and the actual sum of prices of component items, the latter shall prevail; (iv) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail; and (v) amount in price schedule and in the bid form, the latter shall prevail.

61.2.4 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 LCB. Total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, which exceed the ABC shall be disqualified.

61.2.5 The entire evaluation process for the procurement of Goods and Infrastructure Projects using LCB as criteria shall be completed

within seven (7) calendar days from the deadline for receipt of proposals.

61.3 For the procurement of Goods and Infrastructure Projects using MEARB as award criteria, the BAC shall evaluate the quality and price proposals to determine the Most Economically Advantageous Bid (MEAB) using the following steps:

- a) The quality proposal together with the price proposal shall be considered in the evaluation of bids. The quality proposals shall be evaluated first using the criteria in Section 61.4 of this IRR. The price proposals of the bids who meet the minimum quality score shall then be opened.
- b) The price and quality proposals shall be given corresponding weights with the price proposal given a minimum weight of fifteen percent (15%) up to a maximum of forty percent (40%). The weight of the quality criteria shall be adjusted accordingly such that their total weight in percent together with the weight given to the price proposal shall be equal to one hundred percent (100%). To further promote green public procurement, the sustainability of products, materials, or structures with green specifications shall be given greater weight in the evaluation of bids. The exact weights shall be approved by the BAC upon the recommendation of the End-User or Implementing Unit and indicated in the Bidding Documents. The BAC shall rank the bidders in descending order based on the combined numerical ratings of their quality and price proposals. The bidder with the best overall score using the quality-price ratio shall be referred to as the MEAB.
- c) The HoPE 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.

61.4 The quality component shall be assessed on the basis of criteria with corresponding numerical weights indicated in the Bidding Documents, which may include qualitative, environmental, or social aspects linked to the subject matter of the contract. These may include any or a combination of the following:

- a) Quality and technical merit, including technical competence and a credible track record;
- b) Aesthetic and functional design and characteristics;
- c) Approach and methodology;

- d) Accessibility;
- e) Tools and equipment;
- f) Social, environmental, economic, and innovative characteristics;
- g) Organization, qualification, and experience of employees or staff assigned to perform the contract;
- h) Ongoing contracts and work commitments;
- i) After-sales service and technical assistance;
- j) Delivery conditions, such as delivery period and delivery process;
- k) Disposal measures; or
- l) Other relevant criteria in relation to the subject Goods or Infrastructure Projects to be procured.

61.5 In order to eliminate bias in evaluating the quality proposals, it is recommended that the highest and lowest scores for each bidder for each criterion shall not be considered in determining the average scores of the bidders, except when the evaluation is conducted in a collegial manner.

61.6 All participating bidders shall be furnished with the results of the evaluation, which shall reflect the ranking and total scores only, after the approval by the HoPE 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.

61.7 The entire evaluation process for the procurement of Goods and Infrastructure Projects using MEARB as criteria shall be completed within fourteen (14) calendar days from the deadline for receipt of proposals.

61.8 For the procurement of Goods and Infrastructure Projects using MARB as the award criterion, the BAC shall evaluate the quality proposals to determine the MAB using the quality components provided in Section 61.4 of this IRR. The quality components shall be assessed on the basis of the criteria with corresponding numerical weights indicated in the bidding document to determine the bidder with the highest technical rating.

The second bid envelope of the bidder obtaining the highest technical rating shall be opened. If the financial proposal is equal to or lower than

the ABC, the bid shall be accepted and determined as the MAB; otherwise, the same shall be rejected and the bidder will be disqualified. The specific terms and conditions for using the MARB as an award criterion shall be specified in the guidelines to be issued by the GPPB.

## **Section 62. Bid Evaluation of Short-Listed Bidders for Consulting Services**

- 62.1 From submission and receipt of bids until the approval by the HoPE 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 the bidder in writing for clarification of its bid. All responses to requests for clarification shall be in writing.
- 62.2 The purpose of bid evaluation is to determine the Highest Rated Bid using the following steps:

62.2.1 The BAC shall conduct a detailed evaluation of bids using either of the following evaluation procedures as specified in the Bidding Documents:

### **62.2.1.1 Quality-Based Evaluation Procedure**

- a) A two-stage procedure shall be adopted whereby each consultant shall be required to submit its technical and financial proposals simultaneously in separate sealed envelopes.
- b) After the receipt of bids, the technical proposals shall first be opened and evaluated, in accordance with Section 62.2.2 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.
- c) The HoPE 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.
- d) After approval by the HoPE 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 its 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.

- e) Negotiations shall be in accordance with Section 62.2.5 of this IRR: Provided, That the amount indicated in the financial proposal shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the financial proposal and the ABC as stated in the Bidding Documents.

#### 62.2.1.2 Quality-Cost Based Evaluation Procedure

- a) 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 62.2.2 of this IRR. The financial proposals of the consultants who meet the minimum technical score shall then be opened.
- b) 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 HoPE 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.
- c) The HoPE 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.
- d) After approval by the HoPE of the Highest Rated Bid, the BAC shall, within three (3) calendar days, notify and invite the consultant with the Highest Rated Bid for negotiation in accordance with Section 62.2.5 of this IRR, except for the financial proposal under item (e) thereof.

62.2.2 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 other projects; relationship with previous and current clients; and, overall work commitments, geographical distribution of current or 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 of approach, and the quality of interpretation of project problems, risks, and suggested solutions.

For complex or unique undertakings, such as those involving new concepts or 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.

- 62.2.3 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.
- 62.2.4 All participating short-listed consultants shall be furnished with the results of the evaluation, which shall reflect the ranking and total scores only, after the approval by the HoPE of the ranking. Said results shall also be posted on the PhilGEPS and the website of the Procuring Entity, whenever available, for a period of not less than seven (7) calendar days.

62.2.5 Negotiations shall cover the following:

- a) Discussion and clarification of the terms of reference and scope of services;
- b) Discussion and finalization of the methodology and work program proposed by the consultant;
- c) Consideration of appropriateness of qualifications and pertinent compensation, number of man-months and the personnel to be assigned to the job, taking note of over-qualified personnel, to be commensurate with the compensation of personnel with the appropriate qualifications, number of man-months and schedule of activities which shall pertain to the Manning Schedule;
- d) Discussion on the services, facilities, and data, if any, to be provided by the 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.

62.2.6 Total calculated bid prices, as evaluated and corrected for minor arithmetical corrections, such as computational errors, which exceed the ABC shall not be considered.

62.3 There should be no replacement of key personnel before the awarding of contract, except for any delay caused by the Procuring Entity, or for justifiable reason as may be determined by the BAC, such as, illness, death, or resignation; Provided, That it is duly supported by relevant certificates. The BAC shall immediately consider negotiation with the next ranked consultant if an unjustifiable replacement of personnel by the first ranked firm is made. Once the contract has been awarded, no replacement shall be allowed by the HoPE until after fifty percent (50%) of the personnel's man-months have been served, except for justifiable reasons, subject to appropriate sanctions as prescribed in the PBDs.

62.4 The entire evaluation process, including the submission of the results thereof to the HoPE for approval, shall be completed in not more than twenty-one (21) calendar days after the deadline for receipt of proposals.

The proposal with the highest score shall be identified as the Highest Rated Bid.

## **RULE X** **POST-QUALIFICATION**

### **Section 63. Objective and Process of Post-Qualification**

63.1 The Bidder with the LCB, MAB, or the MEAB, in the case of Goods and Infrastructure Projects, or the HRB, in the case of Consulting Services, shall undergo post-qualification to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents.

63.2 Within five (5) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the LCB, MEAB, MAB, or HRB, the bidder shall submit all the eligibility documents supporting its PhilGEPS Certificate of Registration (Platinum Membership), its latest income and business tax returns filed for the preceding quarter which should not be earlier than two (2) quarters from the date of submission and receipt of bid, and other appropriate licenses and permits required by law and stated in the Bidding Documents.

Failure to submit any of the post-qualification requirements on time, or a finding against the veracity thereof, shall disqualify the bidder for award: Provided, That in the event that a finding against the veracity of any of the documents submitted is made, it shall cause the forfeiture of the Bid Security in accordance with Article XXI of the Act and this IRR.

63.3 During post-qualification, the BAC shall verify and validate the veracity, authenticity, and validity of all the eligibility documents supporting the PhilGEPS Certificate of Registration (Platinum Membership), and all the other statements made, and documents submitted by the bidder with the LCB, MEAB, MAB, or HRB, 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 54 of this IRR. For this purpose, the GPPB shall maintain a portal which contains the consolidated file of all “blacklisted” suppliers, contractors, and consultants.

- b) Technical Requirements. To verify and validate the Bidder's stated compliance with the requirements specified in the Bidding Documents.
  - c) Financial Requirements. To verify and validate the bid price proposal of the bidder and, whenever applicable, the required committed Line of Credit 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.
- 63.4 If the BAC determines that the bidder with the LCB, MEAB, MAB, or HRB passes all the criteria for post-qualification, it shall declare the said bid as the LCRB, MEARB, or MARB, in the case of Goods and Infrastructure Projects, or the HRRB, in the case of Consulting Services, and recommend to the HoPE 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.
- 63.5 If, however, the BAC determines that the bidder with the LCB, MEAB, MAB, or HRB fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it.
- 63.6 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 LCB, MEAB, MAB, or HRB. 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 LCB, MEAB, MAB, or HRB.
- 63.7 If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next LCB, MEAB, MAB, or HRB, and so on, until the LCRB, MEARB, MARB, or HRRB, as the case may be, is determined for award, subject to Section 66 of this IRR.
- 63.8 The post-qualification process shall be completed in not more than twelve (12) calendar days from the determination of the LCB, MEAB, or MAB. For Consulting Services, the twelve-day period to complete the post-qualification process shall reckon from the completion of the negotiation with the Bidder that submitted the HRB. In exceptional cases, the post-qualification period may be extended by the HoPE, but in no case shall

the aggregate period exceed forty-five (45) calendar days for Goods and Infrastructure Projects, or thirty (30) calendar days for Consulting Services.

In case of post-disqualification of the bidder with the LCB, MEAB, MAB, or HRB, the BAC shall be given the same fresh period to conduct the post-qualification of the next LCB/MEAB/HRBLCB, MEAB, MAB, or HRB until a bidder is post-qualified or failure of bidding is declared based on Section 64 of this IRR.

#### **Section 64. Failure of Bidding**

64.1 There shall be a failure of bidding in competitive bidding, limited source bidding, or competitive dialogue, if:

- a) No bids are received;
- b) All bidders are declared ineligible;
- c) No bid qualifies as the SCRB, MARB, LCRB, HRRB, or MEARB; or
- d) Whenever the bidder with the SCRB, MARB, LCRB, HRRB, or MEARB, as the case may be, refuses, without justifiable cause, to accept the award of contract.

For other modes of procurement that do not require competitive selection, the BAC may declare a failure of procurement in any of the above-mentioned instances or if negotiations fail, as may be necessary and applicable.

64.2 In order to determine the reason for the failed bidding, the End-User or Implementing Unit shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.

64.3 Based on the End-User or Implementing Unit's findings or evaluation, 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-publishing, as provided for in Section 50 of this IRR.

64.4 All bidders who have initially responded to the Invitation to Bid or 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).

64.5 Should a second failure of bidding occur, the Procuring Entity may resort to negotiated procurement as provided for in Section 35 of this IRR.

### **Section 65. Single Calculated/Rated/Economically Advantageous and Responsive Bid Submission**

The Single Calculated Responsive Bid (SCRB), Single Rated Responsive Bid (SRRB), Single Economically Advantageous Responsive Bid (SEARB), or Single Advantageous Responsive Bid (SARB) as the case may be, shall be considered for award if it falls under any of the following circumstances:

- a) If after publication, only one prospective bidder 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 publication, more than one prospective bidder 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 in accordance with the provisions of this IRR, 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 66. Notice and Execution of Award**

66.1 The BAC shall recommend to the HoPE the award of contract to the bidder with the LCRB, MEARB, MARB, HRRB, SCRB, SEARB, SARB or SRRB, as the case may be, 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 HoPE:

- 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 the appropriate entity authorizing the Procuring Entity to incur obligations for a specified amount; and
- e) Other pertinent documents required by existing laws, rules, and regulations, or the Procuring Entity concerned.

Within three (3) calendar days from the issuance of the resolution recommending award of contract, the BAC shall notify all other bidders, in writing, of its recommendation.

- 66.2 Within a period not exceeding ten (10) calendar days from the determination and declaration through a resolution by the BAC of the LCRB, MEARB, MARB HRRB, SCRB, SEARB, SARB or SRRB, as the case may be, and the recommendation of the award, the HoPE or its duly authorized representative shall approve or disapprove the said recommendation.
- 66.3 In case of approval, the HoPE or its duly authorized representative shall immediately issue the Notice of Award to the bidder with the LCRB, MEARB, MARB, HRRB, SCRB, SEARB, SARB, or SRRB, as the case may be.

In the event that the approving authority shall disapprove the resolution on the award of the contract, such disapproval shall be based only on valid, reasonable, and justifiable grounds as enumerated under Section 70 to be expressed in writing. A copy of the decision disapproving the resolution shall be furnished to the BAC and the bidder.

- 66.4 When applicable, the BAC shall conduct a post-qualification of the bidder with the next LCB, MEAB, or HRB, as provided in Section 63.7 of this IRR.

A request for reconsideration may be filed by the bidder with the HoPE within three (3) calendar days from receipt of the notice of disapproval or the explanation for the inaction. The HoPE shall resolve with finality the request for reconsideration within seven (7) calendar days from the filing thereof and furnish the bidder a copy of the resolution immediately from its promulgation. In no case shall the request for reconsideration stay or

delay the bidding process. However, the request for reconsideration must first be resolved before any award is made.

66.5 Within ten (10) calendar days from receipt by the winning bidder of the Notice of Award, the following conditions should be complied before the contract may be awarded:

- a) Submission of the following documents by the winning bidder:
  - i) Valid JVA, if applicable;
  - ii) A valid PCAB license and registration for the type and cost of the procurement project to be bid for foreign bidders in Infrastructure Projects, when the treaty or international or executive agreement expressly allows submission of such license and registration as a pre-condition to the Notice of Award; or
  - iii) The SEC Certificate of Registration of the foreign corporation, or the SEC Certificate of Registration of the foreign consulting firm, or the authority or license from the appropriate government agency or professional regulatory body of the foreign professionals engaging in the practice of regulated professions and allied professions, where applicable.
- b) Posting of performance security by the winning bidder in accordance with Section 68 of this IRR; and
- c) Signing of the contract by the parties.

## **Section 67. Period of Action on Procurement Activities**

67.1 The procurement process, from the opening of bids up to the award of contract, shall not exceed sixty (60) calendar days. All members of the BAC, BAC Secretariat, TWG, and other relevant procurement personnel shall be on a “jury duty” type of assignment until the Notice of Award is issued by the HoPE in order to complete the entire procurement process at the earliest possible time.

67.2 The GPPB is authorized to adjust the period as may be deemed appropriate: Provided, That the adjusted period shall not exceed ninety (90) calendar days.

67.3 The maximum periods and the recommended earliest possible time for action on specific procurement activities are provided for in 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, or other nonworking days duly declared by the President, Governor, Mayor or other Government Official authorized to make such declaration, the deadline shall be the next working day.

However, for purposes of expediency, economy, and efficiency, as determined by the BAC, specific procurement activities may be held on a Saturday, Sunday, non-working day, or holiday: Provided, That the BAC, Secretariat, and TWG members shall be available on such date, and the appropriate supplemental or bid bulletin is issued and posted pursuant to the posting requirements embodied in Section 51.5.3 of this IRR.

67.4 The period of action on procurement activities is tolled or suspended, as follows:

- a) For Early Procurement Activities, pending approval and effectivity of the GAA, corporate budget or appropriations ordinance, or the loan agreement in the case of FAPs; and
- b) During the suspension of the conduct of procurement activities, as determined by the BAC.

The period of action on procurement activities which has been tolled or suspended shall begin to run again once the basis of such tolling or suspension no longer exists, such as upon the approval and effectivity of the GAA, reenacted budget, appropriations ordinance, corporate budget or loan agreement, as the case may be, or upon lifting of the suspension of the conduct of procurement activities.

The period of action on procurement activities shall not commence anew, but rather, grant the Procuring Entity the balance of the remaining period available for the conduct of procurement activities which has been tolled or suspended.

## **Section 68. Performance Security**

68.1 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. The winning bidder is required to update the performance security posted prior to the issuance of a variation order or an amendment to order, if any.

The IC shall maintain on its website an updated list of its accredited surety companies that may be tapped to issue surety and/or performance bonds. The list of surety companies identified by the IC shall include only those whose surety business is ready to provide callable-on-demand

surety contracts, where the Procuring Entity can claim outright on the surety contract and receive the proceeds thereof upon default of the bidder.

- 68.2 Sectors enumerated under Section 76 of this IRR may also be allowed to post a Performance Securing Declaration (PSD) in lieu of a performance security.
- 68.3 The PSD shall state, among others, that the winning bidder shall be blacklisted from being qualified to participate in any government procurement activity for one (1) year, in case of the first offense, or two (2) years, if with a prior similar offense, in the event that it violates any of the conditions stated in the contract. An unnotarized PSD may be accepted, subject to submission of a notarized PSD before any payment is made by the Procuring Entity, unless the same is replaced with a performance security in the prescribed form, as stated above.
- 68.4 The performance security shall be in the form chosen by the Procuring Entity and in the amount not less than the required percentage of the total contract price in accordance with the following schedule:

<b>Form of Performance Security</b>	<b>Amount of Performance Security (Not less than the required percentage of the Total Contract)</b>
a) Cash or cashier's or manager's check issued by a bank.  For biddings conducted by LGUs, the cashier's or manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Goods and Consulting Services - Five percent (5%)
b) Bank draft or guarantee or irrevocable Letter of Credit issued by a bank. If issued by a foreign bank, it shall be confirmed or authenticated by a local bank.	Infrastructure Projects – Ten percent (10%)
c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

68.5 The performance security shall be denominated in Philippine Peso 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.

68.6 The winning Bidder shall ensure that the performance security remains effective until the issuance of the Certificate of Final Acceptance. In case the performance security issued is valid for a specific period shorter than the term of the contract, the same shall be renewed or extended as often as necessary and immediately submitted to the Procuring Entity.

The performance security may be released by the Procuring Entity after the issuance of the Certificate of Final Acceptance; Provided, That the Procuring Entity has no claims filed against the performance security.

68.7 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.

68.8 The Procuring Entity shall allow a proportional reduction in the original performance security in the following cases:

- a) In case of a reduction in the contract value; or
- b) In case of procurement of Infrastructure Projects, for partially completed works under the contract which are usable and accepted by the Procuring Entity, and the use of which, in the judgment of the Procuring Entity, will not affect the structural integrity of the entire project;

Provided, that any reduction in the performance security is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the performance security.

## **Section 69. Failure to Enter into Contract and Post Performance Security**

69.1 If the bidder with the SCRB, SEARB, SARB, or SRRB fails, refuses or is unable to: (i) submit the documents required under Section 66.5 of this IRR; (ii) enter into contract with the Procuring Entity; or (iii) post the required performance security within the period stipulated in this IRR or in the Bidding Documents, the bidder shall be disqualified from further participating in the bidding process. Further, 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. Consequently, a failure of bidding shall be declared, and a rebidding of the procurement project shall be undertaken, if appropriate.

- 69.2 If the bidder with the LCRB, MEARB, MARB, or HRRB fails, refuses or is unable to: (i) submit the documents required under Section 66.5 of this IRR; (ii) enter into contract with the Procuring Entity; or (iii) post the required performance security within the period stipulated in this IRR or in the Bidding Documents, the bidder shall be disqualified from further participating in the bidding process. Further, 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.

Furthermore, the BAC shall disqualify the said bidder and initiate and complete the post-qualification process on the bidder with the second LCB, MEAB, MAB, or HRB; Provided, however, That in the case of Consulting Services, the second Highest Rated Bid has successfully undergone the negotiation stage in accordance with Section 62 of this IRR. This procedure shall be repeated until the LCRB, MEARB, MARB, or HRRB is determined for award. However, if no bidder passes post-qualification, the BAC shall declare the failure of bidding and conduct a re-bidding with re-publication, if appropriate. Should another failure of bidding occur after the conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement.

## **Section 70. Reservation Clause**

The HoPE 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 or influences or tends to influence the bidding process;
- b) If the BAC is found to have failed in complying with the applicable law or in following the prescribed bidding procedures; or
- c) For justifiable and reasonable grounds, where the award of contract will not redound to the benefit of the government in the following instances:

(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 HoPE; (ii) if the project is no longer necessary, as determined by the HoPE; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

## **Section 71. Contract Implementation and Termination**

The rules for the implementation and termination of contracts awarded pursuant to the provisions of the Act and its IRR are hereby prescribed, subject to relevant provisions in the Manual to be issued by the GPPB.

### **71.1 Contract Implementation for the Procurement of Goods**

**71.1.1 Amendment to Order.** – Amendments to Order for procurement of goods may be issued by the Procuring Entity concerned at any time after the contract execution, subject to the following conditions:

- a) Emergency cases, fortuitous events, or unforeseen contingencies arising during project or contract implementation, and such contingencies have an impact on the procurement at hand, such as (i) changes in the conditions affecting the project (e.g., drawings, design or specifications, if the goods to be furnished are to be specifically manufactured for the Government in accordance therewith; method of shipment or packing; or place of delivery); (ii) time is of the essence in the implementation of the project, and any changes require immediate implementation; (iii) where there are additional items needed and necessary for the protection of the goods, such as changes in the packaging of the goods; or (iv) other causes where immediate action is necessary to prevent damage to or loss of life or property;
- b) When the contract does not reflect the real intention of the parties due to mistake or accident, and the amendment is necessary to reflect the parties' intention as provided in the procurement documents;
- c) When requested by the End-User or Implementing Unit, as may be prompted by a request from the supplier, the HoPE may approve the amendment of the delivery schedule based on meritorious grounds and without fault or negligence on the part of the supplier. The maximum allowable extension should not be longer than the initial delivery period;

- d) When the offered goods are no longer available, goods of equivalent or higher specifications may be accepted by the Procuring Entity; Provided; That there is no resulting increase in contract price and the acceptance of such goods is advantageous to the government; or
- e) Other analogous circumstances that could affect the conditions of the procurement at hand.

If any such order increases or decreases the cost of, or the time required for executing any part of the contracted goods, supplies, or materials, an equitable adjustment in contract price and/or delivery schedule shall be mutually agreed upon between the parties, and the contract modified in writing; Provided, That any increase must not exceed ten percent (10%) of the original contract price. However, the HoPE may approve the increase to twenty percent (20%).

Payment for additional items shall be based on the unit prices in the original contract. If the contract does not contain any rate applicable to the additional items, then suitable prices shall be mutually agreed upon between the parties.

#### 71.1.2 Suspension of Delivery of Goods

The Procuring Entity may suspend the delivery of Goods, in whole or in part, through a written order for a specified period of time as it deems necessary based on justifiable circumstances. Suspension order may be extended, as the case may be, but not to exceed the original contract duration. However, for meritorious reasons as determined by the HoPE, upon the recommendation of the End-User or the Implementing Unit, the period for suspension may exceed the original contract duration.

During such suspension, the supplier, manufacturer, or distributor shall take all reasonable steps to minimize the costs related to storage and handling of Goods, or other activities affected by the suspension order. Delivery of Goods shall be understood to include installation, commissioning, and other relevant services, as may be applicable.

Before the suspension order expires, the Procuring Entity concerned shall either lift such order or terminate the delivery covered by the same. If the suspension order is lifted, or if the period of the order expires, the Procuring Entity shall notify the supplier, manufacturer,

or distributor in writing of such fact. The supplier, manufacturer, or distributor shall resume delivery upon receipt of such notice.

#### 71.1.3 Extension of Contract Time

Requests for extensions, whether initial or supplemental, shall be submitted before the prescribed delivery date. The same may be approved by the HoPE upon the recommendation of the End-User or Implementing Unit, based on meritorious reasons.

#### 71.1.4 Liquidated Damages

The supplier, manufacturer, or distributor shall deliver the goods procured within the period as specified in the Contract.

Liquidated damages shall be imposed if any or all of the contracted Goods remain undelivered on the specified date, including the duly granted extensions.

When the supplier, manufacturer, or distributor fails to satisfactorily deliver the goods under the contract within the specified delivery schedule, inclusive of duly granted time extensions, if any, the supplier, manufacturer, or distributor shall be liable for liquidated damages-in 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. 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 the supplier, manufacturer, or distributor, or collected from any securities or warranties posted by the supplier, manufacturer, or distributor, whichever is convenient to the Procuring Entity. In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the Procuring Entity may rescind the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

If delays are likely to be incurred beyond its control, the supplier, manufacturer, or distributor shall promptly notify the Procuring Entity in writing, providing details of the causes and duration of the expected delay. The Procuring Entity may, at its discretion, grant a time extension based on meritorious grounds, with or without the imposition of liquidated damages.

#### **71.1.5 Advance Payment**

In accordance with existing rules, advance payments may be made as follows:

- a) 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 the requirement of down payment is a standard industry practice: i) Hotel and restaurant services; ii) Use of conference/seminar and exhibit areas; and iii) Lease of office space;
- b) 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; and
- c) Upon submission of an irrevocable Letter of Credit or bank guarantee issued by local bank, advance payment not to exceed fifteen percent (15%) of the contract amount shall be allowed and paid within sixty (60) calendar days from the signing of the contract. The irrevocable Letter of Credit or bank guarantee must be for an equivalent amount, shall remain valid until the goods are delivered, and accompanied by a claim for advance payment.

All progress payments shall first be charged against the advance payment until the latter has been fully exhausted.

#### **71.1.6 Other Aspects of Contract Implementation**

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.

## Section 71.2 Contract Implementation for the Procurement of Infrastructure Projects

### 71.2.1 Variation Orders

Variation Orders may be issued by the Procuring Entity to cover any increase or 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 in case of positive or additive Variation Order/s, the cumulative amount thereof shall not exceed ten percent (10%) of the original contract price; Provided, further, That the scope of works shall not be reduced as to accommodate a positive Variation Order. In all cases, the addition of works under Variation Orders should be within the general scope of the project as bid and awarded.

Any cumulative positive Variation Order beyond ten percent (10%) of the original contract price shall be the subject of another procurement project to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the HoPE, upon the recommendation of the End-User or Implementing Unit, may authorize positive Variation Order/s resulting to a cumulative value of the positive

Variation Orders beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price.

All progress payments shall first be charged against the advance payment until the latter has been fully exhausted, at the option of the Procuring Entity.

a) Variation Order may either be in the form of either a Change Order or Extra Work Order:

- i) A Change Order may be issued by the HoPE or duly authorized representative to cover any increase or decrease in quantities of original work items in the contract.
- ii) 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.

b) Additional or Extra Work Costing

For Variation Orders, the contractor shall be paid for additional work items whose unit prices shall be derived based on the following:

- i) For additional or 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.
- ii) For additional or 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; 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 its bid to determine the unit price of the new work item.

c) Conditions under which the Contractor is to start work under Variation Orders and Receive Payments

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 HoPE or its duly authorized representative. However, under any of the following conditions, the Procuring Entity's representative or Project Engineer may, subject to the availability of funds and within the limits of its delegated authority, allow the immediate start of work under any Change Order or Extra Work Order:

- 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.

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 abovementioned rules. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after

approval of the same by the HoPE or its duly authorized representative.

Provided, finally, That 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 HoPE or its duly authorized representative.

#### 71.2.2 Suspension of Work

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 event 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.

Meanwhile, the contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects or activities along the critical path of activities after fifteen (15) calendar days from the 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 that make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the PNP station which has responsibility over the affected area and confirmed by the Department of the Interior and Local Government (DILG) Regional Director.

- d) There was a 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 by the Procuring Entity's authorized representative that the documents are complete, unless there are justifiable reasons for the delay in payment which shall be communicated in writing to the contractor.

#### 71.2.3 Extension of Contract Time

Should the amount of additional work or other special circumstances warrant the entitlement of the contractor to an extension of contract time, the Procuring Entity shall determine the amount of such extension; Provided, That the contractor has notified the Procuring Entity of its claim for extension of contract time prior to the expiration of the contract time, and within thirty (30) calendar days after the additional work has been commenced or the circumstances leading to such claim have arisen, as the case may be, in order to give the Procuring Entity the opportunity to investigate the claim. Failure to provide such notice shall constitute a waiver of such a claim by the contractor. 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 to complete the contract work when, in the Procuring Entity's opinion, the findings of facts justify an extension.

No extension of contract time shall be granted to the contractor due to ordinary unfavorable weather conditions and inexcusable negligence of the contractor to provide the required equipment, supplies, or materials.

#### 71.2.4 Liquidated Damages

When the contractor fails to satisfactorily complete the works under the contract within the specified contract duration, inclusive of duly granted time extensions, if any, the contractor shall be liable for liquidated damages in an amount equal to at least one-tenth (1/10) of one percent (1%) of the

cost of the unperformed portion of the works for every day of delay.

In computing liquidated damages, the Procuring Entity shall determine the usability of the project. A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted End-User or Implementing Units and the Procuring Entity.

To be entitled to 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, collected from the retention money or other securities posted by the contractor, or a combination thereof, whichever is convenient to the Procuring Entity.

In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances.

#### 71.2.5 Advance Payment

The Procuring Entity shall 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 bidding documents.

The advance payment shall be made only upon:

- a) Written request of the contractor which shall form part of the contract document; and
- b) Submission of an irrevocable standby Letter of Credit of equivalent value from a bank as confirmed by the Procuring Entity; a bank guarantee; or a surety bond callable upon demand issued by a duly licensed surety or insurance company, at the option of the Procuring Entity.

#### 71.2.6 Negative Slippage

The Procuring Entity shall ensure the timely implementation of Infrastructure Projects by monitoring the performance of the contractors. When the contractor incurs negative slippage during the contract duration, the Procuring Entity shall implement the calibrated measures to be provided in the guidelines issued by the GPPB.

#### 71.2.7 Progress Payment

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 (i) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (ii) adjustments made for approved Variation Orders executed. Alternatively, the Procuring Entity may require in the Bidding Documents that the SWA or progress billing and the corresponding request for progress payment may only be submitted upon actual completion of the Infrastructure Project or a specific portion, segment, milestone or phase thereof.

The Procuring Entity's representative or Project Engineer shall check the contractor's 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.

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.
- c) Retention money in accordance with the condition of the contract.
- d) Amount to cover third-party liabilities.
- e) Amount to cover uncorrected discovered defects in the works.

#### **71.2.8 Retention Money**

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, which may be decreased to 5 percent (5%) by the Procuring Entity based on justifiable causes.

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 from a 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.

#### **71.2.9 Other Aspects of Contract Implementation**

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.

### **71.3 Contract Implementation for the Procurement of Consulting Services**

#### **71.3.1 Contract Amendment**

Changes to the consultancy contract affecting the project scope, key personnel, schedule of deliverables and payments, timelines

or contract duration may be made if necessary to achieve the objectives of the project.

In such cases, an equitable adjustment in contract price may be mutually agreed upon by the Procuring Entity and the consultant in writing, using similar rates or unit prices in the contract, or if not available, using applicable or current rates and prices to cover the amended or additional items in the consultancy contract; Provided, That the total increase in cost does not exceed twenty percent (20%) of the contract price.

#### 71.3.2 Suspension of Work

##### a) Suspension of Work by the Procuring Entity

The Procuring Entity may, by written notice to the consultant, suspend the work, including all payments to the consultant, if the consultant fails to perform any of its obligations due to its own fault or due to force majeure or other circumstances beyond the control of either party, e.g. suspension of civil works being supervised by the consultant, under the contract, including the carrying out of the services, provided that such notice of suspension shall:

- i) Specify the nature of the failure; and
- ii) Request the consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the consultant of such notice of suspension.

Prior to the expiration of the suspension order, the PMO, End-User, or Implementing unit shall determine whether or not the grounds for suspension still exist.

If the grounds for work suspension no longer exist and the continuation of the work is practicable, the Procuring Entity can order the resumption of work.

If such grounds continue to exist, or if it is no longer practicable to continue with the work, it shall terminate the work subject of the order or cancel the delivery of the items subject of such suspension.

If, however, the grounds for suspension no longer exist, and continuation of the work is practicable, the PMO, with the approval of the HoPE or his/her/them duly authorized representative, shall lift the suspension order and notify the consultant to proceed with

the work/delivery of items in accordance with the amended contract.

b) Suspension of Work by the Consultant

The consultant may, by written notice to the Procuring Entity, suspend work on any or all activities affected by the following:

- i) Failure on the part of the Procuring Entity to deliver government-furnished equipment, resources, reports or data as stipulated in the contract;
- ii) Peace and order conditions that make it extremely dangerous, if not impossible, to work, provided that the consultant secures a written certification from the PNP station that has responsibility over the affected area, as confirmed by the DILG Regional Director, that such conditions exist; or
- iii) Delay in the payment of the consultant's claim for progress billing beyond sixty (60) calendar days from the time the consultant's claim has been certified by the Procuring Entity as being supported by complete documentation and a notice from the consultant has been received by the Procuring Entity that such payment is overdue, unless there are justifiable reasons which shall be communicated in writing to the consultants.

71.3.3 Extension or Adjustment of Contract Time

The adjustment or extension of contract time in consulting services shall consider both the elapsed time between the effective order suspending operation and the order to resume work in cases when the total suspension or the suspension of activities along the critical path is not due to the fault of the consultant.

71.3.4 Liquidated Damages

When the consultant fails to satisfactorily complete the services required under the contract within the specified period, inclusive of duly granted time extensions, if any, the consultant shall be liable for liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay.

In case the sum of liquidated damages reaches ten percent (10%) of the contract amount, the contract may be rescinded or

terminated by the Procuring Entity, without prejudice to other courses of action and remedies available under the circumstances. In case the contract is rescinded or terminated, the Procuring Entity may take over the contract or award the same to a qualified consultant through negotiated procurement. In addition to the liquidated damages, the erring consultant's performance security shall also be forfeited.

In case the delay in the completion of the services exceeds ten percent (10%) of the specified contract time plus any time extension duly granted to the consultant, the Procuring Entity may rescind the contract. It then forfeits the consultant's performance security and takes over the prosecution of the contract or awards the same to a qualified consultant through negotiated procurement.

#### 71.3.5 Other Aspects of Contract Implementation

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

### 71.4 Termination of Contracts for the Procurement of Goods, Infrastructure Projects, and Consulting Services

The policies relating to the whole or partial termination of government procurement contracts of Goods, Infrastructure Projects, and Consulting Services are herein established, subject to the manuals issued by the GPPB.

#### 71.4.1 Termination for Breach of Contract

- a) In contracts of Goods, the Procuring Entity may terminate for breach of contract when the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity, pursuant to a request made by the supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price, consistent with the provision of this IRR on liquidated damages. The Procuring Entity may likewise impose appropriate sanctions therein.
- b) In contracts of Infrastructure Projects, the Procuring Entity shall terminate the contract for breach thereof when any of the following conditions are present:

- i) Due to the Contractor's fault and while the project is ongoing, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870, s. 1983;
- ii) Due to the contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work;
- iii) The contractor abandons the contract works, plainly demonstrates an intention not to continue the performance of the contractor's obligations under the contract, refuses or fails to comply with the Procuring Entity's instructions, or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;
- iv) When the contractor, without reasonable excuse, fails to comply with the Notice of Rejection given by the Project Engineer that, after examination therein, the Infrastructure Project is found to be defective or otherwise not in accordance with the Contract, or a Project Engineer's instruction to conduct remedial work, within 30 days after receiving the said notice;
- v) The contractor does not actually have on the project site the minimum essential equipment listed on the Bid necessary to prosecute the Works in accordance with the approved work plan and equipment deployment schedule as required for the project;
- vi) The contractor does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
- vii) The contractor neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable;
- viii) The contractor subcontracts any part of the contract works without approval by the Procuring Entity; or
- ix) The contractor becomes bankrupt or insolvent; goes into liquidation, administration, reorganization, winding-up, or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager, or trustee; enters into a composition or arrangement with the

contractor's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable laws.

- c) In contracts for Consulting Services, the Procuring Entity may terminate for breach of contract when the consultant fails to deliver or perform the Outputs and Deliverables, within the period specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the consultant prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price, consistent with the provision of this IRR on liquidated damages. The Procuring Entity may likewise impose appropriate sanctions therein.

#### 71.4.2 Termination due to Force Majeure

- a) In contracts for Goods, the Procuring Entity may terminate the contract and impose liquidated damages when, as a result of force majeure, the supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days, or earlier, as deemed necessary by the Procuring Entity, after receipt of the written notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased.
- b) In contracts for Consulting Services, the consultant is unable to deliver or perform a material portion of the Outputs and Deliverables for a period of not less than sixty (60) calendar days, or earlier, as deemed necessary by the Procuring Entity, after receipt of the written notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased.

#### 71.4.3 Termination for Procuring Entity's Convenience

The Procuring Entity, by notice sent to the supplier, contractor, or consultant, may terminate the Contract, in whole or in part, at any time, if it has determined the existence of any of the following conditions that make contract implementation economically, financially, or technically impractical or unnecessary:

- a) In the case of Goods and Consulting Services
  - i) If physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HoPE

- ii) The HoPE has determined the existence of conditions that make project implementation impractical or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies;
  - iii) Funding for the project has been withheld or reduced by higher authorities through no fault of the Procuring Entity; or
  - iv) Any circumstance analogous to the foregoing.
- b) In the case of Infrastructure Projects
- i) If physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HoPE; or
  - ii) The HoPE has determined the existence of conditions that make project implementation impractical or unnecessary, such as, but not limited to, fortuitous events, changes in laws and government policies.

#### 71.4.4 Termination for Unlawful Acts

The Procuring Entity may terminate the contract in case it is determined *prima facie* that the supplier, contractor, or consultant, including any joint venture partner therein, has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation.

These unlawful acts include, but are not limited to, the following:

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

#### 71.4.5 Termination by Contractor or Consultant

- a) In contracts for Infrastructure Projects

The contractor may terminate its contract with the Procuring Entity if the works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to any of the following reasons:

- i) Failure of the Procuring Entity to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of the contract;
- ii) Substantial failure of the Procuring Entity to perform its obligations under the contract, and such failure constitutes a material breach of the Procuring Entity's obligations under the contract;
- iii) Prolonged suspension by the Procuring Entity, through no fault of the Contractor, which affects the substantial part of the Infrastructure Project; or
- iv) The prosecution of the work is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of the DND.

b) In contracts for Consulting Projects

The consultant may terminate its agreement with the Procuring Entity, through a written notice at least thirty (30) calendar days prior to its intended termination, if, through no fault on its own, any of the following conditions exists:

- i) The latter is in material breach of its obligations pursuant to the contract and has not remedied the same within sixty (60) calendar days following its receipt of the consultant's notice specifying such breach;
- ii) Substantial failure of the Procuring Entity to perform its obligations under the contract; or
- iii) Prolonged suspension by the Procuring Entity, through no fault of the consultant, which affects a substantial part of the Consulting Project.

In case of termination, the Procuring Entity shall return to the consultant its performance security and unpaid claims.

#### 71.4.6 Procedures for Termination of Contracts

- a) **Verification** - Upon receipt of a written report of acts or causes which may constitute grounds for termination as aforementioned, or upon its own initiative, the End-User or Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such grounds and cause the execution of a Verified Report, with all relevant evidence attached.
- b) **Notice to Terminate** - Upon recommendation by the End-User or Implementing Unit, the HoPE shall terminate contracts only by written notice to the supplier, contractor, or consultant conveying the termination of the contract. The notice shall state:
  - i) That the contract is being terminated for any of the grounds aforementioned, and a statement of the acts that constitute the grounds constituting the same;
  - ii) The extent of termination, whether in whole or in part;
  - iii) An instruction to the supplier, contractor, or consultant to show cause as to why the contract should not be terminated; and
  - iv) Special instructions of the Procuring Entity, if any.

The Notice to Terminate shall be accompanied by a copy of the Verified Report.

- c) **Show Cause** - Within a period of seven (7) calendar days from receipt of the Notice of Termination, the supplier, contractor, or consultant shall submit to the HoPE a verified position paper stating why the contract should not be terminated. If the supplier, contractor, or consultant fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the HoPE shall issue an order terminating the contract.
- d) **Rescission of Notice of Termination** - The Procuring Entity may, at any time before receipt of the supplier's, contractor's, or consultant's verified position paper withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the supplier's, contractor's, or consultant's receipt of the notice.

- e) **Decision** - Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the HoPE shall decide whether or not to terminate the contract. It shall serve a written notice to the supplier or contractor or consultant of its decision and, unless otherwise provided, the Contract is deemed terminated from receipt of the supplier or contractor or consultant of the notice of the decision. The termination shall only be based on the grounds stated in the Notice to Terminate.
- f) **Contract Termination Review Committee (CTRC)** - The HoPE may create a committee to assist him in the discharge of his/her/their function under these Guidelines. All decisions recommended by the CTRC shall be subject to the approval of the HoPE.
- g) **Take-over of Contracts** - If a Procuring Entity terminates the contract due to default, insolvency, or for cause, it may enter into a Negotiated Procurement pursuant to Section 35(c) of RA No. 12009 and this IRR.
- h) **Procuring Entity's Options in Termination for Convenience in Contracts for Goods** - The Goods that have been performed or are ready for delivery within thirty (30) calendar days after the supplier's receipt of Notice to Terminate shall be accepted by the Procuring Entity at the contract terms and prices. For Goods not yet performed or ready for delivery, the Procuring Entity may elect:
  - i) To have any portion delivered or performed and paid at the contract terms and prices; or
  - ii) To cancel the remainder and pay to the supplier an agreed amount for partially completed or performed goods and for materials and parts previously procured by the supplier.
- i) **Notice by Contractor or Consultant** - The contractor or consultant must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

## **RULE XII** **SUSTAINABLE PUBLIC PROCUREMENT**

### **Section 72. Sustainable Public Procurement**

- 72.1 All Procuring Entities shall establish and implement a Sustainable Public Procurement (SPP) Program aimed at achieving value for money on a whole life cycle basis. This is designed not only to meet the specific needs of government agencies but also to create broader societal and economic benefits and reduce adverse environmental impacts.
- 72.2 The establishment of an SPP Program requires Procuring Entities to integrate sustainability considerations from procurement planning, budgeting to implementation, contract management, and disposal. This includes incorporating environmental, social, and economic criteria into procurement specifications, evaluations, and decisions.
- 72.2.1 For the environmental aspect, goods, services, and infrastructure that minimize negative impacts must be prioritized.
- 72.2.2 For the social aspect, Procuring Entities must consider fair labor practices, respect human rights, promote gender equity, inclusivity, and support MSMEs, social enterprises, cooperatives, and other marginalized sectors.
- 72.3 The GPPB will issue guidelines on the necessary sustainability criteria, ensuring that all procurement activities align with these standards.

### **Section 73. Green Public Procurement Strategy**

- 73.1 Green Public Procurement (GPP) is an approach whereby Procuring Entities seek to procure Goods, Infrastructure Projects, and Consulting Services with reduced environmental impact through their life cycle.

As part of strategic procurement planning and in support of the Philippines' commitment to accelerate climate action and strengthen disaster resilience, Procuring Entities shall integrate and implement green practices, as well as environmentally relevant criteria or requirements in the design and specifications of their procurement projects.

- 73.1.1 Environmental sustainability should be integrated from the outset, encompassing project identification, design, and budget preparation, to ensure that climate-resilient and environmentally

advantageous solutions are prioritized throughout the procurement process.

To further promote GPP, the sustainability of products, materials, or structures with green specifications shall be given greater weight in the evaluation of Bids, and in accordance with the Bidding Documents.

73.2 During planning and design, based on impact assessment, Procuring Entities must apply criteria, such as energy efficiency, sustainable materials, and waste reduction. Green specifications should be included in technical and performance requirements for Goods, Infrastructure Projects, and Consulting Services, focusing on energy-efficient products, renewable or recyclable materials, and reduced greenhouse or carbon emissions, and pollutants in defining the type and objective of the project to be procured.

73.2.1 Integrating green practices in procurement requires Procuring Entities to incorporate environmental considerations throughout the project life cycle.

73.2.2 Specifications must also align with environmental standards and certifications, advancing sustainability goals in government procurement as identified in the guidelines issued by the GPPB.

73.2.3 Procuring Entities shall assess environmental criteria and specifications related to a specific procurement project to be included in the preparation of bidding documents:

a) For Goods, technical considerations and criteria that particularly deal with each item's or product's primary impact on the environment are important for the development of these green specifications, and applying the LCA in accordance with Section 13 of this IRR; and

b) For Infrastructure Projects, integrate a requirement for contractors to submit an Environmental Impact Statement (EIA) as part of the procurement process, in accordance with Sections 8.2.1 and 13 of this IRR, and Presidential Decree No. 1096 or the Philippine Green Building Code.

73.2.4 In conducting market scoping, the Procuring Entity shall consider the application of the GPP strategy in the design of specific procurement projects. The approach should be structured to define environmental criteria and select a suitable procurement method capable of encouraging a competitive

market response, in accordance with the provisions of Section 10.4 of this IRR. Priority areas for market scoping may include, but are not limited to:

- a) The range of potential bidders interested in providing green market solutions;
- b) The current level of green business practices and maturity of the market;
- c) The potential for innovative or emerging technologies;
- d) The level of influence of public spending in motivating the market to respond;
- e) The motivations driving the market and the challenges it faces in providing green solutions;
- f) The standards and tools required to define environmental criteria and verify performance; and
- g) Other public and private sector organizations that have procured green solutions within this sector, or plan to do so in future procurements, to explore collaboration opportunities.

73.3 In order to achieve the policy's overall objectives, public procurement will prioritize items and services that enhance energy, water, and material efficiency, waste reduction, and prevent pollution and emissions. This approach will help to reduce climate change, promote local and rural development, and enhance the sustainability of supply chains and infrastructure. Further, it aims to boost industrial productivity, innovation, and competitiveness while also encouraging inclusive business models, the creation of green jobs, and the shift to a circular economy.

73.4 Procuring Entities must monitor and report on the GPP Strategy's implementation on a regular basis, including providing yearly reports to the GPPB indicating the quantity and the value for money of procurements with environmental criteria. These reports will be used to continually improve the GPP framework, update environmental standards sets, create minimum obligatory environmental standards, and highlight the benefits of green procurement.

73.5 The GPPB shall ensure the incorporation and implementation of the concepts of sustainability and GPP in the activities of the government. The GPP strategy shall be implemented in phases, taking into account the

readiness of both the government agencies as well as green product suppliers.

In addition to the issuance of guidelines, the GPPB may, as deemed necessary, prescribe standard bidding documents, forms, and evaluation documents, if applicable, that reflect the sustainability principles and objectives of GPP, in accordance with this IRR.

#### **Section 74. Development of a Green Local Market**

- 74.1 The DTI, in consultation with relevant government agencies and the private sector, shall develop a cost-efficient program for the validation and certification of green products. This program aims to attract green investments and enhance competition within government procurement.
  - 74.1.1 The validation and certification program shall include, but not be limited to, the establishment of clear criteria for identifying green products, ensuring compliance with recognized environmental standards, and facilitating the efficient and transparent certification process.
- 74.2 The program shall be designed to reduce the financial and administrative burden on businesses, especially MSMEs, by ensuring that the certification process is accessible, affordable, and aligned with international best practices in environmental sustainability.
- 74.3 The DTI, in coordination with relevant agencies, shall regularly review and update the certification criteria to reflect advancements in environmental standards, technologies, and market trends, ensuring the program remains effective and competitive. Additionally, it shall maintain an up-to-date directory of green local vendors in the market.

#### **Section 75. Inclusive Procurement Program**

- 75.1 To provide equal opportunities to the vulnerable and marginalized sectors, as well as microenterprises, social enterprises, and startups in public procurement, Procuring Entities shall encourage active participation of registered sectors in all procurement activities, by giving weight to gender parity, ethnic equity, and other social factors by integrating marginalized groups and socially responsible enterprises into government procurement. This program shall likewise ensure that procurement practices contribute to poverty reduction and respect fundamental labor standards.
- 75.2 During the strategic procurement planning stage, Procuring Entities shall prioritize measures with enhanced social impact when defining the type

and objectives of the project to be procured, in accordance with Section 7 of this IRR.

75.2.1 In identifying its procurement requirements, the Procuring Entities should particularly consider accessibility and inclusivity, and explore options that meet these requirements while enhancing social impact;

75.2.2 Procuring Entities shall evaluate the social impacts associated with a specific procurement project to inform the design of bidding documents by applying LCA, in accordance with Section 13 of this IRR;

75.2.3 In the conduct of market scoping and engagement activities, the Procuring Entities should identify opportunities to improve social impact and engage inclusive suppliers. These activities may include, but are not limited to, organizing supplier days, providing training for inclusive suppliers to submit unsolicited Bids, and active promotion;

75.2.4 Procuring Entities shall adopt Fit-for-Purpose and Proportional procurement approaches to encourage the participation of registered bidders from vulnerable and marginalized sectors, microenterprises, social enterprises, and startups. The measures to be adopted include, but are not limited to:

- a) Reserving a percentage of procurement opportunities for inclusive suppliers;
- b) Streamlining bidding processes to reduce administrative burdens and compliance costs; and
- c) Conducting Small Value Procurements to pilot inclusive procurements, in accordance with Section 34 of this IRR.

75.3 Social criteria may be incorporated into bidding documents as part of the supplier selection criteria, technical specifications, award criteria, or contract performance clauses. These social criteria may include, but are not limited to, the following:

- a) Adherence to fundamental labor standards and human rights;
- b) Promotion of local job creation or employment opportunities for vulnerable and marginalized groups;

- c) Provision of apprenticeship and training opportunities for individuals facing challenges in entering the workforce; and
  - d) Other social and community benefits.
- 75.4 Procuring Entities are required and encouraged to conduct routine monitoring and evaluation of the inclusive procurement program's results, determining how much procurement possibilities can assist startups, social businesses, microenterprises, and vulnerable sectors.
- 75.5 Procuring Entities shall identify inclusive procurement projects in their indicative APP aligned with Section 7.7.3 of this IRR, to give advanced notice to the market of the forthcoming opportunities.
- 75.6 Procuring Entities shall provide the GPPB with yearly reports that include information on how these sectors participated in their procurement activities, including a breakdown of contracts awarded, gender parity attained, and compliance with social responsibility standards. These reports will be utilized to improve the inclusive procurement framework and further refine policies.
- 75.7 The GPPB will issue guidelines, in consultation with relevant agencies, on gender-responsive public procurement covering Goods, Infrastructure Projects, or Consulting Services. These guidelines shall prioritize women-led or women-owned businesses by ensuring their meaningful and active participation in public procurement and government contracting.

## **Section 76. Registration of Certain Sectors**

- 76.1 The GPPB, once data is available from relevant agencies, shall maintain a registry of entities belonging to the following sectors:
- a) Farmers as certified by the Department of Agriculture (DA);
  - b) Fisherfolk as certified by the Bureau of Fisheries and Aquatic Resources (BFAR);
  - c) Persons with disabilities as certified by the National Council for Disability Affairs (NCDA) pursuant to RA No. 7277, otherwise known as the Magna Carta for Disabled Persons, as amended;
  - d) Solo parents as certified by the Department of Social Welfare and Development (DSWD);

- e) Microenterprises and social enterprises as certified by the MSMED Council;
- f) Startups, spin-offs, and other forms of entity involved in science, technology, and innovation activities as certified by the DTI, DICT, NIC or the Department of Science and Technology (DOST), as may be applicable;
- g) Cooperatives duly registered with the CDA pursuant to RA No. 6938, otherwise known as the Cooperative Code of the Philippines, as amended; and
- h) Other relevant sectors as may be determined by the GPPB to ensure inclusivity and diversity in the procurement process.

### **Section 77. Exemptions and other Forms of Support.**

The GPPB, after due consultation with the DA, BFAR, NCDA, DSWD, MSMED Council, DTI, DICT, NIC, DOST, Commission on Higher Education, and CDA shall prescribe instances for outright exemption and other forms of support for the sectors mentioned in the preceding section. The GPPB may issue relevant guidelines based on the data gathered from the preceding section of this IRR.

## **RULE XIII DOMESTIC AND FOREIGN PROCUREMENT**

### **Section 78. Procurement of Domestic and Foreign Goods**

Consistent with the country's obligations under treaty or international or executive agreement, Goods may be obtained from domestic or foreign sources and the procurement thereof shall be open to all eligible suppliers, manufacturers, and distributors.

### **Section 79. Domestic Preference**

- 79.1 The Procuring Entity shall give priority and preference to Philippine products and services. The preference and priority for Philippine products shall be guaranteed at all levels of the procurement process, including raw materials, ingredients, supplies, or fixtures.
- 79.2 For a period of ten (10) years from the effectivity of RA No. 11981 or the "Tatak Pinoy (Proudly Filipino) Act," and for Philippine products and services in sectors and economic activities covered by the prevailing *Tatak Pinoy* Strategy, the Procuring Entity is mandated to award the contract to the domestic bidder. 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.

- 79.3 After the ten (10) year period counted from the effectivity of RA No. 11981, the domestic preference shall be subject to a margin of preference to be determined by the *Tatak Pinoy* Council which shall not be lower than fifteen percent (15%).
- 79.4 For products and services governed by the TPS, the domestic preference in procurement shall be in accordance with the IRR or guidelines issued for the *Tatak Pinoy* Act.
- 79.5 The Procuring Entity shall award to the domestic bidder if the bid is not more than twenty-five percent (25%) in excess of the lowest foreign bid. The margin of preference provided herein shall be subject to a periodic review and adjustment by the GPPB, as may be necessary.
- 79.6 A Domestic Bidder can only claim preference if it secures from the appropriate agency 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.
- 79.7 The preference herein established may be waived should any of the following conditions be present:
  - a) Where domestic production is insufficient or unavailable in the required commercial quantities;
  - b) Where the specific or desired quality is not met;
  - c) Where domestic preference will result in inconsistencies with the Philippines' obligations under treaty or international or executive agreements; or
  - d) Other analogous circumstances.

## **RULE XIV** **LEASE OF MOVABLE PROPERTIES**

### **Section 80. Lease Contracts**

The lease of movable properties shall also be subject to government procurement using the most applicable mode of procurement. Movable properties refer to those properties defined under Articles 416, 417, and 418 of the New Civil Code of the Philippines.

## **RULE XV** **DISCLOSURE OF RELATIONS**

### **Section 81. Disclosure of Relations**

81.1 All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the HoPE, Procurement Agent if engaged, members of the BAC, the TWG, the BAC Secretariat, the head of the PMO or the End-User or Implementing Unit, and the project consultants, by consanguinity or affinity up to the third civil degree. The bidder shall also disclose the ultimate beneficial ownership of an entity. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 59 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 notwithstanding the act of such persons inhibiting themselves from the procurement process. This provision shall apply to the following persons and affiliates:

- a) In the case of individuals or sole proprietorships, to the bidders and their spouses;
- b) In the case of partnerships, to the partnership itself and its partners;
- c) In the case of cooperatives, to the cooperative itself and members of the board of directors, general manager or chief executive officer;
- d) A partnership, joint venture or consortium which is blacklisted or which has blacklisted member/s or partner/s as well as a person or entity who is a member of a blacklisted joint venture or consortium are, likewise, not allowed to participate in any government procurement during the period of suspension or blacklisting; and

- e) In the case of corporations, a single stockholder, together with their relatives up to the third civil degree of consanguinity or affinity, and their assignees, holding at least twenty percent (20%) of the shares therein, its chairman and president, shall be blacklisted after they have been determined to hold the same controlling interest in a previously blacklisted corporation or in two corporations that have been blacklisted; the corporations of which they are part shall also be blacklisted.
- 81.2 All bidders also found to have conflicting interests with each other shall be disqualified to participate in the procurement at hand, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. A bidder may be considered to have conflicting interests with another bidder in any of the events described in paragraphs (a) through (c) below and a general conflict of interest in any of the circumstances set out in paragraphs (d) through (i) below:
- a) A bidder has controlling shareholders or beneficial owners in common with another bidder;
  - b) A bidder receives or has received any direct or indirect subsidy from any other bidder;
  - c) A bidder has the same legally authorized representative as that of another bidder for purposes of this bid;
  - d) A bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence the bid of another bidder or influence the decisions of the Procuring Entity regarding this bidding process. This will include a firm or an organization that lends, or temporarily seconds, its personnel to firms or organizations that are engaged in consulting services for the preparation related to procurement for or implementation of the project if the personnel would be involved in any capacity on the same project;
  - e) A bidder who participated as a consultant in the preparation of the design or technical specifications of the Goods and related services that are the subject of the bid;
  - f) A bidder who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;

- g) If a consultant combines the function of consulting with those of contracting or supply of equipment;
- h) If a consultant is associated with, affiliated to, or owned by a contractor or a manufacturing firm with departments or design offices offering services as consultants unless such consultant includes relevant information on such relationships along with a statement in the technical proposal cover letter to the effect that the consultant shall limit its role to that of a consultant and disqualify itself and its associates from work in any other capacity that may emerge from the project, including bidding for any part of the future project. The contract with the consultant selected to undertake the project shall contain an appropriate provision to such effect; or
- i) If there is a conflict among consulting projects, the consultant, including its personnel and subcontractors, and any subsidiaries or entities controlled by such consultant shall not be recruited for the relevant project. The duties of the consultant depend on the circumstances of each case. While continuity of consulting services may be appropriate in particular situations where no conflict exists, a consultant cannot be recruited to carry out a project that, by its nature, shall result in conflict with a prior or current project of such consultant. Examples of the situations mentioned are when a consultant engaged to prepare engineering design for an infrastructure project shall not be recruited to prepare an independent environmental assessment for the same project; similarly, a consultant assisting a Procuring Entity in the privatization of public assets shall not purchase, nor advise purchasers, of such assets; or a consultant hired to prepare terms of reference for a project shall not be recruited for the project in question.

## **Section 82. Declaration of Beneficial Ownership**

82.1 Legal entities like corporations, partnerships, private sector organizations, foundations, and associations that participate in procurement projects shall safeguard the government from all acts that undermine a transparent, fair, and competitive procurement process. The beneficial ownership information of the suppliers, manufacturers, distributors, contractors, or consultants, which shall be identified by the GPPB, shall be a requirement to participate in government procurement, specifically: Competitive Bidding, Limited Source Bidding, Competitive Dialogue, or Unsolicited Offer with Bid Matching.

82.2 The GPPB shall maintain an online registry of beneficial ownership information of bidders established for government procurement which shall be accessible to the public.

82.3 The Bidder shall ensure that all beneficial ownership information is updated as often as may be necessary through the beneficial ownership registry.

## **RULE XVI PROTEST MECHANISM**

### **Section 83. Protests on Decisions of the BAC**

Decisions of the BAC in all stages of procurement may be protested to the HoPE; Provided, That a prior request for reconsideration should have been filed by the party concerned to the BAC and the same has been resolved.

83.1 The bidder may file a request for reconsideration to the BAC within three (3) calendar days upon receipt of written notice or upon verbal notification of the BAC decision. The BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The bidder shall not be allowed to submit additional documents to correct any defects in the bid submitted.

If a failed bidder signifies its intent to file a request for reconsideration, the BAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.

83.2 In the event that the request for reconsideration is denied, decisions of the BAC may be protested to the HoPE within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration. The protest shall be made by electronically filing a verified position paper with the HoPE concerned, accompanied by the payment of a non-refundable protest fee, which shall be paid via electronic payment channels in accordance with the following schedule:

<b>ABC Range</b>	<b>Protest Fee</b>
P50 million and below	0.75% of the ABC
More than P50 million to P100 million	P500,000.00
More than P100 million to P500 million	0.5% of the ABC
More than P500 million to P1 billion	P2,500,000.00
More than P1 billion to P2 billion	0.25% of the ABC
More than P2 billion	P5,000,000.00

83.3 The verified position paper shall contain the following information:

- a) Name of the bidder;
- b) Office address of the bidder;
- c) Name of project or contract;
- d) Implementing office or agency or Procuring Entity;
- e) Brief statement of facts;
- f) Issue to be resolved;
- g) Factual basis and legal arguments in support of the protest; and
- h) Such other matters and information pertinent and relevant to the proper resolution of the protest.

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

In addition, the bidder shall likewise certify under oath that:

- a) It has not previously commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of its knowledge, no such other action or claim is pending therein;
- b) If there is such other pending action or claim, the bidder is providing a complete statement of the present status thereof; and
- c) If it should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the HoPE wherein its protest is filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the verified position paper.

For this purpose, the GPPB shall establish an electronic filing system which shall cover the process from request for reconsideration to the resolution of the protest. The procedures for the use of the electronic filing system shall be provided for in the Guidelines issued by the GPPB.

#### **Section 84. Resolution of Protests**

The protests shall be resolved strictly on the basis of records of the BAC.

84.1 The HoPE 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 HoPE concerned shall be final up to the limit of its contract approving authority. With respect to LGUs, the decision of the local chief executive shall be final.

The decision of the HoPE shall clearly state the factual and legal bases used to resolve the protest and expressly cite relevant portions of the procurement or bidding documents, BAC resolutions, or other relevant documents used as references.

84.2 The decision of the HoPE shall be final and executory for the following procurement projects:

- a) Procurement of Goods amounting to Twenty Million Pesos (₱20,000,000.00) and below;
- b) Procurement of infrastructure projects amounting to Fifty Million Pesos (₱50,000,000.00) and below; and
- c) Procurement of Consulting Services amounting to Ten Million Pesos (₱10,000,000.00) and below.

84.3 In case of LGUs, the decision of the HoPE shall be final and executory for the following procurement projects:

- a) Procurement of Goods amounting to One Million Two Hundred Fifty Thousand Pesos (₱1,250,000.00) and below;
- b) Procurement of infrastructure projects amounting to Twelve Million Five Hundred Thousand Pesos (₱12,500,000.00) and below; and
- c) Procurement of Consulting Services amounting to Two Million Five Hundred Thousand Pesos (₱2,500,000.00) and below.

## **Section 85. Resort to Regular Courts**

Court action may be resorted to only after the protests contemplated in this Article have been completed. Cases filed in violation of the process specified in Article shall be dismissed for lack of jurisdiction.

The Regional Trial Court shall have jurisdiction over final decisions of the HoPE. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure, as amended.

In cases where the amounts are in excess of the specified thresholds in the IRR, the decisions of the HoPE shall become final and executory ten (10)

calendar days after receipt of a copy thereof by the parties, unless, within the same period, an appeal to the Regional Trial Court has been perfected.

Nothing in this Act shall be interpreted to prejudice or prohibit the Office of the Ombudsman from exercising its duties, functions, and powers as provided under the 1987 Constitution, RA No. 6770, otherwise known as the "Ombudsman Act of 1989," and/or any relevant rules and regulations pursuant thereto.

### **Section 86. Non-interruption of the Bidding Process**

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

### **Section 87. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Mandatory Injunctions.**

No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government or any of its subdivisions, officials, or any person or entity, whether public or private, acting under the government direction, to restrain, prohibit, or compel the procurement, bidding, or awarding of contracts for Goods, Infrastructure Projects, and Consulting Services of the government; commencement, execution, implementation, operation of any such contract; termination or rescission of any such contract; and the undertaking or authorization of any other lawful activity necessary for such contract.

This prohibition shall apply in all cases, disputes, or controversies instituted by a party, including, but not limited to, cases filed by bidders or those claiming to have rights through such bidders involving such contract. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which shall accrue in favor of the government should the court finally decide that the applicant was not entitled to the relief sought.

## **RULE XVII SETTLEMENT OF DISPUTES**

### **Section 88. Dispute Resolution**

88.1 Any dispute arising from the implementation of a contract covered by the Act and this IRR shall first be resolved and settled amicably by mutual consultation or agreement.

- 88.2 To ensure efficiency in the procurement process, parties to the dispute are encouraged to select the most expeditious mode of dispute resolution. The process of arbitration may be incorporated as a provision in the contract that will be executed pursuant to the provisions of the Act and this IRR; Provided, further, That by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.
- 88.3 In case of disagreement or after exhausting the remedies provided in the preceding Section, the dispute may be submitted to arbitration or other forms of alternative dispute resolution which includes mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof in accordance with the provisions of RA No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004"; Provided, however, That disputes that are within the competence and jurisdiction of the Construction Industry Arbitration Commission to resolve shall be referred thereto.

## **RULE XVIII** **CONTRACT PRICES AND WARRANTIES**

### **Section 89. Contract Prices**

For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation. In the event of an extraordinary increase in prices of specific components of the Infrastructure Project, price escalation may be considered, subject to prior approval of the GPPB. If the cost of construction components increases by more than ten percent (10%) of the unit price of work items, as determined against the prevailing price indices of the PSA, a price escalation may be authorized at a no-loss, no-gain basis, using the appropriate formula prescribed by the GPPB. For the purpose of this Section, the PSA shall ensure that its price indices are region-specific and updated on a monthly basis.

The rules and regulations for price escalation, including its appropriate formula, shall be included in the Guidelines to be issued by the GPPB.

### **Section 90. Warranty**

- 90.1 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 one percent (1%) but not to exceed five percent (5%) of every progress payment, or a special bank guarantee equivalent to at least one percent (1%) but not to exceed five percent (5%) of the total contract price. The said amounts shall be automatically released by the Procuring Entity 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.

In the absence of a specified retention money or special bank guarantee percentage within the Bidding Documents or Technical Requirements, a default warranty rate of one percent (1%) of the total contract price shall be applied.

90.2 For the procurement of Infrastructure Projects, the following warranties shall be made:

90.2.1 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 its personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by its construction work.

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

- a) The contractor shall undertake the repair works, at its own expense, of any damage to the infrastructure on account of the use of materials of inferior quality, defects in the construction, or due to any violation of the terms of the contract, within ninety (90) calendar days from the time the HoPE 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.
- b) The defects liability period shall be covered by the performance security of the contractor required in Section 68 of this IRR, which shall guarantee that the contractor performs its responsibilities

stated in the immediately preceding Section. If the contractor fails to comply with its obligations under Section 90.2.2 (a) of this IRR, the Procuring Entity shall forfeit its performance security, subject its properties to attachment or garnishment proceedings, and may impose the appropriate penalty under Sections 99, 100, and 101 of this IRR. All payables of the GoP in its favor shall be offset to recover the costs.

90.2.3 The following guidelines for Structural Defects shall cover the persons liable and their corresponding periods of liability:

- a) The following persons shall be held responsible for “Structural Defects,” i.e., major faults or flaws or 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:
  - i) 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;
  - ii) 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 undertook construction supervision for the project shall be held liable;
  - iii) Procuring Entity’s Representatives or Project Manager or Construction Managers and Supervisors – The project owner’s representative, project manager, construction manager, and supervisor shall be held liable in cases where the Structural Defects or 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;

- iv) Third Parties - Third Parties shall be held liable in cases where Structural Defects or 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; and
  - v) Users - In cases where Structural Defects or Failures are due to abuse or misuse by the End-User or Implementing Unit 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.
- b) The warranty against Structural Defects and Failures, except those occasioned by Force Majeure, shall begin from Final Acceptance until the following periods:
  - i) 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 or 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;
  - ii) Semi-Permanent Structures: Five (5) years Buildings of types 1, 2, and 3 as classified under the National Building Code of the Philippines, concrete or asphalt roads, concrete river control, drainage, irrigation lined canals, river landing, deep wells, rock causeway, pedestrian overpass, and other similar semi-permanent structures; and
  - iii) Other Structures: Two (2) years Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.

- c) To guarantee that the contractor shall perform its responsibilities as prescribed in Section 90.2.3.1 of this IRR, it shall be required to post a warranty security in the form chosen by the Procuring Entity in accordance with the following schedule:

<b>Form of Warranty Security</b>	<b>Amount of Warranty Security (Not less than the required percentage of the Total Contract Price)</b>
a) Cash or Letter of Credit issued by a Bank: Provided, however, That the Letter of Credit shall be confirmed or authenticated by a local bank, if issued by a foreign bank.  For biddings conducted by LGUs, the Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Five percent (5%)
b) Bank guarantee confirmed by a bank.  For biddings conducted by LGUs, the bank draft/guarantee may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Ten percent (10%)
c) Surety bond callable upon demand issued by GSIS or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

- d) In case of Structural Defects/Failure occurring during the applicable warranty period provided in Section 90.2.3 (b) hereof, the Procuring Entity shall undertake the necessary restoration or reconstruction works and shall be entitled to full

reimbursement by the parties found to be liable for expenses incurred therein upon demand, without prejudice to the filing of appropriate administrative, civil, and/or criminal charges against the responsible persons as well as the forfeiture of warranty securities posted in favor of the Procuring Entity.

## **RULE XIX** **THE GOVERNMENT PROCUREMENT POLICY BOARD**

### **Section 91. Organization and Functions**

91.1 The Government Procurement Policy Board, as established in Section 91 of the Act, shall have the following duties and responsibilities:

- a) To set strategic direction and make policy decisions regarding all matters affecting public procurement, with due regard to the country's regional and international obligations;
- b) To lead the nation's efforts in advancing public procurement reforms in accordance with the Act and its IRR;
- c) To formulate and amend, whenever necessary, this IRR, associated issuances and government procurement manuals, PBDs and standard forms for procurement, and issue policy papers to ensure that the procurement process is streamlined and responsive to the needs of the government;
- d) To establish an online automated process to provide timely responses to inquiries related to the implementation of the Act;
- e) To establish and implement the professionalization program provided in this Act; and
- f) To establish and implement a strategic procurement monitoring program that uses data analytics to enhance procurement planning and evidence-based policymaking as provided under Section 24 of the Act.

### **91.2 GPPB Membership**

The GPPB shall be composed of the Secretary of the DBM as Chairperson, and the Secretary of the National Economic and Development Authority (NEDA) as Alternate Chairperson, with the following as members: the Secretaries of the Departments of Public Works and Highways, National Defense, Education, the Interior and

Local Government, and Transportation, or their duly authorized representatives; a representative from the PS-DBM; and a representative from the private sector, to be appointed by the President of the Republic of the Philippines upon the recommendation of the GPPB. The GPPB may invite a representative from the COA to serve as a resource person.

#### 91.3 The GPPB Technical Support Office

In the performance of its functions, the GPPB shall be supported by a Technical Support Office, an agency attached to the DBM. The TSO shall be headed by a Director General with a rank equivalent to an Undersecretary and supported by Deputy Directors General with a rank equivalent to an Assistant Secretary, to be appointed by the President, as endorsed by the Secretary of the DBM, all of whom should be of good moral character, honesty, probity, and unquestionable integrity. The Secretary of the DBM shall appoint the officials and employees of the TSO for ranks lower than the Deputy Directors General. The security of tenure of existing officials and employees of the GPPB-TSO shall be observed, subject to existing civil service rules and regulations.

91.4 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 E.O. No. 359, series of 1989. All affected functions of the Infrastructure Committee of the NEDA Board are hereby transferred to the GPPB.

91.5 The GPPB may establish Inter-agency Technical Working Group/s (IATWG/s) to provide subject matter expertise to the GPPB in the formulation and review of policies, rules, and regulations related to government procurement. The IATWG/s, in particular, shall endorse policy recommendations for the GPPB's consideration and approval. The IATWG/s shall consist of representatives from the economic services, social services, agriculture, health, education, construction, energy, environment, information and communications technology, research and development, and other sectoral groups as determined by the GPPB, to guarantee that the procurement policies are inclusive and promote good governance.

The GPPB may likewise invite resource persons and technical experts to provide comments, inputs and recommendations on procurement policy measures and other matters submitted to the GPPB for consideration.

## **RULE XX** **ADMINISTRATIVE SANCTIONS**

### **Section 92. Administrative Liability of Public Officers**

Without prejudice to the criminal and civil liabilities under RA No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act" and other penal laws, any public officer found to have committed any of the following acts shall be administratively liable with all the accessory penalties for government employees even if no criminal prosecution is instituted against said public officer:

- a) Opening any sealed bid including, but not limited to, bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents to any prospective bidder, person, or any party having direct or indirect interest in the project to be procured, prior to the appointed time for the public opening of bids or other documents;
- b) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in this IRR;
- c) Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take a particular bidder, or allowing oneself to be unduly influenced or pressured;
- d) Splitting of contracts which exceed procedural purchase limits and competitive bidding;
- e) Abusing the exercise of the power of the HoPE or its duly authorized representative to reject any and all bids with manifest preference to any bidder;
- f) Simulating procurement eligibility requirements or strategic procurement planning activities; or
- g) All other acts or omissions with the intention of not complying with the mandatory provisions of the Act.

All criminal actions filed before the effectivity of the Act and its IRR shall be governed by the laws in force at the time the offenses were committed; Provided, That judicial decisions and orders issued prior to the effectivity of the Act and this IRR shall remain valid.

### **Section 93. Jurisdiction**

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

Notwithstanding Article 22 of the Revised Penal Code or any law to the contrary, the administrative, civil, and/or criminal liability of any person, corporation, or any other entity for any unlawful act committed prior to the effectiveness of the Act shall not be diminished, modified, or affected in any way by its enactment.

### **Section 94. Preventive Suspension**

The head of the agency, upon issuance of the formal charge or notice of charge, or immediately thereafter, may preventively suspend any member of the TWG or the Secretariat, or the BAC, and other officials and employees involved if there are strong reasons or *prima facie* evidence showing that the officials or employees concerned may be found liable of the charges filed against them under Rule XX of the Act and its IRR or for dishonesty as defined by civil service laws. In all cases, procedural and substantive due process as mandated by the Constitution and civil service laws, rules and regulations shall be strictly observed.

### **Section 95. 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 7 CSC, Book V of EO No. 292, otherwise known as the "Administrative Code of 1987", and other civil service laws, rules, and regulations.

### **Section 96. Civil Liability in Case of Conviction**

Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under RA No. 3019 and other penal laws shall carry with it civil liability, which may either consist of restitution for the damage done, or 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 97. 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 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 contract price, the Procuring Entity may terminate the contract, without prejudice to other courses of action and remedies available under the circumstances.

## **RULE XXI** **SUSPENSION AND BLACKLISTING**

### **Section 98. Administrative Liability of Private Entities**

Without prejudice to criminal and civil liabilities under applicable laws, including their accessory penalties, if any, administrative liability attaches to private entities, such as suppliers, contractors or consultants, who may be subject to the following penalties in accordance with the Act, this IRR, and other relevant laws, rules, and regulations:

98.1 Any appropriate corrective measure, depending on the severity of the offense considering its disadvantages to the GOP, shall be imposed in accordance with the guidelines of the GPPB;

98.1.1 These corrective measures may include any of the following:

- a) Imposition of fine;
- b) Rehabilitation through the development of a corrective action plan that outlines steps they need to take to improve performance, compliance, and accountability;
- c) Implementation of a probationary period during which the performance of the supplier, contractor, or consultant is closely monitored;
- d) Creation of a performance improvement plan that outlines the areas of performance that need to be improved (e.g. ensure compliance to quality measures or improved quality control measures);
- e) Conduct of mandatory trainings or workshops; and
- f) Other similar measures.

98.1.2 The penalty shall be commensurate to the severity of the offense considering the resulting disadvantages to the GoP.

98.2 Suspension shall be imposed for offenses committed under Section 99 of this IRR. The entity is prohibited from participating in any procurement of the Procuring Entity concerned for a given period.

98.3 Blacklisting shall be imposed in case offenses occur under Sections 100 and 101 of this IRR. The entity shall be disqualified from participating in all government procurements for a given period or perpetually, as the case may be.

### **Section 99. Imposition of Suspension**

The HoPE shall impose the penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense, for any of the following offenses:

#### **99.1 During Procurement**

- a) Causing the delay, without justifiable cause, of the screening for eligibility, opening of Bids, evaluation and post evaluation of Bids, and awarding of contracts;
- b) Refusing 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;
- c) Withdrawing a bid, or refusing to accept an award, or refusing or failing to enter into contract with the Procuring Entity without justifiable cause, after the approval of the HoPE for having been the declared LCRB, MEARB, or HRRB, as the case may be;
- d) Refusing or failing to post the required performance security within the prescribed time; or
- e) For the renewal of contracts for regular and recurring services, refusal of the service provider to accept the notice of renewal or failure to submit its updated documentary requirements for the renewal of contract without any justifiable reason.

#### **99.2 During Contract Implementation**

- a) Delivering goods with unsatisfactory or inferior quality as may be provided in the contract;
- b) Poor performance by the consultant. Poor performance shall be as follows:

- i) Defective design resulting in substantial corrective works in design and/or construction;
  - ii) Failure to deliver critical output due to the fault or negligence of the consultant;
  - iii) Specifying materials which are inappropriate, substandard, or way above acceptable standards; or
  - iv) Allowing defective workmanship or works by the winning bidder being supervised by the consultant;
- c) Poor performance by the winning bidder or unsatisfactory quality and/or progress of work. Poor performance shall be as follows:
- i) Negative slippage of fifteen percent (15%) and above within the critical path of the project due entirely to the fault or negligence of the winning bidder; or
  - ii) Non-compliance of the materials and workmanship with the approved specifications arising from the fault or negligence of the winning bidder.

Moreover, the bid security or the performance security posted by the entity concerned shall also be forfeited.

## **Section 100. Imposition of Blacklisting**

The HoPE may impose the penalty of blacklisting consisting of one (1) year prohibition for the first offense, or two (2) years prohibition for the second offense for any of the following offenses:

### **100.1 During Procurement or Contract Implementation:**

- a) Commission of three (3) or more of any of the acts imposed with suspension, as provided under Section 99 of this IRR;
- b) The use of force, fraudulent machinations, coercion, undue influence or pressure on any member of the BAC or any officer or employee of the Procuring Entity to take a particular action for its own favor or gain, or to the advantage of a particular bidder; or
- c) In case it is determined *prima facie* that the winning bidder has engaged, before or during the implementation of the contract, in the following

unlawful deeds and behaviors relative to contract acquisition and implementation:

- i) Corrupt, fraudulent, collusive and coercive practices;
- ii) Drawing up or using forged documents; or
- iii) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or trade.

#### 100.2 During Procurement:

- a) Collusion between two (2) or more bidders and submitting different bids as if they were bona fide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest bid;
- b) Malicious submission of different bids through two (2) or more persons, corporations, partnerships, or any other business entity in which it has interest, to create the appearance of competition that does not in fact exist so as to be declared as the winning bidder;
- c) Entering into an agreement with other bidder/s which call upon one to refrain from bidding for procurement contracts, or which call for withdrawal of bids already submitted, or which are otherwise intended to secure an undue advantage to any of the bidders;
- d) Failure to faithfully disclose its relationship, regardless of the time of its discovery, with the HoPE, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the End-User or Implementing Unit, and the project consultants of the Procuring Entity, or of the procurement agent, whichever is applicable, by consanguinity or affinity up to the third civil degree pursuant to Section 81 of this IRR;
- e) Submission of beneficial ownership information containing false entries;
- f) Using the name of another for purposes of participating in any procurement activity;
- g) Submission of eligibility requirements and bids containing false information or falsified documents or the concealment of such information that will materially alter the outcome of eligibility screening or any stage of the procurement;
- h) Unauthorized access of the contents of any Bid submitted to the Procuring Entity before the opening of bids;

- i) Engaging in any documented unsolicited attempt to unduly influence the outcome of the bidding; or
- j) Employing schemes which stifle or suppress any procurement activity;

100.3 During Contract Implementation:

- a) Assigning or subcontracting the contract or any part thereof or substituting key personnel named in the proposal without prior written approval by the Procuring Entity;
- b) Willful or deliberate abandonment or non-performance of the project or contract by the winning bidder resulting in substantial breach thereof without lawful and/or just cause; or
- c) Termination of the contract due to the default or unlawful acts of the supplier, contractor or consultant.

Moreover, the bid security or the performance security posted by the entity concerned shall also be forfeited

**Section 101. Imposition of Blacklisting with Perpetual Disqualification**

The HoPE shall impose blacklisting with perpetual disqualification based on any of the following grounds:

- a) Commission of a third offense imposed with blacklisting under the Act by the same Procuring Entity, or a combination of three (3) violations imposed with blacklisting by the Procuring Entity and other Procuring Entities, as posted on the GPPB portal; or
- b) Failure to comply with the provision on warranty that requires to repair any noted defect or damage to the Infrastructure Project due to the use of materials of inferior quality within ninety (90) calendar days from the issuance of the order by the HoPE to undertake such repairs.

Moreover, the bid security or the performance security posted by the entity concerned shall be forfeited.

**Section 102. Suspension of Bidder Pending Blacklisting Proceedings**

During the pendency of the blacklisting proceedings, the bidder shall be automatically suspended from participating in the current procurement activity being undertaken by the Procuring Entity concerned.

The notice of the commencement of the blacklisting proceedings to the bidder shall likewise serve as the suspension order.

The dismissal of the case by the HoPE shall result in the automatic lifting of the suspension order.

### **Section 103. Status of Suspended or Blacklisted Bidder**

Before the issuance of a blacklisting order, the erring bidder may participate in the procurement of any government project except in the Procuring Entity where it is suspended: Provided, That if the blacklisting order is issued prior to the date of the Notice of Award, the blacklisted bidder shall not be qualified for award and such contract shall be awarded to another bidder.

The issuance of a suspension or blacklisting order shall not prejudice any contract awarded prior thereto; Provided, That the offenses which brought about the suspension or blacklisting are not connected to the awarded contract.

In case the penalty of suspension or blacklisting is imposed during the pendency of a previous penalty, the latter shall be deemed terminated and subsumed in the former.

### **Section 104. Initiation of Action; Subsequent Procedure**

The BAC or the HoPE may, motu proprio, commence the administrative proceedings for corrective measures, suspension or blacklisting, at any stage of the procurement or contract implementation, upon *prima facie* determination that a bidder or prospective bidder has committed any of the grounds provided for in Sections 99, 100, and 101 of this IRR. Any bidder or prospective bidder may also initiate the suspension and blacklisting proceedings.

At the option of the Procuring Entities, a reasonable fee may be required for initiating the suspension and blacklisting proceedings.

104.1 The administrative proceedings for suspension and blacklisting shall cover the following, among others:

- a) **Notice and Hearing** – Upon initiation of action, the BAC shall immediately notify the bidder or prospective bidder concerned in writing, advising of its opportunity to show cause why it should not be held administratively liable, and to request, if preferred, for the conduct of a hearing before the BAC.

Upon evaluation of the records and if the BAC is convinced by substantial evidence that the bidder or prospective bidder is at fault, it

shall issue a resolution recommending to the HoPE the imposition of administrative penalties.

- b) **Decision** – The HoPE shall, within fifteen (15) days from receipt of the relevant BAC resolution, determine whether substantial evidence exists to support a finding of guilt in the administrative case. Otherwise, the HoPE shall dismiss the action.

Decisions of the HoPE shall become final after seven (7) days from receipt thereof by the suspended or blacklisted bidder or prospective bidder, as the case may be, if no Request for Reconsideration is filed.

- c) **Request for Reconsideration** – A Request for Reconsideration may be filed by the suspended or blacklisted bidder or prospective bidder within three (3) calendar days from receipt of the notice of decision. The HoPE shall resolve the request for reconsideration within seven (7) calendar days from the filing thereof and furnish the suspended or blacklisted bidder or prospective bidder with a copy of the resolution immediately from its promulgation. Only one (1) request for reconsideration shall be allowed.
- d) **Posting in the GPPB Portal** – It is the responsibility of the Procuring Entity to upload a copy of the suspension or blacklisting order to the portal of the GPPB, within seven (7) calendar days from the issuance of the order.

## **Section 105. Extent of Administrative Sanctions**

The penalties of suspension and blacklisting shall be applied against (i) any entity in which the suspended or blacklisted person has a controlling interest; and (ii) any beneficial owner of the suspended entity or blacklisted person.

The penalties shall also be applied against the following entities:

- a) In the case of individuals or sole proprietorships, to the bidders and their spouses;
- b) In the case of partnerships, to the partnership itself and its partners;
- c) In the case of cooperatives, to the cooperative itself and members of the board of directors, general manager or chief executive officer;
- d) A partnership, joint venture or consortium which is blacklisted or which has blacklisted member/s and/or partner/s as well as a person or entity who is a member of a blacklisted joint venture or consortium are,

likewise, not allowed to participate in any government procurement during the period of suspension or blacklisting; and

- e) In the case of corporations, a single stockholder, together with their relatives up to the third civil degree of consanguinity or affinity, and their assignees, holding at least twenty percent (20%) of the shares therein, its chairperson and president, shall be blacklisted after they have been determined to hold the same controlling interest in a previously blacklisted corporation or in two corporations which have been blacklisted; the corporations of which they are part shall also be blacklisted.

#### 105.1 Blacklisting Due to Enforcement of a Bid or Performance Securing Declaration

In addition to the forfeiture of the bid security or the performance security posted by the private entity, the following provisions shall be observed in the imposition of administrative penalties pursuant to the enforcement of the Bid Securing Declaration Form (BSDF) or the Performance Securing Declaration Form (PSDF):

The HoPE, upon recommendation of the BAC, shall immediately issue the blacklisting or suspension order upon determination of the grounds for enforcement and forfeiture of the BSDF or the PSDF.

A request for reconsideration may be filed with the HoPE within three (3) calendar days from receipt of the blacklisting or suspension order.

#### 105.2 Other Aspects of Suspension and Blacklisting

The procedures and other aspects relative to administrative proceedings for corrective measures, suspension, and blacklisting of suppliers, contractors, or consultants shall be undertaken in accordance with the guidelines to be issued by the GPPB.

### RULE XXII LEGAL ASSISTANCE AND INDEMNIFICATION PACKAGE FOR BAC MEMBERS AND SUPPORT STAFF

#### **Section 106. Private Legal Assistance**

All members of the BAC, TWG, and Secretariat are authorized to engage the services of private lawyers or external counsels immediately upon receipt of a Court notice that an administrative, civil, or criminal action, suit or proceeding is filed against them in connection with the lawful performance of their official

functions and duties. The lawyer's fee shall be part of the indemnification package for the members of the BAC, TWG, and Secretariat, subject to the provisions of Section 107 hereof.

### **Section 107. Indemnification Package**

The GPPB shall establish an equitable indemnification package for public officials and employees providing services in the BAC, TWG, and BAC Secretariat.

Such indemnification package may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all costs and expenses reasonably 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 performance of their functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or grave misconduct or grave abuse of discretion.

In the event of a settlement or compromise, indemnification shall be confined only to matters covered by the settlement; Provided, That the public officials or employees to be indemnified have not committed gross negligence or grave misconduct in the performance of their functions and duties.

## **RULE XXIII FINAL PROVISIONS**

### **Section 108. Appropriations**

The amount necessary for the initial implementation of the Act and this IRR shall be charged against the current year's available appropriations. Thereafter, such sums as may be necessary for the implementation of the Act and this IRR shall be included in the annual General Appropriations Act.

### **Section 109. Whole-of-Government Approach**

To effectively achieve the objectives of the Act and to scale up the professionalization of government procurement practitioners, the GPPB shall provide sustained training, capacity-building, and support to the stakeholders in the government procurement process. The interventions shall include education, training, seminars, and workshops in areas, such as modes of procurement, streamlined processes, supply chain management and logistics, including warehousing, and digitalization.

All HoPEs, members of the BACs, and TWGs shall undergo an executive course on procurement, while the BAC Secretariats shall undergo annual training programs.

Pursuant thereto, all branches and instrumentalities of the government, its departments, bureaus, offices and agencies, including SUCs, GOCCs, GFIs, and LGUs shall allocate a portion of their capacity development funds to send their BAC members, BAC Secretariats, and TWGs to training. The capacity-building program shall include the development of skills in the public sector in understanding and implementing the government's Green Public Procurement Strategy through the following:

- a) Conduct of relevant training needs assessment of the public sector;
- b) Provision of technical assistance to suppliers, particularly the microenterprises and social enterprises; and
- c) Conduct of public awareness campaigns on green procurement, among others.

The GPPB shall establish partnerships with SUCs and other educational institutions in providing training programs. It shall establish standards for the accreditation of said institutions.

The Procuring Entity, through the HoPE, shall submit periodic progress reports to the GPPB on the status of its capacity development. Reportorial requirements prescribed under the Act and this IRR shall take into consideration reports required under other laws related to procurement, with a view to harmonizing and achieving efficiencies in the preparation of these reports.

### **SEC. 110. Oversight Committee**

The Joint Congressional Oversight Committee created under the Act to oversee the implementation thereof shall submit its report and recommendation to the Senate President and the Speaker of the House of Representatives within five (5) years from its organization.

### **Section 111. Mandatory Review**

The Congress shall conduct a mandatory review of the Act at least once every five (5) years, or as often as it may deem necessary.

## **Section 112. Implementing Rules and Regulations and Standard Forms**

This IRR is promulgated pursuant to Section 112 of the Act for the proper implementation of the provisions of the same Act.

- 112.1 As the need arises, this IRR may be amended by the GPPB.
- 112.2 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.
- 112.3 For a period not later than ninety (90) days upon the approval of this IRR, the standard forms for procurement shall be formulated and approved by the GPPB.

## **Section 113. Transitory Provision**

- 113.1 Prior to the effectivity of this IRR, the provisions of RA No. 9184 and its IRR shall remain in force and effect in order to ensure the continued implementation of programs, activities, and projects.
- 113.2 Procuring Entities are enjoined to leverage the Fit-for-Purpose and Proportional approaches afforded by the Act and this IRR.
- 113.3 The GPPB and all HoPEs, Procuring Entities and the BACs affected by this Act shall be given a three (3)-year transitory period from the approval of the standard forms for procurement to fully comply with the requirements of the Act and its IRR.

## **Section 114. Reportorial Requirements**

The GPPB shall, upon approval of this IRR and the standard procurement forms, effect the publication of the same, in accordance with existing laws, rules, and regulations. Upon approval, the same shall also be posted on the website of the GPPB.

Thereafter, the GPPB, through its TSO, shall send written notices when the said documents have been posted on its website to the Office of the President, the Senate of the Philippines, and the House of Representatives.

## **Section 115. Repealing Clause**

RA No. 9184, otherwise known as the “Government Procurement Reform Act” and Commonwealth Act No. 138, are hereby repealed. All other laws, acts, presidential decrees, executive orders, presidential proclamations, issuances,

rules and regulations, or parts thereof which are contrary to or inconsistent with any of the provisions of the Act and this IRR are hereby repealed, amended, or modified accordingly.

### **Section 116. Separability Clause**

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

### **Section 117. Effectivity**

This IRR shall take effect fifteen (15) calendar days after its publication in the Official Gazette or in two (2) newspapers of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of this IRR.