

2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184

29 August 2016

2016 Revised IRR of RA 9184

Outline:

- Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO)
- 2016 Revised Implementing Rules and Regulations of R.A. 9184

2016 Revised IRR of RA 9184

The GPPB and its TSO:

- The GPPB is the central procurement policy making body of the government under the Government Procurement Reform Act
 - Section 63 of RA 9184 and its IRR authorizes the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, the IRR.
- The GPPB-TSO is the technical, research, monitoring and administrative arm of the GPPB.

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On Authority Over Procuring Entities

❖ It cannot dictate to the procuring entity how to decide or resolve issues relative to its procurement activities. The GPPB is a quasi-legislative body mandated to formulate and amend the IRR. It has no quasi-judicial powers and functions; hence, cannot investigate and ascertain the existence of facts, hold hearings, and exercise discretion of a judicial nature over actual controversies with regard to the conduct of bidding by procuring entities.

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On Granting exemption from application of RA 9184

- ❖ It is beyond the authority of the GPPB to grant exemptions from the application of RA 9184 and its IRR as it does not have the mandate to legislate nor determine the coverage of the law. The GPPB however, may render contemporaneous construction of the provisions of the law pursuant to its quasi-legislative fiat, and issue rules and regulations on the basis of its rule-making power.

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On Resolving issue on post-disqualification

- ❖ GPPB cannot grant a bidder's request to resolve the issue of their post-disqualification. Nonetheless, they are urged to follow the prescribed rules and procedures on Protest Mechanism laid down in Section 55 of the IRR of RA 9184.

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On Declaring Failure of Bidding

- ❖ GPPB is not vested with the authority to declare a PE's procurement activity to have incurred a failure of bidding.
- ❖ Declaration of failure of bidding is within the authority and accountability of the Bids and Awards Committee and the Head of the Procuring Entity to exercise, under Sections 35 and 41 of the IRR of RA 9184, respectively.

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Background:

- Since the passage of the RA 9184, the GPPB has issued two IRRs, namely: (a) IRR-A, and (b) the revised IRR, which took effect on 8 October 2003 and 2 September 2009 respectively.
- On August 9, 2016, the GPPB finally approved the 2016 Revised Implementing Rules and Regulations of RA 9184.

2016 Revised IRR of RA 9184

| Issue/s | Revision | Impact |
|-------------------------|---|---|
| Free Trade Negotiations | Mandates adherence to RA 9184 or selection through competitive bidding. Otherwise, negotiating panel shall ensure that the reasons for the adoption of a different rule or method of procurement are clearly reflected in the records of discussion. (Sec. 4.3) | Provide guidance and directive in negotiations for international agreements and executive agreements (i.e. FTA) |

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| Issue/s | Revision | Impact |
|--|---|---|
| Varying interpretations on what are covered by RA 9184 | <p>Enumerated activities that are not considered as procurement undertakings under RA 9184 and its IRR:</p> <ol style="list-style-type: none">1. Direct financial or material assistance to beneficiaries2. Participation to scholarships, trainings, continuing education etc.3. Lease of gov't property for private use4. Job order workers5. Joint Venture Agreements between Private Entities and GOCCs or LGUs6. Disposal of property and assets (Sec. 4.5) | Clarification on the applicability of RA 9184 and its IRR |

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| Issue/s | Revision | Impact |
|---|--|--|
| <p>Poor planning; Delay in budget approval; Delay in procurement Under-spending</p> | <p>a. MYOA for Multi-year projects (Sec. 5(b), 7.6);</p> <p>b. Preparation of Indicative APP upon issuance of budget call or similar document (7.3)</p> <p>c. Undertaking Procurement Short of Award (7.6)</p> <p>d. Require submission of APP and changes thereto to GPPB (7.4)</p> | <p>Improved linkage of budget to procurement; Efficiency in procurement; Improved monitoring; Avoid splitting of contracts</p> |

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| Issue/s | Revision | Impact |
|-----------------------------------|---|---|
| Lack of members to constitute BAC | <p>Allows designation of an officer of the next lower rank, in case of unavailability of 5th ranking permanent official (except for BAC Chairperson) (Sec. 11.2.2)</p> <p>In case of procurement outsourcing, a representative from the Procuring Entity may be designated as a provisional member</p> <p>The Chairperson and Vice-chairperson shall be designated by the local chief executive (Sec.11.2.2, 11.2.3(a), 11.2.3(b)(iii))</p> | Increases the pool from which HOPE select its BAC members |

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| Issue/s | Revision | Impact |
|--|--|------------------------|
| Lack of full-time BAC Sec members to support the BAC in every procurement activity | <p>Allows designation of an officer of the next lower rank, in case of unavailability of 5th ranking permanent official</p> <p>In case of ad hoc BAC Secretariat, the HOPE shall assign full-time support staff in its BAC Secretariat (Sec. 14.2)</p> | Fast-track procurement |

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| Issue/s | Revision | Impact |
|-------------|--|--|
| Role of TWG | <p>Duties of TWG:</p> <ol style="list-style-type: none">1.) Review of the Technical Specifications, Scope of Work, and Terms of Reference;2.) Review of Bidding Documents;3.) Shortlisting of Consultants;4.) Eligibility Screening;5.) Evaluation of Bids;6.) Post-Qualification; and7.) Resolution of Request for Reconsideration (12.1) | Avoids pinpointing of responsibilities |

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|--|---|---------------------------------|
| Lack of training of HOPE, BAC, Secretariat and TWG | <p>The HoPE shall ensure that the BAC, its Secretariat and TWG members, including other relevant procurement personnel are sent to attend procurement training or capacity development program.</p> <p>Within six (6) months upon designation, the BAC, its Secretariat and TWG members should have satisfactorily completed such training or program conducted, authorized or accredited by the GPPB through its Technical Support Office.</p> | Procurement Professionalization |

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| Issue/s | Revision | Impact |
|---------------------------------------|---|-----------------------------------|
| Low-turn out of procurement observers | <ul style="list-style-type: none">a. Identify stages of procurement when observers are invited;b. Increase the period of notice from 3 to 5 daysc. Allow access or provide copy of bidding documentsd. If no observer report within 7 days from activity, there is a presumption that the BAC followed the correct procedure (Sec. 13) | Increase observers' participation |

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|------------------------------------|---|--|
| Poor specifications | <p>a. Bid documents shall reflect the necessary specifications required to meet the needs of the PE</p> <p>b. For mixed procurement, PE shall specify all relevant requirements for each procurement type (Sec. 17.2)</p> | Quality of Goods for the lowest prices |
| Non-Refundable Fee For bid docs | Provide instances when bid doc fees may be refunded to the bidder, i.e. declaration of failure of bidding under Section 41. (Sec. 17.5) | Fairness in procurement |

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| Difficulty in preparing technical specifications Reference to Brand Names | Reference to brand names is allowed for items or parts that are compatible with the existing fleet or equipment of the same make and brand and will maintain the performance, functionality and useful life of the equipment. Prohibition on brand names likewise apply to the goods component of Infrastructure Projects and Consulting Services. (Sec. 18) | Ensure compatibility, performance, functionality and useful life of the equipment. |

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| Poor Quality of Works | Requirement on detailed engineering is emphasized. (17.6) | Quality of Goods for the lowest prices |
| Delay in procurement due to issues on right of way | Commencement of the procurement process for civil works short of award, until a permit to enter, deed of sale/donation, writ of possession is issued (17.6) | Fastrack procurement activities |
| Volume of Procurement Requests | Institutionalize procurement by lot (Sec. 21.1(b)) | Efficiency in procurement |

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| Issue/s | Revision | Impact |
|---|---|---|
| Newspaper advertisement | a. Increase thresholds for advertisement requirement b. 2 years sunset clause on advertisement requirement (Sec. 21.2.1) | Reduce government cost for newspaper advertisements |
| Low participation of bidders in pre-bid | a. Allow conduct of pre-bid via video-conferencing, webcasting b. Allow all prospective bidders (even those who did not buy bid docs) to raise queries (Sec. 22) | Clarifies procurement requirements; Reduce disqualification; Increase competition |

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| Issue/s | Revision | Impact |
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| <p>Disqualification of Bidders/ Failure of Biddings due to documentary requirements</p> <p>Low turn-out of bidders</p> | <p>a. Mandatory registration under Platinum Membership (Sec. 8.5.2, 25.2)</p> <p>b. Mayor's permit:</p> <ul style="list-style-type: none"> - Allows submission of recently expired mayor's permit with official receipt of application for renewal of permit - Allows equivalent document for economic zones (Sec. 23.1(a)(ii), 24.1(a)(ii)) <p>c. For goods procurement, submission of a Credit Line, as an alternative to NFCC (Sec. 23.1(a)(viii))</p> | <p>Easier eligibility check</p> <p>Reduce disqualification of bidders/ failure of biddings</p> <p>Increase competition</p> |

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| Issue/s | Revision | Impact |
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| <p>Disqualification of Bidders/Failure of Biddings due to documentary requirements</p> <p>Low turn-out of bidders</p> | <p>d. For goods and infrastructure projects, fixing the NFCC's K factor at 15, regardless of contract duration (Sec. 23.4.1.4, 23.4.2.7)</p> <p>e. For individual consultants not registered as sole proprietors, they can submit BIR Certificate of Registration instead of DTI and Mayor's Permit (Sec. 24.1(a)(ii))</p> <p>f. In consulting services, submission of foreign bidders' SEC Certificate of Registration and/or PRC permit is moved from eligibility to contract award (Sec. 37.1.4(a)(iv))</p> | <p>Easier eligibility check</p> <p>Reduce disqualification of bidders/failure of biddings</p> <p>Increase competition</p> |

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| Strict rules on marking/sealing of bids | Bid envelopes that are not properly sealed and marked, 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 the misplacement of the contents of the improperly sealed or marked bid, or for its premature opening(Sec. 25.9) | Reduce disqualification of bidders |

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| Bid Rigging/ Simulation of bids; | <p>a. BAC Secretariat shall notify in writing all bidders whose bids it has received through its PhilGEPS-registered physical address or official e-mail address (25.7)</p> <p>b. The BAC shall notify all other bidders, in writing, of its recommendation to HOPE of award of contract to LCRB/HRRB within 3 Calendar Days. (37.1.1)</p> | Ensure transparency and accurate representation of the bid submission |

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| Procurement by Foreign Service Posts | <p>a. Exempts the bidder from the mandatory PhilGEPS Certificate of Registration (Sec. 25.2)</p> <p>b. Winning bidder shall be required to register (Registration Number only) prior to contract signing. (Section 37.1.4(a)(ii))</p> | Encourage participation of foreign bidders in the procurement by FSPs |
| Bid and Performance Securities | <p>a. Allows the bidder to choose their preferred form of bid security (Sec. 27.2)</p> <p>b. Clarifies that the amount for Bid Security shall not be less than the amount of the ABC; in case of the Performance Security, the Contract Price. (Secs. 27.2 and 39.2)</p> | Avoid undue disqualification of bidders who posted more than the required amount. |

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|---|--|---|
| Technical capability of suppliers and contractors | <p>Strengthen post-qualification process:</p> <p>a. For Goods, BAC shall check:</p> <ol style="list-style-type: none">1. Delay in the partial delivery of goods amounting to ten percent (10%) of the contract price in its ongoing contracts;2. Bidder's failure to deliver within the period(s) specified in the contract or within any extension thereof and such failure amounts to at least ten percent (10%) of the contract price; or3. Unsatisfactory performance of the supplier's obligations as per contract terms and conditions at the time of inspection (Sec. 34.3(b)(iii)) | Ensures technical capability of bidders from their past or on-going contracts |

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| Issue/s | Revision | Impact |
|---|---|---|
| Technical capability of suppliers and contractors | <p>b. For Infrastructure Projects, BAC shall check:</p> <ol style="list-style-type: none">1. Negative slippage of at least 15% in any one project or a negative slippage of at least 10% in each of 2 or more contracts;2. Failure of the contractor to commence repair works on ongoing contracts in accordance with Section 34.33. Failure of the contractor to commence repair works on contracts with pending certificates of acceptance in accordance with Sec. 34.34. Substandard quality of work or unsatisfactory performance at the time of inspection. | Ensures technical capability of bidders from their past or on-going contracts |

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| <p>Period of Action per procurement activity</p> | <p>a. Re-scheduling of bid opening (due to justifiable reasons, i.e lack of quorum, cancellation of office work due to bad weather):</p> <p>-reschedule on the next working day of at the soonest possible time (Sec. 29)</p> <p>b. Standardize/adjusted period of action:</p> <p>Bid Evaluation for goods and infra</p> <p>– 7 calendar days, regardless of amount of ABC (Sec. 32.4)</p> | <p>BAC/HOPE is given a standardized time to determine the eligibility and capability of bidders</p> |

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| Period of Action per procurement activity | <p>Post-qualification:</p> <p>May be conducted up to 12 calendar days, or up to 45 calendar days in exceptional cases for goods & infrastructure projects, or up to 30 calendar days for consulting services.</p> <p>In case of post-disqualification of the LCB/HRB, the BAC is given a fresh period to post-qualify the next LCB/HRB. (Sec. 34.8)</p> <p>Contract Approval by Higher Authority:</p> <p>NGAs, SUCs, LGUs, - 20 cd</p> <p>GOCCs – 30 cd (Sec. 37.3)</p> | BAC/HOPE is given more time to determine the eligibility and capability of bidders |

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| Retention Money | <p>For Goods, retention money is reduced from 10% to at least 1% (Sec. 62)</p> <p>For Infrastructure Projects, retention money is retained at 10%</p> | Reduce transaction cost results to lower bid prices |
| Termination of contract/ Liquidate damages | Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances. (Sec. 68) | PE has the discretion w/n to terminate the contract, especially when the Project is near completion (but LD already reached 10%) |

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| Procurement Agent | <p>Removed Procurement Agent as an alternative modality. However, PE may still outsource their procurement activities by:</p> <ul style="list-style-type: none">a) <i>Requesting other GoP agencies to undertake such procurement for them</i>b) <i>Engaging private procurement agents in accordance with GPPB Guidelines</i>c) <i>Recruiting or engaging consultants to assist them directly and/or train their staff (Sec. 7.3.3)</i> | Clarified that Procurement Agent is not a method of procurement. |

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|--|--|--|
| <p>Difficulty in procuring the following:</p> <ul style="list-style-type: none"> -Media services; -Scientific, academic references, works - life-saving equipment -Legal services -Artistic works - Infra projects with exclusive technology | <p>New Alternative Modality:</p> <p>Section 53.6 <i>Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services.</i></p> | <p>Efficiency in procurement considering that only 1 supplier/contractor could provide the needs of the PE</p> |

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|--|--|--|
| Engaging the services of International Organizations or International Financial Institutions | <p>Expanded the coverage of Section 53.13, to include IOs and IFIs for the following procurement:</p> <ul style="list-style-type: none">a. small quantities of off-the-shelf goods, primarily in the fields of education and health;b. specialized products where the number of suppliers is limited, such as but not limited to vaccines or drugs;c. Goods, Infrastructure Projects and Consulting Services, involving advanced technologies, techniques and innovations not locally available as certified by the HoPE, when it is most advantageous to the government. (Sec. 53.13) | To better facilitate the engagement of the services UN agencies, IOs and IFIs. |

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|---|---|-----------------------|
| Posting Requirements for Alternative Methods of Procurement | <p><i>a. 3-day posting shall be required for the following modalities:</i></p> <ol style="list-style-type: none"> <i>1. Limited Source Bidding;</i> <i>2. Shopping under Section 52.1 above P50K</i> <i>3. Two Failed Biddings</i> <i>4. Small Value Procurement</i> <i>5. NGO Participation (Sec. 54.2)</i> <p><i>b. Posting of awards for all Alternative Methods, excepts for ABCs P50K and below (Sec. 54.3)</i></p> | Standardize AMP rules |

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| PhilGEPS Registration Requirements for Alternative Methods of Procurement | <p>PhilGEPS Registration Number, as a condition for award on the following modalities:</p> <ol style="list-style-type: none"> 1. Direct Contracting 2. Shopping under Sec. 52.1(b) 3. Take over of contracts (new bidders) 4. Scientific, Scholarly, Artistic Works etc. 5. Highly Technical Consultants 6. Small Value Procurement 7. Lease of Real Property and Venue <p>For Limited Source Bidding and Two-Failed Biddings, PhilGEPS Certificate of Registration is required. (Sec. 54.6)</p> | Standardize AMP rules |

Annex “H” of the 2016 Revised IRR

| Issue/s | Revision | Impact |
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| <p>Different guidelines for alternative method of procurement</p> <p>Various interpretations of stakeholders on the procedures of AMPs</p> | <p>Issuance of Annex “H” of the 2016 Revised IRR of RA 9184. Consolidated Guidelines for the following Alternative Methods of Procurement:</p> <ol style="list-style-type: none"> 1. Direct Contracting; 2. Repeat Order 3. Shopping 4. Negotiated Procurement (Two Failed Biddings; Emergency Cases; Take-Over of Contracts; Adjacent/Contiguous; Agency-to-Agency; Scientific, Scholarly, Artistic Works etc.; Highly Technical Consultants; and Lease of Real Property and Venue) | <p>Single reference on the procurement procedures and requirements for the commonly-resorted Alternative Modalities</p> |

Annex “H” of the 2016 Revised IRR

| Issue/s | Revision |
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| The number of quotation that the BAC has to obtain, in order to proceed with the negotiation | <p>a. Shopping 52.1(a) and Emergency Procurement– send at least 1 RFQ</p> <p>b. Shopping 52.1(b) – send at least 3 RFQs, receive at least 3 quotations</p> <p>c. Two Failed Biddings, Small Value Procurement, Lease of Real Property/Venue - send at least 3 RFQs, receive at least 1 quotation will suffice</p> |

Annex “H” of the 2016 Revised IRR

| Issue/s | Revision |
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| 25% threshold requirement for Agency to Agency procurement | 25% threshold requirement is removed, provided that the servicing agency has the mandate and absorptive capacity to undertake the project |
| Procurement of Public-owned real property/venue for public use | Negotiated Procurement under Section 53.10 on lease of real property and venue for public-use cover both publicly-owned and privately-owned. |
| Thresholds for SH & SVP | Doubled the thresholds for all PEs, except for Barangays (maintained at P50,000) |

THANK YOU...

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