

VOLUME 3

# Manual of Procedures for the Procurement of Infrastructure Projects



# MANUAL OF PROCEDURES FOR THE PROCUREMENT OF INFRASTRUCTURE PROJECTS

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## ABBREVIATIONS AND ACRONYMS

<b>ABC</b>	Approved Budget for the Contract
<b>ADB</b>	Asian Development Bank
<b>AFP</b>	Armed Forces of the Philippines
<b>APP</b>	Annual Procurement Plan
<b>ARCC</b>	Allowable Range of Contract Cost
<b>BAC</b>	Bids and Awards Committee
<b>BDS</b>	Bid Data Sheet
<b>BIR</b>	Bureau of Internal Revenue
<b>BRS</b>	Bureau of Research and Standards
<b>BSP</b>	Bangko Sentral ng Pilipinas
<b>CAF</b>	Certificate of Availability of Funds
<b>CARI</b>	Contractor's All-Risk Insurance
<b>CDA</b>	Cooperatives Development Authority
<b>CIAP</b>	Construction Industry Authority of the Philippines
<b>CPE</b>	Constructors Performance Evaluators
<b>CPES</b>	Constructors Performance Evaluation System
<b>DBCC</b>	Development Budget Coordination Committee
<b>DBM</b>	Department of Budget and Management
<b>DBM-PS</b>	Department of Budget and Management-Procurement Service
<b>DENR</b>	Department of Environment and Natural Resource
<b>DILG</b>	Department of the Interior and Local Government
<b>DND</b>	Department of National Defense
<b>D.O.</b>	Department Order
<b>DOLE</b>	Department of Labor and Employment
<b>DOST</b>	Department of Science and Technology
<b>DPWH</b>	Department of Public Works and Highways
<b>DTI</b>	Department of Trade and Industry
<b>E.O.</b>	Executive Order
<b>FAP</b>	Foreign Assisted Project
<b>GAA</b>	General Appropriations Act

<b>GCC</b>	General Conditions of Contract
<b>GFI</b>	Government Financial Institution
<b>GOCC</b>	Government-owned and/or –controlled corporation
<b>GoP</b>	Government of the Philippines
<b>GPPB</b>	Government Procurement Policy Board
<b>GPPB-TSO</b>	GPPB – Technical Support Office
<b>GPRA</b>	Government Procurement Reform Act
<b>GSIS</b>	Government Service Insurance System
<b>IB</b>	Invitation to Bid
<b>IFI</b>	International Financing Institution
<b>2016 IRR</b>	Implementing Rules and Regulations of R.A. 9184
<b>ITB</b>	Instructions to Bidders
<b>IU</b>	Implementing Unit
<b>JVA</b>	Joint Venture Agreement
<b>LBP</b>	Land Bank of the Philippines
<b>LC</b>	Letter of Credit
<b>LCB</b>	Lowest Calculated Bid
<b>LCRB</b>	Lowest Calculated Responsive Bid
<b>LGU</b>	Local Government Unit
<b>LOI</b>	Letter of Instructions
<b>NEDA</b>	National Economic and Development Authority
<b>NFCC</b>	Net Financial Contracting Capacity
<b>NGA</b>	National Government Agency
<b>NGO</b>	Non-Government Organization
<b>NTP</b>	Notice to Proceed
<b>PAGASA</b>	Philippine Atmospheric Geophysical and Astronomical Services Administration
<b>PBD</b>	Philippine Bidding Documents
<b>PCAB</b>	Philippine Contractors Accreditation Board
<b>P.D.</b>	Presidential Decree
<b>PERT/CPM</b>	Program Evaluation and Review Technique/Critical Path Method
<b>PHILGEPS</b>	Philippine Government Electronic Procurement System

<b>PMO</b>	Project Management Office
<b>PNP</b>	Philippine National Police
<b>PPMP</b>	Project Procurement Management Plan
<b>PSA</b>	Philippine Statistics Authority
<b>R.A.</b>	Republic Act
<b>R.A. 9184</b>	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act of 2003"
<b>ROW</b>	Right-of-way
<b>SARO</b>	Special Allotment Release Order
<b>SBDs</b>	Standard Bidding Documents (of IFIs and bilateral agencies)
<b>SCC</b>	Special Conditions of Contract
<b>SCRB</b>	Single Calculated and Responsive Bid
<b>SOW</b>	Scope of Work
<b>SPA</b>	Special Power of Attorney
<b>SUCs</b>	State Universities and Colleges
<b>TWG</b>	Technical Working Group
<b>WB</b>	The World Bank

SECTION 1

# Introduction



## Scope of Volume 3

This Manual seeks to provide its users clear, concise, and accurate information on the **public procurement of infrastructure projects**, by discussing the steps that need to be taken to effect such procurement in the manner prescribed by R.A. 9184, otherwise known as the "Government Procurement Reform Act, and its 2016 IRR" It also discusses important issues that may confront government procurement officials in all stages of infrastructure procurement, from the preparation of bid documents, to the actual bidding activity, monitoring of contract implementation and the final payment to the contractor.

This Manual focuses on public procurement of Infrastructure projects. The procedures are harmonized to a large extent with the IFIs and bilateral agencies lending to the Philippines. There are however policies which are specific to a particular lending agency or grantor and the document highlights the main differences. It should however be noted that the loan, credit or grant agreement with the relevant IFIs and/or bilaterals and their respective Guidelines will be the overriding factors governing the foreign assisted projects.

**Infrastructure projects** are undertakings to construct, improve, rehabilitate, demolish, repair, restore, or maintain roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects. It also encompasses infrastructures such as 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. Under R.A. 9184 and its 2016 IRR, the term "infrastructure projects" has the same meaning as and is used interchangeably with the term "civil works" or "works." **(2016 IRR Section 5 [u])**

In addition, the following terms are used in the manner indicated below:

1. The bidder shall be referred to differently at different stages of the procurement process. Thus, the bidder is called:
  - a. "prospective bidder" from the posting of the Invitation to Bid (IB) to the simultaneous submission of the Technical and Financial Bids;
  - b. "eligible bidder" after passing the eligibility check/screening;
  - c. "bidder with the LCB" after detailed evaluation;
  - d. "bidder with the LCRB" after passing post-qualification; and
  - e. "contractor" after the issuance of the NTP.
2. The term "bid" will be used instead of "proposal" or "offer."
3. "Eligibility Check" and "Eligibility Screening" shall be used interchangeably.
4. Eligibility Requirements are Eligibility Documents enclosed in the Technical Bid Envelope together with the technical documents.
5. The Technical Envelope contains the Technical component of the bid together with the eligibility requirements.
6. The Financial Envelope contains the Financial component of the bid.

Finally, this Manual should be used together with the PBDs for Infrastructure Projects prescribed by the GPPB.



SECTION 2

# Preparing for the Procurement of Infrastructure Projects



## Preparing for the Procurement of Infrastructure Projects

Volume I of this Manual contains an extensive discussion of Procurement Planning as a general concern for all kinds of government procurement, while this Section focuses mainly on procurement concerns particular to the procurement of infrastructure projects. As such, the reader is advised to refer to the pertinent discussions in Volume I before and during the reading of this Section.

Preparing makes for higher efficiency and efficacy. It enables the procurement officials concerned to anticipate the onset of events and, as a consequence, better calibrate their response to them. Having a better appreciation of forthcoming events gives these officials the opportunity to test a range of possible courses of action, choose the best and most feasible of these, and identify measures to put them into action. Ultimately, it would enable them to determine the best manner by which such measures are to be implemented, ensuring that their individual and collective impacts are optimized at the least cost.

Preparing for procurement basically involves three (3) activities: procurement planning, preparation of bidding documents, and the conduct of the pre-procurement conference. Procurement planning entails ensuring that detailed engineering investigations are conducted, plans for procurement are linked to budgets, preparing the PPMP and consolidating all PPMPs into the APP. Formulating the PPMP involves identifying the procurement project requirements, writing the technical specifications, determining the ABC, identifying the schedule of milestone activities, and determining the method of procurement.

The PPMP is then transformed into the bidding documents, which ought to contain all the information a prospective bidder needs to prepare its bid. Therefore, in preparing the bidding documents, one has to ensure that these accurately and comprehensively reflect the main elements of the PPMP. One also has to make sure that the documents are of the kind and form prescribed by the 2016 IRR and this Manual.

The pre-procurement conference is the forum where all officials of the Procuring Entity involved in the project meet to discuss all aspects of the said project to determine the readiness of the Procuring Entity to undertake the procurement. The conference focuses on the technical specifications, the ABC, the appropriateness and applicability of the recommended method of procurement, and the availability of pertinent budget releases, among others.

The preparation of the bidding documents and the conduct of the pre-procurement conference for the procurement of infrastructure projects are also discussed in this Volume.

## Procurement Planning

### Legal Reference

2016 IRR Sections 7, 17.6 and Annex "A" provide the rules in relation to Detailed Engineering and Procurement Planning.

### What is the purpose of Procurement Planning?

The purpose of procurement planning is for the Procuring Entity to schedule its procurement activities in advance, consistent with its approved budget and its target date of implementation.

For infrastructure projects, the APP shall consider the appropriate timing/phasing of related project activities such as engineering design and acquisition of ROW to reduce/lower project costs, among others.

### What is the importance of Detailed Engineering?

No bidding and award of contract shall be made unless the detailed engineering investigations, surveys and designs including the acquisition of the ROW for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the HoPE concerned or his duly authorized representative, pursuant to the recommendation of the end-user or implementing unit and in accordance with the provisions of Annex "A" of the 2016 IRR. 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 notation 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. The exception is in case of design and build schemes, wherein bidders are allowed to submit detailed engineering designs as part of their bids. The procedures for the procurement and contract implementation of infrastructure projects using a design and build scheme shall be in accordance with the provisions of Annex G of the 2016 IRR. **(2016 IRR Section 17.6)**

### How is Detailed Engineering commenced?

Prior to the conduct of the detailed engineering investigations, surveys and designs, the implementing office should draw a feasibility or preliminary engineering study 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, should be examined. If, in the course of this exercise, it is found that changes would be desirable in the design standards of principal features, as proposed, specific recommendations for such changes should be supported by detailed justifications, including their effects on the cost, and, if necessary, the economic justification.

### What Activities are covered by Detailed Engineering?

Only after the acceptance and approval of the feasibility study shall detailed engineering investigations be conducted. A schedule of detailed engineering activities shall include the following:

1. Survey
2. Site Investigation

3. Soils and Foundation Investigation
4. Construction Materials Investigation
5. Preparation of Design Plans
6. Preparation of Technical Specifications
7. Preparation of Quantity and Cost Estimates
8. Preparation of Program of Work
9. Preparation of Proposed Construction Schedule [and estimated Cash Flow for projects with Schedule over six (6) Months]
10. Preparation of Site or Right-of-Way Plans including Schedule of Acquisition
11. Preparation of Utility Relocation Plan
12. Preparation and Submission of Design Report
13. Environmental Impact Statement for critical project as defined by the DENR
14. Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered
15. Value Engineering Studies
16. Preparation of Bid/Tender Documents

Furthermore, work under detailed engineering shall include, but not necessarily be limited to, the following:

1. Design Standards – Design standards shall be in accordance with appropriate standards and accepted detailed engineering practice adopted by the agency concerned. Design standards for structures shall take into account, among other things, the seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage.
2. Field Surveys and Investigations – Necessary field surveys and investigations which may include aerial, hydrographic, topographic, hydrologic, sub-surface, monumenting and other surveys shall be carried out in accordance with the design guidelines, criteria and standards adopted by the agency concerned. All survey and investigation works shall be prepared in a manner satisfactory to carry out accurate design and production of plans that will permit quantity estimates to be made within plus or minus ten percent (10%) of the final quantities of the completed structure.
3. Contract Plans – The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the Procuring Entity concerned, incorporating at least the following:
  - a. Site development plan;
  - b. Plans and profile sheet;
  - c. Typical sections and details;
  - d. Drainage details where applicable;
  - e. Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed; and

- f. Other details which may be required by the head of the agency.
4. Quantities – All construction quantities shall be computed to a reasonable accuracy of not more than plus or minus ten percent (10%) of the final quantities of the as-built structure.
5. Special Provisions – Specifications shall be prepared for specific items of work or methods of construction, measurement and payment under each contract, which are not covered by Standard Construction and Material Specifications adopted by the Procuring Entity concerned.
6. Unit Prices – These shall be prepared for each contract using costs based on reasonable approved current prices as projected over the proposed construction period, divided into local and foreign exchange costs, as the case may be.
7. Approved Budget for the Contract – The approved budget for the contract to be bid shall be prepared by official(s) duly designated by the HoPE concerned or by his duly authorized official. It shall be approved by the HoPE or his duly designated official.

Since the contracts are fixed price contracts, the approved budget for the contract to be bid shall provide for the projected movements of construction costs over the construction period considering the projected inflation and foreign exchange rates as issued by the DBCC. It shall also show the local and foreign currency requirements, as the case may be.

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

8. Bidding documents shall be prepared as provided for in the 2016 IRR.
9. Program of Work – Before prosecuting any project, the necessary program of work shall be prepared and submitted for approval. In no case shall construction funds be remitted to field offices or construction work on a project be started before the program of work is approved, in accordance with existing laws.

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

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

10. Contract Time or Duration – In the preparation of the Bidding Documents, the agency shall make an estimate of the actual number of working days required to complete the project through PERT/CPM analysis of the project activities and corrected for holidays and weekends. Likewise, the agency shall make an estimate of the number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on records of PAGASA, and incorporate the same in the corrected actual number of working days determined above, which shall be made the basis of the total contract time. The estimated number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site shall be made known before the date of bidding through the ITB for the purpose of guiding the contractor in preparing his bid and as reference to both the GoP and the winning contractors taking action on the requests for time extensions. Without the estimated number of rainy/unworkable days established before the bidding date and made known to all participating bidders, the contract time is presumed to have excluded the unfavorable conditions.

11. Warranty Period – Likewise, the Bidding Documents shall specify the type of project and the corresponding warranty period required by the Procuring Entity.
12. Value Engineering – For major projects as specified by the agency, value engineering shall be conducted according to accepted standards and practices. Value engineering shall analyze alternative schemes of achieving the project's objectives in order to delete or reduce non-essential features and lessen the life cycle costs of the projects without sacrificing the quality and integrity of the structure, while maintaining its essential function, performance and safety.
13. Site or Right-of-Way Acquisition Plans Resettlement Action Plans – These shall be prepared based on parcellary surveys and socio-economic surveys of households affected by the project.

For 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. It shall also ensure the conduct of the detailed engineering activities for each phase.

As a requirement for the procurement of infrastructure works, the concerned consultants/government officials who prepared and approved the detailed engineering shall issue a certification that the detailed engineering surveys and designs have been conducted according to the prescribed agency standards and specifications in conformance with the above provisions, and that the detailed engineering outputs are adequate for the procurement at hand. The approval by the authorized government officials of detailed engineering surveys and designs undertaken by consultants neither diminishes the responsibility of the latter for the technical integrity of the surveys and designs nor transfer any part of that responsibility to the approving officials.

The above rules shall apply to the implementation of infrastructure projects under normal or ordinary conditions. However, under emergency or extraordinary cases involving major calamities and disasters as declared by the President where time is of the essence to save lives and properties and restore damaged infrastructures, detailed engineering works shall be conducted in accordance with the guidelines and procedures, as prescribed by the head of the appropriate infrastructure agency and approved by the Infrastructure Committee of the NEDA Board, to enable quick response to said cases, while maintaining the safety and integrity of the structure.

### **What are the considerations on setting the standards and technical specifications?**

1. Standards and technical specifications quoted in bidding documents should promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement;
2. As far as possible, the Procuring Entity should specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship should comply, except that where such international standards are unavailable or are inappropriate, national standards may be specified; and
3. In all cases, the bidding documents should state that equipment, material or workmanship meeting other standards, which promise at least substantial equivalent, should also be accepted.

### **What is the “Approved Budget for the Contract” or the ABC?**

The ABC is the budget for the contract duly approved by the HoPE, as provided for in:

1. The GAA, continuing, and automatic appropriations, in the case of NGAs;

2. The corporate budget for the contract approved by the governing board, pursuant to E.O. No. 518, s. 1979 in the case of GOCCs and GFIs, and R.A. No. 8292 in the case of SUCs; or
3. The budget approved by the Sanggunian through an appropriations ordinance, in the case of LGUs.

Thus, the ABC referred to in R.A. 9184 and its 2016 IRR basically refers to the proposed budget for the project approved by the HoPE based on the APP as consolidated from various PPMPs.<sup>1</sup> The ABC shall be at all times consistent with the appropriations for the project authorized in the GAA, continuing, and automatic appropriations, corporate budget, and the appropriations ordinance, as the case may be. For multi-year contracts, for which a Multi-Year Obligational Authority (MYOA) or an equivalent document is required, the ABC shall be that incorporated in the project cost reflected in the MYOA or equivalent document.

For foreign-funded projects, the ABC refers to the cost estimate prepared by the Procuring Entity and approved by the foreign government/foreign or international financing institution as specified in the Treaty or International or Executive Agreement.

### **What are the factors that should be considered in determining the ABC?**

In determining the ABC, the Implementing Unit or end-user unit, with the assistance of the TWG (when necessary), must consider the different cost components, namely:

1. The cost or market price of the product or service itself;
2. Incidental expenses like taxes, training costs if necessary, and cost of inspection;
3. The cost of money, to account for government agencies usually buying on credit terms; and
4. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date.

If the project or contract has a foreign component, it is also best to include a currency valuation adjustment factor, in order to hedge against any foreign exchange rate fluctuations between the planning phase and the actual procurement date. To determine the factor to be used, the Implementing Unit or end-user unit may request for guidance from the BSP, or refer to BSP forecasts, if available.

### **How do you compute for the ABC?**

The DPWH Department Order No. 22, series of 2015, provides the Guidelines for the Department in preparing the ABC of an infrastructure project. The preparation of the ABC has taken into account the following relevant factors a contractor considers in arriving at its estimate of the cost, among others:

- a. Approved DED, which contain, among other things, the plans, specifications, work pay items and quantities for the project;
- b. Applicable and cost-effective construction methods and sequencing of activities;
- c. Appropriate size and composition of labor crew, type and number of equipment, and construction materials corresponding to the construction method and sequencing of activities;
- d. Realistic production and efficiency rates for construction equipment and labor;

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<sup>1</sup> For FAPs, reference to the standard bidding documents for the project should be made to determine the applicability of the ABC.

- e. Identified feasible sources of construction materials;
- f. Market prices of component labor, materials and equipment; and
- g. Reasonable risks and contingencies, cost of money, projected inflation, and other relevant and legitimate cost items to be incurred by the contractor.

The said DPWH Department Order No. 197 series of 2016, may likewise be adopted, to the extent possible, by other Procuring Entities as guide in their preparation of the ABC. The ABC shall be composed of the Estimated Direct Cost and the Estimated Indirect Cost and shall be calculated in accordance with the following:

- a. The Estimated Direct Cost (EDC) shall consist of the following:
  - (1) Cost of materials to be used in doing the work item called for, which shall include, inter alia, the following:
    - (a) Cost at source, including processing, crushing, stockpiling, loading, royalties, local taxes, construction and/or maintenance of haul roads, etc.
    - (b) Expenses for hauling to project site.
    - (c) Handling expenses.
    - (d) Storage expenses.
    - (e) Allowance for waste and/or losses, not to exceed 5% of materials requirement.
  - (2) Cost of Labor:
    - (a) Salaries and wages, as authorized by the Department of Labor and Employment.
    - (b) Fringe benefits, such as vacation and sick leaves, benefits under the Workmen's Compensation Act, Social Security System (SSS) contributions, allowances, 13<sup>th</sup> month pay, bonuses, etc.
  - (3) Equipment Expenses:
    - (a) Rental rates of equipment—based on the prevailing "Associated Construction Equipment Lessors, Inc." (ACEL) rental rates approved for use by the DPWH. Rental rates of equipment not indicated in the ACEL booklet shall be taken from the rental rates prepared by the Bureau of Equipment. For simplicity in computation, the operated rental rates are preferred to the bare rental rates as the former includes operator's wages, fringe benefits, fuel, oil, lubricants and equipment maintenance. The make, model and capacity of the equipment should be indicated in the detailed unit cost analysis.
    - (b) Mobilization and demobilization –treated as a separate pay item. It shall be computed based on the equipment requirements of the project stipulated in the proposal and contract booklet. In no case shall mobilization and demobilization exceed one percent (1%) of the EDC of the civil works items.
  - (4) Cost for Permits, Clearances and other Government Taxes (i.e. MMDA Permit, LGU Permits, Bureau of Fire Protection Clearance, etc.) shall be included in the cost under Part B – Other General Requirements of the Program of Works (POW) and Estimate/ABC.
- b. The Estimated Indirect Cost shall consist of the following:
  - (1) Overhead Expenses– range from seven to eleven percent (7-11%) of the EDC, which include the following:

- (a) Engineering and Administrative Supervision.
  - (b) Transportation allowances.
  - (c) Office Expenses, e.g., for office equipment and supplies, power and water consumption, communication and maintenance.
  - (d) Premium on Contractor's All Risk Insurance (CARI).
  - (e) Financing Cost.
    - i. Premium on Bid Security
    - ii. Premium on Performance Security
    - iii. Premium on Surety for Advance Payment
    - iv. Premium on Warranty Bond (one year)
- (2) Contingencies- range from five-tenths to three percent (0.5-3.0%) of the EDC. These include expenses for meetings, coordination with other stakeholders, billboards (excluding Project Billboard which is a pay item under General Requirements), stages during ground breaking and inauguration ceremonies, and other unforeseen events.
- (3) Miscellaneous Expenses- range from five-tenths to one percent (0.5-1.0%) of the EDC. These include laboratory tests for quality control and plan preparation.
- (4) Contractor's Profit Margin- shall be eight percent (8%) of the EDC for projects with an EDC of more than PhP5Million and ten percent (10%) for projects with an EDC of PhP5Million and below.

Estimates for Overhead, Contingencies and Miscellaneous or OCM (items b(1), b(2) and b(3)) and Profit (item b(4)), as percentages of the EDC, shall not exceed the following amounts for different cost ranges:

<b>Allowable OCM and Profit</b>		
<b>Estimated Direct Cost (EDC)</b>	<b>OCM, as % of EDC</b>	<b>Profit, as % of EDC</b>
Up to PhP5M	15	10
Above PhP5M to PhP50M	12	8
Above PhP50M to PhP150M	10	8
Above PhP150M	8	8

- (a) Value Added Tax (VAT) Component- shall be five percent (5%) of the sum of the EDC, OCM and Profit.
- Note! The Bureau of Internal Revenue - Revenue Memorandum Circular No. 85-2017**, provides that: "Sales to the government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs), of goods and/or services are generally subject to the twelve percent (12%) VAT under Sections 106 and 108 of the NIRC, unless the sale transaction is specifically VAT-exempt or VAT zero-rated under the provisions of the NIRC or other special laws. Engineering and Administrative Supervision.
- (b) The following items shall not be subjected to OCM and Profit mark-up:
- i. Mobilization and demobilization
  - ii. Provision of Service Vehicle
  - iii. Permits and Clearances
- (5) The following non-civil works items shall not be subjected to OCM mark-up:
- (a) Field/Laboratory Office and Living Quarters (Rental Basis)

- (b) Furnishing of Furniture, Laboratory Equipment, Survey Equipment and Consumables
- (c) Assistance to the Engineer
- (d) Photographs
- (e) Health and Safety
- (f) Traffic Management
- (g) Environmental Compliance
- (h) Communication Equipment, etc.

Since the contract cost is fixed, the Procuring Entity must apply an inflationary factor to the calculated base cost considering that the cost estimate is arrived at months ahead of the actual procurement and construction dates. The Procuring Entity may refer to the NEDA and the Philippine Statistics Authority (PSA) for estimates of likely inflation rates applicable to the contract.

## Preparing the Bidding Documents

### Legal Reference

2016 IRR Section 17 provides the rules in relation to the preparation of the bidding documents.

### What are Bidding Documents?

Bidding documents are documents issued by the Procuring Entity as the basis for bids, furnishing all necessary information for a prospective bidder to prepare a bid for the Infrastructure Project required by the Procuring Entity. **(2016 IRR Section 5 [e])** These clearly and adequately define, among others:

1. The objectives, scope and expected outputs and/or results of the proposed contract;
2. The expected contract duration;
3. The obligations, duties and/or functions of the winning bidder; and
4. The minimum eligibility requirements of bidders, such as track record to be determined by the HoPE.

### What are the contents of Bidding Documents?

The Philippine Bidding Documents (PBDs) contain the following:<sup>2</sup>

1. Invitation to Bid (IB);
2. Instructions to Bidders (ITB);
3. Bid Data Sheet (BDS);
4. General Conditions of Contract (GCC);
5. Special Conditions of Contract (SCC);
6. Specifications;
7. Drawings;
8. Bill of Quantities;
9. Bidding Forms; and
10. Foreign-assisted Projects. This Section provides the specific information for foreign-assisted projects of the Asian Development Bank (ADB) and the World Bank (WB). If the funding source is the ADB, the Procuring Entity should use the ADB BDS and the ADB SCC. If the funding source is WB, the Procuring Entity should use the WB BDS and the WB SCC.

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<sup>2</sup> The contents of the standard bidding documents for FAPs may vary.

**In addition to properly crafted Bidding Documents, what other practices may a Procuring Entity observe to ensure a successful procurement?**

1. All prospective bidders should be provided the same information, and should be assured of equal opportunities to obtain additional information on a timely basis.
2. Procuring Entities should provide reasonable access to project sites for visits by prospective bidders.
3. For works, particularly for those requiring refurbishing existing works, a pre-bid conference may be arranged whereby potential bidders may meet with the Procuring Entity's representatives to seek clarifications (in person or online).
4. Any additional information, clarification, correction of errors, or modifications of bidding documents should be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline should be extended.

**Who shall participate in the preparation of the Bidding Documents?**

The following must participate in the preparation of the bidding documents:

1. The BAC;
2. The TWG;
3. The End-user Unit/Implementing Unit;
4. Consultants, if any; and
5. The BAC Secretariat.

The bidding documents should be prepared following the PBDs prescribed by the GPPB.

**When should you prepare the Bidding Documents?**

The bidding documents must be prepared in time for presentation at the pre-procurement conference. After the conference, and preferably before the advertisement and/or posting of the IB, it should be ascertained that these documents are finalized.

**What are the Forms and Contents of the Bidding Documents?**

The bidding documents shall be prepared by the Procuring Entity following the standard forms prescribed by the GPPB. The bidding documents shall include the following **(2016 IRR Section 17.1)**:

1. ABC;
2. Invitation to Bid;
3. Eligibility Requirements;
4. Instructions to Bidders, include scope of bid, documents comprising the bid, criteria for eligibility, bid evaluation methodology criteria in accordance with the GPRA, and post-qualification, as well as the date, time and place of the pre-bid conference (where applicable), submission of bids and opening of bids;
5. Scope of Work (SOW);
6. Plans/Drawings and Technical Specifications;

7. Form of Bid and Bill of Quantities;
8. Completion Schedule;
9. Form, amount and validity period of Bid Security, the amount to be stated in Philippine pesos **(2016 IRR Section 27)** and its validity period to be determined by the HoPE but not to exceed one hundred twenty (120) calendar days after the opening of bids **(2016 IRR Section 28)**;
10. Form, amount and validity of Performance Security and Warranty; and
11. Form of Contract, GCC and SCC.

In mixed procurement, 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. In the preparation of the bidding documents, the Procuring Entity shall ensure compliance with existing rules and regulations especially those concerning licenses and permits required for the project.

### What is a Bid Security?

A bid security is a guarantee that the successful bidder will:

1. Not default on its offer; and
2. Enter into contract with the Procuring Entity within ten (10) calendar days, or less as indicated in the ITB, from receipt of the Notice of Award, and furnish the performance security provided for in Section 39 of the Act and its 2016 IRR. **(2016 IRR Section 27.1)**

All bids submitted by bidders must be accompanied by a Bid Securing Declaration or any form of bid security, which must be operative on the date of bid opening.

### What is a Bid Securing Declaration?

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, or less, as indicated in the Bidding Documents, from receipt of the Notice of Award, and commits to pay the corresponding amount as fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as required in the guidelines issued by the GPPB. **(2016 IRR, Section 27.5)**

### What are the forms of Bid Security and the corresponding amounts required?

The bid security shall be in any of the following forms, with the corresponding required amount:<sup>3</sup> **(2016 IRR Section 27.2)**

FORM OF BID SECURITY	AMOUNT OF BID SECURITY (Not less than the percentage of the ABC)
a. Cash, cashier's check/manager's check issued by a Universal or Commercial Bank;	2% of ABC
b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided,	2% of ABC

<sup>3</sup> For FAPs, reference should be made to the appropriate standard bidding documents for the project in order to determine the requirement of a bid security and, if one is so required, the applicable amount and form thereof.

however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank;	
c. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security; or	5% of ABC

### **Who determines the form of the Bid Security to be submitted by bidders?**

The bidders choose, from the different forms of bid security, the preferred form and the corresponding amount it shall submit.

In order to enhance competition and bidders' participation, reduce transactional costs, and promote economy in procurement activities of the government, the use of the Bid Securing Declaration shall be an alternative to the existing forms of bid security. **(Guidelines on the Use of Bid Securing Declaration)**

### **What is the period of validity of Bids and the corresponding Bid Security?**

Bids and bid securities must be valid for a reasonable period of time as determined by the HoPE. This time period must be indicated in the bidding documents, but in no case should it exceed one hundred twenty (120) calendar days from the date of the opening of bids. **(2016 IRR Section 28.1)** The recommended norm for bid validity is ninety (90) calendar days with the corresponding bid security valid for one hundred twenty (120) calendar days to provide reasonable time (thirty (30) calendar days) for the Procuring Entity to act if the security is to be called.

Should it become necessary to extend the validity of the bids and the bid securities, the Procuring Entity should request in writing all those who submitted bids for such extension before the expiry date thereof. Bidders shall have the right to refuse to grant such extension without forfeiting their bid securities. The bid security of bidders who refuse to grant the Procuring Entity's request for an extension of the validity of their respective bid securities will have these securities returned to them. **(2016 IRR Section 28.2)** However, they are deemed to have waived their right to further participate in the bidding.

### **In what currency shall the Bid Security be denominated?**

The bid security must be denominated in Philippine currency **(2016 IRR Section 27.3)** and posted in favor of the Procuring Entity.

### **What happens if a bidder does not submit a bid security?**

If the bidder fails to submit a Bid Securing Declaration in the prescribed form, or a bid security in the prescribed form and amount, the bidder shall automatically be disqualified.

### **When should bid securities be returned to the bidders?**

No bid securities shall be returned to bidders after the opening of bids and before contract signing, except to those that failed to comply with any of the requirements submitted in the technical envelope of the bids. Bid securities shall be returned to bidders that failed post-qualification or post-disqualified, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest or lapse of the reglementary period without having filed a motion for reconsideration or protest. Without prejudice to the provisions of the law allowing forfeiture of bid securities, bid securities shall be returned only after the bidder with the LCRB has signed the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period indicated in the ITB. **(2016 IRR Section 27.6)**

### When may a bid security be forfeited?

A bidder's bid security may be forfeited when the bidder:

1. Withdraws its bid during the period of bid validity;
2. Does not accept corrections of arithmetical errors;
3. Being post-qualified, did not provide the BAC the required clarifications within the prescribed period or has a finding against the veracity of the required documents submitted;
4. Being considered for award, does not accept the award or does not sign the contract within the period prescribed in the bidding documents;
5. Being considered for award, fails to furnish the performance security within the period prescribed in the bidding documents; or
6. Is proven to commit any of the acts under Section 69 (Imposition of Administrative Penalties) of the 2016 IRR.

### What is a Performance Security?

A performance security is a written guarantee from a guarantor (usually a bank or an insurance company) submitted to the Procuring Entity by the winning bidder that it will faithfully perform its obligations under the contract prepared in accordance with the bidding documents. **(2016 IRR Section 39.1)** The performance security shall be denominated in Philippine Pesos and posted in favor of the Procuring Entity, which shall be forfeited in the latter's favor in the event it is established that the winning bidder is in default in any of its obligations under the contract. **(2016 IRR Section 39.3)**

### When shall the Performance Security be posted by the Bidder with the LCRB?

Within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity, and in all cases prior the signing of the contract, the successful bidder should furnish the Procuring Entity with the performance security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents. **(2016 IRR Section 39.2)** The performance security forms part of the contract. **(2016 IRR Section 37.2.3)**

### What are the forms of Performance Security and the corresponding amounts required?

The performance security must be in any of the following forms with the corresponding required amounts:<sup>4</sup>

FORM OF PERFORMANCE SECURITY	AMOUNT (Not less than the Percentage of the Total Contract Price)
a. Cash, or cashier's/manager's check issued by a Universal or Commercial Bank;	Ten percent (10%)
b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however,	Ten percent (10%)

<sup>4</sup> For FAPs, reference should be made to the appropriate standard bidding documents for the project in order to determine the applicable amount and form of the performance security.

that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank; or	
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%)

**Who determines the form of the Performance Security to be submitted by winning bidder?**

The winning bidder chooses from the different forms of performance security the preferred form and the corresponding amount it shall submit.

**In case of amendments in the contract price, will there be a corresponding change in the amount of the Performance Security?**

Yes. 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. **(2016 IRR Section 39.6)** The winning bidder must also cause the extension of the validity of the performance security to cover approved contract time extensions.

For partially completed works under the contract which are usable and accepted by the government, and the use of which, in the judgment of the implementing agency or the Procuring Entity, will not affect the structural integrity of the entire project, the said agency or Procuring Entity shall allow a proportional reduction in the original performance security. However, this proportional reduction in the value of the performance security is allowed only when the reductions are more than ten percent (10%) and the aggregate of such reductions is not more than fifty percent (50%) of the original performance security. **(2016 IRR Section 39.7)**

**When may the Performance Security be released?**

Subject to the conditions of the contract, the Procuring Entity may release the performance security to the winning bidder after the issuance of the Certificate of Final Acceptance, provided that there are no claims filed against the contract awardee or the surety company; no claims for labor and materials filed against the contractor; and other terms of the contract. **(2016 IRR Section 39.5)** and provided that it is replaced by a warranty covering the defects liability period in accordance with 2016 IRR Section 62.

**Who are the parties involved in the posting of the Performance Security?**

The bidder with the LCRB/SCRB, the Procuring Entity and the issuer of the security, *e.g.*, the banking/financial institution or the insurance company, are all involved in the posting of the performance security.

**Methodology: How is the Performance Security posted?**

The following steps are followed in the posting of the performance security:

1. The bidder with the LCRB/SCRB posts a performance security which must comply with the following conditions:
  - a. Must remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance at the end of the Defects Liability Period; and

- b. The following provisions shall form part of the performance security: “The right to institute action on the penal bond pursuant to Act No. 3688 of any individual firm, partnership, corporation and association supplying the contractor with labor and materials for the prosecution of the work is hereby acknowledged and confirmed.”
2. The BAC Secretariat accepts the performance security and indicates such posting and acceptance by attaching the appropriate form to the contract.

## Conduct of the Pre-Procurement Conference

### Legal Reference

2016 IRR Section 20 specifies the rules and the guidelines in relation to the conduct of a pre-procurement conference.

### What is a Pre-Procurement Conference?

The pre-procurement conference is the forum where all officials involved in the procurement meet and discuss all aspects thereof. These include the technical specifications, the ABC, the applicability and appropriateness of the recommended method of procurement and the related milestones, the bidding documents, and availability of the pertinent budget release for the project. A pre-procurement conference is conducted for infrastructure projects with ABCs of more than Five Million Pesos (₱5,000,000). Even when the ABC amounts to ₱5 million and below, the BAC is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the technical specifications, warrant the holding of such a conference before the Procuring Entity proceeds with the procurement.

### When do you conduct a Pre-Procurement Conference?

The pre-procurement conference must be conducted prior to the advertisement and/or posting of the IB. **(2016 IRR Section 20.1)** At least seven (7) days prior to the advertisement and/or posting of the IB would be an advisable timeframe for the BAC to call for a pre-procurement conference. This is to give the BAC Secretariat and the Implementing Unit/End-user Unit sufficient time to incorporate the necessary changes, amendments or revisions, if any, to the bidding documents as agreed upon by the participants.

### Who are the participants of a Pre-Procurement Conference?

The participants in a pre-procurement conference are:

1. The BAC;
2. The Secretariat;
3. The Implementing Unit or End-user Unit;
4. The TWG
5. Consultants/technical experts, if any, who assisted in the preparation of the technical specifications and bidding documents for the procurement at hand;
6. Other officials concerned, as may be required.

### What should a Pre-Procurement Conference achieve?

A pre-procurement conference should: **(2016 IRR Section 20.1)**

1. Confirm the description and scope of the contract, the ABC and contract duration;
2. Ensure that the procurement is in accordance with the PPMP and APP;
3. Determine the readiness of the procurement at hand, including, among other aspects, the following:

- a. Availability of appropriations and programmed budget for the contract;
  - b. Completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;
  - c. Completion of the detailed engineering according to the prescribed standards; and
  - d. Confirmation of the availability of right-of-way or location, and the possession of affected properties. 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.
4. Review, modify and agree on the criteria for eligibility check/screening, evaluation, and post-qualification. Clarify that the specifications and other terms in the bidding documents are minimum requirements and that the bidder may submit an offer which provides for superior specifications, better terms and conditions to the government at no extra cost, without any bonus, credit or premium in the bid evaluation. For example, the bidding documents shall emphasize that the bidder shall provide information on the minimum equipment required for the project, such as, the corresponding engine numbers, chassis numbers and/or serial numbers. Additionally, the bidding documents shall clearly state the minimum required experiences of the bidders' personnel, such as project managers, project engineers, material engineers and foreman;
  5. Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities;
  6. Reiterate and emphasize the "no contact rule" during the bid evaluation process, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing; and
  7. Finalize and approve the IB.



SECTION 3

Instructions on the Procedural  
Steps for the Procurement of  
Infrastructure Projects

PART ONE – COMPETITIVE BIDDING



## Competitive Bidding

### What is Competitive Bidding?

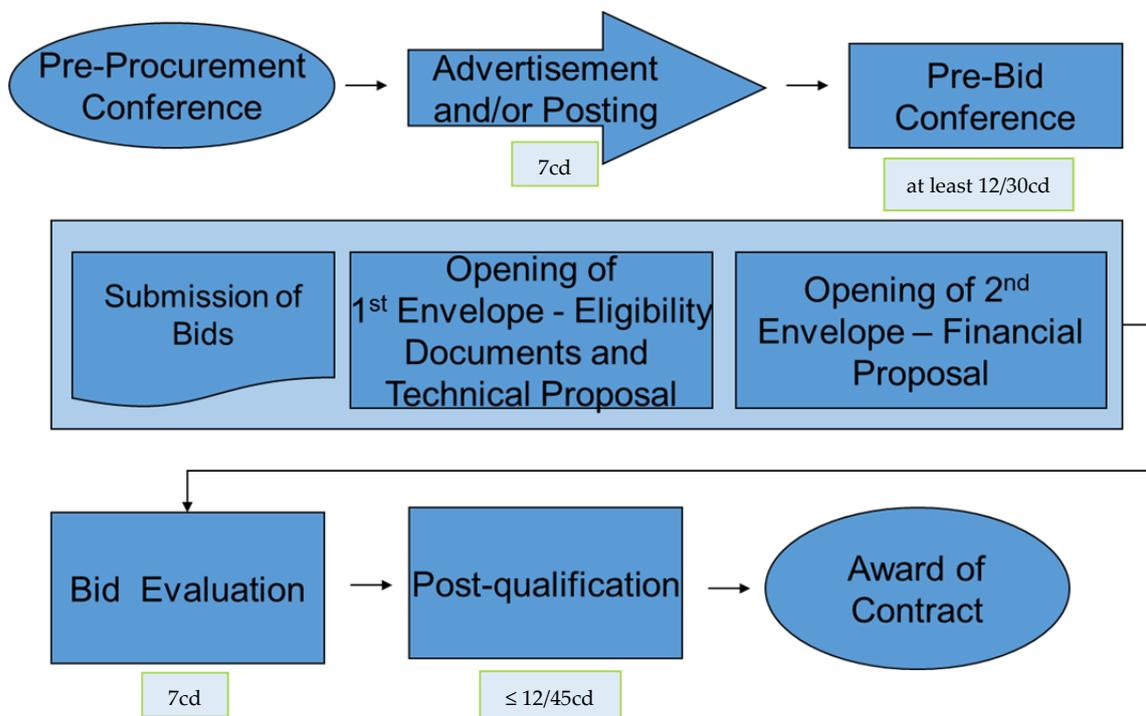
Competitive or Public Bidding is a method of procurement that is open to any interested and qualified party. It is preferred over other methods of procurement. A Procuring Entity should, therefore, see to it that its procurement program allows enough time to conduct such Public Bidding. **(2016 IRR Section 10)**

Competitive Bidding consists of the following processes: advertisement, eligibility check/screening of prospective bidders, pre-bid conference, submission and receipt of bids, opening and preliminary examination of bids, detailed evaluation of bids, post-qualification, and award of contract. **(2016 IRR Section 5 [h])**

The procurement process from the opening of bids up to the award of contract should not exceed three (3) months, or a shorter period to be determined by the Procuring Entity concerned. **(2016 IRR Section 38.1)** In case the deadline for each activity falls on a non-working day (*i.e.* Saturday and Sunday), legal holiday, special non-working holiday or other non-working 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/bid bulletin is issued and posted pursuant to the posting requirements embodied in section 22.5.3 of this IRR.

Below is a graphical representation of the standardized Competitive Bidding procedures for the procurement of Infrastructure projects.



## Step 1 Advertise and Post the Invitation to Bid (IB)

### Legal Reference

**2016 IRR Section 21** specifies the rules in relation to the advertising and posting of the IB.

### What is the IB?

The IB serves as the notice to the public and all interested parties of the procurement and bidding opportunities of the Procuring Entity.

### Why do you advertise/post an IB?

Advertising/posting the IB and ensuring its widest possible dissemination will increase the number of prospective bidders and intensify competition for the procurement activity or project. Intensified competition, in turn, will ensure that the government, in general, and the Procuring Entity, in particular, will get the best possible proposals as to quality and cost.

### What does an IB contain?

The IB must contain the following: **(2016 IRR Section 21.1)**

1. The name and location of the contract to be bid;
2. 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;
3. A general statement on the criteria to be used by the Procuring Entity for:
  - a. The eligibility check/screening;
  - b. The preliminary examination and detailed evaluation of bids;
  - c. Post-qualification; and
  - d. Award
4. The date, time and place of the deadline for:
  - a. The submission and receipt of the eligibility requirements;
  - b. The pre-bid conference, if any;
  - c. The submission and receipt of bids; and
  - d. The opening of bids;
5. The ABC;
6. The source of funding;
7. 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 2016 IRR Section 17.4;
8. The contract duration;

9. The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned Procuring Entity, as well as its designated contact person; and
10. Such other necessary information deemed relevant by the Procuring Entity.

### **When, where, and for how long do you post an IB?**

The IB for infrastructure projects shall be **(2016 IRR Section 21.2.1)**:

1. 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;
2. Posted continuously in the PhilGEPS website, the website of the Procuring Entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for seven (7) calendar days starting on date of advertisement; and
3. Advertised at least once in one (1) newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement. However, advertisement shall not be required for contracts to be bid with an ABC of Fifteen Million Pesos (P15,000,000) and below. Advertisement of the Invitation to Bid is suggested to be on the 7<sup>th</sup> day after the pre-procurement conference. But if during the pre-procurement conference the BAC finds that it is not prepared to undertake the bidding procedure, it should not hesitate moving back the advertisement/posting of the IB to allow more time to perfect the same.

Two (2) years after the effectivity of the 2016 IRR, advertisement in a newspaper of general nationwide circulation shall no longer be required. However, a Procuring Entity that cannot post its IB in the PhilGEPS website for justifiable reasons shall continue to publish its advertisements in a newspaper of general nationwide circulation.

### **Which unit shall ensure that the advertising/posting requirements of the IB are complied with?**

The BAC, with the assistance of the BAC Secretariat, is responsible for ensuring that the IB is advertised and posted in accordance with law.

### **Methodology: How are IBs advertised and posted?**

The following steps are followed in the advertising and posting of IBs:<sup>5</sup>

1. For public bidding of contracts with an ABC costing more than Fifteen Million Pesos (P15 Million)
  - a. The BAC Secretariat prepares the draft IB for review/approval of the BAC.
  - b. The BAC approves the contents of the IB during the pre-procurement conference.
  - c. The BAC Secretariat posts the IB in any conspicuous place reserved for this purpose in the premises of the Procuring Entity for the duration required; and this fact will be certified to by the Head of the Secretariat. It is recommended that the BAC Secretariat prepares a bulletin board where the IB shall be posted.

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<sup>5</sup> FAPs may have additional publication requirements. For this reason, reference should be made to the appropriate standard bidding documents for the project.

- d. The BAC Secretariat advertises the IB in a newspaper of nationwide general circulation.
  - e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IB in the following websites: the PhilGEPS, that of the Procuring Entity, if any, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for the duration required.
2. For public bidding of contracts with an ABC costing Fifteen Million Pesos (P15 Million) and below, steps a to e, except d, in Para. 1 above shall be performed.

## Step 2 Issue the Bidding Documents

### Legal Reference

2016 IRR Sections 17 and 21 provide the rules in relation to the issuance of the bidding documents.

### When must the bidding documents be made available to prospective bidders?

To provide prospective bidders ample time to examine the bidding documents and prepare their respective bids, the concerned BAC shall make the bidding documents available from the time the Invitation to Bid is first advertised and/or posted until the deadline for the submission and receipt of bids. **(2016 IRR Section 17.3)**

The bidding documents are strictly confidential and may not be divulged or released to any person prior to its official release, except to those officially authorized in the handling of the documents. However, after its official release, it shall be made available to the public, unless the procurement at hand affects national security.

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 vis-à-vis the purpose and reason for the request. **(2016 IRR Section 19)**

Based on the National Intelligence Coordinating Agency (NICA), national security refers to the state or condition wherein the country's national interests, the well-being of its people and institutions, and its sovereignty and territorial integrity are protected and enhanced.

### How much must prospective bidders pay for the bidding documents?

Standard rates have been formulated by the GPPB to rationalize the fees primarily to regulate its price and to lessen the exercise of discretion of Procuring Entities so as not to discourage market participation and competition. Procuring Entities are proscribed to adopt any internal rule or practice that establishes fees that are inconsistent or beyond the standard rate for the sale of bidding documents set forth below.

The cost of bidding documents shall correspond to the ABC range. This shall be the maximum amount of fee that Procuring Entities can set for the acquisition of bidding documents<sup>6</sup>.

Approved Budget for the Contract (in PhP)	Maximum Cost of Bidding Documents (in PhP)
500,000 and below	500
More than 500,000 up to 1 Million	1,000
More than 1 Million up to 5 Million	5,000
More than 5 Million up to 10 Million	10,000
More than 10 Million up to 50 Million	25,000
More than 50 Million up to 500 Million	50,000
More than 500 Million	75,000

*\*Guidelines on the Sale of Bidding Documents. GPPB Resolution #04-2012 dated 24 February 2012*

Bidding documents fee may be refunded based on the grounds provided for under **Section 41 of the Act and its 2016 IRR**.

<sup>6</sup> For ADB-funded projects, the cost of the bidding documents should be nominal which should cover only reproduction and mailing/courier costs.

### **Methodology: How are the bidding documents issued?**

A complete set of Bidding Documents may be acquired by prospective bidders from the BAC Secretariat during the period of availability of availability of the Bidding Documents. If the bidding documents are being sold, only those bidders that have paid the amount required shall be issued bidding documents and be allowed to submit bids.

The BAC Secretariat shall also post the Bidding Documents in the PhilGEPS website, the website of the Procuring Entity and the website prescribed by the foreign government/foreign or international financing institution, if applicable, from the time the IB is advertised. Bidding documents may be downloaded from any of the said websites, provided that upon submission of their bids, the bidder shall pay the applicable fee, if required. In such a case, bidders submitting their bids may be required to show the official receipt as proof of payment.

The BAC must issue copies of the bidding documents to the Observers free of charge.

### **What are the responsibilities of a prospective bidder with regard to the bidding documents?**

A prospective eligible bidder must be responsible for having:

1. Taken steps to carefully examine all of the bidding documents;
2. Acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
3. Made an estimate of the facilities available and needed for the contract to be bid, if any; and
4. Complied with his responsibility that it shall be the responsibility of all those who have properly secured the bidding documents to inquire and secure supplemental/bid bulletins that may be issued by the BAC.

#### **What does acknowledging the conditions affecting the project mean to a prospective bidder?**

It means determining and satisfying itself with the following:

1. The location and nature of the project;
2. Climatic conditions;
3. Transportation facilities;
4. Nature and condition of the terrain, geological conditions of the site; communication facilities; requirements, location and availability of construction aggregates and other materials, labor, water, electric power, and access roads; and
5. Other factors that may affect the cost, duration and execution or implementation of the project.  
**(Clause 6.4 of the 5<sup>th</sup> Edition of the Philippine Bidding Documents)**

Failure to observe any of the above responsibilities shall be at the risk of the prospective bidder concerned. The Procuring Entity shall not be responsible for any erroneous interpretation or conclusions by the prospective or eligible bidders of the data it furnished.

Moreover, the prospective bidders are deemed to have become familiar with all existing Philippine laws, decrees, ordinances, acts and regulations that may affect the contract in any way. However, if the contract is affected by new laws, ordinances, regulations or other acts of government promulgated after the date of the bidding, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis. **(2016 IRR Section 61.2)**

## Step 3 Call A Pre-Bid Conference and, if necessary, Issue Supplemental/Bid Bulletins

### Legal Reference

2016 IRR Section 22 specifies the rules in relation to the conduct of a Pre-bid Conference.

### What is a Pre-Bid Conference?

The pre-bid conference is the initial forum where the Procuring Entity's representatives and the prospective bidders discuss the different aspects of the procurement at hand.

The ground rules that will govern the procurement are discussed. In particular, the participants discuss the legal, technical and financial components of the contract to be bid. This is also an opportunity for the prospective bidders to request for clarifications about the bidding documents. However, it should be noted that any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin. **(2016 IRR Sec. 22.4)**

It is important that responsible and knowledgeable officials attend the conference. The persons who actually formulated the scope of work, plans and technical specifications for the project should be present and among those representing the Procuring Entity. Prospective bidders, on the other hand, should be encouraged to send representatives who are legally and technically knowledgeable about the requirements of the procurement at hand. It is also important that the prospective bidders are given ample time to review the bidding documents prior to the pre-bid conference.

### When do you hold a Pre-Bid Conference?

A pre-bid conference must be held for all contracts with ABCs of at least One Million Pesos (₱ 1 Million). For contracts with ABCs of less than P 1 million, pre-bid conferences may or may not be held at the discretion of the BAC. The BAC may also decide to hold such a pre-bid conference upon the written request of a prospective bidder. **(2016 IRR Section 22.1)**

The pre-bid conference must 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 the Bidding Documents. **(2016 IRR Section 22.2)** If the pre-bid conference is held less than 12 calendar days before the deadline for the submission and receipt of bids, that deadline should be moved to a later date. A Supplemental/Bid Bulletin shall be issued for this reason. If the Procuring Entity determines that, by reason of the method, nature, or complexity of the contract to be bid, or when international participation will be more advantageous to the GoP, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids. **(2016 IRR Section 22.2)** Note that these periods are all within the maximum period of fifty (50) calendar days from the last day of the period of posting of the Invitation to Bid up to the opening of bids for infrastructure projects with an ABC of ₱50,000,000 and below, and sixty five (65) calendar days for infrastructure projects with an ABC of above ₱50,000,000, as provided under 2016 IRR Section 25.5(b).

### Who are the participants of a Pre-Bid Conference?

The following must attend the pre-bid conference:

1. The BAC;

2. The BAC Secretariat;
3. The TWG members and consultants, if any;
4. The Implementing Unit/End-user Unit;
5. The prospective bidders; and
6. The Observers.

The attendance of the prospective bidders, while not mandatory, is encouraged.

### **How should the participants conduct themselves during the Pre-Bid Conference and other stages of the procurement process?**

The BAC, BAC Secretariat, TWG, and other officials involved in procurement are expected to act in an impartial, courteous and professional manner in all their dealings and interactions with the bidders during all stages of the procurement. The bidders' representatives are likewise enjoined to adopt the same professional manner in their dealings with the Procuring Entity's officials. Communications between the parties must, as much as possible, be made in writing, except during the pre-bid conference when verbal clarifications may be allowed – keeping in mind, however, that any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin.

### **Methodology: How is the Pre-bid Conference conducted?**

How the pre-bid conference is conducted depends on the discretion of the BAC Chairperson, or in his absence, the BAC Vice-Chairperson, who shall chair the proceedings. The BAC is expected to present, at the minimum, the bidding procedure, the eligibility, technical and financial requirements of the contract, including an explanation of the different documents to be submitted, bid evaluation procedure, contract terms and conditions including the warranty requirements, and possible causes of failure of bidding. The BAC shall also respond to queries raised by the prospective bidders, if any.

The pre-bid conference may be conducted in person or face-to-face through videoconferencing, webcasting, or similar technology, or a combination thereof. Procuring Entities with videoconferencing capabilities that have contractors that also have videoconferencing capabilities may conduct their pre-bid conferences electronically.

The minutes of the pre-bid conference shall be recorded and prepared by the BAC Secretariat not later than five (5) calendar days after the pre-bid conference, and shall be made available to the prospective bidders not later than 5 days upon written request. **(2016 IRR Section 22.4)**

### **What happens if there is a need for clarification or interpretation on the Bidding Documents after the Pre-bid Conference has been held?**

Requests for clarification(s) on any part of the bidding documents or for an interpretation may be made by prospective bidders provided that these are in writing and are submitted to the BAC at least ten (10) calendar days before the deadline for the submission and receipt of bids. In this case, the BAC shall issue its response by issuing a supplemental/bid bulletin signed by the BAC Chairperson and 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. **(2016 IRR Section 22.5.1)**

The BAC may, at its own initiative, also issue supplemental/bid bulletins for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the bidding documents must be identified as an "AMENDMENT." **(2016 IRR Section 22.5.2)**

The BAC should also post the supplemental/bid bulletin on the website of the Procuring Entity concerned, if available, and on the PhilGEPS, within the same timetable. Nonetheless, it will be the prospective bidders' responsibility to ask for, and secure, these bulletins.

A supplemental/bid bulletin must contain a brief but comprehensive and accurate summary of the issue or issues that it wishes to address. If it was a prospective bidder that raised the issue addressed by the bulletin, then it ought to contain a summary of that bidder's request for clarification and/or interpretation, without identifying the bidder.

Bidders who have submitted bids before a supplemental/bid bulletin is issued have to be informed in writing and allowed to modify or withdraw their respective bids. **(2016 IRR Section 22.5.3)**

### **Methodology: How is a Supplemental/Bid Bulletin issued?**

If the supplemental/bid bulletin is being issued upon the initiative of the BAC, the following steps are followed:

1. The BAC Secretariat, the TWG and/or the Implementing Unit/End-user Unit drafts the supplemental/bid bulletin for approval by the BAC.
2. The BAC approves the supplemental/bid bulletin and the BAC Chairperson signs it.
3. The BAC Secretariat posts the supplemental/bid bulletin in the PhilGEPS, the website of the Procuring Entity, if any, and in the agency's premises not later than seven (7) calendar days before the deadline for the submission and receipt of bids.

If the supplemental/bid bulletin is being issued in response to a request for clarification submitted by a prospective bidder, the process is as follows:

1. The prospective bidder submits to the BAC, through the BAC Secretariat, a written request for clarification, within the period prescribed above.
2. The BAC directs the BAC Secretariat, TWG and/or Implementing Unit/End-user Unit to study the request for clarification.
3. The TWG, BAC and BAC Secretariat perform the steps undertaken in the issuance of the supplemental/bid bulletin issued at the initiative of the BAC.

## Step 4 Receive, Open and Examine the Technical and Financial Envelopes

### Legal Reference

2016 IRR Sections 23, 25 to 30 specify the rules in relation to the submission, receipt, opening and preliminary examination of bids.

### Who may be eligible to participate in a public bidding for infrastructure projects?<sup>7</sup>

The following persons/entities shall be allowed to participate in the bidding: **(2016 IRR Section 23.4.2.1)**

- a. Duly licensed Filipino citizens/sole proprietorships;
- b. Partnerships duly organized under the laws of the Philippines and of which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;
- c. Corporations duly organized under the laws of the Philippines and of which at least seventy five (75%) of the outstanding capital stock belongs to citizens of the Philippines;
- d. Cooperatives duly organized under the laws of the Philippines; or
- e. Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract, provided, however, that<sup>8</sup> in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest in the joint venture concerned shall be at least seventy-five percent (75%): Provided, further, that joint ventures in which Filipino ownership or interest is less than 75% may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the 75% Filipino ownership requirement: Provided, finally, that in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership shall be based on the contributions of each of the members of the Joint Venture as specified in their JVA.

All these entities must have:

1. A license by the PCAB, in accordance with the provisions of R.A. 4566. **(2016 IRR Section 23.4.2.3)**
2. The experience of having satisfactorily completed a single largest completed contract (SLCC) that is similar to the contract 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 to be bid.<sup>9</sup> **(2016 IRR Section 23.4.2.4)**

Note, however, that Small A and Small B contractors without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more

<sup>7</sup> For FAPs, reference should be made to the appropriate standard bidding documents for the project to determine the appropriate qualification requirements of a bidder.

<sup>8</sup> For FAPs, any firm may bid independently or in joint venture confirming joint and several liability, either with domestic firms and/or with foreign firms, but the IFIs generally do not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

<sup>9</sup> For foreign-funded procurement, the GoP and the foreign government/foreign or international financing institution may agree on another track record requirement.

**When is a contract “similar” to another?**

A contract is similar to the contract to be bid if it has the same major categories of work, such as in both bridges and fly-overs. The Procuring Entity may clarify in the bidding documents what is regarded as major categories of work.

than the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines prescribed by PCAB. Presently, the ARCCs for the different categories are as shown below. **(2016 IRR Section 23.4.2.4)**

Registration Particulars	
Category	Allowable Range of Contract Cost (in Million Pesos)
Small A	Up to 0.5
Small B	Up to 15
Medium A	Up to 100
Medium B	Up to 200
Large A	Up to 300
Large B	No limit

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

3. A Net Financial Contracting Capacity (NFCC) at least equal to the ABC, calculated as follows: **(2016 IRR Section 23.4.2.6)**

NFCC = [(Current assets minus current liabilities) (15)] minus the value of all outstanding works or uncompleted portions of the projects under ongoing contracts, including awarded contracts yet to be started, coinciding with the contract to be bid.

**What do we mean by “coinciding with the contract to be bid”?**

In computing for the NFCC, for ongoing contracts and contracts awarded but not yet started, not all of the value of the outstanding works shall be deducted from the working capital multiplied by the factor 15, but only the value of the year/s that overlap with the contract being bid out. If the period of, say, a 2-year ongoing contract and a 3-year contract awarded but not yet started overlaps only for 1 year with the contract being bid out, only the value of the works that overlap for 1 year and not the value of the outstanding works of the 2 year ongoing contract and the entire 3 year contract awarded but not yet started shall be deducted.

Example:

Given:	
Current Assets=	P 3,000,000
Current Liabilities=	P 500,000
Value of Outstanding Works=	P 4,000,000
NFCC	= [ (P 3,000,000 – P 500,000) x 15 ] – P 4,000,000
	= P 37,500,000 – P 4,000,000
	= P 33,500,000

The values of the domestic bidder’s current assets and current liabilities shall be based on the latest Audited Financial Statements submitted to the BIR. For purposes of computing the foreign bidder’s NFCC, the value of the current assets and the current liabilities shall be based on their Audited Financial Statements prepared in accordance with international financial reporting standards.

### **Can GOCCs participate in the bidding for infrastructure projects?**

GOCCs may be eligible to participate only 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. **(2016 IRR Section 23.5)**

### **Can foreign bidders participate in the bidding for infrastructure projects?**

Yes, 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 its IRR. **(2016 IRR section 23.4.2.2)**

### **When is a prospective bidder eligible to bid?**

A prospective bidder is eligible to bid for the procurement of infrastructure projects if it complies with the eligibility requirements prescribed for competitive bidding, within the period stated in the IB. The eligibility requirements shall provide for fair and equal access to all prospective bidders.

As Procuring Entities, bidders and contractors are required to observe the highest standard of ethics during the procurement and execution of contract, bidders should not be under a declaration of ineligibility for corrupt, fraudulent, collusive, coercive and obstructive practices by the government.

### **What are the minimum eligibility requirements?**

2016 IRR Section 23.1 prescribes the submission to the BAC of the following eligibility documents following the forms prescribed in the Bidding Documents:

#### **1. Class "A" Documents**

##### **a. *Legal Documents***

- i. DTI business name registration in the case of Single Proprietorships, SEC registration certificate, in the case of Partnerships or Corporations, or CDA Registration in case of Cooperatives.
- ii. Valid and current Mayor's/Business Permit issued by the city or municipality where the principal place of business of the prospective bidder is located, or the equivalent document for Exclusive Economic Zones or areas.

In cases of recently expired mayor's/Business Permits, it shall be accepted together with the official receipt as proof that the bidder has applied for renewal within the period prescribed by the concerned LGU, provided that the renewed permit shall be submitted as a post-qualification requirement.

- iii. Tax clearance per E.O. 398, s. 2005, as finally reviewed and approved by the BIR;

##### **b. *Technical Documents***

- iv. Statement of the prospective bidder of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid;

- v. Statement of the bidder's SLCC similar to the contract to be bid, except under conditions provided for in 2016 IRR Section 23.4.2.4;

Both statements above shall include all information required in the PBDs for Procurement of Infrastructure Projects.

- vi. Valid PCAB license and registration for the type and cost of contract to be bid. In the case of joint ventures, a Special PCAB license of the joint venture;

**c. Financial Documents**

- vii. The prospective bidder's audited financial statements, showing, among others, the prospective bidder's total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of bid submission; and
- viii. The prospective bidder's computation of its NFCC.

**Can a Procuring Entity require additional eligibility documents from prospective bidders?**

No, the Procuring Entity is proscribed from requiring additional eligibility documents because the list of eligibility requirements has already been streamlined/simplified by the GPPB.

**2. Class "B" Documents**

If the prospective bidder is a joint venture, a valid JVA in accordance with R.A. 4566 and its IRR.

Each partner of the joint venture should submit their respective PhilGEPS Certificates of Registration and membership in accordance with Section 8.5.2 of the 2016 IRR. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance, provided that the partner responsible to submit the NFCC shall likewise submit the Statement of all of its ongoing contracts and Audited Financial Statements.

## **How can submission of eligibility documents be made easier?**

All bidders shall upload and maintain in PhilGEPS a current and updated file of the following Class "A" eligibility documents:

- a) Registration Certificate;
- b) Mayor's/Business Permit;
- c) Tax Clearance; and
- d) Audited Financial Statements.

For Foreign Bidders, the abovementioned 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. It shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines.

These documents shall be accompanied by a Sworn Statement in a form prescribed by the GPPB stating that the documents submitted are complete and authentic copies of the original, and all statements and information provided therein are true and correct. Upon receipt of the said documents, the PhilGEPS shall process the same in accordance with the guidelines on the Government of the Philippines – Official Merchants Registry (GoP-OMR). **(2016 IRR Section 8.5.2)**

Bidders who are maintaining current and updated Class "A" Eligibility Documents, as enumerated above, shall be issued their PhilGEPS Certificate of registration and Membership. This PhilGEPS Certificate will be required during submission of bids, in lieu of the same Class "A" Eligibility Documents.

## **What is a Bid?**

A Bid refers to a signed offer or proposal to undertake a contract submitted by a bidder in response to, and in consonance with, the requirements stated in the bidding documents. "Bid" is also equivalent to and may be used interchangeably with "Proposal" and "Tender". A Bid has two components, the Technical Proposal or the Technical Bid, and the Financial Proposal or the Financial Bid. The Technical and Financial Bids must each be contained in separate sealed bid envelopes.

## **What are the contents of the Technical Proposal?**

The Technical Proposal should contain, at the minimum, the following technical information/documents for the contract to be bid, including the eligibility requirements:

1. PhilGEPS Certificate of Registration and Membership in accordance with 2016 IRR Section 8.5.2. For procurement to be performed overseas, it shall be subject to the Guidelines to be issued by the GPPB;
2. A-Special PCAB License and Registration in case of a Joint Venture;
3. Statement of all ongoing Government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid;
4. Statement of Single Largest Completed Contract (SLCC) similar to the contract to be bid, and whose value must be at least fifty percent (50%) of the ABC to be bid;
5. Computation of NFCC which must be at least equal to the ABC to be bid;

6. Joint Venture Agreement, if applicable;
7. The bid security in the prescribed form, amount and validity period;
8. Project requirements, which shall include the following:
  - a. Organizational chart for the contract to be bid (not of the firm);
  - b. List of contractor's key personnel (*e.g.*, Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the contract to be bid, their complete qualification and experience data;
  - c. List of contractor's major equipment units pledged for the contract to be bid, which are owned (supported by proof/s of ownership), leased, and/or under purchase agreements (with corresponding engine numbers, chassis numbers and/or serial numbers), supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the contract; and
9. Omnibus Sworn Statement (OSS) in accordance with 2016 IRR Section 25.3 and using the form prescribed in the bidding documents. The OSS shall contain the following:
  - (a) The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract accompanied by the duly notarized Special Power of Attorney, Board/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/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
  - (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 his duly authorized representative/s to verify all the documents submitted;
  - (e) It complies with the disclosure provision under Section 47 of the Act and this IRR, in relation to other provisions of R.A. 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; and
  - (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.

### **What are the contents of the Financial Proposal?**

The Financial Proposal shall contain the following financial information/documents:

1. Bid Form using the form prescribed in the bidding documents;
2. Bid prices in the prescribed form of the Bill of Quantities;

3. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used, indicating also the direct and indirect costs, in coming up with the bid; and
4. Cash flow by the quarter or payments schedule.

Each and every page of the Bid Form, including the Bill of Quantities, shall be signed by the duly authorized representative of the bidder. Failure to do so shall be a ground for the rejection of the bid. **(2016 IRR Section 19.4)**

### Computation of Discounts

Discounts may be offered and reflected on the Bid Form. In which case, discounts can be considered when computing for the total calculated bid price, as can be gleaned from ITB Clause 27.4 of the PBDs for Infrastructure Projects and Section 32.2.4 of the IRR of RA 9184.

Discounts and its corresponding percentage and computation are recognized to support a lower bid price proposal that is beneficial and advantageous to government, provided that the legal and technical components of the bid are fully compliant with the requirements of the project.

The discounts offered, through the Bid Form should be included and considered in the computation and ranking of bid prices during the detailed bid evaluation. Discounts stated in the Bid Form allow bidders to itemize the application of discounts that are not yet reflected in the amounts specified in its bill of quantities and detailed estimates, *vis-a-vis* the program of works, as there could be a situation that the decision to offer a discount came long after these amounts have been prepared, finalized and reflected in the bid documents, and changing the entries may be too cumbersome and time consuming for the bidder.

### When should the bids be submitted?

Bids should be submitted on or before the specified time and date of the deadline for submission of bids, as stated in the bidding documents, **(2016 IRR Section 29)**, and within the following periods from the last day of posting of the Invitation to Bid up to submission and receipt of bids: **(2016 IRR Section 25.5.b)**

Approved Budget for the Contract (in pesos)	Period
Fifty (50) million and below	50 calendar days
Above fifty (50) million	65 calendar days

Bids, including the eligibility requirements, submitted after the specified deadline shall not be accepted by the BAC. The BAC shall record in the minutes of bid submission and opening the bidder's name, its representative and the time the late bid was submitted. **(2016 IRR Section 25.6)**

### Are bidders allowed to modify or withdraw their bids?

A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. If a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to its original bid and marked as a "Modification," of the original, and stamped "Received" by the BAC. Bid modifications received after the applicable deadline will not be considered and must be returned to the bidder unopened. **(2016 IRR Section 26.1)**

A bidder may, through a Letter of Withdrawal, withdraw its bid, before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline shall be subject to appropriate sanctions as prescribed in the 2016 IRR. A bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped received

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

### Who are involved in the Receipt and Opening of Bids?

1. The BAC;
2. The TWG;
3. The BAC Secretariat
4. The prospective bidders; and
5. The Observers.

### Methodology: How are the bids received, opened and preliminarily examined?<sup>10</sup>

The following steps are undertaken in the receipt, opening and preliminary examination of bids:

1. Prospective bidders submit their bids through their respective authorized representatives (**2016 IRR Section 25.1**) in two (2) separate sealed bid envelopes, the first containing the Technical Proposal, together with the eligibility requirements, and the second containing the Financial Proposal. The two envelopes shall be placed in an outer envelope or any appropriate container, which shall be sealed and addressed to the BAC and marked as specified in the ITB.

#### Can the BAC reject unsealed or unmarked bid envelopes?

Yes, unsealed or unmarked bid envelopes shall be rejected. However, 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. (**2016 IRR Section 25.8**)

2. The BAC convenes on the Bid Opening Date. The presence of the majority of the BAC members shall constitute a quorum, provided that the Chairperson and/or the Vice-Chairperson is present.

3. The BAC receives the bids at the time, date and place specified in the bidding documents. Upon receipt of the bid envelope or container containing the Technical and Financial Proposals, the BAC Secretariat must stamp the face of the outer envelope/container as "RECEIVED," indicating thereon the date and time of receipt.

4. The BAC then proceeds with the opening and preliminary examination of bids in public. For each bid, the BAC first opens the envelope containing the Technical Proposal and the eligibility requirements to determine its compliance with the required documents. The BAC conducts an eligibility check on the submitted eligibility documents contained in the Technical Bid Envelope of each bidder against a checklist of required documents to ascertain if they are all present, using non-discretionary "pass/fail" criteria. (**2016 IRR Section 30.1**)
5. In case one or more of the required eligibility documents in the Technical Bid Envelope is missing, incomplete or insufficient, the BAC rates the bid "failed" and immediately returns the eligibility documents and Technical Proposal to the bidder

<sup>10</sup> The receipt, opening and preliminary examination methodology may vary for FAPs. Reference should be made to the appropriate standard bidding documents for the project.

### When is a document deemed "complete" and "sufficient"?

For a document, to be deemed "complete" and "sufficient", it must be complete on its face, that is, contain all the information required, and must comply with the requirements set out in the bidding documents. For example, a Mayor's Permit should be current, and submission of an expired Mayor's Permit is deemed a "non-submission". Another example of an insufficient submission is a Bid Security in an amount below the requirement.

concerned, together with the unopened envelope containing the Financial Proposal. Otherwise, the BAC rates the Technical Proposal "passed".

6. The BAC then examines the technical bid documents submitted against a checklist of technical bid requirements. In case one or more of the required technical documents in the Technical Bid Envelope is missing, incomplete or insufficient, the BAC rates the bid "failed" and immediately returns the eligibility documents and Technical Proposal to the bidder concerned, together with the unopened envelope containing the Financial Proposal. Otherwise, the BAC rates the Technical Proposal "passed".
7. The BAC then immediately opens the envelope containing the Financial Proposal of each remaining bidder whose Technical Proposal (first envelope) was rated "passed." The Financial envelope of each complying bidder shall be opened within the same day. The BAC determines whether all the requirements/documents required for the Financial Proposal are complete and sufficient, and if the total bid price does not exceed the ABC. If so, the BAC rates the bid "passed". If not, then the BAC rates the bid "failed". Only bids that are rated "passed" for both the Technical and Financial Proposals shall be considered for the next stage of the procurement process, *i.e.* detailed evaluation and comparison of bids. **(2016 IRR Sections 30.2)**

In the case of foreign currency denominated bids, where allowed by the law and rules, the same shall be converted to Philippine currency, based on the exchange rate prevailing on the day of the bid opening. The BSP reference rate as of the date of the bid opening shall be used.

8. The BAC reads the total bid prices of the bidders that are rated "passed."
9. All members of the BAC, or in their absence their alternates, who are present during the bid opening, shall initial every page of the original copies of all bids received and opened. **(2016 IRR Sections 29)**
10. The BAC members and the Observers (if they concur with the proceedings) shall also sign the "Abstract of Bids as Read" after the Preliminary Examination of Bids.
11. The BAC Secretariat shall record the proceedings. The minutes of the bid opening should be prepared and completed as soon as possible after the bid opening date, so that copies thereof could immediately be sent to the BAC members, Observers, Bidders and other interested parties. Copies of the "Abstract of Bids as Read" and the minutes shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.
12. In case the bids cannot be opened as scheduled due to justified reasons, the BAC shall take custody of 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 at the PhilGEPS website and the website of the procuring Entity.<sup>11</sup>

### What happens if only one prospective bidder submits a bid envelope?

<sup>11</sup> For ADB- and WB-funded projects, rescheduling the date of opening of bids shall not be considered except for force majeure, such as natural calamities. In re-scheduling the opening of bids, the BAC shall issue a Notice of Postponement to be posted at the PhilGEPS' and the Procuring Entity's websites.

Even if only one prospective bidder submits a bid envelope, the bidding process shall proceed. The BAC should not declare a failure of bidding. If its bid is found to be responsive to the bidding requirements, its bid will be declared as an SCRB and considered for contract award. **(2016 IRR Section 36)**

### **What happens if no prospective bidder submits a bid?**

If no prospective bidder submits a bid, the BAC should declare the bidding a failure and issue a Resolution declaring the same. The BAC shall then conduct a review of the scope of work, the contract terms, conditions, specifications and other provisions in the bidding documents. If warranted, the BAC shall, as necessary, revise the scope of work, contract terms and conditions, specifications, ABC, and/or other provisions in the bidding documents, subject to the required approvals. It must, thereafter, conduct a re-bidding, in the process formulating a new IB with re-advertisement and/or posting as required. **(2016 IRR Section 35.2)**

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the scope of work, contract terms, conditions, specifications, and other provisions in the bidding documents. The BAC may conduct another public bidding with re-advertisement and/or posting. Alternatively, the Procuring Entity may conduct a negotiated procurement following the Guidelines provided in section V.D.1 (Negotiated procurement, Two failed Biddings) of Annex H (Consolidated Guidelines for the Alternative Methods of Procurement) of the 2016 IRR. However, if the Procuring Entity resorts to negotiated procurement, the ABC cannot be increased by more than 20% of the ABC for the last failed bidding.

#### **TIPS: Let's make things easier**

The BAC shall require one (1) original and at least two (2) copies of the Technical Documents, including the Eligibility Documents, and Financial Documents. The original copy will be the one initialed by the BAC members, or in their absence their alternates, and will be kept by the BAC Secretariat for check and balance purposes while the copies will be the ones used during Bid

### **What is an eligibility check?**

It is a procedure to determine if a prospective bidder is eligible to participate in the bidding at hand. In determining a prospective bidder's eligibility, the BAC shall use non-discretionary "pass/fail" criteria, as stated in the IB and the ITB. Essentially, this means that the absence, incompleteness or insufficiency of a document shall make a prospective bidder ineligible to bid for the particular procurement.<sup>12</sup> **(2016 IRR Section 23.2)**

### **How do you determine the eligibility of the prospective bidders?**

A prospective bidder is eligible to bid for a particular project if it complies with the eligibility requirements prescribed for the competitive bidding within such period as may be required by the Procuring Entity and stated in the invitation to bid. The eligibility requirements shall provide for fair and equal access to all prospective bidders.

### **What can a prospective bidder do if it is found ineligible?**

A prospective bidder that was absent during the Eligibility Check and was found ineligible has three (3) calendar days from receipt of the Notice of Ineligibility, within which to file a written request for reconsideration before the BAC. If the prospective bidder was present during

<sup>12</sup> Generally, FAPs do not utilize the eligibility check system of the GOP, unless so required by the pertinent IFI/bilateral lending agency. Moreover, pre-qualification may be utilized for large or complex works or in any other circumstances in which the high costs of preparing detailed bids could discourage competition such as custom designed equipment, industrial plant, specialized services, some complex information and technology, and contracts to be let under turnkey, design and build, or management contracting.

Eligibility Check and was duly notified (a verbal notification will suffice in this case) of its ineligibility, it also has 3 calendar days upon such notice within which to file a written request for reconsideration. The bidder shall not be allowed to submit additional documents to correct any defects in the eligibility documents submitted. Within seven (7) calendar days after it receives a letter requesting for reconsideration, the BAC should resolve such request. In the meantime, it will hold on to the Eligibility envelopes of the prospective bidder until the request for reconsideration is resolved. **(2016 IRR Section 55.1)**

If its request for reconsideration is denied, the ineligible bidder may protest the decision in writing with the HoPE within seven (7) calendar days from receipt of the BAC resolution informing him of the denial of his request for reconsideration. A protest may be made by filing a verified position paper with the HoPE concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be paid in cash and in accordance with the following schedule **(2016 IRR Section 55.3)**:

ABC RANGE	PROTEST FEE
P50 million and below	0.75% of the ABC
More than P50 million to P100 million	P500,000
More than P100 million to P500 million	0.5% of the ABC
More than P500 million to P1 billion	P2,500,000
More than P1 billion to P2 billion	0.25% of the ABC
More than P2 billion to P5 billion	P5,000,000
More than P5 billion	0.1% of the ABC

The verified position paper shall contain the following information:

1. The name of bidder;
2. The office address of the bidder;
3. The name of project/contract;
4. The implementing office/agency or Procuring Entity;
5. A brief statement of facts;
6. The issue to be resolved; and
7. Such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned, produces no legal effect, and results to the outright dismissal of the protest. **(2016 IRR Section 55.4)**

In addition, the bidder shall likewise certify under oath that:

- a) He has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;
- b) If there is such other pending action or claim, he is including a complete statement of the present status thereof; and
- c) If he should thereafter learn that the same or similar action or claim has been filed or pending, he shall report that fact within five (5) days therefrom to the HoPE wherein his protest is filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the verified position paper. **(2016 IRR Section 55.4)**

The protests shall be resolved strictly based on records of the BAC. The HoPE shall resolve a 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 his contract approving

authority. With respect to LGUs, the decision of the local chief executive shall be final. **(2016 IRR Section 56)**

**What happens if questions/doubts have been raised about the eligibility of a prospective bidder after it had been declared as eligible?**

Notwithstanding the eligibility of a prospective bidder, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the preset eligibility criteria, the Procuring Entity shall consider the said prospective bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract. **(2016 IRR Section 24.7)** A prospective bidder found guilty of false information faces imprisonment of not less than six (6) years and one (1) day but not more than 15 years. **(2016 IRR Section 65.3)**

**What happens if all bidders are declared ineligible or fail to comply with the Technical and Financial Bid Requirements?**

If all prospective bidders are found to be ineligible or fail to comply with the technical and financial bid requirements, the BAC should declare the bidding a failure and issue a Resolution declaring the same. The BAC shall then conduct a review of the scope of work, the contract terms, conditions, specifications and other provisions in the bidding documents. If warranted, the BAC shall, as necessary, revise the scope of work, contract terms and conditions, specifications, ABC, and/or other provisions in the bidding documents, subject to the required approvals. It must, thereafter, conduct a re-bidding, in the process formulating a new IB with re-advertisement and/or posting as required. All bidders who have initially responded to the previous IB and have been declared eligible will be allowed to submit new bids. **(2016 IRR Section 35)**

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the scope of work, contract terms, conditions, specifications, and other provisions in the bidding documents. The BAC may conduct another public bidding with re-advertisement and/or posting. Alternatively, the Procuring Entity may conduct a negotiated procurement following the Guidelines provided in section V.D.1 (Negotiated procurement, Two failed Biddings) of Annex H (Consolidated Guidelines for the Alternative Methods of Procurement) of the 2016 IRR. However, if the Procuring Entity resorts to negotiated procurement, the ABC cannot be increased by more than 20% of the ABC for the last failed bidding.

## Step 5 Evaluate the Bids

### Legal Reference

2016 IRR Section 32 specifies the rules and guidelines relative to the detailed evaluation of bids.

### What is the purpose of Bid Evaluation?

Detailed bid evaluation is done on bids that passed the preliminary examination of bids to determine the LCB. **(2016 IRR Section 32.2.1)** This is done by:

1. Establishing the correct calculated prices of the bids, through a detailed evaluation of the financial component of the bids; and
2. Ranking of the total bid prices as so calculated from the lowest to the highest. The bid with the lowest price shall be identified as the LCB.

The ABC shall be the upper limit or ceiling for acceptable bid prices. If a bid price, as evaluated and calculated, 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 award. **(2016 IRR Section 31.1)**

### When should the bids be evaluated?

The entire evaluation process for the bids must be completed in not more than seven (7) days from the deadline for receipt of proposals. **(2016 IRR section 32.4)** It is advisable that the BAC exert best efforts to complete the Bid Evaluation even before the lapse of the aforementioned periods as this will expedite the procurement process.

### Who are the participants in Bid Evaluation?

The following must participate in the bid evaluation process:

1. The BAC;
2. The TWG;
3. The BAC Secretariat; and
4. The Observers.

### Methodology: How are bids evaluated?<sup>13</sup>

1. After the preliminary examination of bids, the BAC, or through the TWG, shall immediately conduct a detailed evaluation of all bids rated "passed," using a non-discretionary criteria, as stated in the IB and the ITB, which shall include a consideration of the following: **(2016 IRR Section 32.2.1)**
  - a. The bid must be complete. Unless the ITB specifically allows partial bids, bids not addressing or providing all of the required items in the bidding documents including, where applicable, bill of quantities, shall be automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a

<sup>13</sup> For FAPs, the rules on evaluation will depend on the standard bidding documents for the project.

“0” (zero) or a “-” (dash) for the said item would mean that it is being offered for free to the Government, except those required by law or regulations to be provided for. **(2016 IRR Section 32.2.1a)**

- b. Minor arithmetical corrections to 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. **(2016 IRR Section 32.2.1b)** For evaluation purposes, in allowed instances, the bid must be converted into Philippine currency based on the exchange rate prevailing on the day of the bid opening. **(2016 IRR Section 61.4)** The BSP reference rate prevailing on the date of the bid opening shall be used.
  - c. In the evaluation of bids, all bids shall be evaluated on an equal footing to ensure fair and competitive bid evaluation. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison. **(2016 IRR Sections 32.2.2)**
  - d. In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; (b) total price per item and unit price for the item as extended or multiplied by the quantity of that item, the latter shall prevail; (c) stated total price and the actual sum of prices of component items, the latter shall prevail; and (d) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail. **(2016 IRR Sections 32.2.3)**
2. Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall 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. **(2016 IRR Sections 32.2.4)**
  3. After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding Bid Securities and the minutes or proceedings of the bidding. **(2016 IRR Section 32.3)** The Observers shall also sign the Abstract of Bids if, in their independent observation, the bidding activity conducted by the BAC followed the correct procedure indicated under R.A. 9184 and its 2016 IRR. The Abstract of Bids shall contain the following:
    - a. Name of the contract and its location, if applicable;
    - b. Time, date and place of bid opening; and
    - c. Names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of Bid Security and the name of the issuing entity.
  4. The TWG, with the assistance of the BAC Secretariat, when directed by the BAC, should prepare the Bid Evaluation Report, containing the details of the evaluation conducted, preferably within three (3) calendar days from the date the evaluation was concluded.

5. Members of the BAC, its staff and personnel, Secretariat and TWG, as well as the 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 in writing the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing. **(2016 IRR Section 32.1)**

**What happens if a bidder does not accept the arithmetical corrections done by the BAC on its bid?**

If the bidder does not accept the arithmetical corrections done by the BAC on its bid, the BAC must disqualify the bidder and forfeit its bid security.

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**On clarifications during bid evaluation (the "no-contact" rule)**

The BAC and the TWG shall not entertain clarifications from Bidders, neither shall they initiate communication with the Bidders, during the bid evaluation stage. There are two reasons for this rule:

1. There is no need for clarifications of technical issues since the evaluation is focused on arithmetical computations which are determined from the face of the bid itself; and
2. Communications with the Bidders might lead to possible collusion or the Bidder might try to unduly influence the outcome of the bidding process.

**What happens if no bid complies with all bid requirements?**

If no bid complies with all bid requirements, the BAC should declare the bidding a failure and issue a Resolution declaring the same. The BAC shall then conduct a review of the scope of work, the contract terms, conditions, specifications and other provisions in the bidding documents. If warranted, the BAC shall, as necessary, revise the scope of work, contract terms and conditions, specifications, ABC, and/or other provisions in the bidding documents, subject to the required approvals. It must, thereafter, conduct a re-bidding, in the process formulating a new IB with re-advertisement and/or posting as required. **(2016 IRR Section 35.2)** All bidders that have initially responded to the IB and have been declared eligible in the first bidding shall be allowed to submit new bids.

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the scope of work, contract terms, conditions, specifications, and other provisions in the bidding documents. The BAC may conduct another public bidding with re-advertisement and/or posting. Alternatively, the Procuring Entity may conduct a negotiated procurement following the Guidelines provided in section V.D.1 (Negotiated procurement, Two failed Biddings) of Annex H (Consolidated Guidelines for the Alternative Methods of Procurement) of the 2016 IRR. However, if the Procuring Entity resorts to negotiated procurement, the ABC cannot be increased by more than 20% of the ABC for the last failed bidding.

## Step 6 Post-qualify

### Legal Reference

2016 IRR Section 34 specifies the rules and guidelines for the conduct of post-qualification.

### What is Post-qualification?

Post-qualification is the process of verifying, validating and ascertaining all the statements made and documents submitted by the bidder with the LCB using non-discretionary criteria. The BAC shall ascertain the said bidder's compliance with all requirements and conditions stated in the Bidding Documents. The criteria for post-qualification shall consider, but not limited to, the bidder's compliance with the eligibility, technical and financial requirements of the bid. If the BAC determines that the bidder with the LCB is responsive to the bid requirements, the BAC shall declare the bid to be the LCRB, and recommend to the HoPE the award of contract to the said bidder at its submitted bid price or calculated bid price, whichever is lower. **(2016 IRR Section 34.4)**

### What are the requirements to be submitted by the Bidder that submitted the LCB/SCB?

Within five (5) calendar days from receipt by the bidder of the Notice from the BAC that it has submitted the LCB/SCB, the bidder shall submit the following documentary requirements to the BAC **(2016 IRR Section 34.2)**:

1. Latest income and business tax returns; and
2. Other appropriate licenses and permits required by law and stated in the Bidding Documents.

### What does Post-qualification entail?

Post-qualification involves the BAC verifying, validating and ascertaining that the bidder satisfies the following requirements: **(2016 IRR Section 34.3)**

1. Legal Requirements. The post-qualification process under this criterion involves the verification, validation and ascertaining of the contractor's claim that it is not included in any government "blacklist," as well as all the licenses, permits and other documents it submitted, including the following:
  - a. PCAB license;
  - b. Registration Certificate coming from SEC, DTI for sole proprietorship, or CDA for cooperatives;
  - c. Mayor's/Business Permit or the equivalent document for Exclusive Economic Zones or Areas; and
  - d. Tax Clearance per EO 398, s. 2005.
2. Technical Requirements. Post-qualification under this criterion means that the BAC would have to verify, validate and ascertain the veracity of the documents submitted by a contractor to prove compliance of the infrastructure project it offered with the requirements of the contract and bidding documents. This involves the following processes:

- a. Verification of the bidder's stated competence and experience, as well as the competence and experience of its key personnel to be assigned to the project, to ensure that these meet the minimum requirements,
  - b. Verification of availability and commitment, and/or inspection and testing, of major equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts, if any of these ongoing contracts shows:
    - A reported negative slippage of at least fifteen percent (-15%) in a single contract;
    - A reported negative slippage of at least ten percent (-10%) in each of two or more contracts;
    - Failure of the contractor to commence repair works on ongoing contracts within seven (7) calendar days and to complete them within thirty (30) calendar days after receipt of the Procuring Entity's notice of defects and deficiencies;
    - Failure of the contractor to commence repair works on contracts with pending certificates of acceptance within thirty (30) calendar days and complete them within ninety (90) calendar days after receipt of the Procuring Entity's notice of defects and failures;
    - Substandard quality of work as per contract plans and specifications;
    - Unsatisfactory performance of contractor's obligations as per contract terms and conditions, at the time of inspection; or
    - That there are overlaps in the proposed utilization of the minimum required equipment with those equipment in the on-going works of the contractor.
- Any of which will be a ground for disqualification from award of contract if verified by the BAC to be due to the bidder's fault or negligence.
- c. Ascertainment of the authenticity of the Bid Security and its correctness as to type, amount, form and wording, and validity period, as required in the Bidding Documents.
  - d. Verification of completeness and compliance of statements with requirements of the Omnibus Sworn Statement.
3. Financial Requirements. Under this criterion, the BAC ought to verify, validate and ascertain the bid price proposal of the bidder, the bidder's stated net worth and liquid assets, net working capital, the value of all outstanding or unfinished works under ongoing contracts, and the bidder's NFCC, as recalculated considering developments in the bidders' other projects, whenever applicable. This is done to ensure that the bidder can sustain the operating cash flow of the transaction. This process involves:
    - a. Examination of the Bill of Quantities, Detailed Estimates and Cash Flow;
    - b. Ascertaining of the updated NFCC taking into consideration the up-to-date value of all outstanding or unfinished works under ongoing and awarded contracts coinciding with the contract being procured; and
    - c. Examination of the BIR-audited financial statement.

### **What is the Timeline for the conduct of Post-qualification?**

The post-qualification process must be conducted and completed within twelve (12) calendar days from the determination of the LCB. However, in exceptional cases, the HoPE may extend the post-qualification period, but in no case should the aggregate period exceed forty five (45) calendar days. **(2016 IRR Section 34.8)**

### **Who are the parties involved in the conduct of Post-qualification?**

The following parties ought to be involved in the conduct of post-qualification:

1. The BAC;
2. The TWG; and
3. The BAC Secretariat; and
4. The contractor, ranked starting from bidder with the LCB.

### **Methodology: How is Post-qualification conducted?**

The following steps are followed in the conduct of post-qualification:

1. The BAC/TWG verifies, validates, and ascertains the genuineness, validity and accuracy of the legal, technical and financial documents submitted by the bidder with the LCB, using the non-discretionary criteria described above.

In verifying the information contained in such documents, the TWG may make inquiries with appropriate government agencies and examine the original documents kept in the bidder's place of business. The use of other means for verification and validation of such documents may be resorted to by the TWG, such as the Internet and other research methods that yield the same results.

2. The BAC/TWG inquires about the bidder's performance in relation with other contracts/transactions as indicated in its eligibility statement (statement of on-going, completed and/or awarded but not yet started contracts).
3. If the TWG conducts post-qualification, it prepares a Post-qualification Report to be submitted to the BAC. The Report shall contain, among others, the activities undertaken with regard to the Post-qualification process, including feedback from inquiries conducted.
4. The BAC reviews the Post-qualification Report submitted by the TWG.
5. The BAC determines whether the bidder with the LCB passes all the criteria for post-qualification.
6. If the bidder with the LCB passes post-qualification, the BAC declares it as the bidder with the LCRB.
7. After the BAC has determined the bidder with the LCRB, the Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the bidder with the LCRB and recommending it for award. The BAC Resolution is forwarded to the HoPE for its approval/disapproval.

**What happens if a bidder is related within the third civil degree by consanguinity or affinity to the HoPE, members of the BAC, the TWG, the BAC Secretariat, Head of the End-user Unit/Implementing Unit or project consultants?**

Bidders with relatives in the Procuring Entity covered by the prohibition are disqualified from participating, even if their relatives intend to inhibit themselves from participating in the procurement process. Such bidders are disqualified from participating as they will have direct access to information that may substantially affect the results of the bidding. **(2016 IRR Section 47.1)**

**What happens if a bidder is found to have committed an act that constitutes fraud or misrepresentation or to have colluded with others for the purpose of influencing the outcome of the Bidding?**

Such bidder will be disqualified by the BAC, its bid security forfeited and, upon conviction, it will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years, **(2016 IRR Section 65.2)** and likewise suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. **(2016 IRR Section 69.1)**

**What happens if the bidder with the LCB fails Post-qualification?**

If the bidder with the LCB fails to pass post-qualification, the BAC shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it. The post-disqualified bidder shall have three (3) calendar days from receipt of the said notification to request from the BAC, if it so wishes, a reconsideration of this decision. The BAC shall evaluate the request for reconsideration, if any, using the same non-discretionary criteria, and shall issue its final determination of the said request within seven (7) calendar days from receipt thereof. **(2016 IRR 34.4)** Similar to the cases of bidders deemed to be ineligible and whose bids are rated "failed," the bidder with the LCB who fails to pass post-qualification may likewise file a protest with the corresponding fee in case the BAC denies its request for reconsideration.

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. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the BAC shall declare the second bidder as the bidder with the LCRB. The BAC shall forward a Resolution recommending the bidder for contract award to the HoPE for its approval/disapproval. **(2016 IRR Section 34.6)**

If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next LCB, and so on until the LCRB, is determined for award. **(2016 IRR Section 34.7)**

**What happens if all qualified bidders fail Post-qualification?**

If no bidder passes post-qualification, the BAC should declare the bidding a failure and issue a Resolution declaring the same. The BAC shall then conduct a review of the scope of work, the contract terms, conditions, specifications and other provisions in the bidding documents. If warranted, the BAC shall, as necessary, revise the scope of work, contract terms and conditions, specifications, ABC, and/or other provisions in the bidding documents, subject to the required approvals. It must, thereafter, conduct a re-bidding, in the process formulating a new IB with re-advertisement and/or posting as required. **(2016 IRR Section 35.2)** All bidders that have initially responded to the IB and have been declared eligible in the first bidding shall be allowed to submit new bids.

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the scope of work, contract terms, conditions, specifications, and other provisions in the bidding documents. The BAC may conduct another public bidding with re-advertisement and/or posting. Alternatively, the Procuring Entity may conduct a negotiated procurement following the Guidelines provided in section V.D.1 (Negotiated procurement, Two failed Biddings) of Annex H (Consolidated Guidelines for the Alternative Methods of Procurement) of the 2016 IRR. However, if the Procuring Entity resorts to negotiated procurement, the ABC cannot be increased by more than 20% of the ABC for the last failed bidding.

**May a procuring entity adopt the result of the post-qualification on the same company previously conducted [within the last six months]?**

No. This may be tantamount to pre-qualification which has already been abandoned by RA 9184. Further, each bidding activity is considered as a separate activity. Thus, for each procurement project, the BAC is required to conduct post-qualification to verify, validate and ascertain the statements and documents submitted by the bidder. While procuring entities are not precluded from using the information from a previous post-qualification report as reference, it is still but necessary on the part of the BAC to re-validate and confirm the report based on the requirements of the new project, as the legal, financial and technical capability of the bidder may have already changed within the six-month period. Likewise, the happening of the grounds for post-disqualification that are hinged on the bidder's performance on any of its ongoing products may vary within the said 6-month period.

## Step 7 Award the Contract

### Legal Reference

2016 IRR Section 37 specifies the rules and guidelines for the awarding of contract.

### What is the rule on Contract Award?

The contract shall be awarded to the bidder with the Lowest Calculated Responsive Bid (LCRB) **(2016 IRR Section 34.4)** or with the Single Calculated Responsive Bid (SCRB) **(2016 IRR Section 36)** at its submitted bid price or its calculated bid price, whichever is lower. The BAC shall issue a Resolution recommending to the HoPE award of the contract to the bidder with the LCRB/SCRB.

Prior to the expiration of the period of bid validity, the Procuring Entity should notify the successful bidder in writing that its bid has been accepted, through a Notice of Award received personally or sent by registered mail or electronically.

### What is the Timeline for Contract Award?

Within a period not exceeding fifteen (15) calendar days from the determination by the BAC of the bidder with the LCRB/SCRB, and the recommendation to award the contract, the HoPE or his duly authorized representative shall approve or disapprove the recommendation. **(2016 IRR Section 37.1.2)**

The NOA shall be given to the bidder with the LCRB/SCRB immediately after approval of the recommendation. Simultaneously, a copy of the Notice shall be furnished to all losing bidders, and posted in the website of the PhilGEPS, as well as the website of the Procuring Entity, if any.

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

- (a) Submission of valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders when the Treaty or International or Executive Agreement expressly allows submission of the PCAB license and registration for the type and cost of the contract to be bid as a pre-condition to the Award within ten (10) calendar days from receipt of the Notice of Award;
- (b) Posting of the performance security in accordance with ITB Clause **Error! Reference source not found.**;
- (c) Signing of the contract; and
- (d) Approval by higher authority, if required, as provided in Section 37.3 of the IRR of RA 9184.

### May the HoPE still exercise the acts provided for under Section 41 of the IRR after issuance of the NOA?

Ans: Yes, the PE may withdraw or cancel the NOA after its issuance in case the conditions under Section 41 of RA 9184 and its IRR are present. Thus, the HoPE may still reject any and all bids or declare a failure of bidding even after issuance of NOA based on the grounds under Section 41 of RA 9184 but not after the conditions under Section 37.1.4 of the 2016 IRR have already been complied with.

## Who are involved in the Award of the Contract?

### How's that again?

#### What is the maximum period of time that a contract can be awarded?

Contract award must be made within the bid validity period as specified in the bidding documents, with the period lasting for a maximum of one hundred twenty (120) calendar days from the date of bid opening. If award cannot be made within the said period, it is suggested that the bid validity period be extended.

The following parties must participate in the activities related to the awarding of the contract:

1. The HoPE;
2. The BAC;
3. The Implementing Office/End-user Unit;
4. The BAC Secretariat;
5. The bidder who submitted the LCRB/SCRB; and
6. The Observers.

## Methodology: How is a contract awarded?

The following steps are followed in the awarding of a contract:

1. The BAC Secretariat drafts the BAC Resolution recommending award.
2. The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand, and attaches the same to the BAC Resolution. These documents shall be comprised of the abstract of bids as calculated, duly approved program of work, cost estimates, document issued by the appropriate entity authorizing the Procuring Entity to incur obligations for a specified amount, and other pertinent documents required by existing laws, rules, and/or the Procuring Entity concerned.
3. The BAC approves and signs its resolution recommending award, and transmits the same to the HoPE.
4. The HoPE, or his/her duly authorized representative, acts on the recommendation for award within fifteen (15) calendar days from the date of determination and declaration by the BAC of the LCRB/SCRB.
5. In case of approval of the recommendation, the HoPE, through the BAC Secretariat, issues the Notice of Award to the bidder with the LCRB/SCRB, while the BAC accordingly notifies the losing bidders.
6. The bidder with the LCRB/SCRB accepts the Notice of Award.

## What recourse does the bidder recommended for award by the BAC have if the recommendation is disapproved by the HoPE?

A request for reconsideration may be filed by the bidder with the HoPE within 3 calendar days from receipt of the Notice of Disapproval. The HoPE shall resolve with finality the request for reconsideration within 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 **(2016 IRR Section 37.1.3)**.

**What happens if the bidder being considered for award does not accept the award?**

If the bidder refuses to accept the award within the bid validity period, the BAC shall forfeit the bid security of the bidder and shall initiate the blacklisting proceedings in accordance with the **Uniform Guidelines for Blacklisting (GPPB Resolution No. 09-2004 as amended by 03-2011)**. It then initiates and completes the post-qualification of the bidder with the second lowest calculated bid. If found qualified, the said bidder shall be awarded the contract. This procedure is repeated until the LCRB is determined. Should all eligible bidders fail post-qualification, the BAC must declare the bidding a failure.

Refusal to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder, if proven, is meted with a penalty of imprisonment of not less than six (6) years and one (1) day by not more than fifteen (15) years. **(2016 IRR Section 65.3(d))** Additional penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense shall also be imposed on the bidder. **(2016 IRR Section 69.1)**

## Step 8 Have the Contract Signed and Approved and Issue the NTP

### Legal Reference

2016 IRR Section 37 specifies the rules regarding contract signing and approval.

### When must the winning bidder and the Procuring Entity enter into a contract?

The winning bidder and the HoPE, or its authorized representative, must enter into a contract immediately after the former has submitted the performance security and all other documentary requirements within the period specified in the 2016 IRR. The parties must sign the contract within ten (10) calendar days from receipt by the winning bidder of the Notice of Award. **(2016 IRR Section 37.2.1)**

The Procuring Entity signatory is encouraged to sign within the same day as the signing of the bidder as there are penalties against delaying, without justifiable cause, the award of the contract. **(2016 IRR Section 65.1(b))**

### What documents form part of the contract?

The contract shall include the following:

1. The Contract Agreement;
2. Bidding Documents, including Addenda and/or Supplemental/Bid Bulletins, if any;
3. Winning bidder's bid, including the Eligibility requirements, Technical and Financial proposals, and all other documents form including all the documents/statements submitted;
4. Performance Security and Contractor's All-Risk Insurance (CARI);
5. Notice of Award of Contract with the winning bidder's "Conforme" thereto; and

Other contract documents that may be required by existing laws and/or the Procuring Entity concerned, as specified in the Bidding Documents, such as construction schedule and S-curve, manpower schedule, construction methods, equipment utilization schedule, construction safety and health program approved by the Department of Labor and Employment, and PERT/CPM or other acceptable tools of project scheduling.

The documents forming the Contract shall be interpreted in the following order of priority:

- a) Contract Agreement;
- b) Bid Data Sheet;
- c) Instructions to Bidders;
- d) Addenda to the Bidding Documents;
- e) Special Conditions of Contract;
- f) General Conditions of Contract;
- g) Specifications;
- h) Bill of Quantities; and
- i) Drawings.

### **When is a contract “effective”?**

Unless otherwise specified in the contract, the contract effectivity date shall be the date of contract signing. The winning contractor shall commence performance of its obligations only upon receipt of the NTP.

### **Who are the Parties involved in Contract Signing and Approval and Issuance of the NTP?**

The following parties are involved in contract signing and approval and in the issuance of the NTP:

1. The Procurement Unit/BAC Secretariat;
2. The HoPE and/or higher contract approving authority; and
3. The winning bidder.

### **Methodology:**

1. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
2. The BAC Secretariat/Procurement Unit transmits the contract and its attachments to the Budget Office (for issuance of OS) and the Chief Accountant (for issuance of the CAF.
3. The BAC Secretariat/Procurement Unit transmits the contract and the supporting documents to the HoPE or its authorized representative for signature. The contract is signed provided that the winning bidder complies with all the documentary requirements.
4. After signing, if the contract needs the approval of a higher authority, the BAC Secretariat/Procurement Unit transmits the contract and the supporting documents to the higher authority for approval.
5. The higher approving authority or its authorized representative acts on the contract within twenty (20) calendar days, or thirty (30) calendar days for GOCCs and GFIs, from receipt thereof. However, the said periods for contract approval of a higher authority shall not apply if the approving authority is the Office of the President.

### **What happens if no action on the contract is taken by the HoPE?**

If the HoPE, or the appropriate approving authority, takes no action on the contract, or no decision is made within the periods specified above, the contract concerned shall be deemed approved. However, where further approval by the Office of the President is required, the contract shall not be deemed approved unless and until the Office of the President gives actual approval to the contract concerned. **(2016 IRR Section 38.3)**

### **What are the rules governing the review and approval of government contracts?**

Executive Order 423, s. 2005, as amended by E.O. 645, s. 2007 and E.O. 34, s. 2017, prescribes the rules and regulations on the review and approval of government contracts. Essentially, E.O. 423 provides that, except for government contracts required by law to be acted upon and/or approved by the President, the HoPE shall have full authority to give final approval and/or enter into all government contracts of his respective government agency, awarded through public bidding, regardless of amount. Provided, that the HoPE certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations. The HoPE may also delegate in writing this full authority to give final approval and/or enter into government contracts awarded through public bidding as

circumstances may warrant (*i.e.* to decentralization of procurement in a government agency), subject to such limitations as he may impose.

All Government contracts required by law to be acted upon and/or approved by the President, and any subsequent amendments or supplements thereto, shall be submitted with complete documentation to NEDA, through its Director-General, within seven (7) days from approval by the Head of Procuring Entity concerned or his duly authorized representative, as the case may be, for NEDA's review and evaluation.

Government contracts submitted shall be accompanied by a complete execution copy of the contract, related agreements, annexes, other approvals and permits, including a detailed summary of the pertinent laws, rules and regulations governing the processing and award of the contract, and accompanied by the requirements under E.O. 423, as amended, where alternative methods of procurement were resorted to.

### **When should the Procuring Entity issue the NTP?**

The HoPE, or its authorized representative, must issue the NTP together with a copy or copies of the approved contract to the winning bidder within seven (7) calendar days from the date of approval of the contract. **(2016 IRR Section 37.4.1)** All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful contractor.

The Procuring Entity, through the BAC Secretariat/Procurement Unit, shall post a copy of the Notice to Proceed and the approved contract in the PhilGEPS website and the website of the Procuring Entity within fifteen (15) calendar days from the issuance of the NTP.

### **How long is the entire process of public bidding for infrastructure projects?**

From advertisement/posting of the procurement opportunity to issuance of the NTP, the minimum and maximum periods are estimated to be 26 and 156 calendar days, respectively. All members of the BAC shall be on a "jury duty" type of assignment until the NOA is issued by the HoPE in order to complete the entire bidding process at the earliest time.,

### **What happens if the bidder with the LCRB or SCRB refuses or is unable, through its own fault, to post the performance security and sign the contract within the prescribed period?**

If the bidder with the LCRB or SCRB refuses to, or is unable, through its own fault, to post the performance security and sign the contract within the prescribed period:

1. Its bid security is forfeited;
2. It is disqualified from further participating in the bidding at hand;
3. Upon conviction, the relevant officers or individuals will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years; and
4. Upon determination of administrative liability, it will suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. This is without prejudice to the blacklisting proceedings undertaken in accordance with the Uniform Guidelines for Blacklisting (GPPB Resolution No. 09-2004 as amended by GPPB Resolution No. 03-2011).

For its part, the BAC must initiate and complete the post-qualification of the bidder the second LCB. This procedure must be repeated until the LCRB is determined for award. If no bidder passes post-qualification, the BAC declares the bidding a failure and conducts a re-bidding with re-posting and/or re-advertisement. Should there be another failure of bidding after the

conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement. **(2016 IRR Section 40.2)**

If, on the other hand, the bidder that fails to post the performance security and sign the contract happens to be one with the SCRB, the BAC must declare the bidding a failure. It then conducts a re-bidding with re-posting and/or re-advertisement. Should there be another failure of bidding after the conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement **(2016 IRR Section 40.3)**

**What happens if the failure of the bidder with the LCRB or SCRB to sign the contract within the prescribed period is not its own doing?**

If the failure of the bidder with the LCRB or SCRB to sign the contract within the prescribed period is not due to its fault, the sanctions mentioned above shall not be imposed. **(2016 IRR Section 40.1)**

## Reservation Clause

### Legal Reference

2016 IRR Section 41 provides the rules governing the Reservation Clause.

### When may the Procuring Entity exercise its right to reject bids, declare a failure of bidding, or not award the contract?

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

1. 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 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;

#### How's that again?

#### What are instances of the BAC not following prescribed procedures?

The following are some instances when a BAC fails to follow procedures:

1. Prescribing an insufficient number of days in the advertisement and/or posting of the IB;
2. Exceeding the required periods for eligibility screening, bid evaluation, post-qualification for each lowest calculated bidder or for awarding the contract without justifiable cause;
3. Conducting the pre-bid conference or issuing the Supplemental/Bid Bulletin in less than the required number of days before deadline for the submission and opening of bids;
4. Requiring the bidder to submit additional documents which is tantamount to improving his bidding documents; and
5. Allowing a bidder to be declared eligible or pass the post-qualification with incomplete documents.

2. If the BAC is found to have failed in following the prescribed bidding procedures, for which the applicable sanctions shall be applied to the erring officers; or

3. For any justifiable and reasonable ground where the award of the contract will not contribute to the benefit of the Government as follows:

- a. 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;

- b. If the project is no longer necessary as determined by the HoPE; and

- c. If the source of funds for the project has been cancelled, withheld or reduced through no fault of the Procuring Entity.

However, abuse by the HoPE of his power to reject any and all bids as provided by the Reservation Clause, with manifest preference to any bidder who is closely related to him in accordance with 2016 IRR Section 41 shall be meted with penalties provided in 2016 IRR Section 65.1(e).

### When does a failure of bidding occur?

1. The BAC shall declare the bidding a failure when any of the following situations take place (**IRR Section 35**):
  - a. No bids are received.

- b. All prospective bidders are declared ineligible.
  - c. All bids fail to comply with all the bid requirements or fail post-qualification.
  - d. The bidder with the LCRB/SCRB refuses, without justifiable cause, to accept the award of contract, and no award is made in accordance with **2016 IRR Section 40**.
2. To determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.
3. Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting (**IRR Section 21.2**).
4. All bidders who have initially responded to the IB and have been declared eligible 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 biddings.
5. Should there occur a second failure of bidding, the Procuring Entity may resort to negotiated procurement (**IRR Section 53.1**).



SECTION 3

Instructions on the Procedural  
Steps for the Procurement of  
Infrastructure Projects

PART TWO – ALTERNATIVE METHODS OF  
PROCUREMENT



## The Alternative Methods for the Procurement of Infrastructure Projects

### What is the rule on the use of alternative methods of procurement?

Generally, procurement should be through competitive bidding. In preparing the APP, the Procuring Entity must ensure that there is sufficient time to undertake public bidding. However, the law allows the use of alternative methods of procurement in some exceptional instances, provided:

1. There is prior approval of the HoPE on the use of alternative methods of procurement, as recommended by the BAC; and
2. The conditions required by law for the use of alternative methods are present.

One of the reasons for the use of alternative methods of procurement is for administrative convenience. This means that the Procuring Entity is given the opportunity to procure infrastructure projects at advantageous terms without having to undergo the entire public bidding process which could be time-consuming. Or, there could be changes in circumstances that preclude the use of public bidding as originally proposed in the APP, like in those cases where the BAC has twice declared a failure of bidding. The BAC, through a Resolution, shall justify and recommend to the HoPE, for his approval, the change in the method of procurement. The changes must be reflected in the APP and submitted to the GPPB.

In resorting to any of the alternative methods of procurement, the Procuring Entity must ensure that the method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.

While the law allows the use of alternative methods of procurement, it emphasizes that splitting of government contracts is not allowed. **(2016 IRR Section 54.1)** There is splitting of government contracts when, for the purpose of evading or circumventing the requirements of law and the 2016 IRR, especially the necessity of public bidding and the requirements for the alternative methods of procurement, the Procuring Entity:

1. Divides or breaks up government contracts into smaller quantities and amounts; or
2. Divides contract implementation into artificial phases or sub-contracts.

Thus, the amount indicated in the ABM/SARO (or the equivalent documents in GOCCs/LGUs) shall not be divided into several projects for bidding.

For procurement undertaken through any of the alternative methods allowed by law, where the government contract involves an amount less than P500 Million, except where action or approval of the President is required, the HoPE shall have full authority to give final approval and/or enter into such contract, provided that the Department Secretary concerned certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations. He may delegate in writing this authority, as circumstances may warrant (i.e. to decentralize procurement), subject to such limitations as he may impose.

Where the HoPE has made a determination that a Government contract, including Government contracts required by law to be acted upon and/or approved by the President, involving an amount of at least P500 Million falls under any of the exceptions from public bidding allowed by law, the HoPE shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, obtain the approval of the GPPB that said Government proposed procurement undertaking falls within the exceptions from public bidding and that the proposed specific alternative mode of procurement is appropriate. **(Executive Order (EO) 423 s. 2005, as amended by E.O. 645 s. 2007)**

This has been further amended by **E.O. 34 issued on 17 July 2017**, which now provides that:

Where the Head of the Procuring Entity has made a determination that a Government contract, including Government contracts required by law to be acted upon and/or approved by the President, regardless of amount, falls under any of the exceptions from public bidding described in Section 3 hereof, **the Head of the Procuring Entity may proceed with the alternative methods of procurement according to the law and applicable rules and regulations**; Provided, that for Government contracts involving an amount of at least ₱500 Million, the Head of the Procuring Entity issues a certification under oath that the contract falls within the exceptions from public bidding, is being entered into faithful compliance with all applicable laws, rules and regulations, and is advantageous to the government.

Except for Government contracts required by law to be acted upon and/or approved by the President, the Head of the Procuring Entity shall have full authority to give final approval and/or enter into said Government contracts through alternative methods of procurement allowed by law and applicable rules and regulations upon issuing the certificates mentioned in the immediately preceding paragraph, when applicable.

The Head of the Procuring Entity may delegate in writing this full authority to give final approval and/or to enter into Government contracts, through alternative methods of procurement allowed by law, involving such amount or threshold as he may deem appropriate, as circumstances may warrant, subject to existing laws and such limitations imposed by the Head of the Procuring Entity concerned (Section 5(j), Republic Act No. 9184). However, the Head of the Procuring Entity may not delegate the authority to certify under oath that the contract falls within the exceptions from public bidding, is being entered into faithful compliance with all applicable laws, rules and regulations, and is advantageous to the government.

For the procurement of infrastructure projects, negotiated procurement is the only alternative method of procurement that may be used.

### **What are the Advertisement and Posting Requirements for the Alternative Method of Negotiated Procurement?**

For alternative methods of procurement, the Procuring Entity may dispense with the advertisement in the newspaper and posting requirement. For the following alternative methods, however, the BAC, through its Secretariat, shall post the procurement opportunity 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 3 calendar days:

- a. Two Failed Biddings; and
- b. Small Value Procurement, for projects with ABC above PhP50,000.

## Negotiated Procurement

### What is negotiated procurement?

**NEGOTIATED PROCUREMENT** is a method of procurement whereby the Procuring Entity directly negotiates a contract with a legally, technically and financially capable contractor. **(2016 IRR Section 53)**

### When is Negotiated Procurement allowed?

Negotiated procurement may be resorted to under the following instances:

1. **Two Failed Biddings.** When there has been a second failure of competitive bidding or Limited Source Bidding because of any of the Following **(2016 IRR Section 35)**:
  - a. No bids are received;
  - b. All prospective bidders are declared ineligible;
  - c. All bids fail to comply with all the bid requirements, or fail post-qualification; or
  - d. The bidder with the LCRB/SCRB refuses, without justifiable cause, to accept the award of contract, and there is no award made in accordance with **2016 IRR Section 40.**

#### Procedure

- a. After the mandatory review of the terms, conditions, specifications, and cost estimates, as prescribed in 2016 IRR Section 35, the BAC, based on its findings, as assisted by the Secretariat, TWG, and the end-user unit/implementing unit, may revise and agree on the technical, legal and financial eligibility requirements, and the technical specifications, and if necessary, adjust the ABC, subject to the required approvals. However, the ABC cannot be increased by more than twenty percent (20%) of the ABC for the last failed bidding.
- b. The BAC shall invite at least three (3) contractors, including those disqualified in previous biddings for the project, who meet the revised eligibility requirements, for negotiations to ensure effective competition. The BAC shall post the Invitation in the websites of the Procuring Entity and the PhilGEPS and in any conspicuous place in the premises of the Procuring Entity. 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 contractor shall be communicated on an equal basis to all other contractors 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 bid.
- d. Following completion of the negotiations, the BAC shall request all contractors to submit on a specified date, a best offer based on the final technical and financial requirements. The BAC shall require the submission by each bidder of a Certificate of PhilGEPS Registration in accordance with 2016 IRR Section 8.5.2. Contract negotiations shall be conducted with the contractor determined to have submitted the LCB. If contract negotiations is successful,

the BAC shall post-qualify the contractor to determine if its bid complies with the technical and financial requirements of the project.

- e. The BAC shall recommend award of contract to the HoPE in favor of the contractor determined to have submitted the LCRB. Within a period of 15 calendar days from receipt, the HoPE shall approve or disapprove the BAC's recommendation. In case of approval, the HoPE shall immediately issue the NOA to the contractor. In the event the HoPE disapproves the recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.
- f. Upon receipt of the NOA, the contractor shall immediately enter into contract with the Procuring Entity. Upon transmission of the signed contract, the HoPE or his duly authorized representative shall immediately sign the contract provided that all relevant documentary requirements are submitted.
- g. The HoPE or his duly authorized representative shall issue the NTP and a copy of the approved contract to the contractor within 3 calendar days from the date of approval of the contract by the appropriate government approving authority.
- h. The BAC, through its Secretariat, shall post the NOA, contract, including the NTP, if necessary, for information purposes, in the PhilGEPS website, the website of the Procuring Entity concerned, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity within 10 days from their issuance, except for contracts with ABC of P50,000 and below.

Procuring Entities, in the interest of promoting economy and efficiency, are given the discretion to determine which requirements must be submitted by bidders when resorting to Negotiated Procurement (Two-Failed Bidding). This gives Procuring Entities the authority to choose the eligibility documents necessary for the project, provided that a mandatory review has been conducted to determine the adjustments needed to address the previous failure of bidding.

However, the certificate of PhilGEPS registration, in accordance with Section 8.5.2 of this IRR, is still required to be submitted by the bidder.

2. **Emergency Cases.** The Procuring Entity may resort to negotiated procurement in emergency cases under any of the following circumstances:
  - a. In case of 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 to:
    - i) Prevent damage to or loss of life or property; or
    - ii) Restore vital public services, infrastructure facilities and other public utilities.

The HoPE shall confirm in writing the existence and veracity of the ground or grounds relied upon before approving the ensuing contract. Further, when the ground for applying negotiated procurement under emergency cases is based on imminent danger to life during a state of calamity, there must be a declaration by a competent authority of a state of calamity pursuant to existing laws, rules and regulations before any procurement activity may be undertaken.

Considering that the underlying reason to support a Negotiated Procurement through the emergency modality relates to "time element" as when there is - a) imminent danger to life or property; b) when time is of the essence; or c) immediate action is necessary, the Procuring Entity, through the HoPE, BAC, its Secretariat and end-user unit, should consider appropriate timing or the proximity of time between the actual procurement activity to be conducted and the emergency sought to be addressed,

such that when the reason or cause for the emergency has already been abated, adoption of competitive bidding as the primary method of procurement shall be considered.

Procedure

- a. The end-user/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 civil works that have to be procured to address the emergency.
  - b. Upon preparation of the appropriate procurement documents, the BAC may directly negotiate with a contractor with technical, legal and financial capabilities to execute the works to address the emergency. Upon confirmation and ascertainment of such capabilities to address the emergency, the HoPE, upon recommendation of the BAC, shall immediately award the contract to the contractor.
  - c. Due to the emergency nature of the attending circumstances, and the imminent danger to life, limb or property, the BAC and the HOPE, through an appropriate Resolution and Office Order, may delegate to specific officials, personnel, committee or office in the Procuring Entity to directly negotiate with a contractor and award the contract to efficiently and expeditiously deal with emergency sought to be addressed.
3. **Take-over of Contracts.** The Procuring Entity may resort to negotiated procurement for a contract taken over under the following circumstances:
- a. The contract previously awarded through competitive bidding 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 public utilities.

Procedure

- a. The BAC shall post-qualify the second LCB 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 written approval by the HoPE concerned, within their respective limits of approving authority.
- b. If negotiations fail or if post-qualification is unsuccessful, the BAC shall negotiate and post-qualify the next lowest calculated bidder at the said bidder's own original bid price.
- c. If negotiations fail or post-qualification is unsuccessful another time, the process is repeated until all the bidders from the previous bidding have been considered.
- d. If negotiations fail or post-qualification is unsuccessful and there is no bidder left from the previous bidding or if the original awardee is a Single Calculated Responsive Bidder, the BAC may either invite at least 3 contractors to submit bids, or resort to any other appropriate alternative method of procurement.
- e. In case of successful negotiation and post-qualification, the BAC shall recommend the award of contract with the said contractor. Within a period of 15 calendar days from receipt, the HoPE shall approve or disapprove the

BAC's recommendation. In case of approval, the HoPE shall immediately issue the NOA to the contractor. In the event the HoPE disapproves the recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.

- f. Upon receipt of the NOA, the contractor shall immediately enter into contract with the Procuring Entity. Upon transmission of the signed contract, the HoPE or his duly authorized representative shall immediately sign the contract provided that all relevant documentary requirements are submitted.
  - g. The HoPE or his duly authorized representative shall issue the NTP and a copy of the approved contract to the contractor within 3 calendar days from the date of approval of the contract by the appropriate government approving authority.
  - h. The BAC, through its Secretariat, shall post the NOA, contract, including the NTP, if necessary, for information purposes, in the PhilGEPS website, the website of the Procuring Entity concerned, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity within 10 days from their issuance, except for contracts with ABC of P50,000 and below.
4. **Adjacent or Contiguous Project.** The Procuring Entity may resort to negotiated procurement where the subject contract is adjacent or contiguous to an on-going infrastructure project contract where the contractor has unique experience and expertise to deliver the required services, subject to the following conditions:
- a. The original contract is the result of competitive bidding;
  - b. The subject contract to be negotiated has similar or related scope of services to the original contract;
  - c. The sum of the ABC of the subject contract to be negotiated and the value of the remaining services for the existing contract is within the contracting capacity of the contractor considering the legal, technical (e.g., PCAB license, SLCC), and financial (e.g., NFCC) requirements for eligibility;
  - d. The contractor uses the same or lower unit prices as in the original contract less mobilization cost;
  - e. The ABC of the subject contract does not exceed the contract amount of the on-going project;
  - f. The contractor has no negative slippage/delay in the original contract during the time of negotiation; and
  - g. Negotiations for the procurement are commenced before the expiry of the original contract.

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.

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.

#### Procedure

- a. The BAC shall negotiate with the contractor of the on-going infrastructure project.
- b. In case of successful negotiation, the BAC shall recommend to the HoPE the award of contract in favor of the contractor. Within a period of 15 calendar

days from receipt, the HoPE shall approve or disapprove the BAC's recommendation. In case of approval, the HoPE shall immediately issue the NOA to the contractor. In the event the HoPE disapproves the recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.

- c. Upon receipt of the NOA, the contractor shall immediately enter into contract with the Procuring Entity. Upon transmission of the signed contract, the HoPE or his duly authorized representative shall immediately sign the contract provided that all relevant documentary requirements are submitted.
  - d. The HoPE or his duly authorized representative shall issue the NTP and a copy of the approved contract to the contractor within 3 calendar days from the date of approval of the contract by the appropriate government approving authority.
  - e. The BAC, through its Secretariat, shall post the NOA, contract, including the NTP, if necessary, for information purposes, in the PhilGEPs website, the website of the Procuring Entity concerned, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity within 10 days from their issuance, except for contracts with ABC of P50,000 and below.
5. **Agency-to-Agency Agreement.** This negotiated procurement involves procurement from another agency of government (i.e., Servicing Agency) that has the mandate to undertake the infrastructure Project required by the Procuring Entity.

All projects undertaken through Agency-to-Agency Agreement shall be subject to pertinent budgeting, accounting, and auditing rules and regulations.

#### Conditions

It is the general policy of government to purchase its requirements from the private sector. However, it acknowledges that, in some exceptional cases, procurement from another agency of government is more efficient and economical for the government, subject to the following:

- a. The Procuring Entity shall justify that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical to the government;
- b. Servicing Agency has the mandate to undertake the infrastructure project required by the Procuring Entity;
- c. Servicing Agency has the absorptive capacity to undertake the project;
- d. Servicing Agency owns or has access to the necessary tools and equipment required for the project;
- e. 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
- f. Servicing Agency must have a track record of having completed, or supervised a project, by administration or contract, similar to and with a cost of at least fifty percent (50%) of the project at hand.

#### Procedure

- a. The End-user/Implementing Unit shall justify to the BAC that the resort to Agency-to-Agency agreement is more efficient and economical to government.
- b. It shall likewise secure a certificate from the relevant officer of the Servicing Agency that the latter complies with all the foregoing conditions.

- c. Based on the assessment and recommendation of the End-user/Implementing Unit, the BAC shall issue a Resolution recommending the use of Agency-to-Agency Agreement to the HoPE.
  - d. In case of approval, the HoPE shall enter into a Memorandum of Agreement with the Servicing Agency.
6. **Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services.** The Procuring Entity may resort to negotiated procurement where infrastructure projects can be contracted to a particular contractor, as determined by the HoPE, for the construction or installation of an infrastructure facility where the material, equipment, or technology under a proprietary right can only be obtained from the same contractor.

To justify the need to procure through this negotiated modality, the End-user shall conduct a market study and determine the probable sources. This study should confirm that the contractor could undertake the project at more advantageous terms. In all cases, the market study must be conducted prior to the commencement of the procurement process.

Procedure

- a. The BAC shall undertake the negotiation with a technically, legally and financially capable contractor based on the scope of work prepared by the End-user Unit.
  - b. Upon successful negotiation, the BAC shall recommend award of contract to the HoPE. Within a period of 15 calendar days from receipt, the HoPE shall approve or disapprove the BAC's recommendation. In case of approval, the HoPE shall immediately issue the NOA to the contractor. In the event the HoPE disapproves the recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.
  - c. Upon receipt of the NOA, the contractor shall immediately enter into contract with the Procuring Entity. Upon transmission of the signed contract, the HoPE or his duly authorized representative shall immediately sign the contract provided that all relevant documentary requirements are submitted.
  - d. The HoPE or his duly authorized representative shall issue the NTP and a copy of the approved contract to the contractor within 3 calendar days from the date of approval of the contract by the appropriate government approving authority.
  - e. The BAC, through its Secretariat, shall post the NOA, contract, including the NTP, if necessary, for information purposes, in the PhilGEPS website, the website of the Procuring Entity concerned, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity within 10 days from their issuance, except for contracts with ABC of P50,000 and below.
7. **Small Value Procurement.** Procurement of infrastructure projects where the amount involved does not exceed the following threshold:
- a. For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, Five Hundred Thousand Pesos (P500,000);
  - b. For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Pesos)		
	Province	City	Municipality
1 <sup>st</sup> Class	500,000	500,000	100,000

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

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

#### Procedure

- a. The End-user Unit shall submit a request for SVP to the BAC, which indicates the technical specifications, scope of work, ABC and other terms and conditions.
- b. The BAC shall prepare and send the RFQ to at least three (3) contractors of known qualifications. This notwithstanding, those who respond through 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.
- c. Except for those with ABCs equal to P50,000 and below, RFQs shall be posted for a period of 3 calendar days in 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.
- d. After the deadline for submission of quotations, an Abstract of Quotations shall be prepared setting forth the names of those who responded to the RFQ and their corresponding price quotations.
- e. The BAC shall recommend to the HoPE the award of contract in favor of the contractor with the Single or Lowest Calculated Responsive Quotation. In case of approval, the HoPE shall immediately enter into contract with the said contractor.
- f. The conduct of SVP may be delegated to the End-user Unit or any other appropriate bureau, committee, or support unit duly authorized by the BAC through a Resolution approved by the HoPE.

#### **Who are the parties involved in negotiated procurement?**

The following must participate in the procurement of consulting services using the negotiated procurement method:

1. The HoPE;
2. The BAC;
3. The TWG;
4. The BAC Secretariat;
5. The End-user Unit or Implementing Unit;
6. The contractor; and
7. The Observers

#### **Are bid, performance, and warranty securities still required for the alternative methods of procurement?**

As a general rule, both bid security and performance security must be posted when a Procuring Entity resorts to negotiated procurement. However, for the above alternative methods of procurement, submission of bid securities may be dispensed with. Posting of a performance security is required for two failed biddings, emergency cases, take-over of contract, adjacent or contiguous project, and small value procurement. Posting of a warranty security is required for two failed biddings, take-over of contract, and for adjacent or

contiguous project. For emergency cases and small value procurement, the Procuring Entity may require the posting of a warranty security depending on the nature of the procurement project.

**Are Contractors required to register with PhilGEPS to be eligible to participate under the alternative methods of procurement?**

Contractors are mandated to register with PhilGEPS and provide a PhilGEPS Registration Number for the following alternative methods of procurement as a condition for contract award:

- a. Take-over of Contract (for new bidders, if any);
- b. Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services;  
and
- c. Small Value Procurement.

For purposes of Negotiated Procurement under Two-failed Biddings, the BAC shall require the submission of a Certificate of PhilGEPS Registration in accordance with Section 8.5.2 of the 2016 IRR.

SECTION 4

**Guidelines on Contract  
Implementation for the  
Procurement of Infrastructure  
Projects**



## Contract Implementation for the Procurement of Infrastructure Projects

### Legal Reference

2016 IRR Section 42 and Annex "E" provide the rules on contract implementation and termination.

### What is covered by Contract Implementation?

Contract implementation covers the following milestones:

1. Contractor's performance of his contractual obligations;
2. Procuring Entity's performance of its contractual obligations, as specified in the contract;
3. Final acceptance or project sign-off;
4. All other related activities; and
5. Payment by the Procuring Entity.

#### Let's make things easier

The Implementing Unit or end-user unit should determine the period of contract implementation during the procurement planning stage, and include it in the PPMP. In determining the contract implementation period, it must ensure that the contractor is given ample time to undertake any preparatory activity/ies necessary for it to comply with the conditions of the contract.

### When shall a contract be deemed effective?

The contract effectivity date is the date of contract signing. However, the contractor shall commence execution of the Works on the Start Date, which is the date of receipt of the NTP.

### Procuring Entity's Responsibilities

**What are the Procuring Entity's responsibilities to the contractor if the latter needs to coordinate with other government entities for it to be able to perform its contractual obligations?**

Whenever the implementation of the infrastructure project requires that the contractor obtain permits, approvals, and import and other licenses from national or local government agencies, the Procuring Entity may, if so requested by the contractor, assist the latter in complying with such requirements in a timely and expeditious manner. However, the contractor shall bear the costs of such permits and/or licenses. On the other hand, the Procuring Entity shall pay all costs involved in the performance of its responsibilities, in accordance with the contract.

### Subcontracting

**Is subcontracting allowed for the procurement of infrastructure projects?**

A contractor may be allowed to subcontract a portion of the contract or project if the bidding documents clearly provide for such arrangement. However, the contractor should not be allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed fifty percent (50%) of the total project cost. The bidding documents must specify what are considered as significant/material component(s) of the project. Moreover, except if otherwise provided by the contract, it should not subcontract any part of

the works without the prior written consent of the HoPE. However, this consent shall not relieve the contractor of any liability or obligation under the contract. The contractor will be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen as fully as if these were its own acts, defaults or neglects, or those of its agents, servants or workmen.

The bidder may identify the subcontractor to whom a portion of the Works will be subcontracted at any stage of the bidding process or during contract implementation. If the bidder opts to disclose the name of the subcontractor during bid submission, the bidder shall include the required documents as part of the technical components of the bid. A subcontractor that is identified during contract implementation must comply with the eligibility criteria and documentary requirements and secure approval of the HoPE.

Subcontractors should pass the eligibility requirements for the portions of the contract that they will undertake. If they are determined to be ineligible, subcontracting of such portion of the works shall be disallowed.

## **Inspection and Tests**

### **What is the scope of the Procuring Entity's right to inspect the infrastructure project procured?**

All materials, plant/s and workmanship shall be of the kind described in the contract and in accordance with the Procuring Entity's representative's instructions. To ensure that this, indeed, is the case, these materials, plant/s and workmanship will be subjected, from time to time, to such tests as the Procuring Entity's representative may require. These tests must be at the place of manufacture, fabrication or preparation, or on site or at such other place or places as may be specified in the contract, or at all or any of such places.

The Procuring Entity's representative, and any person authorized by him, must, at all reasonable times, have access to the site and to all workshops and places where materials or plant are being manufactured, fabricated or prepared for the works. The contractor, for its part, shall afford every facility for, and every assistance in, obtaining the right to such access.

The Procuring Entity's representative shall be entitled, during manufacture, fabrication or preparation of materials to be used in the project, to inspect and test these materials and the plant or plants where these materials are being manufactured, fabricated, and/or prepared. If the materials are being manufactured, fabricated or prepared in workshops or places other than those of the contractor, the contractor must obtain permission for the Procuring Entity's representative to carry out inspection and testing in those workshops or places. Such inspection or testing will not release the contractor from any obligation under the contract.

If, at the time and place agreed above, the materials or plant are not ready for inspection or testing, the Procuring Entity's representative may reject these materials or the plant and must notify the contractor of such rejection immediately. He/she must also do so if, as a result of the inspection or testing, he/she determines that the materials or plant are defective or otherwise not in accordance with the contract. The notice must state the Procuring Entity's representative's objection and the reasons for the objection. The contractor, for its part, must then promptly make good the defect or ensure that rejected materials or plant comply with the contract. If the Procuring Entity's representative so requests, the test of rejected materials or plant shall be made or repeated under the same terms and conditions.

The Procuring Entity's representative will, after consultation with the contractor, determine all the costs incurred in the repetition of the test or tests. These costs are recoverable from the contractor by the Procuring Entity and may be deducted from any monies due to the contractor. The Procuring Entity's representative must notify the contractor accordingly, with a copy being furnished the Procuring Entity.

## **Dayworks**

### **How are Dayworks undertaken and compensated?**

If applicable, as indicated in the contract, the dayworks rates in the contractor's bid shall be used for small additional amounts of work, only when the Procuring Entity's representative has given written instructions in advance for additional work to be paid for in that way.

All works to be paid for as dayworks shall be recorded by the contractor on forms approved by the Procuring Entity's representative. Each completed form shall be verified and signed by the Procuring Entity's representative within two (2) days of the work being done.

The contractor shall be paid for dayworks subject to obtaining signed dayworks forms.

## **The Use of Accredited Testing Laboratories**

### **Can the Procuring Entity engage the services of private testing laboratories?**

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

## **Evaluation of Contractor's Performance**

### **What is the subject and scope of the Procuring Entity's evaluation of a contractor's performance?**

All Procuring Entities implementing government infrastructure projects must evaluate the performance of their contractors using the NEDA-Approved CPES Guidelines for the type of project being implemented. These guidelines cover all infrastructure projects awarded by the government regardless of contract amount and funding source.

CPES evaluation must be done during construction and upon completion of the project. To ensure continuous implementation of CPES, all Procuring Entities concerned are required to include in their Projects' Engineering and Administrative Overhead Cost the budget for such system's implementation pursuant to NEDA Board Resolution No. 18 (s.2002).

### **What must a Procuring Entity do if there are no CPES Guidelines for the kind of infrastructure project it is implementing?**

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

### **What implementation mechanisms ought to be established for the CPES Guidelines?**

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

### **Where must a Procuring Entity submit its CPES evaluation results and how must these results be disseminated?**

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

### **How are the CPES evaluation results used?**

The CIAP shall consolidate all of the CPES evaluation results it receives and disseminate these to all Procuring Entities concerned. The CPES ratings and other information shall be used by the concerned government agencies for the following purposes:

1. Eligibility screening of constructors;
2. Awarding of contracts;
3. Project monitoring and control;
4. Issuance of Certificate of Completion;
5. Policy formulation/review;
6. Industry planning;
7. Granting of Incentives/Awards; and
8. Adoption of measures to further improve performance of contractors in the prosecution of government projects.

### **How are works to be measured?**

The quantities set out in the Bill of Quantities are the estimated quantities for the works. They should not therefore be taken as the actual and correct quantities of the works to be executed by the contractor in fulfillment of his obligations under the contract. They can vary to up to ten percent (10%) of the contract price to account for variation orders as provided for in Annex E of the 2016 IRR.

The Procuring Entity's representative must, except if otherwise stated in the Quantities of the Detailed Engineering, measure the value of the works actually in-place in accordance with the contract. This measurement will be the basis for the payment that will be made to the contractor in accordance with the Statement of Work Accomplished. The Procuring Entity's representative must, when he/she needs to measure any part of the works, give reasonable notice to the contractor's authorized agent, who must:

1. Forthwith attend or send a qualified representative to assist the Procuring Entity's representative in making such measurement; and
2. Supply all particulars required by the Procuring Entity's representative.

### **How must infrastructure project impact on traffic and adjoining properties?**

All operations necessary for the execution and completion of the works and the remedying of any defects therein must, so far as compliance with the requirements of the contract permits, be carried on so as not to interfere unnecessarily or improperly with:

1. The flow of traffic;
2. The convenience of the public; and
3. The access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Procuring Entity or any other person.

The contractor shall save harmless and indemnify the Procuring Entity in all claims, proceedings, damages, costs, charges and expenses arising out of, or in relation to, any such matters insofar as the contractor is responsible for them.

**What are the responsibilities of the contractor as far as the project site is concerned?**

During the execution of the works, the contractor must keep the site reasonably free from all unnecessary obstruction. It must also store or dispose of any equipment and surplus materials and clear away and remove from the site any wreckage, rubbish or temporary works that are no longer required.

Upon the issue of the Taking-Over Certificate, the contractor shall remove from that part of the site to which the certificate relates, all equipment, surplus material, rubbish and temporary works of every kind. It must leave such part of the site and works clean and in a workmanlike condition to the satisfaction of the Procuring Entity's engineer. However, it is entitled to retain until the end of the defects liability period such materials, equipment and temporary works he may need to fulfill his obligations in relation to the project.

**At the end of the project, what happens to materials and equipment paid for by the Procuring Entity**

Unless otherwise provided for in the contract, the contractor must turn-over to the Procuring Entity all excess, used, unused and/or reusable materials paid for in the contract such as, formworks, laboratory apparatus and equipment, vehicles, field office, safety gadgets and devices, etc. Vehicles and equipment paid for by the Project should be in operating condition when turned over.

## Contract Price and Payment

### Legal Reference:

2016 IRR Section 61 and Annex "E" provide the rules for Contract Prices and Payment.

### Are contract prices fixed?

Price escalation is generally not allowed.<sup>14</sup> For the given scope of work in the contract as awarded, the price must be considered as a fixed price, except under extraordinary circumstances as determined by the NEDA in accordance with the Civil Code of the Philippines, upon recommendation of the Procuring Entity concerned, and upon prior approval of the GPPB. Any request for price escalation under extraordinary circumstances should be submitted by the concerned entity to the NEDA with the endorsement of the Procuring Entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

"Extraordinary circumstances" shall refer to events defined in the Civil Code of the Philippines, consistent with the guidelines issued by the GPPB. In particular, the Guidelines for Contract Price Escalation approved by the GPPB in Resolution 07-2004, dated July 22, 2004, provides that the term "extraordinary circumstances" shall refer to the following Articles of the Civil Code of the Philippines:

1. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen to which could be reasonable foreseen but are inevitable, such as, but not limited to the following: (a) typhoons; (b) thunderstorms; (c) flooding of lowly areas; and (d) vehicular accidents; provided that the following are present:
  - a. The cause of the extraordinary circumstances must be independent of the will of the parties;
  - b. The event must be either unforeseeable or unavoidable;
  - c. The event must be such as to render it difficult but not impossible for the supplier to fulfill his obligation in a normal manner or within the contemplation of the parties;
  - d. The contractor must be free from any participation in or aggravation of the injury to the Procuring Entity; and
  - e. The allowance for price escalation, should an ordinary fortuitous event occur, is stipulated by the parties or the nature of the obligation requires the assumption of risk.
2. Article 1250, as it pertains to Extraordinary Inflation or Deflation, which may refer to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed in accordance with the

<sup>14</sup> For FAPs, the bidding documents would have to state whether the bid prices will be fixed or whether price adjustments would be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving completion of works generally within twelve (12) months in the case of JBIC- or eighteen (18) months in the case of World Bank-funded projects, but should be included in contracts which extend beyond eighteen (18) months. Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable), and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

Guidelines for Contract Price Escalation, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.

3. Article 1680, as it enumerated Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following: (a) fire; (b) war; (c) pestilence; (d) unusual flood; (e) locusts; and (f) earthquake; provided that the circumstances before, during and after the event shall be taken into consideration.

### **How are contract prices to be denominated?**

All contract prices must be denominated and payable in Philippine currency, and this shall be stated in the bidding documents. However, subject to the Guidelines issued by GPPB on Procurements involving Foreign-denominated Bids, Contract Price, and Payment using Letters of Credit, the Procuring Entity may provide in the Bidding Documents that obligations may be paid in foreign currency. Should the Procuring Entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate officially prescribed for similar transactions as established by the BSP on the date of the bid opening for purposes of bid comparison and evaluation. **(2016 IRR Section 61.4)**

### **What is the method of payment for works in the contract?**

The method and conditions of payment shall be specified in the contract. Generally, payment for works can be made in two ways: unit price or lump-sum payment. Unit price payments are made based on the unit prices of specific items as applied to actual quantities accomplished according to the Statement of Work Accomplished. Lump-sum payments, on the other hand, are based on the value of actual accomplished work in proportion to total contract cost.

### **When shall payments be made?**

Any kind of payment, including advance and progress payments, must be made by the Procuring Entity as soon as possible, but in no case later than forty-five (45) days after the submission of an invoice or claim by the contractor, accompanied by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract. The Procuring Entity must also ensure that all accounting and auditing requirements are met prior to payment. The Procuring Entity should commence inspection within twenty-four (24) hours after delivery.

### **In what currency shall payments be made?**

Payments must be made in the Philippine currency.<sup>15</sup>

### **Can the contractor request an advance payment?**

Yes, a contractor can request for an advance payment. However, the payment must not exceed fifteen percent (15%) of the total contract price, and must be made in lump sum or, at the most, two (2) installments according to a schedule specified in the ITB and other relevant bidding documents. Moreover, it must be made only upon the submission by the contractor of a written request. The contractor must also submit to the Procuring Entity an irrevocable standby letter of credit from a commercial bank, a bank guarantee or a surety

<sup>15</sup> For FAPs, payment of the contract price should be made in the currency or currencies in which the bid price is expressed in the bid of the successful bidder. When the bid price is required to be stated in local currency but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments should be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain. At any rate, where the price is to be paid, wholly or partly, in a currency or currencies other than the currency of the bid, the exchange risk should not be borne by the supplier or contractor and, to this end, the contract should provide that amounts payable in a currency or currencies other than that of the bid should be calculated at the rates of exchange between these currencies specified for the purpose in the bidding documents.

bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the Procuring Entity. This letter of credit, surety bond or bank guarantee must be equal in value to the advance payment and must be accepted by the Procuring Entity.

### **How can the Procuring Entity recover the advance payment it made to a contractor?**

The Procuring Entity must recover the advance payment by deducting from the progress payments to the contractor fifteen percent (15%) until the advance is fully recouped within the duration of the contract, and before full payment is made to the contractor.

The contractor may reduce his standby letter of credit or guarantee/surety instrument by the amounts recovered to recoup the advance payment.

### **Are incentive bonuses allowed?**

No incentive bonus, in whatever form or for whatever purpose, must be allowed.<sup>16</sup> **(2016 IRR Section 42.4)**

## **Progress Payment**

### **How are progress payments made?**

The first progress payment may be paid by the Procuring Entity to the contractor provided at least 20% of the work had been accomplished as certified by the Procuring Entity's representative. Thereafter, payments can be made once a month, provided that the latter submits a Progress Billing or a request for payment for work accomplished. Such request for payment, including the Statement of Work Accomplished by the contractor, must be verified and approved by the government project engineer concerned. Except as otherwise stipulated in the ITB, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

The Procuring Entity has the right to deduct from the contractor's progress billing such amount as may be necessary to cover third party liabilities. It must not process any progress payment unless the discovered defects are corrected.

## **Retention Money**

### **What is "retention money" and why is it withheld?**

"Retention money" refers to the amount equal to ten percent (10%) of the progress payments, before deductions are made, that is withheld by the Procuring Entity to cover the uncorrected discovered defects and third party liabilities. It is collected from all progress payments until works equivalent to fifty percent (50%) of the value of works, as determined by the Procuring Entity, is accomplished. 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 continue to be imposed.

The total "retention money" shall be due for release after the defects liability period, upon final acceptance of the works.

The contractor may request the Procuring Entity that, instead of retention money being withheld from each progress billing, it issues in favor of the government, irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on

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<sup>16</sup> For FAPs, provision may be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the procuring entity. The option to grant incentive bonus is given by the IFIs to the procuring entity.

demand. These financial instruments must be of amounts equivalent to the retention money substituted for and acceptable to government. They must also be valid for a duration to be determined by the concerned implementing office/agency or Procuring Entity and will answer for the purpose for which the ten percent (10%) retention is intended. The Procuring Entity, for its part, may agree to the request, provided that the project is on schedule and is satisfactorily undertaken.<sup>17</sup>

## **Final Payment**

### **In what manner are the final payments for a project made?**

The final payment will be made upon one hundred percent (100%) completion of the work. The final payment shall still be subject to retention of ten percent (10%) to cover for all defects that may be detected, including maintenance costs for one year after project completion. The final payment shall still be reduced by whatever balance remains of the amount that is needed in order to return to the government the 15% advance payment previously made to the contractor.

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<sup>17</sup> For FAPs, the usual percentage of retention is from five percent (5%) to ten percent (10%).

## Variation Orders

### Legal Reference:

2016 IRR Annex "E" provides the rules in relation to Variation Orders.

### What is a Variation Order?

A Variation Order refers to any increase/decrease in quantities within the general scope of the project as bid and awarded, in any of the following aspects:

1. Introduction of new work items that are not included in the original contract; or
2. 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 pre-construction plans used for purposes of the 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, or during actual construction.

A Variation Order may either be in the form of a Change Order or Extra Work Order.

A Change Order covers any increase/decrease in quantities of original work of items in the contract.

An Extra Work Order covers the introduction of new work necessary for the completion/improvement or protection of the project which are not included as items of work in the original contract. As an example, there may be subsurface or latent physical conditions at the site that differ materially from those indicated in the contract. There might also be duly unknown physical conditions at the site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.

The addition/deletion of works should be within the general scope of the project as bid and awarded, and the deletion of the work should not affect the integrity and usefulness of the structure.

### When can the Procuring Entity issue a Variation Order?

Variation Orders may be issued by the Procuring Entity concerned at any time during contract implementation. However, the adjustment provided for in these orders must be necessary to fully meet the requirements of the project. The issuance of a Variation Order, must conform to the following:

1. That there will not be any short changes in the original design;
2. That it will not affect the structural integrity and usefulness of the structure; and
3. That it is covered by a CAF.

### How much Variation Order is allowed?

The net cumulative amount of the Variation Order should not exceed positive ten percent (+10%) of the original project cost. The scope of work, however, shall not be reduced so as to accommodate a positive Variation Order.

If the adjustments provided for in a Variation Order costs more than ten percent (10%) of the original project costs, these shall be the subject of another contract to be bid out if the works

are separable from the original contract. However, if these adjustments are urgently necessary to complete the original scope of work, the HoPE may authorize the Variation Order beyond ten percent (10%) but not more than twenty percent (20%), subject to the guidelines to be determined by the GPPB.

In case the Variation Order exceeds ten percent (10%), the Procuring Entity must ensure that appropriate sanctions are imposed on the designer, contractor or official responsible for the original detailed engineering design which failed to consider the conditions that led to the need for adjustments costing more than ten percent (10%) of the original total contract price.

### **What are the conditions under which a contractor may start work under Variation Orders and receive payments?**

Under no circumstances can a contractor proceed to commence work under any Change Order or Extra Work Order unless the HoPE or his/her duly authorized representative has approved the order.

The Procuring Entity's representative/Project Engineer may, subject to the availability of funds and within the limits of his delegated authority, authorize the immediate start of work under any Change Order or Extra Work Order, subject to any or all of the following conditions:

1. In the event of any emergency where the prosecution of the work is urgent to avoid any detriment to public service, or damage to life and/or property; and/or
2. When time is of the essence.

However, the 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. Furthermore, immediately after the start of work, the corresponding Change Order or Extra Work Order must be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after approval of the same by the HoPE or his duly authorized representative.

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

### **What rules govern price adjustments due to a Variation?**

The payment to the contractor for additional work under Variation Orders, must be derived based on the following:

1. For additional/extra works duly covered by Change Orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items in the original contract shall be used.
2. For additional/extra works duly covered by Extra Work Orders involving new work items that are not in the original contract, the unit prices of the new work items shall be based on the direct unit costs used in the original contract (*e.g.*, unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both the government and the contractor. The direct unit costs of new components must also be based on the contractor's estimate as validated by the Procuring Entity via documented canvass in accordance with existing rules and regulations. The direct cost of the new work item must then be combined with the mark-up factor (*i.e.* taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

The request for payment by the contractor for any extra work must be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. This request for payment must be included in the contractor's statement for progress payment.

### **Who are the parties involved in the issuance of a Variation Order?**

The following parties are involved in the issuance of a Variation Order:

1. The Implementing Unit or end-user unit;
2. The contractor;
3. The HoPE or his duly authorized representative.

### **Methodology: How is a Variation Order issued?**

The following must be undertaken in issuing a Variation Order:

1. Within seven (7) calendar days after the contractor has commenced work or within twenty eight (28) calendar days after the circumstances or reasons justifying a claim for extra cost shall have occurred, the contractor should have delivered a notice giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim.
2. If the Procuring Entity's representative/Project Engineer finds that a Change Order or Extra Work Order is justified, he/she must prepare the proposed order, accompanied with the following:
  - a. Notices submitted by the contractor;
  - b. The plans to effect the adjustments;
  - c. The contractor's computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof; and
  - d. A detailed estimate of the unit cost of such items of work, together with the justifications for the need of such Change Order or Extra Work Order

The Procuring Entity's representative/Project Engineer then submits the same to the HoPE for approval .

3. The HoPE or his duly authorized representative, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the appropriate technical staff or office of the Procuring Entity to conduct an on-the-spot investigation to verify the need for the work to be prosecuted and to review the proposed plan, and prices of the work involved.
4. The technical staff or appropriate office of the Procuring Entity shall submit a report of their findings and recommendations, together with the supporting documents, to the HoPE or his duly authorized representative for consideration.
5. The HoPE or his duly authorized representative, acting upon the recommendation of the technical staff or appropriate office, shall approve the Change Order or Extra Work Order after being satisfied that the same is justified, and in order.

6. Upon approval by the HoPE or his duly authorized representative, the Implementing Unit or end-user unit shall notify the contractor to proceed with the work/delivery of items in accordance with the amendment.
7. The Implementing Unit shall likewise post the Variation Order in the PhilGEPS and website of the Procuring Entity, if any.
8. The contractor shall proceed with the work/delivery of items in accordance with the amended contract.

The timeframe for the processing of Variation Orders from the preparation up to the approval by the Procuring Entity concerned should not exceed thirty (30) calendar days.

## Suspension of Work

### Legal Reference:

2016 IRR Annex "E" provides the rules in relation to contract suspension.

### When can the Procuring Entity suspend work?

The Procuring Entity has the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary due to the following:

1. Force majeure or any fortuitous event;
2. Failure on the part of the contractor to:
  - a. Correct bad conditions which are unsafe for workers or for the general public;
  - b. Carry out valid orders given by the Procuring Entity;
  - c. Perform any provisions of the contract; or
  - d. 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.

### When can the contractor suspend work?

The contractor or its duly authorized representative has the right to suspend work operation on any or all projects/activities along the critical path of activities due to any of the following:

1. There exist right-of-away problems that prohibit the contractor from performing work in accordance with the approved construction schedule;
2. Requisite construction plans, which must be furnished by the Project Owner, are not issued to the contractor, in the process precluding any work called by such plans.
3. Peace and order conditions make it extremely dangerous, if not impossible, to work, such conditions having been certified in writing by the PNP station which has responsibility over the affected area and confirmed by the DILG Regional Director;
4. There is a failure on the part of the Procuring Entity to deliver government- furnished materials and equipment as stipulated in the contract; or
5. The payment of the contractor's claim for progress billing beyond forty-five (45) calendar days from the time the claim has been certified by the Procuring Entity's authorized representative as having been supported by complete documentation, unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

The contractor may suspend work fifteen (15) calendar days after the district engineer/regional director/consultant or equivalent official, as the case may be, have received a written notice of the suspension of work.

### Should the period of work suspension be considered in extending the contract time?

Yes, but only in cases when the total suspension or suspension of activities along the critical path is not due to the fault of the contractor. In such cases, the elapsed time between the effective order suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

### **Can the contract price be adjusted as a result of work suspensions?**

No. No payment can be made to the contractor for any standby time expense during the suspension period, except when prior clearance is secured from the HoPE and for justifiable reasons.

### **When must the contractor resume work?**

Work must be resumed either upon notice from the Procuring Entity of the lifting of the suspension order or upon the expiration of the suspension order.

### **Who are the parties involved in the issuance of a Suspension Order?**

The following parties are involved in the issuance of a Suspension Order

1. End-User Unit/Implementing Unit;
2. The HoPE or his/her duly authorized representative; and
3. The contractor.

### **Methodology: How is a Suspension Order issued?**

The following steps are undertaken in the issuance of a suspension order by the Procuring Entity:

1. The Implementing Unit or end-user unit determines the existence of any of the grounds for suspension enumerated above.
2. The Implementing Unit or end-user unit drafts the suspension order for the approval of the HoPE.
3. The suspension order is issued to the contractor, stating the grounds therefor.
4. Prior to the expiration of the suspension order, the Implementing Unit or end-user unit shall determine whether or not the grounds for suspension still exist.
  - a. 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.
  - b. If, however, the grounds for suspension no longer exist, and continuation of the work is practicable, the Implementing Unit, with the approval of the HoPE or his/her duly authorized representative, shall lift the suspension order and notify the contractor to proceed with the work/delivery of items in accordance with the amended contract.

## Contract Time Extension

### Legal Reference:

2016 IRR Annex "E" provides the rules in relation to contract time extension.

### Can the contract time be extended?

Yes, the contractor can request for a time extension provided that:

1. There are additional work or other special circumstances that would entitle the contractor to an extension of its contract;

#### Some special circumstances to be considered for contract time extension:

1. Major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics;
2. Non-delivery on time of materials, working drawings, or written information to be furnished by the procuring entity;
3. Non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralysis of construction activities;
4. Region-wide or nationwide shortage of construction materials, as certified by the DTI Secretary;
5. Region-wide or nationwide general labor strikes, as certified by the DOLE Secretary; and
6. Serious peace and order problems as certified by the DILG, or AFP Provincial Commander and approved by the DND Secretary.

2. The affected activities fall within the critical path of the PERT/CPM network; and

3. The contractor shall have notified the Procuring Entity that the amount of additional work or the occurrence of the special circumstance merits the extension of its contract, and that it had done so before the expiration of the contract and within thirty (30) calendar days after the start of the additional work or of the special circumstance has arisen.

If the contractor fails to notify the Procuring Entity within the time period provided for, it waives any claims to contract extension.

Upon receipt of full and detailed particulars, the Procuring Entity shall examine the facts and extent of the delay and shall extend the contract time completing the contract works when, in the Procuring Entity's opinion, the findings of fact justify an extension.

### Under what circumstances should the Procuring Entity automatically disapprove a request for contract extension?

No extension of contract time will be granted if the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection. The contract period includes a particular number of unworkable days, to cover days when unfavorable weather conditions and special circumstances not within the control of the contractor prevent any work from being done. This number of unworkable days should be consumed first before any contract extension can be considered. For example, if the total project duration is two hundred (200) calendar days inclusive of the forty-five (45) calendar days of unfavorable weather condition, the contractor

cannot claim for time extension citing unfavorable weather condition if the forty-five (45) calendar days anticipated unfavorable weather condition has not been consumed.

Thus, no contract extension must be given to a contractor due to:

1. Ordinary unfavorable weather conditions, in that such weather conditions had already been taken into consideration and anticipated in the computation of the unworkable days; and
2. Inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials.

If the reason of unfavorable weather condition will be used for the time extension, the considerations of both nationwide and region wide conditions should be looked into, using the records from PAGASA.

### **Methodology: How must a request for extension be handled?**

If a contractor incurs a delay and wishes to request for an extension of the completion or construction period:

1. It must submit a written request to the Implementing Unit or end-user unit for an extension of the completion or construction period, citing the reason/s for such delay.
2. The Implementing Unit or end-user unit shall either approve or disapprove the request for extension.
3. If the extension is granted, the liquidated damages shall not be imposed and the contractor will be so informed in writing.
4. If, however, the request for extension is denied, the Implementing Unit or end-user unit shall inform the contractor in writing of such denial, and ensure that the said notice or communication is received by the latter within a reasonable time from receipt of the request for extension. The Procuring Entity then imposes the liquidated damages in accordance with the provisions of the contract and the procedures outlined below Steps 2 to 3.

If the Contractor incurs a delay and there is no request for extension:

1. The Implementing Unit or end-user unit shall, within a reasonable time from the first day of delay, inform the contractor that the Procuring Entity will impose the liquidated damages agreed upon by the parties.
2. Upon contract completion, the Implementing Unit or end-user unit and the Acceptance Committee shall record the delay in the inspection documents, noting therein the amount of the liquidated damages imposable on the contractor.
3. The amount of liquidated damages due shall be deducted from the total amount payable to the contractor, and the same shall be reflected in the disbursement vouchers. Or, if the contract provides that the liquidated damages shall be collected from securities or warranties posted by the contractor, the Implementing Unit or end-user unit shall so inform the official authorized to call on the securities or warranties about the delay and the corresponding liquidated damages imposable.

## Delays in Work Completion and Liquidated Damages

### Legal Reference:

2016 IRR Section 68 and Annex "E" provide the rules in relation to delivery and liquidated damages.

### What is the rule on the applicable period for the completion of work?

The contractor must complete the work procured within the period prescribed by the Procuring Entity as specified in the contract.

If delays are likely to be incurred, the contractor must notify the Procuring Entity in writing, stating therein the duration and causes of the expected delay. The Procuring Entity may grant time extensions, at its discretion, if such extensions are meritorious, with or without liquidated damages. Maximum allowable extension shall not exceed the original construction period.

In all cases, the request for extension shall always be filed before the expiry of the original completion date.

### What are liquidated damages?

Liquidated damages are damages agreed upon by the parties to a contract, to be paid in case of breach thereof. **(Civil Code of the Philippines Article 2226)**

### What are the grounds for the imposition of liquidated damages?

When the contractor refuses or fails to satisfactorily complete the works under the contract within the specified contract duration, plus any time extension duly granted, and is thus considered in default under the contract, it will be liable for liquidated damages for the delay. The Procuring Entity need not prove that it has incurred actual damages to be entitled to liquidated damages from the contractor, and the same shall not be by way of penalty. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or collect such liquidated damages from the retention money or other securities posted by the contractor, whichever is convenient to the Procuring Entity.

### What is the amount of Liquidated Damages that can be imposed upon the contractor?

The amount of the liquidated damages shall be at least equal to one-tenth of one percent (.001) of the cost of the unperformed portion for every day of delay. A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned Procuring Entity.

### What action may the Procuring Entity take if the contractor continues to be delayed?

Aside from collecting on the liquidated damages, once the cumulative amount of liquidated damages reaches ten percent (10%) of the contract amount, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances. The Procuring Entity may also take over the contract or award the

same to a qualified supplier through negotiation. In addition to the liquidated damages, the erring contractor's performance security shall also be forfeited.<sup>18</sup>

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<sup>18</sup> For FAPs, the applicable liquidated damages is at least 1/10 of 1% of the cost of unperformed portion for every day of delay. The maximum deduction shall be 10% of the amount of the contract, and the procuring entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.

## Contract Termination for Default, Unlawful Acts or Insolvency

### Legal Reference:

Guidelines on Termination of Contracts, approved by the GPPB through Resolution 018-2004, dated December 22, 2004.

### When may a Procuring Entity terminate a contract for Default?

The HoPE may terminate a contract for default when any of the following conditions attend its implementation:

1. Due to the contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with P.D. 1870;
2. 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; or
3. The contractor:
  - a. Abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;
  - b. 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;
  - c. Does not execute the works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
  - d. Neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
  - e. Sub-lets any part of the contract works without approval by the Procuring Entity.

The rescission of the contract shall be accompanied by the forfeiture by the Procuring Entity of the contractor's performance security. The contractor will also be recommended for blacklisting.

### May a Procuring Entity terminate a contract by reason of Unlawful Acts?

The Procuring Entity may terminate the contract in case it is determined *prima facie* that the contractor has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

1. Corrupt, fraudulent, collusive and coercive practices;
2. Drawing up or using forged documents;
3. Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
4. Any other act analogous to the foregoing.

**May a Procuring Entity terminate a contract by reason of Insolvency?**

Yes. The Procuring Entity should terminate the contract if the contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the contractor.

**Under what conditions and how may a contractor terminate its contract with a Procuring Entity?**

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:

1. 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; or
2. The prosecution of the work is disrupted by the adverse peace and order situation, as certified by the AFP Provincial Commander and approved by the DND Secretary.

The contractor must serve a written notice to 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.

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

## **Contract Termination for Convenience**

### **May termination be allowed for reasons other than those attributable to the contractor?**

The Procuring Entity, by written notice sent to the contractor, may terminate the contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the Procuring Entity's convenience, the extent to which performance of the contractor under the contract is terminated, and the date upon which such termination becomes effective.

### **What circumstances may constitute sufficient grounds to terminate a contract for convenience?**

Any of the following circumstances may constitute sufficient grounds to terminate a contract for convenience:

1. 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
2. The HoPE has determined the existence of conditions that make project implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies.

## **Contract Completion**

### **Legal Reference:**

2016 IRR Annex "E" provides the rules in relation to contract completion.

### **What should the Procuring Entity do in anticipation of contract completion?**

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

## Warranty

### Legal Reference

2016 IRR Section 62 provides the rules in relation to Warranty.

### What is the purpose of a Warranty?

A warranty is required to ensure that the contractor will correct structural defects and failures. It should be noted that a one-year period after the completion of the project, called the defects liability period, is observed until final acceptance by the Procuring Entity. At any rate, the length of the warranty period will depend on the nature of the project.

### What are the arrangements during the Defects Liability Period?

The defects liability period for infrastructure projects shall be one year from project completion up to final acceptance by the government. As such, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the government and shall be held responsible for any damage or destruction of the works except those occasioned by force majeure. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work. During this period, the contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure projects on account of

#### How's that again?

##### On the warranty

During the defects liability period, the contractor shall post a warranty security in the form and amount prescribed below. In turn, the government will return to the contractor its Performance Security and issue the Certificate of Final Acceptance.

the use of materials of inferior quality within ninety (90) days from the time the HoPE has issued an order to undertake repair. In case of contractor's failure or refusal to comply with this mandate, the government shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand at the cost of the contractor. **(2016 IRR Section 62.2.2.1)**

Any contractor who fails to comply with the preceding paragraph shall have his performance security forfeited by the Procuring Entity, suffer perpetual disqualification from participating in any

public bidding and his property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of government in his favor shall be offset to recover the costs. **(2016 IRR Section 62.2.2.2)**

As security for the above responsibilities, the contractor shall be required to put up a warranty security in accordance with the following schedule:

Form of Warranty Security	Amount of Warranty Security (Not less than the % of Total Contract Price)
1. Cash or Letter of Credit (LC) issued by a Universal or Commercial Bank: Provided, however, that the LC shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank;	Five Percent (5%)
2. Bank Guarantee confirmed by a Universal or Commercial Bank; or	Ten Percent (10%)
3. Surety Bond callable upon demand issued by GSIS or	Thirty Percent (30%)

a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	
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### What's that?

#### On Bank Guarantees

A special bank guarantee should be contract specific, that is, it shall be executed for the specific purpose of covering the warranty for the subject procurement contract.

### What are the arrangements during the Warranty Period?

After final acceptance of the project by the government, the contractor shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties: **(2016 IRR 62.2.3.3)**

1. Permanent Structures: Fifteen (15) years

Buildings of types 4 (steel, iron, concrete, or masonry construction with walls, ceilings, and permanent partitions of incombustible fire resistance) and 5 (steel, iron, concrete, or masonry construction), steel and concrete bridges, flyovers, concrete 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;

2. Semi-Permanent Structures: Five (5) years

Buildings of types 1 (wooden), 2 (wood with 1 hour fire resistance), and 3 (masonry and wood construction), concrete roads, asphalt roads, concrete river control, drainage, irrigation lined canals, river landing, deep wells, rock causeway, pedestrian overpass, and other similar semi-permanent structures; and

3. Other Structures: Two (2) years

Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.

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

### What if the project is a combination of different types of structures?

A schedule of warranty shall be made to cover the warranty for the different types of structures for the project.

### Who will be held responsible for defects/failures during the Warranty period?

In cases where structural defects and/or failures arise during the warranty period, the following persons/parties shall be held liable: **(2016 IRR Section 62.2.3)**

1. Contractor – Where structural defects and/or failures arise due to faults attributable to improper construction use of inferior quality/substandard materials, and any violation of the contract plans & specifications, the contractor shall be held liable;
2. Consultants – Where structural defects and/or 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;

3. Procuring Entity's Representatives/Project Manager/Construction Managers and Supervisors - The project owner's representative(s), project manager, construction manager, and supervisor(s) shall be held liable in cases where the structural defects/failures are due to his/their willful intervention in altering the designs and other specifications; negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project;
4. Third Parties - Third Parties shall be held liable in cases where structural defects/failures are caused by work undertaken by them such as leaking pipes, diggings/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.
5. Users - In cases where structural defects/failures are due to abuse/misuse by the end user of the constructed facility and/or non-compliance by a user with the technical design limits and/or intended purpose of the same, then the user concerned shall be held liable.

The term "structural defects" shall mean major faults/flaws/deficiencies in one or more key structural elements of the project which may lead to structural failure of the completed elements or structure. The term "Structural Failures" is defined as an occurrence 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. **(2016 IRR Section 62.2.3)**

In case of structural defects/failures occurring during the applicable warranty period provided above, 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, of 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. **(2016 IRR Section 62.2.4)**

## General Procurement Activities and Timeline for Infrastructure Projects

Below are the earliest possible time and the maximum period allowed for procurement of infrastructure projects. **(2016 IRR Annex C)** The shortest possible time is 25 calendar days and the maximum period is 141 calendar days for projects with ABC of PhP50,000,000 and below, and 156 calendar days for projects with ABC of above PhP50,000,000. The said periods do not include the time allotted for approval of contract by higher authority.

Procurement Activity	Minimum calendar days	Operational Timeline (Earliest Possible)	Maximum calendar days	Operational Timeline (Maximum Period)	Conditions/ Remarks
Pre-procurement Conference	1	Day 0	<i>Whenever necessary</i>	0	Optional for project with ABC of PhP5M and below
Advertisement/ Posting of Invitation to Bid	7 CDs	Day 1 to 7	7 CDs	Day 1 to 7	
Pre-bid Conference	1 CD	Day 8	<i>Whenever necessary</i>	Day 8 to 45 Or Day 8 to 60	<ul style="list-style-type: none"> <li>• Optional for project with ABC of less than PhP1M</li> <li>• Not earlier than 7 CDs from Day 1 of posting of IB</li> <li>• At least 12 CDs before deadline of submission and receipt of bids</li> </ul>
Deadline for Submission and Receipt of Bids/Bid Opening	1 CD	Day 20	50 CDs (for ABC = PhP50M and below) 65 CDs (for ABC = above PhP50 M)	Day 57 <hr/> Day 72	
Bid Evaluation	1 CD	Day 21	7 CDs	Day 58 to 64 <hr/> Day 73 to 79	
Post-qualification	1 CD	Day 22	45 CDs	Day 65 to 109 <hr/> Day 80 to 124	
Approval of Resolution/ Issuance of Notice of Award	1 CD	Day 23	15 CDs	Day 110 to 124 <hr/> Day 125 to 139	
Contract Preparation and Signing	1 CD	Day 24	10 CDs	Day 125 to 134 <hr/> Day 140 to 149	
Approval of Contract	1 CD		20 CDs or		<i>If necessary</i>

Procurement Activity	Minimum calendar days	Operational Timeline (Earliest Possible)	Maximum calendar days	Operational Timeline (Maximum Period)	Conditions/ Remarks
by Higher Authority			30 CDs		
Issuance of Notice to Proceed	1 CD	Day 25	7 CDs	Day 135 to 141 Day 150 to 156	
TOTAL TIME		25 CDs		141 CDs OR 156 CDs	<i>Excluding Approval of Higher Authority</i>

## Case Study: Procurement of Infrastructure Projects

A concrete road project with an ABC of ₱10.0 million was advertised for bidding. Twenty (20) contractors submitted their bids on or before the deadline for submission and receipt of bids specified in the Invitation to Bid and the Bidding Documents. On the date and time of the opening of bids, the technical bid envelopes were opened. The eligibility and technical bid documents of the 20 contractors were examined using the non-discretionary “pass/fail” criteria. Only ten (10) contractors were found to be complying with the eligibility and technical bid requirements.

The financial envelopes of the 10 contractors were opened and all were deemed complying with the financial bid requirements. After reading all the financial bids, Contractor A, which submitted a bid of ₱8.5 million, was declared the bidder with the LCB. The second lowest bid was ₱9.1 million, submitted by Contractor B.

During the Detailed Bid Evaluation, the bid of Contractor A was corrected for arithmetical errors. The recalculated bid of Contractor A went up to ₱9.0 million.

During the Post-Qualification, Contractor B wrote the BAC Chairman and informed him that Contractor A has an on-going project with outstanding works of about ₱40.0 million. This project was apparently not taken into consideration in Contractor A’s submitted calculation of its NFCC, a requirement for eligibility.

The BAC called the attention of Contractor A on the matter of the deficient NFCC. In reply, Contractor A posted a credit line in an amount which is more than enough to cover for the difference between its real NFCC and the ABC. The bid of Contractor A seemed to be responsive, especially since it has all the required personnel and equipment needed for the project, and has done all its previous projects satisfactorily with no negative slippage at all. Further, there is political pressure on the BAC to award the contract to Contractor A as it is being endorsed by the Congressman in the locality of the project.

In comparison, the bidder with the second lowest bid, Contractor B, has completed all its previous projects satisfactorily, suffering only a negative slippage of – 12% in one of its projects. Further, its legal, technical and financial requirements would have passed the Post-Qualification. The BAC is wary of it though as its owner is the first cousin of the BAC Chairman.

The BAC will meet to deliberate on the award of the project.

### Analysis:

The BAC should award the project to Contractor B, not to Contractor A, primarily because: (a) Contractor A is not eligible in the first place; and (b) Contractor B submitted the lowest bid among all the others who have been found complying with the eligibility and technical bid requirements.

Contractor A is not eligible. While the eligibility requirements it submitted passed the Eligibility Check, information that the BAC gathered during Post-Qualification shows that Contractor A misrepresented itself by not reporting its on-going project, whose outstanding works would have a negative impact on its NFCC.

2016 IRR Section 23.6 says: *“Notwithstanding the eligibility of a prospective bidder, the Procuring Entity concerned reserves the right to review its qualification at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder’s capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the*

*preset eligibility criteria, the Procuring Entity shall consider the said prospective bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract."*

While Contractor A posted a credit line enough to compensate for the difference in its NFCC and the project's ABC, the BAC should not have accepted the credit line because: 1) this is tantamount to an improvement in the qualification/bid of Contractor A; and 2) the procurement rules allowing submission of a credit line or a cash deposit certificate have been amended and no longer applied.

In fact, Contractor A should be penalized in accordance with 2016 IRR Section 65.3 for submitting false information. This section penalizes the act of submitting eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.

If proven to be guilty of the above, the bidder may be penalized with imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years.

At this point, the BAC should have disqualified Contractor A despite: (a) its apparent capability to undertake the contract as is shown by its other submitted requirements such as lists of personnel and equipment and its good track record; (b) its bid being the lowest; and (c) its closeness to the Congressman, which does not have a bearing on the bidding process.

It must be clear in the minds of the BAC that the reason for having an Eligibility Check/Screening prior to the submission of Bids is to allow the BAC to sift among the many interested bidders and deal only with those that are eligible, based on some pre-set criteria. Thus, if a bidder is not eligible, the BAC should not think twice about disqualifying it even if it appears to be capable based on its technical and/or financial envelopes. The advantage of having this step-by-step procedure is that it minimizes discretion of the BAC and saves/protects it from having to face dilemmas of this sort.

In view of the foregoing, the BAC would have to award the contract to the bidder which submitted the second lowest bid, Contractor B, among all the others who have been found eligible and technically complying. While Contractor B has had a negative slippage of -12% in his other projects, the eligibility requirement on track record only requires that the negative slippage, if any, be not more than -15%, or at least two projects with a negative slippage of at least -10%. Further, while the owner of Contractor B is a first cousin of the BAC Chairman, it is still not in violation of 2016 IRR Section 47.1, because the prohibition refers to the participation of bidders related to the members of the BAC within the third civil degree. A first cousin falls within the fourth civil degree.