

VOLUME 4

Manual of Procedures for the Procurement of Consulting Services

MANUAL OF PROCEDURES FOR THE PROCUREMENT OF CONSULTING SERVICES

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ABBREVIATIONS AND ACRONYMS

ABC	Approved Budget for the Contract
APP	Annual Procurement Plan
BAC	Bids and Awards Committee
BDS	Bid Data Sheet
BIR	Bureau of Internal Revenue
BSP	Bangko Sentral ng Pilipinas
CDA	Cooperatives Development Authority
CSC	Civil Service Commission
DTI	Department of Trade and Industry
E.O.	Executive Order
FAP	Foreign Assisted Project
GAA	General Appropriations Act
GCC	General Conditions of Contract
GFI	Government Financial Institution
GOCC	Government-owned and/or –controlled corporation
GoP	Government of the Philippines
GPPB	Government Procurement Policy Board
GPPB-TSO	GPPB – Technical Support Office
HoPE	Head of the Procuring Entity
HRB	Highest Rated Bid
HRRB	Highest Rated Responsive Bid
IFI	International Financing Institution
2016 IRR	The 2016 Revised Implementing Rules and Regulations of R.A. 9184
ITB	Instructions to Bidders
JVA	Joint Venture Agreement
LGU	Local Government Unit
MYOA	Multi-Year Obligational Authority
NGA	National Government Agency
NOA	Notice of Award
NTP	Notice to Proceed

PBDs	Philippine Bidding Documents
PhilGEPS	Philippine Government Electronic Procurement System
PMO	Project Management Office
PPMP	Project Procurement Management Plan
QBE	Quality-Based Evaluation Procedure
QCBE	Quality-Cost Based Evaluation Procedure
R.A.	Republic Act
R.A. 9184	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"
REI	Request for Expression of Interest
RFP	Request for Proposals
SARO	Special Allotment Release Order
SCC	Special Conditions of Contract
SEC	Securities and Exchange Commission
SRRB	Single Rated and Responsive Bid
SUCs	State Universities and Colleges
TOR	Terms of Reference
TWG	Technical Working Group

SECTION 1

Introduction

Scope of Volume 4

This Manual seeks to provide its users with clear, concise, and accurate information on the **public procurement of consulting services**, 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 officials in all stages of consulting services procurement, from the preparation of bid documents, to the actual conduct of the bidding activity, monitoring of contract implementation and the final payment to the consultant.

This Manual focuses on public procurement of consulting services. The procedures are harmonized to a large extent with the IFIs and bi-lateral 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.

CONSULTING SERVICES are services for infrastructure projects and other types of projects or activities of the government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the Government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. **(2016 IRR Section 5 [i])**

What are the types of consulting services?

Consulting services can be divided into six (6) broad categories, namely: **(2016 IRR Annex "B")**

1. Advisory and Review Services

These services include advice on particular projects or problems. These will include advice on and review of, among others, planning, design and other professional services, as well as management, production, inspection, testing and quality control. They also include such services as appearances before commissions, boards or other judicial bodies to give evidence or otherwise submit professional opinions.

2. Pre-Investment or Feasibility Studies

These are the studies which normally precede decisions to go (or not to go) forward with specific projects. These studies may have as their objectives:

- a. To establish investment priorities and sector policies - Studies conducted for this objective include basic resource inventories, such as, river basin surveys, transport sector surveys, and studies of alternative development patterns and of sectors on a regional or nationwide scale;
- b. To determine the basic features and the feasibility of individual projects - Studies toward this objective include functional designs, project site selections, architectural and space programming and physical layout of specific projects, preliminary designs and cost estimates, and the economic, financial and environmental impact analyses required for project evaluation; or
- c. To define and propose changes in governmental policies, operations and institutions necessary for the successful implementation or functioning of investment projects - Studies undertaken in pursuit of this objective include analyses of project related organizations, administrative problems, planning

machinery, regulatory and marketing policies, accounting and management systems, and manpower resources and training requirements.

3. Design

This type of services normally consists of three (3) phases:

- a. **Pre-Design Phase**, which establishes the general size and scope of the project and its location on the site. The consulting services under this category include reconnaissance, topographical and other engineering and land surveys, soils investigations, preparation of preliminary architectural/engineering designs, layouts, outline specifications, preliminary cost estimates, and specific recommendations prior to actual design;
- b. **Basic Design Phase**, which includes the preparation of detailed plans, designs, working drawings, specifications, detailed cost estimates and tender documents required for invitations of bids for construction works and equipment; and
- c. **Support Services During Construction**, which include assistance and advice in securing bids, tabulation and analysis of bid results, and making recommendations on the award of construction contracts, and in preparing formal contract documents; preparation of supplementary drawings required to suit actual field conditions; checking detailed construction and as-built drawings, shop and erection drawings submitted by contractors; making periodic visits to check on the general progress of work and quality of materials and workmanship; observing performance tests and start-up and making report thereon; and making a final inspection and reporting of completed project.

4. Construction Supervision

Consulting services under this category include:

- a. Inspection and expediting of the work;
- b. Verification and checking of quantities and qualities of work accomplished by the contractor as against the approved plans, specifications, and programs of work;
- c. Issuance of instructions for correction of defects on the work;
- d. Verification and recommendation for approval of statements of work accomplished and certificate of project completed by the contractor;
- e. Review and recommendation for approval of progress and final billings of the contractor; and
- f. Provision of record or as-built drawings of the completed projects.

The above do not mean direction, superintendence or management of construction.

5. Management and Related Services

The services under this category, on the other hand, include:

- a. Sector policy and regional development studies;
- b. Planning, feasibility, market, economic, financial, technical, operations and sociological studies;
- c. Project management, including procurement advisory services, impact monitoring, and post-evaluation services;

- d. Production management, inventory control, and productivity improvement;
- e. Marketing management and systems;
- f. Information and communications technology services, including but not limited to, information systems design and development, and network design and installation;
- g. Institutional strengthening, organization development, manpower requirements, training and technology transfer;
- h. General management consultancy; and
- i. Other related services.

6. Other Technical Services or Special Studies

Other technical services include:

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

Special studies include the following:

- a. Soils investigation;
- b. Studies, tests and process determination performed to establish design criteria for water facilities;
- c. Detailed mill, shop, and / or laboratory inspection of materials and equipment;
- d. Land surveys, establishment of boundaries and monuments, and related office computations and drafting;
- e. Parcellary surveys;
- f. Engineering surveys (for design and construction) and photogrammetry;
- g. Assistance in litigation arising from the development or construction of projects and in hearings before various approving and regulatory agencies;
- h. Investigation involving detailed consideration of the operation, maintenance, and overhead expenses; and the preparation of rate schedules; earning and expense statements, feasibility studies, appraisals, evaluations, and material audits or inventories required for certification of force account construction performed by the agencies;
- i. Preparation of environmental statements and assistance to the agencies in public hearings;
- j. Preparation of operating instructions and manuals for facilities and training of personnel and assistance in initial operation of facilities;

- k. Designs to meet unique and / or above normal requirements brought about by severe earthquakes, tornadoes, or blasts, or satisfy unique or abnormal tolerances, safety requirements, etc.;
- l. Site and physical planning;
- m. Environmental and other aspects of planning;
- n. Housing;
- o. Interior design;
- p. Studies on preservation and restoration of historical, cultural, and artworks;
- q. Landscaping;
- r. Construction management; and
- s. Defense systems design, including self-reliance defense program.

Other specialized expertise not included in the above categories and to be provided for a client in the performance of a specified task over a specified period of time may also be considered as consulting services.

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

SECTION 2

Preparing for the Procurement of Consulting Services

Preparing for the Procurement of Consulting Services

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

Preparing makes for higher efficiency and better 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 activities: procurement planning, preparation of the bidding documents, and the conduct of the pre-procurement conference. Procurement planning entails ensuring that plans for procurement are linked to budgets, as well as to the agency's thrust and priorities, and strategic and operational plans, preparing the PPMP and consolidating all PPMPs into the APP. Formulating the PPMP involves identifying the procurement project requirements, writing the TOR, 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, PBDs for Consulting Services and these Manuals.

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 and to determine the readiness of the Procuring Entity to undertake the procurement. The conference focuses on the Terms of Reference, the ABC, the appropriateness and applicability of the recommended method of procurement, and the availability of pertinent budget releases, among others.

Procurement Planning

What is the purpose of procurement planning?

The purpose of procurement planning is for the procurement entity to schedule its procurement activities in advance, consistent with the agency's APP. During the planning stage, the following activities must be undertaken, among others:

- Preparation of the draft terms of reference by the end user
- Determination of the method of procurement
- Type of consultant (*e.g.* individual or firm, local or foreign)
- Determination of the Approved Budget for the Contract

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. 8292, in the case of SUCs;
3. The budget approved by the Sanggunian through an appropriations ordinance, in the case of LGUs; or
4. The budget approved by the Autonomous Regional Government of the Autonomous Region in Muslim Mindanao.

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 approved APP as consolidated from various PMPs.¹ The ABC shall be at all times consistent with the appropriations for the project authorized in the General Appropriations Act (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 the amount reflected in the MYOA or equivalent document issued by the governing board of corporations, and the local Sanggunian of LGUs.

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

In determining the ABC (keeping in mind that contract prices are fixed prices), the 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 service itself;
2. The cost of money, to account for government agencies usually buying on credit terms; and
3. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date.

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

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.

How do you compute the cost of consultancy?

The cost of consultancy for the project, which can be considered to be the ABC, shall be computed on the basis of cost to the consultant of actual services to be rendered by the consultant plus a reasonable level of management fee. The amount of management fee depends on the complexity and magnitude of the project, and other direct expenses associated to the undertakings. The cost of actual services shall be commensurate to the work to be performed by the consultant taking into consideration the prevailing industry rates for the specific field of specialization of the consultant.

The cost of consultancy shall consist of the following and shall be presented in the agreement in like manner:

1. Remuneration Costs

These are the remuneration to be paid to the consultant's staff/personnel who are directly engaged in the consulting services as per agreed manning schedule. It covers the basic rates of the staff multiplied by a billing factor of the consulting firm.

a. Basic Rates

The basic rates represent the salaries actually being received by the professional staff from the consulting firms as certified by the consultant with a sworn statement to be submitted to the Procuring Entity during negotiations, if requested by the BAC. The basic rates of all individual members of the staff shall be clearly indicated in the contract. In determining the basic rates, the following may be considered as bases:

- i. Salary history;
- ii. Industry rates; and
- iii. Two hundred percent (200%) of the equivalent rate in the Procuring Entity as the floor.

b. Billing Factor or Multiplier

The billing factor or multiplier shall be derived from the following to be supported by audited financial statements prepared by an independent auditing/accounting firm/entity:

i. Overhead Cost

These are incidental and general administrative and management expenses of the firm other than those directly related to the project, and are expressed in percent of the total of the basic salaries of all the personnel of the firm. Normally not exceeding one hundred twenty percent (120%) of the basic salary of the personnel, these expenses may include a combination of the following:

- Executive, administrative, accounting, and legal salaries, other than identifiable salaries included in the basic man-month salaries;
- Legal and corporate expenses including licenses, professional membership fees;
- Business costs including representation allowances, advertisements, promotions;

- Research and development activities including personnel development programs;
- Provision for office, electricity, water, and similar items for working space;
- Depreciation and amortization;
- Financial and banking costs including interest expenses and handling charges;
- Building and equipment insurance;
- Provision for loss of productive time of technical employees between assignments; and
- Taxes.

ii. Social Charges

These are cost items for the welfare and benefit of the consultant's staff in accordance with the policies of the consultant and of the government. Expressed as a percentage of the basic rates of the consultant's personnel, these cost items may include any or a combination of the following, based on audited and sworn statement to be submitted by the consultant to the Procuring Entity:

- Bonuses;
- Vacation/sick leave and paid public holidays;
- Medical Care;
- Pension plan – retirement and/or terminal pay;
- Company insurance; and
- Other benefits as required by law.

iii. Management Fee

This is the remuneration for the professional know-how and expertise of the consultant. The amount of fees shall be fixed as a percentage of the sum of the basic salary, overhead costs and social charges, depending on the complexity of the services rendered and other considerations, but not to exceed fifteen percent (15%).

The sum total of the basic salary, overhead, social charges and management fee as percentage of basic salary represents the billing factor or multiplier. The size of the multiplier will vary with the types of work, the organization and experience of the consultant, and the geographic area in which its office is located. The multiplier normally ranges from 2.0 to 3.0 for the technical personnel, and shall normally not exceed 1.8 for the administrative personnel directly hired for the project.

2. Reimbursable Costs

These include all other expenses associated with the execution of the services. These costs may be classified into:

a. Based on Agreed Fixed Rates

These are cost items which are payable at agreed unit rates to the staff and include the following, among others:

i. Housing Allowance

These cover housing costs, including those for power and water, for consultant's staff. It should not include food and laundry since these are basic necessities that the consultant has to spend for even without the project. In considering the housing allowance, the base of operation and the designated official station of duty of the consultant must be defined.

Tips: Let's do things easier

On per diems

Per diem rates vary for short visits and longer stays and by location within the country. Stays in cities receive higher per diem as compared to municipalities.

The base of operation is the location of the home office of the consultant while the designated official station of duty is the location outside of the base of operation where most of the consultant's staff will be working more often continuously during the duration of the services.

For local consultants, the base of operation is usually in Metro Manila, and the designated official station of duty is the project site outside Metro Manila.

Sometimes, in undertaking the services, the consultant's staff is grouped into two (2), *i.e.* those who are stationed at the base of operation and those stationed at the project site, depending on where they will be staying longer continuously during the duration of the services.

Housing allowance shall be given only for long-term consultant's staff, *i.e.* those who will be staying at the designated official station of duty continuously for more than one (1) month. The agency may also have the option to provide for housing facilities at the designated official station of duty instead of giving housing allowance. The work and manning schedules, together with the designated base of operation and the official station of duty, shall be the basis for determining the rates of housing allowance and per diem.

ii. Per Diems

These are daily allowances given to the consultant personnel while on official trips authorized by the agency and/or explicitly required in the contract as follows:

- Outside of the base of operation for consultant staff stationed there; and
- Outside of the designated official station of duty for consultant staff stationed there, except when staying at the base of operation.

Per diems shall be reckoned from a 24-hour day trip of at least 50 kilometers away from the station.

iii. For foreign consultants, miscellaneous international travel expenses such as, the cost of transportation to and from the airports, airport taxes, passports, visas, travel permits and vaccinations.

b. Based on Actual Cost

These are all other reimbursable costs that must be supported with invoices and/or other supporting papers, and include the following:

i. International Travel

This covers the cost of full fare economy class air transportation, preferably through a Filipino-owned airline, by the most direct and expeditious air routes of the consultant's expatriate staff and their eligible dependents, *i.e.*, wife and children under eighteen (18) years of age not to exceed two (2) children, from their point of origin. Eligible dependents are those of the personnel assigned to resident duty in the Philippines for periods of not less than one (1) year. For those whose period of constructive assignment is over six (6) months but less than 1 year, only the wife will be entitled for the cost of

transportation. An expatriate shall be allowed the cost of excess baggage up to 20 kilograms each per round trip.

ii. Domestic Travel

This covers the cost of full fare economy class air transportation and/or land transportation by the most direct and expeditious routes of the consultant's staff for official trips authorized by the agency and/or explicitly required in the contract.

iii. Domestic Transportation

This covers the provision of vehicles and equipment either through purchase or rental.

iv. Communication Expenses

This includes telephone, mobile, two-way radio, telegrams, Internet, parcel, freight, courier, fax and etc.

v. Cost of office/engineering supplies and cost of preparing/reproducing drawings and other documents to be submitted;

vi. Cost of field office either through rental or construction;

vii. Acquisition of software licenses; and

viii. Cost of other items deemed necessary for the project as certified by the agency concerned.

3. Contingency

Payments in respect of items of additional work within the general scope of services that may turn out to be necessary as the study progresses or costs that would exceed the estimates set forth may be chargeable to the contingency amounts in the respective estimates. However, these payments can be done only if such costs are approved by the agency concerned prior to its being incurred and provided, further, that they shall be used only in line with the unit rates and costs specified in the contract and in strict compliance with the project needs. Contingency amount must not exceed five percent (5%) of the amount of the contract.

Tips: Let's do things easier

On determining the cost of consulting services

The end-user must estimate the cost of consulting services through cost research in the local market. This study ought to focus on the monthly salaries paid to the consultant's staff, per diems for hotel and living expenses for staff away from normal duty station, air or land transportation, and other out-of-pocket expenses, to obtain a good basis for the budget. For contract duration of more than one (1) year, a reasonable percentage to cover inflation may be added to the estimate.

Per DBM Circular Letter No. 2017-9, dated 16 May 2017, it was clarified that National Budget Circular No. 433, dated 1 March 1994 and Circular Letter No. 2000-11, dated 1 June 2000, which prescribe the guidelines on the hiring of consultants and in setting the compensation of individual professional consultants, are revoked. The Circular Letter referred to RA 9184 and its IRR, including the Manual of Procedures for the Procurement of Consulting Services, that contain the step-by-step procedure in the procurement process and the factors to be considered in determining the appropriate ABC, and the basis for computing and arriving at the cost of consultancy or consultancy rate, among others.

What are the factors to be considered in setting rates for individual consultants?

In determining the rate for individual consultants, the following factors shall be considered by the procuring entity as part of the market study, thus:

1. Nature of the assignment;
2. Level of work to be performed in terms of complexity, difficulty and extent;
3. Educational Attainment, Qualifications, degree of expertise and relevant work experience required;
4. Prevailing consultancy fee based on relevant local market rates, prior or existing local consultancy contract;
5. Risks and inconveniences related to work under hardship and hazardous conditions; and
6. Any other relevant expenses related to the performance of services, which may include reimbursable costs and contingency fees.²

Procuring entities may adopt a standard range of remuneration for consultants depending on the level of expertise of the consultant, *e.g.*, junior, middle, senior and executive. Engagement of consultants on a daily or monthly rate, or by way of a lump sum contract may be considered. Procuring entities may also refer to rates prescribed by international organizations for the engagement of local consultants, if applicable.

Approved Budget for the Contract as Basis for Award

The ABC covers all individual cost components of consultancy services works such as the remuneration costs and reimbursable costs, and contingencies among others. In determining the ABC for the project, Procuring Entities, after conducting diligent market research, estimate the reasonable budget for all the cost components. The total of all estimated budget for these cost components then becomes the ABC for the particular consultancy services.

The ABC shall be the upper limit or ceiling for bid prices, such that bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. The total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, which exceed the ABC shall be disqualified. It must be noted that the rules referred to "*total calculated bid prices that exceed the ABC*" as ground for disqualifying a bid. Thus, as long as the total calculated bid prices does not exceed the ABC, the bid shall be considered responsive, regardless whether some of the cost components of the bid exceed the estimated cost for an identified component.

² Factors were based on the rate setting of UN Secretariat, UNDP, UNESCO and UNFPA, available at the following links: procurement-notices.undp.org/view_file.cfm?doc_id=20134, www.unesco.org/culture/ich/doc/src/07082-EN.doc, www.unfpa.org/sites/default/files/admin-resource/DHR_IndividualConsultant_0.pdf, and www.un.org/hr_handbook/English/.../ai20134consulta/ai20134consulta.doc accessed on 17 May 2017, 12:07 pm.

Preparing the Bidding Documents

Legal Reference

Section 17 of the 2016 IRR 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 information necessary for a prospective bidder to prepare a bid. **(2016 IRR Section 5 [e])** In preparing the bidding documents, the Procuring Entity should ensure that 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. **(2016 IRR Section 17.2)**

What are the contents of Bidding Documents?

The PBDs contain the following:³

1. Request for Expression of Interest (REI);
2. Eligibility Documents;
3. Eligibility Data Sheet;
4. Notice of Eligibility and Short Listing;
5. Instructions to Bidders (ITB);
6. Bid Data Sheet (BDS);
7. General Conditions of Contract (GCC);
8. Special Conditions of Contract (SCC);
9. Technical Proposal – Standard Forms;
10. Financial Proposal – Standard Forms;
11. Terms of Reference; and
12. Appendices.

What should the ITB provide?

The ITB should contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score. The ITB should indicate an estimate of the level of key staff inputs (in staff time) required of the consultants or the total budget.

Consultants, however, should be free to prepare their own estimates of staff time to carry out the assignment and to offer the corresponding cost in their proposals. The ITB should specify the bid validity period, which should be adequate for the evaluation of bids, finalization of contract negotiations, and decision on award.

³ The contents of the standard bidding documents for FAPs may vary.

Who shall participate in the preparation of the Bidding Documents?

The following are involved in the preparation of the bidding documents:

1. The BAC;
2. The TWG;
3. The BAC Secretariat and/or the procurement office/unit;
4. The end-user/PMO; and
5. The technical experts on the consulting services to be procured.

When should you prepare the Bidding Documents?

The bidding documents must be prepared in time for presentation at the pre-procurement conference. These documents must be finalized before the advertisement and/or posting of the REI.

How are the Bidding Documents prepared?

The BAC Secretariat and the end-user unit/PMO, with the assistance of the TWG, prepares the bidding documents following the standard forms and manuals prescribed by the GPPB. **(2016 IRR Section 17.1)** The bidding documents must contain the following information:

1. ABC and source of funds;
2. Request for Expression of Interest, including date, time and place for submission of eligibility requirements;
3. Eligibility Requirements;
4. ITB, including, the type of evaluation procedure, criteria for proposal evaluation and post-qualification, and date, time and place of the pre-bid conference (where applicable), submission of bids and opening of bids;
5. TOR, which shall be crafted by the end-user/PMO, assisted by external/internal technical experts (whenever needed) and approved by the HoPE or his authorized or approving official, and which shall define the following:
 - a. The objectives, scope and expected outputs and/or results of the proposed contract;
 - b. The expected contract duration and/or time frame;
 - c. The obligations, duties and/or functions of the consultant and government counterparts and staff, including working arrangement between the consultant, its staff and the counterpart staff;
 - d. The minimum qualifications of consultants, such as track record to be determined by the HoPE; and
 - e. The services, facilities and data, if any, to be provided to the consultants;
6. Form of bid and price form;
7. Completion schedule;
8. Form, amount and validity period of bid security;
9. Form, amount, and validity of the performance security; and
10. Form of contract, GCC and SCC.

The bidding documents shall subsequently form an integral part of the contract. Statements not made in writing at any stage of the bidding process shall not modify the bidding documents.

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 NOA, and furnish the performance security provided for in Section 39 of the Act and its IRR. **(2016 IRR Section 27.1)**

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

What is a Bid Securing Declaration?

A Bid Securing Declaration, as a form of bid security, is an undertaking stating, among others, that the bidder shall enter into contract with the Procuring Entity and furnish the required Performance Security within ten (10) calendar days from receipt of the NOA, and commits to pay a 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 in the guidelines issued by the GPPB. **(GPPB Resolution 15-2014, Guidelines on the Use of Bid Securing Declaration)**

The Bid Securing Declaration shall cease to be valid on the following circumstances:

1. Upon expiration of the bid validity period, or any extension thereof;
2. The bidder is declared ineligible or post-disqualified and failed to timely file a request for reconsideration or filed a waiver to avail of such right; or
3. The bidder is declared as the bidder with the Highest Rated and Responsive Bid and have furnished the performance security and signed the contract.

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

Aside from the Bid Securing Declaration, the bid security shall be in any of the following forms, with the corresponding required amount: **(2016 IRR Section 27.2)**⁴

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;	Two percent (2%)
b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank; or	Two percent (2%)
c. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Five percent (5%)

⁴ 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.

Who determines the form of the Bid Security to be submitted by Consultants?

The Consultant chooses from the different forms of bid security the preferred form and the corresponding amount it shall submit.

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 the bid and/or bid security validity periods submitted by the bidder be longer than that required in the Bidding Documents, this shall not be a ground for disqualification of the bidder.

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?

Failure to submit the required bid security in the prescribed form and amount shall automatically disqualify the bidder.

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 or declared as 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 **(2016 IRR Section 27.4)**. Without prejudice to the provisions of the law allowing forfeiture of bid securities, bid securities shall be returned only after the bidder with the HRRB 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, or enforced in the case of a Bid Securing Declaration, when the bidder:

1. Does not accept correction of arithmetical errors;
2. Has a finding against the veracity of the required documents submitted;

3. Being considered for award does not accept the award, or does not sign the contract within the period prescribed in the bidding documents, or fails to furnish the performance security within the period prescribed in the bidding documents;
4. In the case of a joint venture, fails to enter into a Joint Venture Agreement in the event of contract award; or
5. Is proven to commit any of the acts under Section 69 (Imposition of Administrative Penalties) of the 2016 IRR.

What is a Performance Security?

The 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 to guarantee the satisfactory completion of the project in accordance with the terms and conditions of the contract. The Performance Security shall be forfeited in the event it is established that the Consultant is in default in any of its obligations under the contract.

When shall the performance security be posted by the Bidder with the Highest Rated Responsive Bid?

Within a maximum period of ten (10) calendar days from the receipt of the NOA from the Procuring Entity, and in all cases upon 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 may be in any of the following forms with the corresponding required amounts:⁵

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;	Five percent (5%)
b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank; or	Five percent (5%)
c. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	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 corresponding amount it shall submit.

⁵ Performance securities are not required for consulting services in FAPs.

If portions of the services have already been completed and accepted by the Procuring Entity, can there be a reduction in the amount of the Performance Security?

If the contract value is reduced because part of the consulting service under the contract had already been delivered or completed, and accepted by the government, the 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 contract allows for partial deliveries or performance. Moreover, the reductions must be more than ten percent (10%), and the aggregate of such reductions must not be more than fifty percent (50%) of the original performance security.

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

The bidder with the HRRB/SRRB, 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.

In what currency shall the Performance Security be denominated?

The Performance Security shall be denominated in Philippine pesos and posted in favor of the Procuring Entity.

Methodology: How is the Performance Security posted?

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

1. The bidder with the HRRB/SRRB posts a performance security which must be at least co-terminus with the period of final acceptance of the output of the bidder as stated in the contract.
2. The procurement unit/office accepts the performance security and indicates such posting and acceptance by attaching the same to the contract.

When may the Performance Security be released?

Subject to the conditions of the contract, the performance security may be released by the Procuring Entity concerned after the issuance of the Certificate of Final Acceptance of the final report, provided that there are no claims filed against the contract awardee or the surety company. **(2016 IRR Section 39.5)**

Why is the posting of bid and performance securities required?

Prior to RA 9184, posting of bid and performance securities was not required. However, due to the increasing number of incidents wherein consultancy firms being considered for award have refused to accept the award or abandoned their ongoing consultancy assignments, the posting of such securities is now required to serve as additional protection to the government and help prevent such incidents from recurring.

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 of the project. These aspects include, among others, the TOR, the ABC, readiness of the project, applicability and appropriateness of the recommended method of procurement and the related milestones, draft bidding documents, and availability of the pertinent budget release for the project. A pre-procurement conference is conducted for consulting services with ABCs of more than One Million Pesos (₱1,000,000). Even when the ABC amounts to ₱ 1 Million and below, the BAC is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the technical requirements, warrant the holding of such a conference before the Procuring Entity proceeds with the procurement.

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 feasibility of the procurement by ascertaining, among other factors, the availability of the appropriations and programmed budget for the contract, and the adherence of the bidding documents, TOR and other related matters to relevant general procurement guidelines;
4. Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities;
5. Review, modify and agree on the criteria for eligibility screening and criteria for shortlisting, including the weights for each criterion, and ensure that the said criteria are fair, reasonable, and that they are of the "pass / fail" type and are written in such manner;
6. Determine the actual number of consultants to be included in the short list. The number shall be from three (3) to seven (7) consultants, with five (5) as the preferable number, as well as the minimum score required; **(2016 IRR Section 24.5.2)**
7. Review, modify and agree on the criteria for the evaluation of proposals, and ensure that the said criteria are fair, reasonable and applicable to the procurement at hand. The pre-procurement conference should also confirm if the evaluation procedure, i.e., quality based or quality-cost based, is consistent with that indicated in the approved PPMP. If the procedure will be quality-cost based, the BAC shall confirm that the weights for the technical and financial proposals are within the allowable range as provided for in the 2016 IRR. The weights of the financial proposal shall be from fifteen percent (15%) up to a maximum of forty percent (40%). **(2016 IRR Section 33.2.1(b)(ii))**. When the assignment can be accomplished in a fairly limited number of ways and/or involves repetitive or standardized approaches, it is recommended that the weight of the financial proposal be closer to forty percent (40%);

8. Finalize and approve the Bidding Documents; and
9. 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.

When do you conduct a Pre-procurement Conference?

The pre-procurement conference must be conducted prior to the advertisement and/or posting of the REI. **(2016 IRR Section 20.1)** At least seven (7) days prior to the advertisement and/or posting of the REI would be an advisable timeframe for the pre-procurement conference, to give the technical staff sufficient time to incorporate the necessary changes, amendments or revisions, if any, to the Bidding Documents.

Who calls for a pre-procurement conference?

The BAC calls for a pre-procurement conference.

Who are the participants of a pre-procurement conference?

The participants of the pre-procurement conference are:

1. The BAC;
2. The Secretariat;
3. Representatives of the PMO or end-user/implementing unit;
4. The members of the TWG;
5. Technical experts who assisted in the preparation of the TOR and bidding documents for the procurement at hand; and
6. Other officials concerned, as may be required.

What ought to be the criteria for the evaluation of proposals?

The technical proposals of consultants shall be evaluated based on the following criteria: **(2016 IRR Section 33.3.4)**

1. Quality of personnel to be assigned to the project. This criterion covers suitability of key staff to perform the duties of the particular assignments and their general qualifications and competence, including education and training (Recommended weight: 30%-70%);
2. Experience and capability of the consultant. The consultant’s experience and capability should include its record in previous engagements and the quality of its performance in similar and other projects. These also include its relationship with previous and current clients, overall current work commitments, the geographical distribution of its current/impending projects, and the level of attention it is going to give to the project in question. In rating a consultant on this criterion, the BAC shall consider both the overall experiences of the firm and the individual experiences of the principal and key staff, including those experiences when the staff were employed by other consultants (Recommended weight: 10%-30%); and
3. Plan of approach and methodology in delivering the services required. This criterion should emphasize the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of the interpretation of project problems, risks and the suggested solutions (Recommended weight: 20%-40%).

The BAC must assign numerical weights to each of the above criteria, and these weights must be indicated in the BDS. The relative importance of the above three (3) factors will vary with the type of consulting services to be performed. In the overall rating of the proposals, the greatest weight is normally given to the qualifications of the staff to be assigned to the project. They are the most important resources for the success of the work as they are the ones analyzing the problems and proposing solutions. The above criteria can be further subdivided to appropriately consider the requirements of the project.

The weights for each criterion, which should have been determined during the pre-procurement conference, shall add up to one hundred percent (100%).

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

SECTION 3

**Instructions on the Procedural
Steps for the Procurement of
Consulting Services**

PART ONE – COMPETITIVE BIDDING

Competitive Bidding

What is competitive bidding?

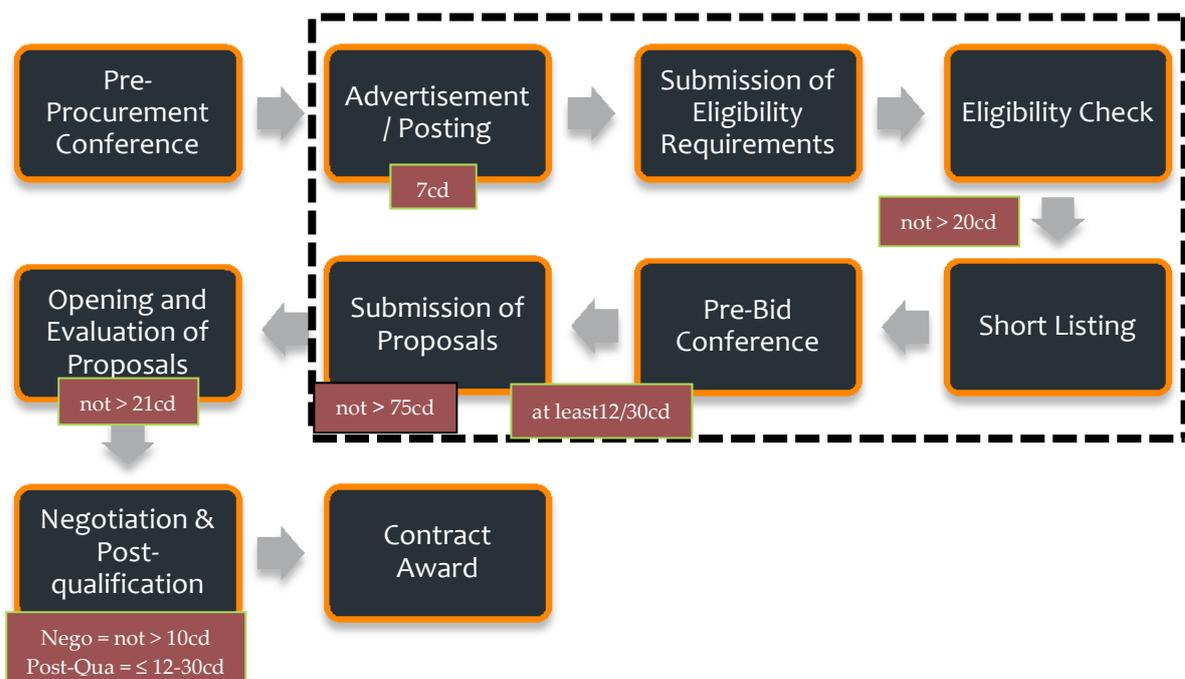
Competitive or public bidding is a method of procurement that is open to any interested and qualified party. All procurement shall be done through competitive bidding, except as provided in Rule XVI (Alternative Methods of Procurement) of the 2016 IRR (**2016 IRR Section 10**). Procuring Entity should, therefore, see to it that its procurement schedule allows for enough time to conduct such public bidding.

Competitive bidding consists of the following processes; advertisement, eligibility screening of prospective consultants, short listing, pre-bid conference, receipt and opening of bids, evaluation of bids, negotiations, post-qualification, and award of contract. (**2016 IRR Section 5 [h]**)

The period for the submission of bids reckoned from the last day of posting of the REI should not exceed seventy five (75) calendar days, (**2016 IRR Section 25.5(c)**) and 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. (**2016 IRR Section 38.2**)

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 Consulting Services.



Step 1 Advertise and Post the Request for Expression of Interest (REI)

Legal Reference

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

What is the REI?

The REI serves as the notice to the public and all interested parties of the bidding opportunities of the Procuring Entity with respect to procurement of consulting services.

Why do you post an REI?

Posting the REI 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 bids, quality- and cost-wise.

What does an REI contain?

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

1. The name of the contract to be bid, a general description of the project and other important or relevant information on the project;
2. A general statement on the criteria to be used by the Procuring Entity for
 - a. The eligibility check; and
 - b. The short listing of eligible consultants;
3. The nature of the evaluation process, that is, whether Quality-Based or Quality Cost-Based; **(2016 IRR Section 33.2.1)**
4. The required number of firms to be included in the short list;
5. The date, time and place of the deadline for the submission of the Expression of Interest together with the eligibility and short listing requirements;
6. The ABC
7. The source of funding;
8. The period of availability of the Bidding Documents, and the place, time and website where the Bidding Documents may be secured or downloaded;
9. The contract duration;
10. The name, address, telephone number, facsimile number, and e-mail and website addresses of the concerned Procuring Entity, as well as its designated contact person;
11. The Reservation Clause in accordance with Section 41 of the 2016 IRR, which is normally located at the bottom of the notice; and
12. Such other necessary information that are deemed relevant by the Procuring Entity.

When, where, and for how long do you advertise and post the REI?

The REI shall be: **(2016 IRR Section 21.2.2)**

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;
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 (advisably from the 7th calendar 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 to consider moving back the advertisement/posting thereof to allow more time to perfect the same). Advertisement shall not be required for contracts to be bid with an ABC of Five Million Pesos (P5 Million) and below.

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 REIs in the PhilGEPS website for justifiable reasons shall continue to publish its advertisements in a newspaper of general nationwide circulation. **(2016 IRR Section 21.2.1)**

Which unit shall ensure that the advertising/posting requirements of the REI are complied with?

The BAC, with assistance provided by the BAC Secretariat, shall be responsible for ensuring that the REI is advertised and posted in accordance with law.

Should there be any change in the original Bidding Documents prior to the conduct of eligibility checking and shortlisting, the BAC shall issue supplemental/bid bulletin for such purpose at least seven (7) calendar days before the deadline for the submission of eligibility documents, subject to the provisions of Section 22.5.3 of this IRR.

Methodology: How are REIs advertised and posted?

The following steps are followed in the advertising and posting of REIs:⁶

1. For public bidding of contracts with an ABC costing more than ₱5 Million:
 - a. The BAC Secretariat prepares the draft REI for review/approval of the BAC.
 - b. The BAC approves the contents of the REI during the pre-procurement conference.
 - c. The BAC Secretariat posts the REI 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;
 - d. The BAC Secretariat advertises the REI in a newspaper as described above;
 - e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the REI in the following websites: the PhilGEPS, that of

⁶ FAPs may have additional publication requirements. For this reason, reference should be made to the appropriate standard bidding documents for the project.

the Procuring Entity, 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 ₱5 Million and below, the steps mentioned in the foregoing para. 1 are to be followed, except for step 1.d.

Step 2 Issue the Bidding Documents, Accept Expressions of Interest, and Conduct Eligibility Check

Legal Reference

2016 IRR Section 24 specifies the rules in relation to the eligibility requirements for the procurement of consulting services.

Where can the Bidding Documents for a consulting services project be acquired by a prospective bidder?

A complete set of the Bidding Documents can be acquired by prospective bidders on the date and time indicated by the Procuring Entity in the Request for Expression of Interest. It may also be downloaded free of charge from the websites of the PhilGEPS and the Procuring Entity.

Under no circumstances should the bidding documents, as a whole, or individually, be divulged or released to anyone prior to their official release. Neither should these be divulged to any person with or without direct or indirect interest in the project being bid out, except those officially authorized to handle them. 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.

When should Expressions of Interest be submitted?

A prospective bidder should submit its Expression of Interest (Eligibility Documents Submission Form) together with the required eligibility documents on or before the date and time for the submission of such requirements.

What happens if only one bidder submits an Expression of Interest?

Even if only one bidder submits an Expression of Interest together with its eligibility documents, the bidding process should continue. If the bidder is later declared eligible and passes the shortlisting requirements, and submits a bid that is found to be responsive to the bidding requirements, its bid will be declared as a SRRB and be considered for contract award. **(2016 IRR Section 36)** The BAC should not reject the submitted Expression of Interest, stop the bidding process and declare a failure of bidding.

What happens if no prospective bidder submits an Expression of Interest?

If no prospective bidder submits an Expression of Interest, the BAC shall declare a failure of bidding and issue a Resolution declaring the same. The BAC shall then conduct a review of the TOR, contract terms and conditions and other provisions in the bidding documents, including the evaluation criteria. If warranted, the BAC shall, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, 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 REI with re-advertisement and/or posting, as provided in **Section 21.2 of the 2016 IRR.**

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, ABC, and/or 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.

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 the period stated in the Request for Expression of Interest. The eligibility requirements shall provide for fair and equal access to all prospective bidders.

When could consultants be hired?

Consultants may be hired if the services they would be providing is of such magnitude and/or scope as would require a level of expertise or attention beyond the optimum in-house capability of the Procuring Entity concerned and consistent with the Government's policy not to compete with the private sector. **(2016 IRR Annex B para. 2)**

Who may be hired as consultants?

In order to manifest trust and confidence in and promote the development of Filipino consultancy, Filipino consultants should be hired whenever the services required for the project are within the expertise and capability of Filipino consultants. It is only when the HoPE determines that Filipino consultants do not have the sufficient expertise and capability to render the services required under the project may foreign consultants be hired subject to the submission of documents in accordance with Section 37.1.4(a)(iv) of the 2016 IRR. Where applicable, technology and knowledge transfer to the Procuring Entity shall be required in the provision of consulting services. **(2016 IRR Annex B)** A Procuring Entity may hire a joint venture composed purely of Filipino consultants or, when circumstances require the participation of foreign consultants, a joint venture composed of Filipino and foreign consultants. The preference for Filipino consultants merely reflects Article XII of the 1987 Constitution, which mandates the government to give preference to qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony, including the purchase of goods, services and the hiring of consultants, contractors and other professionals.

The above should be read in connection with E.O. 278, s. 2004, which prescribes Guidelines for Project Loan Negotiations and Packaging of Government Foreign-Assisted Infrastructure Projects. Under Section 1 thereof, as a general rule, the government should, as much as possible, fund consultancy services for government infrastructure projects with local funds and using local resources and expertise. Consultancy services shall be proposed for foreign assistance only where foreign funding is indispensable or local funds are insufficient. For this purpose, the concerned government units should provide funds in their respective investment programs for the following consultancy services:

1. Pre-investment components which include feasibility studies and related surveys and special studies;
2. Detailed engineering design and related activities (where the project is determined to be feasible); or
3. Project Management/Supervision.

Under the same Section 1 of E.O. 278, where Filipino capability is determined by appropriate authorities to be insufficient, Filipino consultants may hire or associate themselves with foreign consultants, provided that the Filipino shall be the lead consultant. It further provides that where foreign funding is indispensable, foreign consultants for the project must enter into joint venture with Filipino consultants. It should be noted, however, that this E.O. only covers consultancy services for foreign-assisted government infrastructure projects.

The consultant must be one of the following to be able to participate in the bidding for consulting services (2016 IRR Section 24.3.1):

1. Duly licensed Filipino citizens/sole proprietorships;
2. Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
3. Corporations duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
4. Cooperatives duly organized under the laws of the Philippines; or
5. Persons/entities forming themselves into a joint venture, i.e., a group of two or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract, provided that Filipino ownership or interest thereof shall be at least sixty percent (60%). Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.

When the types and fields of consulting services involve the practice of professions regulated by law, those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

A **Foreign Consultant** may be an individual, sole proprietorship, partnership, corporation or joint venture that does not meet the citizenship, ownership, interest and/or registration/authorization requirements for a Filipino consultant, but must satisfy the following minimum requirements:

1. When the consulting services involve the practice of regulated professions, the foreign consultant must be authorized by the appropriate Philippine government professional regulatory body to engage in the practice of those professions and allied professions. It must submit any registration, license or authority before it is awarded contract; and
2. The hiring of foreign consultants should be in consonance with, or compliance of all pertinent laws and regulations of the Philippines.

Can a government employee or official become a consultant of a Procuring Entity?

Yes. A government employee or official may become a consultant on a full-time or part-time basis, provided that:

1. As a full-time consultant:
 - a. He takes a leave of absence, whether with or without pay, subject to the following rules:
 - i. A leave of absence must be contingent upon the needs of the service, *i.e.* it must not adversely affect agency operations, thus, the grant of vacation leave shall be at the discretion of the head of department/agency;

- ii. A leave without pay shall not exceed one (1) year; and
 - iii. A leave without pay shall not be granted whenever an employee has leave with pay to his/her credit;
- b. His being a consultant does not violate the rule against a government employee holding multiple positions;
 - c. He obtains permission or authority from his head of agency as his being a consultant constitutes a limited private practice of profession; and
 - d. His being a consultant does not conflict or tend to conflict with his official functions and the interest of the Republic of the Philippines.
2. As a part-time consultant:
- a. His being a consultant does not violate the rule against a government employee holding multiple positions;
 - b. He obtains permission or authority from his head of agency as his being a consultant constitutes a limited private practice of profession;
 - c. His being a consultant does not conflict or tend to conflict with his official functions and the interest of the Republic of the Philippines; and
 - d. His being a consultant does not affect the effective performance of his duty.

See CSC Resolution 021264, dated September 27, 2002.

Can an employee or official of the Procuring Entity be hired as a consultant in a project of the same agency?

A government employee or official of the Procuring Entity cannot be hired by the agency they are working for immediately before going on leave, since their employment would create a conflict of interest.

How can a Procuring Entity know if there are Filipino consultants that have the expertise and experience it needs?

The GPPB recognizes for each identified major sectors of the consulting industry an umbrella organization of Filipino consultants. It deals and consults with this organization on matters relative to the consulting industry in the country.

The umbrella organization will prepare and certify a list of fields wherein Filipino consultants can provide competent consulting services. As proof of the availability of Filipino expertise, it will prepare a list of its members that have expertise in a specific field. It will list its standards for competence in the field and certify that the members that it had listed had passed such standards.

The umbrella organization's certification and list of consultant-members will help guide the BAC in determining the fields where Filipino consultants are already qualified and capable, and thus would not require foreign consultants. **(2016 IRR Annex B)**

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 REI 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.⁷

When is a prospective bidder eligible to bid?

A prospective bidder is eligible to bid for the procurement of consulting services if it complies with the eligibility requirements prescribed for the competitive bidding, within the period stated in the invitation to bid. The prospective bidder should also be included in the short list of consultants to be invited to submit a bid.

As Procuring Entities and consultants 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 and coercive practices by the government.

Are there instances where a conflict of interest may arise in consulting services?

GoP policies require that consultants provide professional, objective and impartial advice, and at all times hold the client's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants should not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Procuring Entity. Without limitation on the generality of the foregoing, a consultant may be considered to have conflicting interests with another consultant in any of the following events:

1. A consultant has controlling shareholders in common with another consultant;
2. A consultant receives or has received any direct or indirect subsidy from any other consultant;
3. A consultant has the same legal representative as that of another consultant for purposes of the same bid;

<p>Is this prohibition absolute? It is not, if the law firm is applying a Chinese wall in its dealings with its clients. A Chinese wall is a screen established within a firm to segregate lawyers and staff working on one retainer, and the information associated with that retainer, from other personnel within the same firm, for the purpose of protecting client confidences.</p>
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4. A consultant has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another consultant or influence the decisions of the Procuring Entity regarding this bidding process. This will include a firm or an organization who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;
5. A consultant submits more than one bid in this bidding process. However, this does not limit the participation of subcontractors in more than one bid;
6. A consultant who participated as a consultant in the preparation of the design or technical specifications of the goods and related services that are the subject of the bid.
7. A consultant who lends, or temporary seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement

⁷ Generally, FAPs do not utilize the eligibility check system of the GoP, unless so required by the pertinent IFI/bilateral lending agency.

for or implementation of the project, if the personnel would be involved in any capacity on the same project.

8. If a consultant combines the function of consulting with those of contracting and/or supply of equipment in the same project;
9. if a consultant is associated with, affiliated to, or owned by a contractor or a manufacturing firm with departments or design offices offering services as consultants unless such consultant includes relevant information on such relationships along with a statement in the technical proposal cover letter to the effect that the consultant shall limit its role to that of a consultant and disqualify itself and its associates from work in any other capacity that may emerge from the project (including bidding for any part of the future project). The contract with the consultant selected to undertake the project shall contain an appropriate provision to such effect; or
10. If there is a conflict among consulting projects, the consultant (including its personnel and subcontractors) and any subsidiaries or entities controlled by such consultant shall not be recruited for the relevant project. The duties of the consultant depend on the circumstances of each case. While continuity of consulting services may be appropriate in particular situations where no conflict exists, a consultant cannot be recruited to carry out a project that, by its nature, shall result in conflict with a prior or current project of such consultant. examples of the situations mentioned are when a consultant engaged to prepare engineering design for an infrastructure project shall not be recruited to prepare an independent environmental assessment for the same project; similarly, a consultant assisting a Procuring Entity in privatization of public assets shall not purchase, nor advise purchasers, of such assets; or a consultant hired to prepare terms of reference (TOR) for a project shall not be recruited for the project in question.

How should a Procuring Entity address any possibility of an unfair competitive advantage in the procurement of consulting services?

Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Procuring Entity should make available to all the short listed consultants all information that would in that respect give a consultant a competitive advantage.

What are the minimum eligibility requirements?

The eligibility of a prospective bidder that is a Filipino consultant is determined based on its submission of the following documents: **(2016 IRR Section 24.7.1)**

1. Class "A" Documents

a. Legal Documents

- i Registration certificate from SEC, DTI for sole proprietorship, or CDA for cooperatives.
- ii Mayor's/Business permit issued in 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 the case 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 in accordance with 2016 IRR Section 34.2.

For individual consultants not registered under a sole proprietorship, a BIR Certificate of Registration shall be submitted, in lieu of DTI registration and Mayor's/Business permit.

- 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 and completed government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid, within the relevant period as provided in the EDS. The statement must include, for each contract, the following:
 - Name and location of the contract/project;
 - Date of award of the contract;
 - Type and brief description of the consulting service;
 - Consultant's role (whether main consultant, subconsultant, or JV partner);
 - Amount of contract;
 - Contract duration;
 - Copies of certificates of satisfactory completion or equivalent document specified in the EDS issued by clients for completed contracts.
- v Statement of the consultant specifying its nationality and confirming that those who will actually perform the services are registered professionals authorized by the appropriate regulatory body (e.g., Professional Regulatory Commission or PRC for engineers, and Supreme Court for lawyers) to practice those profession, including their respective curriculum vitae.

c. Financial Document

The consultant's audited financial statements, showing, among other things, the consultant's total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from the date of bid submission.

2. Class "B" Documents

- a. Valid joint venture agreement (JVA), in case a joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful, shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the PhilGEPS Certificate of Registration in accordance with Section 8.5.2. The submission of technical and financial documents by any of the joint venture partners constitutes compliance.

For foreign bidders, the foregoing documents may be substituted by the appropriate equivalent documents in English, if any, issued by the country of the bidder concerned. Otherwise, it must be accompanied by a translation of the documents in English by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country, and shall be authenticated by the appropriate Philippine foreign service

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

To facilitate determination of eligibility, the BAC of a Procuring Entity shall use the contents of the PhilGEPS electronic registry of consultants in accordance with 2016 IRR Section 8.5.2. Consultants wishing to participate in government project shall, therefore, 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.

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 GoP-Official Merchants Registry.

Consultants that maintain a current and updated file of the above Class "A" eligibility documents with PhilGEPS shall be given a PhilGEPS Certificate of Registration which shall be submitted as one of the required eligibility documents in lieu of the said Class "A" eligibility documents.

For procurement to be performed overseas, it shall be subject to the Guidelines to be issued by the GPPB.

How and when shall the Eligibility Requirements be submitted?

Prospective bidders shall enclose their original eligibility documents in a sealed envelope marked "ORIGINAL – ELIGIBILITY DOCUMENTS". Each copy thereof shall be similarly sealed duly marking the envelopes as "COPY NO. ___ - ELIGIBILITY DOCUMENTS". These envelopes containing the original and the copies shall then be enclosed in one single envelope.

All envelopes shall:

- a. Contain the name of the contract to be bid;
- b. Bear the name and address of the prospective bidder;
- c. Be addressed to the Procuring Entity's BAC;
- d. Bear the specific identification of the Project; and
- e. Bear a warning "DO NOT OPEN BEFORE ..." the date and time for the opening of eligibility documents.

Where should the acknowledgement of improper sealing and marking be recorded?

The BAC, through the BAC Secretariat should record in the Minutes of the Meeting the acknowledgement by the bidder of the condition of the improperly sealed or marked bid. However, in the absence of the bidder during the opening of the envelopes, the BAC Secretariat will reflect in the minutes the condition of the bid as submitted. Improper sealing and marking means failure to comply with the requirement for sealing and marking as stated in the Bidding Documents.

Eligibility documents that are not properly sealed and marked, as required in the bidding documents, shall not be rejected, but the bidder or its duly authorized representative shall acknowledge such condition of the documents as submitted. The BAC shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked eligibility documents, or for its premature opening.

Eligibility documents must be received by the BAC at the address and on or before the date and time indicated in the REI. Any eligibility documents submitted after the deadline for submission and receipt shall be declared "Late" and shall not be accepted by the BAC. The BAC shall record in the minutes of submission and opening of eligibility documents, the bidder's name, its representative, and the time the eligibility documents were submitted late.

What happens if only one bidder submits an Eligibility Envelope?

Even if only one bidder submits its eligibility envelope, the bidding process continues. The BAC should not declare a failure of bidding. If the single bidder is determined to be eligible, passes short listing, submits a bid that meets the minimum score, completes a successful negotiation, and the bid is found to be responsive to the bidding requirements, its bid will be declared as a Single Rated and Responsive Bid (SRRB) and considered for contract award. **(2016 IRR Section 36)**

Who are involved in the Receipt and Opening of the Eligibility Envelopes?

The following parties participate in the eligibility check/screening:

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

How should Eligibility Envelopes be received?

Upon receiving an eligibility envelope, the BAC Secretariat must stamp an eligibility envelope as "RECEIVED," indicating thereon the date and time of receipt, and have the stamp countersigned by an authorized representative.

How is an Eligibility Check conducted?

1. The BAC shall open in public the Eligibility envelopes on the date and time specified in the REI. **(2016 IRR Section 24.4.1)** The BAC shall read in public the contents of the Eligibility envelopes, and shall examine each prospective bidder's eligibility requirements or statements. It shall record the presence or absence of the required eligibility documents in a checklist.

This procedure is referred to as Eligibility Check, the purpose of which is 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 REI and the eligibility documents. Essentially, this means that the absence, incompleteness or insufficiency of a required document shall make a prospective bidder ineligible to bid for the particular procurement.

Let's make things easier

The BAC should have a secure depository of all the original copies of the Eligibility documents submitted by bidders, for which only its members and those of the BAC Secretariat have access. This will prevent the loss of any of the eligibility documents, thus sparing the BAC the embarrassment and trouble of rectifying such loss.

2. The BAC shall declare prospective bidders as either "eligible" or "ineligible", based on the findings in Item 1 above, and inform them accordingly. The BAC shall provide the prospective bidders a Notice of Eligibility or a Notice of Ineligibility, depending on the results of the eligibility check. In case a prospective bidder is declared ineligible, the

Notice of Ineligibility shall state the reason for such ineligibility. The Notice will be received officially by the bidder's authorized representative.

3. The BAC shall inquire from ineligible bidders whether or not they intend to file a request for reconsideration; if they signify their intention to do so, the BAC shall keep the eligibility envelopes containing the eligibility requirements and re-seal and sign the same in the presence of all the participants. These shall be deposited in the Bid Box or any other secured place or location. The BAC may return the eligibility envelope if the prospective bidder is declared "ineligible" and expressly waives his right to file a request for reconsideration. Such waiver shall be made in writing, to be executed by the authorized representative of the ineligible bidder.

What can a potential 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 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 only one prospective bidder is declared eligible?

Even if only one bidder passes the eligibility check, the bidding process continues. The BAC should not declare a failure of bidding. If the eligible bidder submits a bid that is found to be responsive to the bidding requirements, its bid shall be declared as a SRRB and considered for contract award. **(2016 IRR Section 36)**

What happens if no prospective bidder is declared eligible?

If no prospective bidder is found to be eligible, the BAC shall declare a failure of bidding and issue a Resolution declaring the same. The BAC shall then conduct a review of the TOR, contract terms and conditions and other provisions in the bidding documents, including the evaluation criteria. If warranted, the BAC shall, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, 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 REI with re-advertisement and/or posting, as provided in **Section 21.2 of the 2016 IRR.**

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, ABC, and/or 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 3 Short list Eligible Consultants

Legal Reference

2016 IRR Section 24.5 specifies the rules in relation to the short listing requirements for the procurement of consulting services.

What is short listing?

The process of short listing determines the most qualified consultants from those that submitted eligibility documents to undertake the project.

Why is there is a need to short list?

If all eligible bidders are invited to submit proposals, the chance of a consultant being awarded the contract diminishes greatly. Considering the substantial costs incurred in preparing a proposal, this discourages a consultant from participating in the bid. The probability of being awarded the contract, in this case, becomes less commensurate to the time and money spent in formulating the proposal. A short list of, say, five (5) consultants greatly increases the chances of a consultant and thus encourages it to put in more time and effort in preparing a good proposal. In the end, government, in general, and the Procuring Entity, in particular, receive better proposals to choose from.

Who shall be considered for short listing?

The Procuring Entity must consider for short listing only those consultants that:

1. Have been declared eligible by the BAC; and
2. Have satisfactorily completed contracts, as stated in their eligibility documents, that are similar in nature and complexity to the project as described in the REI. **(2016 IRR Section 24.5.1)**

The required number of short listed consultants, which shall be determined during the pre-procurement conference, shall consist of three (3) to seven (7) consultants, with five (5) as the preferable number. Should only one (1) or less than the required number apply for eligibility and short listing, pass the eligibility check, and/or pass the minimum score required to be in the short list, the BAC shall consider the same. The BAC shall invite the short listed consultants through the Notice of Eligibility and Short Listing. The short listed consultants shall then be required to pay the applicable fee for the Bidding Documents.

Methodology: How are eligible consultants short listed?

In short listing the eligible consultants, the BAC, assisted by the TWG, shall:⁸

1. Rate each eligible consultant based on the following criteria, among others: **(2016 IRR Section 24.5.3)**:
 - a. Applicable experience of the consultant (meaning the consulting firm) and associates in case of joint ventures, considering both the overall experiences of the firm or, in the case of new firms, the individual experiences of the principal and key staff, including the times when employed by other consultants. (Recommended weight: 50%);

⁸ As short listing methodologies may vary for specific FAPs, reference should be made to the appropriate standard bidding documents for the project.

- b. Qualification of principal and key staff of the consultant who may be assigned to the job vis-à-vis extent and complexity of the undertaking (Recommended weight: 30%); and
 - c. Current workload relative to capacity (Recommended weight: 20%).
2. Rank the eligible consultants based on the average of the total ratings given them by the BAC members;
3. If the number of eligible consultants that obtained the minimum average rating for the short list exceeds the predetermined number of the short list of consultants, those obtaining the highest ranks shall be considered. If the number of eligible consultants that obtained the minimum average rating required does not exceed the desired number of the short list, the BAC shall consider all such consultants as being short listed. **(2016 IRR Section 24.5.2)**
4. Recommend the short list of consultants through a BAC Resolution to the HoPE for consideration and approval; **(2016 IRR Section 24.5.4)** and
5. If the HoPE approves the recommendation, inform the short listed consultants about the results of the short listing process. If the HoPE disapproves the recommendation, he must inform the BAC of the reasons for the disapproval and instruct the BAC on the measures that ought to be adopted.

How do the short listed consultants secure the bidding documents?

The BAC shall send a Notice of Eligibility and Short Listing to each of the consultants in the short list. If the short listed consultant has not yet downloaded the bidding documents from the website of the PhilGEPS and/or the Procuring Entity, the BAC Secretariat shall provide the said short listed consultant with a complete set of Bidding Documents. Short listed consultants may be asked to pay a fee to recover the cost of the preparation and development of the Bidding Documents pursuant to the Guidelines on the Sale of Bidding Documents **(2016 IRR Section 17.4)**. If the Bidding Documents are sold, the Procuring Entity shall only accept bids from short listed consultants that have purchased the Bidding Documents from the office indicated in the REI. Prior to the acceptance of bids, short listed consultants may be required to show the official receipt as proof of payment.

Bidding Documents fee may be refunded in accordance with the aforementioned Guidelines based on the grounds provided for under Section 41 of the Act and its 2016 IRR **(2016 IRR Section 17.5)**.

What are the responsibilities of a short listed consultant with regard to the bidding documents?

A short listed consultant must be responsible for having:

Taken steps to carefully examine all of the bidding documents;

1. Acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
2. Made an estimate of the facilities available and needed for the contract to be bid, if any; and
3. Complied with his responsibility as provided for under 2016 IRR Section 22.5.3, which provides 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. **(ITB Clause 4.3 of the 5th Edition of the Philippine Bidding**

Failure to observe any of the above responsibilities shall be at the risk of the short listed consultants. The Procuring Entity shall not be responsible for any erroneous interpretation or conclusions by the short listed consultants of the data it furnished.

Moreover, the short listed consultants 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 any new laws, ordinances, regulations or other acts of government promulgated after the date of bidding, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis. (2016 IRR Sec. 61.2)

How much must short listed consultants 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.

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*

How long shall the entire process of eligibility check and short listing take?

The entire process of eligibility check and short listing must not exceed twenty (20) calendar days after opening the eligibility envelopes. **(2016 IRR Section 24.5.4)**

Are disassociations and associations among short listed consultants allowed?

No. A short listed association cannot disassociate from each other; otherwise, its members should be rejected. Neither can a short listed firm be allowed to associate with any other firm.

What happens if no eligible bidder passes short listing?

If no eligible bidder is short listed, the BAC shall declare a failure of bidding and issue a Resolution declaring the same. The BAC shall then conduct a review of the TOR, contract terms and conditions and other provisions in the bidding documents, including the evaluation criteria. If warranted, the BAC shall, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, 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 REI with re-advertisement and/or posting, as provided in **Section 21.2 of the 2016 IRR**.

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, ABC, and/or 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 4 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 short listed bidders discuss the different aspects of the procurement at hand.

The ground rules that will govern the procurement are discussed during the conference. In particular, the participants discuss the legal, technical and financial components of the contract to be bid. This is also an opportunity for the short listed consultants to raise questions and/or request for clarifications about the bidding documents. Decisions of the BAC amending any provision of the Bidding Documents shall be issued in writing through a Supplemental/Bid Bulletin at least seven (7) calendar days before the deadline for the submission and receipt of bids. **(2016 IRR Sec. 22.4)**

It is important that responsible and knowledgeable officials attend the conference. The persons who actually formulated the Terms of Reference for the project should be present among those representing the Procuring Entity. Short listed consultants, 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 short listed consultants be 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 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 a pre-bid conference upon the written request of a short listed 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 determination of the short listed consultants. **(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 seventy five (75) calendar days from the last day of the period of posting of the REI up to the opening of bids, as provided under 2016 IRR Section 25.5(c).

Who must attend the Pre-bid Conference?

The following shall attend the pre-bid conference:

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

5. End-user Unit/PMO;
6. Technical experts on the consulting services to be procured; and
7. Short listed consultants.

Short listed consultants may or may not attend the pre-bid conference. **(2016 IRR Section 22.3)**

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.

How is the Pre-bid Conference conducted?

How the pre-bid conference is conducted depends on the discretion of the BAC Chairperson or his/her duly authorized representative who shall chair the proceedings. The BAC is expected to present, at the minimum, the bidding procedure, the technical and financial requirements, evaluation procedure and criteria, contract terms and conditions, and possible causes of failure of bidding.

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 consultants 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 short listed 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 had been held?

Requests for clarification(s) on any part of the bidding documents or for an interpretation may be made by short listed 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, to be made available to all those who have properly secured the bidding documents at least seven (7) calendar days before the deadline for the submission and receipt of bids. **(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, the website of the PhilGEPS, and at any conspicuous place within the premises of the Procuring Entity, within the same timetable. It shall be the short listed 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 short listed 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 short listed bidder.

Short listed 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)**

Who are involved in the Issuance of the Supplemental / Bid Bulletin?

The following are involved in the issuance of the supplemental/bid bulletin:

1. BAC;
2. BAC Secretariat;
3. TWG; and
4. Short listed consultants.

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 and/or the TWG drafts the supplemental/bid bulletin for approval by the BAC.
2. The BAC approves the supplemental/bid bulletin and the BAC Chairman signs it.
3. The BAC Secretariat shall post the supplemental/bid bulletin in the website of PhilGEPS, the website of the Procuring Entity, if available, and at any conspicuous place within the premises of the Procuring Entity, for at least 7 calendar days before the deadline for submission and receipt of bids. It shall be the responsibility of the shortlisted bidders who have properly secured the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC. However, shortlisted bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with 2016 IRR Section 26.

If the supplemental/bid bulletin is being issued in response to a request for clarification submitted by a short listed consultant, on the other hand, the process is as follows:

1. The short listed consultant submits to the BAC, through the BAC Secretariat, a written request for clarification at least 10 calendar days before the deadline for the submission and receipt of bids.
2. The BAC directs the BAC Secretariat and/or the TWG 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, as described above.

Step 5 Receive and Open the Technical and Financial Envelopes

Legal Reference

2016 IRR Sections 25 to 30 specify the rules in relation to the submission and receipt of bids.

What is a Bid?

A Bid refers to a signed offer or proposal to undertake a contract submitted by a short listed consultant 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 the following technical information/documents:

1. Technical Proposal Submission Form (TPF 1) as provided in the bidding documents;
2. The bid security in its required form, amount and validity period;
3. A brief description of the organization and outline of recent experience of the Consultant and each partner and/or subconsultant on on-going and completed projects of a similar and related nature as required in form TPF 2 of the bidding documents;
4. Comments and suggestions on the TOR using form TPF 3 of the bidding documents;
5. Approach, work plan, and schedule on how the Consultant shall carry out the services to meet all the requirements in the TOR using form TPF 4, provided that for architectural design, submission of architectural plans and designs shall not be required during the consultant's selection process;
6. Organizational chart of the key and support staff indicating their tasks, among others, using form TPF 5 of the bidding documents;
7. List of key personnel to be assigned to the contract to be bid with their curriculum vitae indicating their relevant qualification, experience data and signed written commitment to work for the project once awarded the contract using form TPF 6 of the bidding documents;
8. A Time Schedule indicating clearly the estimated duration in terms of person-months and the proposed timing of each input for each nominated expert using TPF 7 of the bidding documents;
9. A work plan showing in graphical form (bar chart) the timing of major activities using form TPF 8 of the bidding documents; and
10. 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 its 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 Financial Proposal Submission Form (FPF 1) as provided in the bidding documents and the following financial information/documents:

1. Summary of Costs;
2. Breakdown of Price per Activity;
3. Breakdown of Remuneration per Activity;
4. Reimbursables per Activity; and
5. Other items as may be required in the bidding documents.

How should the envelopes be submitted and received?

Both envelopes must be labeled with the name of the contract to be bid and the name of the bidder in capital letters, addressed to the BAC of the agency concerned. The bidder shall mark the two (2) envelopes: "Do not open before (date and time of opening of bids)." Both envelopes shall then be put in an outer envelope, which shall be sealed and addressed to the BAC Chairperson. The Financial Proposal shall also be marked with a warning: "Do not open with the Technical Proposal." This outer envelope must be marked as specified in the ITB.

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 improperly sealed or marked bid, or for its premature opening. **(2016 IRR Section 25.8)**

The bid must be submitted to the BAC through the bidder's duly authorized representative. **(2016 IRR Section 25.1)**

When should the bids be received by the BAC?

Bids should be received by the BAC on or before the specified time and date of the deadline for submission of bids, and at the place, as stated in the bidding documents. The period for receipt of bids should be within seventy five (75) calendar days from the last day of posting the REI. **(2016 IRR Section 25.5(c))** Bids submitted after the specified deadline shall not be accepted by the BAC **(2016 IRR Section 25.6)**. 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.

What happens if only one short listed consultant submits a bid envelope?

Even if only one short listed consultant submits a bid envelope, the bidding process should continue. The BAC should not stop the bidding process and declare a failure of bidding. If the sole bid received meets the minimum score, negotiation is successfully completed, and the bid is found to be responsive to the bidding requirements, its bid will be declared as a SRRB and considered for contract award. **(2016 IRR Section 36)**

What happens if no short listed bidder submits a bid?

If no short listed bidder submits a bid, the BAC shall declare a failure of bidding and issue a Resolution declaring the same. The BAC shall then conduct a review of the TOR, contract terms and conditions and other provisions in the bidding documents, including the evaluation criteria. If warranted, the BAC shall, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, 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 REI with re-advertisement and/or posting, as provided in Section 21.2 of the 2016 IRR.

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, ABC, and/or 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 do things easier

The BAC shall require one (1) original and at least five (5) copies of the Technical Documents and Financial Documents to be used by the BAC. The original copy shall be initialed by the BAC members or their alternates and will be kept by the BAC Secretariat for check and balance purposes while the duplicate copies will be the ones used by each BAC member during Bid Evaluation.

Who are involved in the receipt, opening and preliminary examination of the Bids?

The following should be involved in the receipt, opening and preliminary examination of bids:

1. The BAC;
2. The TWG;
3. The BAC Secretariat;
4. The Observers; and
5. The Short listed Consultants.

How are bids received, opened, and preliminarily examined?

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

1. Short listed consultants submits their bids through their respective authorized representatives (**2016 IRR Section 25.1**) in two (2) separate sealed bid envelopes submitted simultaneously. The first envelope shall contain the technical component of the bid, and the second envelope shall contain the financial component of the bid. The two envelopes shall be placed in an outer envelope or any container, which shall be sealed and addressed to the BAC and marked as specified in the ITB. (**2016 IRR Section 25.1**)
2. The BAC convenes on the Bid Opening date and time. The presence of the majority of the BAC members and/or their alternates shall constitute a quorum, provided that the Chairperson or the Vice-Chairperson is present.
3. The BAC receives the technical and financial envelopes at the time, date and place specified in the bidding documents. Upon receipt of the envelope containing the technical and financial envelopes, the BAC shall stamp on the face of the outer envelope the date and the time of receipt thereof.

How's that again?

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 Bid Security in an amount below the requirement is an insufficient submission. A document that is not signed and/or notarized is considered a patently insufficient submission.

4. The BAC then proceeds with the opening and preliminary examination of bids in public, following the same procedure as the eligibility check. For each bid, the BAC opens the Technical Envelopes of short listed consultants to determine each one's compliance with the required documents for the technical component of the bid. The BAC checks the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present in the technical envelope, using non-discretionary "pass/fail" criteria. (**2016 IRR Sections 30.1**) The opening of bids must be done in public, following the same procedure as

the eligibility check.

Normally, the opening of the technical envelope starts about thirty (30) minutes after the deadline for the submission and receipt of bids.

The order of opening is as follows:

- a. The letters of short listed consultants that decided not to participate;
 - b. The letters of short listed consultants that decided to withdraw the bids that they have submitted before the deadline;
 - c. The letter of short listed consultants that decided to modify their bids that they have submitted earlier than the deadline, followed by the opening of their technical envelopes; and
 - d. The technical envelopes of short listed consultants that have submitted bids on or before the deadline without any modification.
5. In case one or more of the required documents is missing, incomplete, or patently insufficient, it must rate the bid concerned as "failed". Otherwise, it shall rate the said first bid envelope as "passed."

6. 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 in the PhilGEPS website and the website of the Procuring Entity concerned.
7. All members of the BAC, or their alternates who are present during bid opening, shall initial every page of the original copies of all bids received and opened.
8. The financial envelopes of all short listed consultants must remain sealed and secured.
9. All technical envelopes must be resealed. Those rated "passed" will be secured in preparation for the detailed technical evaluation (which normally starts the following day). Those rated "failed" will be secured for purposes of potential filing of request for reconsideration except when the shortlisted consultant waives its right to file such request.
10. The BAC Secretariat shall record the proceedings. The minutes of the bid opening should be prepared and completed as soon as possible so that copies thereof could immediately be sent to the BAC members, Observers, Bidders and other interested parties. Copies of the minutes shall also be made available to the public upon written request and payment of a specified fee to recover cost of materials.

Are short listed consultants allowed to modify or withdraw their bids?

A short listed consultant may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. If such a consultant 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 or related 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 consultant unopened. **(2016 IRR Section 26.1)** Any discount should form part of the bid submission in the financial envelope.

A short listed consultant may, through a letter, withdraw its bid before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline must be subject to appropriate sanctions as prescribed in the 2016 IRR. A short listed consultant 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 consultant that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. **(2016 IRR Section 26.2)** Moreover, a consultant that withdraws its bid without any justifiable cause therefor shall be subject to the administrative sanctions provided in Section 69.1 of the 2016 IRR.

A short listed consultant that withdraws its bid prior to the deadline for submission of bids, for a justifiable cause, does not forfeit its bid security.

What happens to the bid security of a short listed consultant that withdraws its bid after the deadline for the submission of bids?

The bid security of the consultant shall be forfeited.

What happens if a short listed consultant has failed to comply with the technical requirements of the Bid?

The short listed consultant that has failed to comply with any of the technical requirements of the Bid will be disqualified by the BAC. Similar to ineligible bidders, it may file a written request for reconsideration within three (3) calendar days upon receipt of written notice regarding its bid's deficiency or upon verbal notification. The short listed consultant,

however, shall not be allowed to submit additional documents to correct the bid submitted. **(2016 IRR Section 55.1)**

In case a bidder is determined to have failed in the first envelope, which contains the Technical Proposal, and it signifies its intention to file for a request for reconsideration, the BAC must hold this bidder's second envelope unopened until such time the request for reconsideration has been resolved. **(2016 IRR Section 55.1)**

What happens if no short listed consultant passes the preliminary examination of bids?

If no short listed consultant passes the preliminary examination of bids, the BAC shall declare a failure of bidding and issue a Resolution declaring the same. The BAC shall then conduct a review of the TOR, contract terms and conditions and other provisions in the bidding documents, including the evaluation criteria. If warranted, the BAC shall, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, 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 REI with re-advertisement and/or posting, as provided in **Section 21.2 of the 2016 IRR**.

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, ABC, and/or 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 Evaluate the Bids

Legal Reference

2016 IRR Section 33 specifies the rules in relation to bid evaluation.

After the preliminary examination of the Technical Proposals, the BAC will conduct the detailed evaluation of the Technical Proposals. Normally, the BAC members are given each a copy of all the technical envelopes of each bidder whose technical bid has been rated "passed." This is why the bidders are asked to submit several copies of the envelopes, so that each member of the BAC may be given his own copy. The BAC agrees on when to meet again to discuss the ratings that they will give each technical bid.

Why do you need to evaluate the bids?

The purpose of bid evaluation is to determine the bidder which, through the quality of its bid, is deemed to be the best qualified for the assignment. The bid is referred to as the HRB and shall be subject to post-qualification to validate its eligibility and its bid requirements. Once post-qualified, it is designated as the HRRB and then awarded the contract. **(2016 IRR Section 37.1.1)**

The HRB shall be determined in two (2) ways: **(2016 IRR Section 33.2)**

1. The detailed evaluation of the bids of the short listed consultants using numerical ratings based on either the Quality-Based Evaluation (QBE) procedure or the Quality-Cost Based Evaluation (QCBE) procedure; and
2. The ranking of the bidders based on the numerical ratings from the highest to the lowest.

How are bids evaluated?

There are two methods of evaluating bids: the QBE and QCBE procedures. QBE considers only the Technical Proposals in the ranking of consultants. QCBE, on the other hand, considers both the Technical and Financial Proposals in the ranking of consultants. The former is best applied for:

1. Complex or highly specialized assignments for which it is difficult to precisely define the TOR and the required inputs from the consultants; and
2. Where the assignment can be carried out in substantially different ways, such that the proposals are not comparable.

In other cases, the QCBE procedure shall apply.

Whatever evaluation method is applied, bids are rated numerically. This can be done in either of two ways: individual or collegial rating.

1. Individual Evaluation Process

In the individual rating process, each BAC member participating in the evaluation assigns numerical scores to a proposal, these rates range from 1 to 100, with 100 as the highest value. The ratings provided by each BAC member are tabulated. In order to help eliminate bias in the evaluation of technical proposals, it is recommended that the highest and lowest scores for each consultant for each criterion are disregarded. This is done to remove the possibility of one BAC member unduly influencing the results of the evaluation. The average of all remaining scores is then calculated. **(2016 IRR Section 33.2.3)**

The table below illustrates how the highest and lowest scores are disregarded in calculating the average score of the proposals per criterion.

Evaluation Result for Criteria 1. Quality of Personnel					
Evaluators	Firm A	Firm B	Firm C	Firm D	Firm E
A	95	75	84	83	84
B	84	88	86	81	82
C	84	86	85	79	84
D	83	85	84	79	82
E	84	87	86	80	83
Average	84	86	85	80	83
Rank	3	1	2	5	4

If the highest and lowest scores were not eliminated, the example below will show that the scores of Evaluator A, which appears to be biased for Firm A, would have unduly placed Firm A at an advantage.

Evaluation Result for Criteria 1. Quality of Personnel					
Evaluators	Firm A	Firm B	Firm C	Firm D	Firm E
A	95	75	84	83	84
B	84	88	86	81	82
C	84	86	85	79	84
D	83	85	84	79	82
E	84	87	86	80	83
Average	86	84.2	85	80.4	83
Rank	1	3	2	5	4

2. Collegial Evaluation Process

Under the Collegial Evaluation process, the BAC members evaluate the proposals, deciding as a group. The score obtained by a proposal is the consensus of the BAC members involved in the evaluation.

How is QBE done?

The following steps are followed under the QBE procedure:⁹

1. The BAC evaluates the Technical Proposal based upon the set criteria.
2. The BAC ranks the consultants in descending order based upon the numerical ratings of their Technical Proposals and identifies the HRB, which should have passed the minimum technical rating. **(2016 IRR Section 33.2.1(a)(ii))**
3. The BAC submits the results of the evaluation, including the rankings and the consultant with the HRB, through a Resolution to the HoPE, who must approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of such results.
4. If the HoPE disapproves the BAC recommendations, he shall inform the BAC of its disapproval and the reasons for it, and shall instruct the BAC on the subsequent steps to be adopted.
5. If the HoPE approves the recommendations of the BAC, the BAC furnishes all participating short listed consultants with the results of its evaluation (ranking and total scores only). The results must also be posted in the website of PhilGEPS and the website of the Procuring Entity for a period of not less than seven (7) calendar days. **(2016 IRR Section 33.2.4)**

⁹ The steps may vary for FAPs, and so reference should be made to the appropriate standard bidding documents for the project.

6. Within three (3) calendar days of the approval of its recommendations, the BAC invites the consultant with the HRB for the opening of its financial proposals and for contract negotiations. In its letter of notification, the BAC shall inform the consultant of the issues in the Technical Proposal the BAC may wish to be clarified on during negotiations. **(2016 IRR Section 33.2.1(a)(iv))**

How is QCBE done?

The following steps are followed under the QCBE procedure:¹⁰

1. The BAC evaluates the Technical Proposals of all short listed consultants that submitted bids.
2. The BAC ranks all the Technical Proposals, noting those that have earned ratings above the minimum requirement and those that have not.
3. The BAC sends a formal letter to all consultants whose Technical Proposals earned ratings below the minimum required rating, informing them of their failure to qualify and returning to them their Financial Proposal unopened.
4. The BAC sends a formal letter to all consultants whose Technical Proposals earned at least the minimum required rating, informing them thereof and of the date, time, and venue of the opening of the Financial Proposals. The methodology to be used in the evaluation of the financial proposal shall be described in the BDS.
5. On the day, time and venue set, the BAC opens the Financial Proposals of the qualified consultants in public, and records the proposed prices of each qualified consultant. If the proposed price exceeds the ABC, the bidder will be disqualified.
6. The BAC reviews each Financial Proposal, checks for its completeness, corrects any arithmetical errors, and corrects the recorded proposed prices, if warranted.
7. The BAC disqualifies a consultant if:
 - a. It provides for a required item but does not indicate a price for it and is thus deemed as non-compliant, except that if it specifies a "0" (zero) or a "-" (dash) for the said item, it would be deemed as having offered the item for free to the government, or
 - b. Its corrected price exceeds the ABC.
8. The BAC computes the ratings of each Financial Proposal in the following manner:
 - a. The consultant with the lowest price gets 100 points.
 - b. The scores of the other consultants will be computed using the formula:

$$S_f = 100 \times FI/F$$

In which S_f is the financial score, FI is the lowest Financial Proposal and F is the Financial Proposal under consideration.

Example:

Firm	Cost of Financial Proposal	Financial Score
A	P 1,100,000	$P 1,000,000 / P 1,100,000 = 90.9$ points
B	P 1,000,000	$P 1,000,000 / P 1,000,000 = 100$ points
C	P 1,500,000	$P 1,000,000 / P 1,500,000 = 66.7$ points
D	P 1,300,000	$P 1,000,000 / P 1,300,000 = 76.9$ points
E	P 1,200,000	$P 1,000,000 / P 1,200,000 = 83.0$ points

¹⁰ The steps may vary for FAPs, and so reference should be made to the appropriate standard bidding documents for the project. While the IRR does not provide a formula for computing the scores for the financial proposal, the scoring method presented is the most widely adopted.

9. The BAC gives corresponding weights to the Financial and Technical Proposals of the qualified consultants, the weights having been determined in the pre-bid conference and indicated in the BDS. The financial proposal may be given a weight of fifteen percent (15%) up to a maximum of forty percent (40%).
10. The BAC adjusts the weight of the technical criteria such that their total weight in percentage terms, together with the weight given to the Financial Proposal, shall be equivalent to one hundred percent (100%).
11. The BAC multiplies the average score of each qualified consultant's Technical Proposal with the percentage value allowed as weight for Technical Proposals. It also multiplies the rate earned by each consultant's Financial Proposal with the percentage value allowed as weight for Financial Proposals. It then adds the resulting products of both operations for each consultant. The sum becomes the total score for the consultant.

The formula is as follows:

$$S = St \times T\% + Sf \times F\%$$

Where:

S is the Total Score;

St is the Technical Score;

Sf is the Financial Score;

T is the weight given to the Technical Proposal; and

F is the weight given to the Financial Proposal.

Example:

Firm	Technical Proposal				Financial Proposal				Total Score
	Ave. Score		Weight	Weighted Score	Score		Weight	Weighted Score	
A	86	X	70% or 0.7	= 60.2	90.9	X	30% or 0.3	= 27.3	87.5
B	84.2	X	70% or 0.7	= 58.9	100	X	30% or 0.3	= 30	88.9
C	85	X	70% or 0.7	= 59.5	66.7	X	30% or 0.3	= 20	79.5
D	80.4	X	70% or 0.7	= 56.4	76.9	X	30% or 0.3	= 23.1	79.4
E	83	X	70% or 0.7	= 58.1	83	X	30% or 0.3	= 24.9	83

12. The BAC ranks the consultants in descending order, with the consultant obtaining the highest total score being declared as the bidder with the HRB.
13. The BAC, through a Resolution, submits the results of its evaluation to the HoPE, identifying the consultant with the HRB, and recommending that the BAC be authorized to negotiate with this consultant.
14. The HoPE approves or disapproves the recommendations of the BAC within two (2) calendar days after receiving these from the BAC.
15. If the HoPE disapproves the recommendation, he shall state the reason(s) for the disapproval and instruct the BAC on the subsequent steps to be adopted. If the HoPE approves the recommendations, the BAC furnishes all participating short listed consultants with the results of its evaluation (ranking and total scores only). The results shall be posted in the PhilGEPS and the website of the Procuring Entity, whenever available, for a period of not less than 7 calendar days. **(2016 IRR Section 33.2.4)**
16. Within three (3) calendar days of the approval of its recommendations, the BAC invites the consultant with the HRB for contract negotiations, except for the financial proposal. In its letter of notification, the BAC shall inform the consultant of the issues in the technical proposal the BAC may wish to be clarified on during negotiations. **(2016 IRR Section 33.2.1(b)(iv))**

Can the short listed bidders communicate with the Procuring Entity during the period of bid evaluation?

From submission and receipt of bids until the approval by the HoPE of the ranking of short listed bidders, short listed bidders are prohibited from making any communication with any BAC member, including its staff and personnel, as well as the BAC Secretariat and TWG, regarding matters connected to their bids. However, the BAC, through its Secretariat, may ask in writing the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing. **(2016 IRR Section 33.1)**

How long does the Evaluation Procedure take place?

The entire evaluation process, from bid opening until submission of the bid evaluation results to the HoPE for approval, should be completed in not more than twenty-one (21) calendar days **(2016 IRR Section. 33.4)**

What happens if a consultant does not accept the arithmetical corrections done by the BAC on his bid?

The consultant forfeits his bid security and is disqualified from participating further in the bidding process.

Who are the participants in the Bid Evaluation?

The following are involved in bid evaluation:

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

What happens if no bid passes the minimum technical rating?

If no bid passes the minimum technical rating for QCBE, the BAC shall declare a failure of bidding and issue a Resolution declaring the same. The BAC shall then conduct a review of the TOR, contract terms and conditions and other provisions in the bidding documents, including the evaluation criteria. If warranted, the BAC shall, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, 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 REI with re-advertisement and/or posting, as provided in Section 21.2 of the 2016 IRR.

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, ABC, and/or 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 7 Negotiate with the Consultant with the Highest Rated Bid

Legal Reference

2016 IRR Section 33 provides the rules for the conduct of negotiations.

Who are the parties involved in the negotiations?

The following are involved in the negotiations:

1. BAC;
2. TWG;
3. Consultant with HRB/SRB;
4. BAC Secretariat, to provide administrative support; and
5. End user/PMO, to provide technical support.

What are covered during negotiations?

For contracts awarded using the QBE procedure, the following are covered during negotiations **(2016 IRR Section 33.2.5)**:

1. Discussion and clarification of the TOR and Scope of Services, provided that if changes in the TOR become necessary, the cost of these changes shall be within the ABC;
2. Discussion and finalization of the methodology and work program proposed by the consultant;
3. Consideration of the personnel to be assigned to the job, taking note of over-qualified personnel to be commensurate with the compensation of personnel with the appropriate qualifications, number of man-months and schedule of activities (manning schedule) [Note that there should be no replacement of key personnel, except for justifiable reasons as may be determined by the BAC such as death, incapacity, resignation or delay in the evaluation process due to the fault of the Procuring Entity. The BAC shall immediately consider negotiation with the next ranked consultant if unjustifiable replacement of key personnel is made.
4. Discussion on the services, facilities and data, if any, to be provided by Procuring Entity concerned;
5. Discussion on the financial proposal submitted by the consultant (Note that if the proposed price is greater than the ABC, the bidder will be disqualified); and
6. Provisions of the contract.

For contracts awarded using the QCBE procedure, all the matters covered in the negotiations for contracts using the QBE procedure are also covered, except for the discussion on the Financial Proposal of the consultant. The financial bid, including the proposed remuneration rates for staff and the reimbursables, shall not be negotiated since it has already been a factor in the selection of the consultant.

When is the Financial Proposal opened?

For contracts awarded using the QBE procedure, the Financial Proposal of consultant with the HRB is opened in the presence of the bidder during the negotiation stage – normally during the first day of the negotiations.

For contracts awarded using the QCBE procedure, the Financial Proposals of all consultants whose Technical Proposals meet the minimum technical rating shall be opened during the bid evaluation stage, which is earlier than the negotiation stage.

How long should the negotiations take?

Except for meritorious reasons, negotiations with any one consultant shall be completed within ten (10) calendar days. **(2016 IRR Section 33.2.5)**

Who will prepare the minutes of contract negotiations?

The minutes shall be prepared by the BAC Secretariat, with inputs from the BAC, TWG, and the end-user/implementing unit. The minutes should present, among others, the discussions on issues raised during the negotiations and the agreements reached on particular points. The minutes also provide the background information on why and how decisions were arrived at.

Who will finalize the Draft Contract after negotiations?

The end user/PMO with the assistance of the BAC Secretariat shall finalize the draft contract after the negotiation.

What happens if negotiations with the bidder with the Highest Rated Bid fail?

If agreement on all items discussed during negotiations is not possible between the BAC and the highest rated consultant, the BAC would have to terminate negotiations and invite the next ranked consultant for negotiations. The procedure for negotiations, as described above, shall be repeated until negotiation with a consultant is successfully completed.

What happens if negotiations with all qualified bidders fail?

If negotiations with all qualified bidders fail, the BAC shall declare a failure of bidding and issue a Resolution declaring the same. The BAC shall then conduct a review of the TOR, contract terms and conditions and other provisions in the bidding documents, including the evaluation criteria. If warranted, the BAC shall, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, 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 REI with re-advertisement and/or posting, as provided in **Section 21.2 of the 2016 IRR.**

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, ABC, and/or 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.

What additional guidelines may a Procuring Entity adopt during negotiations?

1. Negotiations should include discussions of the TOR, the methodology, staffing, the Procuring Entity's inputs, and special conditions of the contract. The Procuring Entity

should give the consultants adequate authority to discharge their responsibilities and carry out the terms of their contract.

2. The discussions should not substantially alter the original TOR or the terms of the contract, otherwise the quality of the final product, its cost, and the relevance of the initial evaluation may be affected.
3. Major reductions in work inputs should not be made solely to meet the budget.
4. The final TOR and the agreed methodology should be incorporated in the description of services, which should form part of the contract.
5. Generally, the selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay on the side of the Procuring Entity in the selection process makes such substitution unavoidable. If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. Replacement of key staff may be allowed for justifiable reasons as may be determined by the BAC, such as death, incapacity or resignation. The replacement should have qualifications equal to or better than the key staff initially proposed.
6. Financial negotiations should include clarification of the consultant's tax liability in the Procuring Entity's country (if any) and how this tax liability has been or would be reflected in the contract.
7. As **Lump-sum Contracts** payments are based on delivery of outputs (or products), the offered price should include all costs (staff time, overhead, travel, etc.). If the selection method for a Lump-sum contract included price as a factor, this price shall not be negotiated.
8. For **Time-based Contracts**, payment is based on inputs (staff time and reimbursables) and the offered price should include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a factor, there shall be no negotiations on the financial proposal.
9. **Reimbursables** based on actual costs are to be paid on actual expenses incurred upon presentation of receipts and therefore are **not subject to negotiations**. However, if the Procuring Entity wants to define ceilings for unit prices of certain reimbursables (like travel rates), it should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.
10. **Reimbursables** based on agreed fixed rates are cost items which are payable at agreed unit rates to the staff and include the following, among others: housing allowance and per diems. These rates normally vary for short visits and longer stays and by location.
11. If the negotiations fail to result in an acceptable contract, the Procuring Entity should terminate the negotiations and invite the next ranked firm for negotiations.
12. Once negotiations are commenced with the next ranked firm, the Procuring Entity should not reopen the earlier negotiations.
13. After negotiations are successfully completed, the BAC, through its Secretariat, should promptly notify other firms in the short list that they were unsuccessful.

Step 8 Post-qualify

Legal Reference

2016 IRR Section 34 specifies the rules for post qualification.

Why do you need to conduct a Post-qualification?

The eligibility check conducted earlier does not ascertain the validity and genuineness of the eligibility documents submitted by the bidders. Neither does it determine the veracity of the claims made by the bidders in their technical and financial bid.

A post-qualification is conducted to determine whether or not the consultant with the HRB complies with and is responsive to all the requirements and conditions for eligibility and the bidding for the contract, as specified in the bidding documents. **(2016 IRR Section 34.1)**

How is Post-qualification conducted?

The BAC or the TWG shall verify, validate and ascertain all statements made and documents submitted by the Consultant that submitted the HRB and has successfully completed negotiations to determine whether it complies with and is responsive to all the requirements and conditions specified in the Bidding Documents. **(2016 IRR Section 34)**

1. Legal Requirements. The post-qualification process under this criterion involves the verification, validation and ascertaining of the consultant'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. Registration certificate from SEC, DTI for sole proprietorship, or CDA for cooperatives;
 - b. Mayor's/Business Permit; and
 - c. Tax Clearance Certificate and Income and Business Tax Returns.

The bidder's status with regard to "blacklisting" may be verified by checking the blacklist, if any, of other government agencies.

In verifying the information contained in the above 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, e.g., internet, for on-line verification and validation of such documents may be resorted to by the TWG.

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 consultant to prove compliance of the consulting services it offers with the requirements of the contract and bidding documents. These documents include:
 - a. Documents proving the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, such as:
 - i. A list of completed projects; and
 - ii. A list of key personnel to be assigned to the contract, with complete data on their qualification and experience;

- b. A list of on-going projects, to check the performance of the bidder in its ongoing government and private contracts; and
 - c. The Bid Security, specifically on its sufficiency as to type, amount, form and wording, and validity period.
3. Financial Requirements. Post-qualification under this criterion means that the BAC would have to verify, validate and ascertain the audited financial statements and the financial proposal.

The TWG prepares a Post-Qualification Report to be submitted to the BAC for its review. The Report shall contain, among others, the activities undertaken with regard to the Post-qualification process, including feedback from inquiries conducted. The BAC determines whether the consultant with the HRB passes all the criteria for post-qualification.

If the HRB passes post-qualification, the BAC declares it as the HRRB. The BAC Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the bidder with the HRRB and recommending award of contract thereto.

When should Post-qualification be conducted?

The post-qualification process must be conducted and completed within twelve (12) calendar days from date of determination of the HRB. **(2016 IRR Section 34.8)** For procurement of consulting services, this period is reckoned from the date of successful negotiation with the consultant concerned.

However, in exceptional cases, the HoPE may extend the post-qualification period, but the aggregate period should in no case exceed thirty (30) calendar days. **(2016 IRR Section 34.8)**

Within five (5) calendar days from receipt by the short listed consultant of the notice from the BAC that the consultant has submitted the HRB, the short listed consultant shall submit to the BAC its latest income and business tax returns and other appropriate licenses and permits required by law and stated in the bidding documents. Failure to submit any of the requirements on time, or a finding against the veracity of any of the documents submitted is made, shall disqualify the bidder for award. In the event that a finding against the veracity of any of the documents submitted is made, it shall cause the forfeiture of the bid security and imposition of administrative penalties under Section 69 of the 2016 IRR.

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

The following parties are involved in the conduct of post-qualification:

1. BAC;
2. TWG;
3. BAC Secretariat;
4. The Consultant that submitted the HRB and had a successful negotiation; and
5. Observers.

What happens if a bidder is found to have been included in any government blacklist of consultants?

A bidder that has been blacklisted by any government agency or instrumentality will be post-disqualified by the BAC and precluded from further participating in the bidding process.

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 unduly 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 but not more than fifteen (15) years, **(2016 IRR Section 65.2)** and likewise suffer the administrative penalties of suspension from participation in government procurement for the first offense, and suspension for two years on the second offense. **(2016 IRR Section 69.1)**

What happens if the Highest Rated Bid fails Post-qualification?

If the consultant with the HRB 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 the BAC to reconsider this decision. The BAC shall evaluate the request for reconsideration, 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 Section 34.4)**

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 negotiation and post-qualification process on the bidder with the second HRB. If the negotiations with the second bidder are successful, and it passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the HRRB. The BAC shall forward a Resolution recommending the bidder for award of contract to the HoPE for approval. In case of the QBE procedure, the sealed financial envelopes of the unsuccessful bidders shall be returned by the BAC unopened and duly sealed only when the consultant with the HRRB has signed the contract and furnished the performance security. **(2016 IRR Section 34.6)**

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

What happens if all qualified bidders fail post-qualification?

If no short listed bidder passes post-qualification, the BAC should declare a failure of bidding and issue a Resolution declaring the same. The BAC shall then conduct a review of the TOR, contract terms and conditions and other provisions in the bidding documents, including the evaluation criteria. If warranted, the BAC shall, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, 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 REI with re-advertisement and/or posting, as provided in Section 21.2 of the 2016 IRR.

Should a second failure of bidding occur, the BAC shall again review and, as necessary, revise the TOR, contract terms and conditions, evaluation criteria, ABC, and/or 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 9 Award the Contract

Legal Reference

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

Who will be the recipient of the award of contract?

The award of contract shall be made to the consultant with the HRRB at its submitted bid price or its calculated bid price, whichever is lower. In the case of QBE, the award shall be based on the negotiated price or the submitted price, whichever is lower. In the case of an SRRB, as provided for in 2016 IRR Section 36, the bidder with the SRRB shall be awarded the contract.

What is the Timeline for Contract Award?

The HoPE or his duly authorized representative shall approve the recommendation of award within fifteen (15) calendar days from the date of determination and declaration by the BAC of the HRRB/SRRB. **(2016 IRR Section 37.1.2)**

The HoPE shall issue the NOA to the bidder with the HRRB/SRRB immediately after approval of the recommendation.

Who are involved in the Award of the Contract?

The following are involved in the activities related to the award of contract:

1. HoPE;
2. BAC;
3. Implementing Unit/Office;
4. BAC Secretariat; and
5. Consultant that submitted the HRRB/SRRB.

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 three (3) months from the date of bid opening. **(2016 IRR Section 38.1)** If award cannot be made within the said period, it is suggested that the bid validity period shall be extended.

What are the other conditions for award of contract, aside from the issuance of the NOA?

The bidder with the HRRB/SRRB must submit to the Procuring Entity within ten (10) calendar days from receipt of the NOA the following documents:

1. Valid Joint Venture Agreement, if applicable;
2. In case of a foreign consultant, the SEC Certificate of Registration and/or the authorization or license issued by the appropriate GoP professional regulatory body of the foreign professionals engaging in the practice of regulated professions and allied professions; and
3. Performance security in accordance with 2016 IRR Section 39.

The bidder with the HRRB/SRRB needs to sign the Contract within the same 10 calendar days.

What happens if the bidder fails, refuses, or is unable to submit the aforementioned documents that are necessary for contract award?

If the bidder with the HRRB or SRRB fails, refuses or is unable to submit the documents required or to make good its bid by entering into a contract with the Procuring Entity or post the required performance security within the 10-day period, the bid security shall be forfeited and the appropriate sanctions in the 2016 IRR and existing laws shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder.

How is a contract awarded?

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

1. The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand.
2. The BAC Secretariat drafts the BAC Resolution recommending award to the Consultant with the HRRB/SRRB.
3. The BAC approves and signs the Resolution Recommending Award, and transmits the same to the HoPE or his or her duly authorized representative. Together with the BAC Resolution recommending award of contract, the BAC shall submit to the HoPE the following supporting documents:
 - a. Duly approved work plan and cost estimate;
 - b. Document issued by the appropriate entity authorizing the Procuring Entity to incur obligations for a specified amount; and
 - c. Other pertinent documents required by existing laws, rules, and/or the Procuring Entity concerned.

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

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 HRRB/SRRB.
5. In case of approval of the recommendation, the HoPE, through the BAC Secretariat, issues the NOA to the bidder with the HRRB/SRRB. The bidder with the HRRB/SRRB accepts the NOA.
6. The BAC, through the Secretariat, shall post, within three (3) calendar days from its issuance, the NOA in the PhilGEPS website, the website of the Procuring Entity, if any, and in conspicuous place in the premises of the Procuring Entity. **(2016 IRR Section 37.1.6)**
7. In case of a disapproval of the recommendation of award which shall be based only on valid, reasonable and justifiable grounds as provided for under Section 41 of the 2016 IRR, the HoPE shall notify the BAC and the bidder in writing of such decision and the grounds therefor **(2016 IRR Section 37.1.3)**. The HoPE shall instruct the BAC on the subsequent steps to be taken.

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)**. It then initiates negotiation, and if successful, completes the post-qualification of the bidder with the second highest rated bid. If found qualified, the said bidder shall be awarded the contract. This procedure is repeated until the HRRB is determined. Should all short listed 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 10 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 HoPE 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 NOA. **(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))** Moreover, it would be best for the winning bidder and the HoPE, or its appropriate signing authority, to sign/execute the contract together – provided that all contract documents and requirements are complete – so that both may personally appear before a Notary Public.

What are the Timelines to be considered with respect to contract approval?

When, after contract signing, further approval of a higher authority is required, the approving authority for the contract, or his duly authorized representative, shall be given a maximum of twenty (20) calendar days from receipt thereof, together with all documentary requirements to perfect the said contract, to approve or disapprove it. In the case of GOCCs and GFIs, when further approval of the governing Board is required, the concerned governing Board or its duly authorized representative has thirty (30) calendar days. **(2016 IRR Section 37.3)**

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)**

When shall the Procuring Entity issue the NTP?

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

When is a contract “effective”?

Unless otherwise specified in the contract, the contract effectivity date shall be the date of contract signing. The Consultant shall commence performance of the 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 the signing and approval of the contract, and in the issuance of the NTP:

1. The HoPE and/or higher contract approving authority;
2. The winning Consultant; and
3. The Implementing Office/End-User Unit

What documents form part of the contract?

The contract shall include the following:

1. The Contract Agreement;
2. Bidding Documents;
3. Winning Consultant's bid, including the Eligibility Documents, Technical and Financial Proposals, and all other documents/statements submitted;
4. Performance Security;
5. NOA of Contract; and
6. Other contract documents that may be required by existing laws and/or the Procuring Entity concerned as specified in the Bidding Documents.

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; and
- g) Terms of Reference

How is Contract Signed and Approved, and the NTP Issued?

1. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
2. The End-User Unit transmits the contract together with the other contract documents mentioned above to the appropriate signing authority for signature.
3. The HoPE, or its authorized representative, signs the contract. The date of contract signing shall be the contract effectivity date.
4. If further approval of higher authority is required, the End-User Unit /office transmits the signed contract and related documents to the higher approving authority or his authorized representative for approval.
5. The approving authority, or his authorized representative, acts on the contract within twenty (20) calendar days, or thirty (30) calendar days for GOCCs and GFIs, from receipt thereof, except if the approving authority is the Office of the President.
6. The HoPE or his/her duly authorized representative issues the NTP within seven (7) calendar days from the date of the approval of the contract.

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 EO 423, as amended, where alternative methods of procurement were resorted to.

How long is the entire process of public bidding for consulting services?

From advertisement/posting of the procurement opportunity to issuance of NTP, the minimum and maximum periods are estimated to be 35 and 180 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 possible time.

What happens if the Consultant with the HRRB/SRRB refuses or is unable, through its own fault, to submit the required documents, post the performance security and sign the contract within the prescribed period?

If the Consultant with the HRRB or SRRB refuses to, or is unable, through its own fault, to submit the required documents, post the performance security and/or sign the contract within the prescribed period:

1. Its bid security shall be forfeited;
2. It is disqualified from further participating in the bidding at hand;
3. Upon conviction, it will suffer the penalty of imprisonment of not less than six (6) years 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.

For its part, the BAC must initiate negotiations and, if successful, complete the post-qualification of the bidder with the second HRB. This procedure must be repeated until the HRRB is determined for award. If no bidder passes post-qualification, the BAC declares the bidding a failure and conducts a re-bidding with re-advertisement and/or re-posting. 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 SRRB, the BAC must declare the bidding a failure. It then conducts a re-bidding with re-posting and 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 HRRB/SRRB to sign the contract within the prescribed period is not its own doing?

If the failure of the bidder with the HRRB or SRRB 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 any and all 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 if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;

What are instances of the BAC not following prescribed procedures?

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

1. Waiving advertisement and/or prescribing an insufficient number of days in the posting of the REI;
2. Exceeding the required periods for eligibility screening, bid evaluation, negotiation, post-qualification for each highest rated 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 become eligible or pass the post-qualification with incomplete documents.

2. If the BAC is found to have failed in following the prescribed bidding procedures; or

3. For any justifiable and reasonable ground where the award of the contract will not redound 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; or

c. If the source of funds for the project has been, 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 47 shall be meted with penalties provided in 2016 IRR Section 65.1(e).

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

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. In the like manner, 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.

SECTION 3

Instructions on the Procedural Steps for the Procurement of Consulting Services

PART TWO - ALTERNATIVE METHODS OF
PROCUREMENT

The Alternative Methods for the Procurement of Consulting Services

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

Generally, procurement should be through public 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 consulting services 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.

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 GAA/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 EO 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 consulting services, limited source bidding and negotiated procurement are the only alternative methods of procurement that may be used.

Procurement through the Limited Source Bidding Method

What is limited source bidding?

LIMITED SOURCE BIDDING, otherwise known as **SELECTIVE BIDDING**, is a method of procurement of consulting services, that involves the issuance of a direct invitation to bid by the concerned Procuring Entity to a set of pre-selected consultants with known experience and proven capability to provide the services required in a particular contract. **(2016 IRR Section 49)** All the consultants appearing in the list should be invited. The Invitation to Bid, which shall be issued by the BAC, should already indicate the relevant information required to enable prospective bidders to prepare their bids as prescribed under the pertinent provisions of the 2016 IRR.

The limited source bidding (LSB) method may be used to procure highly-specialized types of consulting services, as determined by the Procuring Entity, where only a few consultants are known to be available. In these cases, resorting to the public bidding method will not likely result in any additional consultants participating in the bidding.

Who are the parties involved in procurement through limited source bidding?

1. HoPE;
2. BAC;
3. TWG;
4. BAC Secretariat;
5. Pre-selected prospective consultants; and
6. Observers.

How is limited source bidding conducted?

The following steps are undertaken in procuring through the limited source bidding method:

1. Upon determination that a procurement activity may be done through LSB, the Procuring Entity, through the BAC, shall prepare a list of pre-selected consultants which shall be those appearing in a list that is maintained updated by the relevant government authority with expertise in the type of procurement concerned.
2. In the event that there is a relevant government authority, but no list exists, the Procuring Entity shall request the identified relevant government authority for the issuance of the list. The relevant government authority concerned shall not unduly and unreasonably delay the issuance of such list. In case of non-issuance by the relevant government authority of the list, the Procuring Entity shall resort to open competitive bidding in its selection of consultant.
3. In the event that no relevant government authority exists, and/or the Procuring Entity represents that it is the relevant government authority, it may prepare a self-generated list of consultants, with known experience and proven capability on the requirements of the particular contract; Provided, that it establishes, attests to such fact, and confirms that it has the mandate and nature of its functions and operations; Provided, further, that in the event that the Procuring Entity cannot establish its expertise on the subject matter of procurement within the purview of Section 49.2 of the 2016 IRR, the Procuring Entity shall resort to open competitive bidding in its selection of consultant.
4. In preparing the pre-selected list, the BAC, with assistance of the TWG, shall adopt a set of criteria to be used as basis in evaluating the capability of the consultants. Said criteria shall take into consideration the following characteristics of the consultants:

- a. Capability and resources to perform the contract taking into account their experience and past performance on similar contracts;
- b. Capabilities with respect to personnel or equipment; and
- c. Financial position.

In the conduct of pre-selection proceedings, procuring entities shall ensure that the list or source of known eligible bidders is accurate, definite, and distinct, and resorting to public bidding will not likely result in any additional consultants participating in the bidding.

5. The BAC shall evaluate and submit the recommended pre-selected list to the HoPE for approval. Submitted together with the list are The TOR of the project, and the specific criteria to be used by the Procuring Entity for the evaluation of the pre-selected consultants.
6. Upon approval of the list, the HoPE shall transmit the list to the GPPB, through its Technical Support Office, accompanied by a Certification from the HoPE:
 - a. Justifying the recourse to LSB;
 - b. Verifying the compliance with the criteria previously set; and
 - c. Certifying that the pre-selected list is a list of known consultants where resorting to public bidding will not likely result in any additional consultants participating in the bidding.

In case the Procuring Entity identifies itself as the RGA with the expertise on the particular type of procurement, the HoPE or his duly authorized representative, shall also submit a certification attesting to the fact that the Procuring Entity has the expertise on the subject matter of procurement by virtue of its mandate and nature of its functions and operations.

7. The GPPB-TSO shall acknowledge receipt of the pre-selected list and shall post the list in the GPPB or PhilGEPS website for the purpose of transparency. The function of the GPPB-TSO shall partake of a ministerial nature and shall not include the validation of the qualifications of the consultants contained in the list. Concerns on the propriety of the self-generated or pre-selected list shall be directed to the Procuring Entity that issued/adopted the list for a particular procurement activity in accordance with the protest mechanism provided under Section 55 of the 2016 IRR.
8. The Procuring Entity shall post the procurement opportunity to be undertaken through LSB in the PhilGEPS website, website of the Procuring Entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned for seven (7) calendar days, upon receipt of said acknowledgement letter.

Except for the advertisement requirement provided under Section 21.2.1 in the use of LSB as an alternative method of procurement, the Procuring Entity shall adopt the rules on competitive bidding.

Are bid and performance securities also required for this alternative method of procurement?

Yes, bid and performance securities are required to be submitted in favor of the Procuring Entity.

Procurement through the Negotiated Procurement Method

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 consultant. **(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 there is no successful negotiations or fail post-qualification; or
 - d. The bidder with the Highest Rated Responsive Bid 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, TOR, 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/implementing unit, may revise and agree on the technical, legal and financial eligibility requirements, and the TOR, 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) consultants, 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 consultant shall be communicated on an equal basis to all other consultants engaging in negotiations with the BAC relative to the procurement. The prospective bidders shall be given equal time and opportunity to negotiate and discuss the technical and financial requirements of the project to be able to submit a responsive bid.
- d. Following completion of the negotiations, the BAC shall request all consultants 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 consultant

determined to have submitted the HRB. If contract negotiations is successful, the BAC shall post-qualify the consultant 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 consultant determined to have submitted the HRRB. 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 consultant. 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 consultant 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, if necessary, and a copy of the approved contract to the consultant 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/ implementing 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 consulting services that have to be procured to address the emergency.
 - b. Upon preparation of the appropriate procurement documents, the BAC may directly negotiate with a consultant with technical, legal and technical capabilities to perform the services 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 consultant.
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 negotiate and post-qualify the second HRB for the project under consideration at the said bidder's own original bid price, applicable to the remaining services 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 authority.
- b. If negotiations fail or if post-qualification is unsuccessful, the BAC shall negotiate and post-qualify the next highest rated 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 Rated Responsive Bidder, the BAC may either invite at least 3 consultants 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 consultant. 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 consultant. 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 consultant 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, if necessary, and a copy of the approved contract to the consultant 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 consulting services contract where the consultant 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 consultant considering the legal, technical, and financial requirements for eligibility;
 - d. The consultant 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 consultant 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" pertains to the linkage or relationship of the subject matters, outputs or deliverables required.

If there is a necessity to introduce new items which are related to the scope of services 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 consultant for the on-going consulting services (e.g., TOR, unit price and other terms and conditions of the contract).
- b. In case of successful negotiation, the BAC shall recommend to the HoPE the award of contract in favor of the consultant. 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 consultant. 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 consultant 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, if necessary, and a copy of the approved contract to the consultant 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 consulting services required by the Procuring Entity.

All projects undertaken through Agency-to-Agency Arrangements 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 consulting services 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; and
- e. Sub-contracting is not allowed.

Procedure

- a. The End-user 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 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 consulting services can be contracted to a particular consultant, as determined by the HoPE, for scientific, academic, scholarly work or research, or legal services.

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 consultant 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 consultant based on the TOR 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 consultant. 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 consultant 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, if necessary, and a copy of the approved contract to the consultant 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. **Highly Technical Consultants.** The Procuring Entity may resort to negotiated procurement of consulting services contract involving an individual, subject to the following conditions:
- a. The individual consultant will be hired to do work that is either:
 - i) Highly technical or proprietary; or
 - ii) Primarily confidential or policy determining, where trust and confidence are the primary consideration.
 - b. The term of the individual consultant shall, at the most, be on a six (6) month basis, renewable at the option of the appointing HoPE, but in no case exceed the term of the latter.

Procedure

- a. The End-user Unit shall justify to the BAC the engagement of the individual consultant in accordance with the conditions set forth in this Section.
- b. The BAC shall undertake the negotiation with the individual consultant based on the TOR prepared by the End-user Unit. Considering the nature of the consultancy work, the negotiations need not be elaborate. It is enough that the BAC validated that the individual consultant is legally, technically and financially capable to undertake and fulfill the consultancy work based on the TOR.

- c. The BAC shall recommend to the HoPE the award of contract to the individual consultant. 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 consultant. 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.
 - d. Upon receipt of the NOA, the consultant 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.
 - e. The HoPE or his duly authorized representative shall issue the NTP, if necessary, and a copy of the approved contract to the consultant within 3 calendar days from the date of approval of the contract by the appropriate government approving authority.
 - f. 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.
8. **Small Value Procurement.** Procurement of consulting services 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 st Class	1,000,000	1,000,000	200,000
2 nd Class	1,000,000	1,000,000	200,000
3 rd Class	1,000,000	800,000	200,000
4 th Class	800,000	600,000	100,000
5 th Class	600,000	400,000	100,000
6 th Class	400,000	200,000	100,000

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 TOR, ABC and other terms and conditions.
- b. The BAC shall prepare and send the RFP to at least three (3) consultants 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) proposal is sufficient to proceed with the evaluation thereof, using QBE/QCBE and the criteria indicated in the RFP.
- c. Except for those with ABCs equal to P50,000 and below, RFPs 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. A pre-bid conference may be conducted at the discretion of the BAC in order to clarify and/or explain any of the requirements, terms, and conditions stipulated in the RFP.

- e. After the deadline for submission of proposals, an Abstract of Ratings shall be prepared setting forth the names of those who responded to the RFP and their corresponding ratings.
 - f. The BAC shall recommend to the HoPE the award of contract in favor of the consultant with the Single or Highest Rated Responsive Proposal. In case of approval, the HoPE shall immediately enter into contract with the said consultant.
9. **United Nations Agencies, International Organizations, and International Financing Institutions.** Procurement from specialized agencies of the United Nations, International Organizations, and International Financing Institutions of consulting services involving advanced technologies, techniques and innovations not locally available as certified by the HoPE, when it is most advantageous to the government.

The BAC shall post the procurement in the PhilGEPS website, the website of the Procuring Entity, and at any conspicuous place reserved for the purpose in the premises of the Procuring Entity for a period of seven (7) calendar days. Posting of a performance security is not required for this alternative method of procurement.

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/implementing unit or PMO;
6. The consultant; and
7. The Observers

Are bid and performance 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, except for limited source bidding.

Posting of performance securities is required for limited source bidding, two failed biddings, take-over of contract, and adjacent or contiguous project. Depending on the nature of the procurement, posting of performance security may be required for emergency cases and for small value procurement.

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

Consultants 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;
- c. Highly Technical Consultant; and
- d. Small Value Procurement.

For limited source bidding and 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 Consulting
Services**

Advance Payment for Mobilization

Can the Procuring Entity make an advance payment for mobilization to the consultant?

Yes, it can. The Procuring Entity may make an advance payment to the consultant in an amount that shall not exceed fifteen percent (15%) of the contract amount to cover the cost of mobilization. The advance payment shall be made only upon the submission of a written request by the consultant together with an irrevocable standby letter of credit issued by an entity acceptable to the Procuring Entity and of an amount equal to the advance payment. **(2016 IRR Annex "F")**

How can the Procuring Entity recover the advance payment it made to a consultant?

The Procuring Entity must recover the advance payment by deducting from the progress payments to the consultant such sum as agreed during contract negotiations until the advance payment shall have been fully liquidated within the duration of the contract. **(2016 IRR Annex "F")**

The consultant, for its part, may reduce his standby letter of credit or guarantee instrument by the amounts refunded in the advance payment.

Replacement of Consultant and Key Personnel

Can a consultant replace a key personnel?

Once the contract is effective, no changes shall be made in the key personnel, except for justifiable reason as may be determined by the Procuring Entity. If the Consultant introduces changes in the key personnel for reasons other than death, serious illness, incapacity, or resignation of the individual personnel during the first fifty percent (50%) of the contracted inputs of the said individual, this shall result in the imposition of damages. Violators will be fined an amount equal to the refund of the replaced personnel's basic rate, which should be at least fifty percent (50%) of the total basic rate for the duration of the engagement **(2016 IRR Section 33.3)**. The Consultant shall seek a replacement who should have equal or better qualifications, in terms of education, experience, and training, but will receive remuneration not exceeding that which would have been payable to the person replaced. The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of staff. Prior written approval by the Procuring Entity shall be obtained before any replacement of the Consultant's key personnel is made.

What must a Procuring Entity do if it considers the performance of one or more key personnel to be unsatisfactory?

If the Procuring Entity finds that any of the personnel has committed serious misconduct or has been charged with having committed a criminal action under Philippine law, or has reasonable cause to be dissatisfied with the performance of any of the personnel, then the consultant must, at the Procuring Entity's written request specifying the grounds therefor, forthwith provide as replacement a person with qualifications and experience acceptable to the Procuring Entity. The determination of the qualifications and the remuneration of the replacement shall follow the above described procedure.

Contract Price and Payment

Are contract prices fixed?

Price escalation is not allowed. For the given scope of work in the contract as awarded, the price must be considered as a fixed price.¹¹ **(2016 IRR Section 61.1)**

In cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the GoP, promulgated after the date of bid opening, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis. **(2016 IRR Section 61.2)**

How are contract prices to be denominated?

All contract prices must be denominated in Philippine currency, and this shall be stated in the bidding documents. 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. **(2016 IRR Section 61.1)**

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 sixty (60) days after the submission of a request for payment, 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. Only the portion of a claim that is not satisfactorily supported/accepted may be withheld from payment subject to the usual accounting and auditing rules and regulation.

The final payment must be made only after the consultant submits its final report and such report is approved as satisfactory by the Procuring Entity.

In what currency shall payments be made?¹²

Payments must be made in the Philippine currency.

What are the different types of consultancy contracts based on payment terms normally used?

1. Lump Sum Contract

Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs.

¹¹ For FAPs, to adjust the remuneration for foreign and/or local inflation, a price adjustment provision should be included in the contract if its duration is expected to exceed eighteen (18) months. Contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.

¹² For FAPs, RFPs should clearly state that firms may express the price for their services, in any fully convertible currency. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided the proposal includes no more than three (3) foreign currencies. The Procuring Entity may require consultants to state the portion of the price representing costs in the currency of the Procuring Entity's country. Payment under the contract should be made in the currency or currencies in which the price is expressed in the proposal.

Lump sum contracts are easy to administer because payments are due on clearly specified outputs.

2. Time-Based Contract

This type of contract is appropriate when it is difficult to define the scope and the length of the services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract should include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate.

3. Retainer and/or Contingency (Success) Fee Contract

Retainer and contingency fee contracts are widely used when consultants are preparing companies for sales or mergers of firms, notably in privatization operations. The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

4. Percentage Contract

These contracts are commonly used for architectural services. They may be also used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision).

5. Indefinite Delivery Contract (Price Agreement)

These contracts are used when Procuring Entities need to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain "advisers" for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The Procuring Entity and the firm agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

Liquidated Damages

What happens when the consultant fails to satisfactorily complete the services required under the contract?

When the consultant fails to satisfactorily complete the services required under the contract within the specified period, inclusive of duly granted time extensions, if any, the consultant shall be liable for damages for the delay. Consequently, it will have to pay the Procuring Entity liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of unperformed portion for every day of delay. **(2016 IRR Section 68)**

In case the sum of liquidated damages reaches ten percent (10%) of the contract amount, the contract may be rescinded or terminated by the Procuring Entity, without prejudice to other courses of action and remedies available under the circumstances. In case the contract is rescinded or terminated, the Procuring Entity may take over the contract or award the same to a qualified consultant through negotiated procurement. In addition to the liquidated damages, the erring consultant's performance security shall also be forfeited.

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

Incentive Bonus

Can a Procuring Entity give incentive bonuses to consultants?

A consultant that completes the consulting services ahead of schedule without any extension of time granted, e.g., detailed engineering design of an infrastructure project in a calamity stricken area, may be granted an incentive bonus if there would be benefit to the Procuring Entity and if explicitly provided in the contract. However, 2016 IRR Section 42.5 provides that no incentive bonus, in whatever form or for whatever purpose, shall be allowed.¹³

¹³ For FAPs, any allowable incentive bonus would be provided in the standard bidding documents for the project. The option to grant incentive bonus is given by the IFIs to the Procuring Entity.

Subcontracting

Is subcontracting allowed for the procurement of consulting services?

The Consultant may subcontract portions of the Services to an extent as may be approved by the Procuring Entity. A maximum of twenty percent (20%) of the Services may be subcontracted by the Consultant.

Subcontracting of any portion shall not relieve the Consultant from any liability or obligation that may arise from the contract. The Consultant will be responsible for the acts, defaults, and negligence of any subconsultant as fully as if these were the Consultant's own acts, defaults, or negligence.

A subconsultant must comply with the eligibility criteria and the documentary requirements specified in the BDS. In the event that any subconsultant is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Services shall be disallowed. For this reason, subconsultants are also bound by the same nationality and disclosure of relations requirements that applies to the principal consultants.

The Consultant may identify the subconsultant at any stage of the bidding process or during contract implementation. If the Consultant opts to disclose the name of the subconsultant during bid submission, the Consultant shall include the required documents as part of the technical component of its bid. A subconsultant identified during the bidding stage may be changed during the implementation of this Contract, subject to compliance with the required qualifications and the prior written approval of the Procuring Entity. A subconsultant that is identified by the Consultant during contract implementation must comply with the eligibility criteria and documentary requirements and secure prior written approval of the Procuring Entity.

Suspension of Work

Can the Procuring Entity suspend services on a project?

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

1. Shall specify the nature of the failure; and
2. Shall request the consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the consultant of such notice of suspension.

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. The PMO or end-user/implementing unit;
2. The HoPE or his/her duly authorized representative; and
3. The consultant.

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 PMO or end-user/implementing unit determines the existence of any of the grounds for suspension enumerated above.
2. The PMO or end-user/implementing unit drafts the suspension order for the approval of the HoPE.
3. The suspension order is issued to the consultant, stating the grounds therefor.
4. Prior to the expiration of the suspension order, the PMO or end-user/implementing 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 PMO, with the approval of the HoPE or his/her duly authorized representative, shall lift the suspension order and notify the consultant to proceed with the work/delivery of items in accordance with the amended contract.

Can the consultant suspend work?

The consultant may, by written notice of suspension, suspend work on any or all activities affected by the following:

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

When can a Procuring Entity order the resumption of work?

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

Should the period when work was suspended be considered in extending the contract time?

Yes, but only in cases when the total suspension or the suspension of activities along the critical path is not due to the fault of the consultant. In such cases, the elapsed time between the effective order suspending operation and the order to resume work shall be considered in the adjustment/extension of contract time.

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 shall terminate a contract for default when any of the following conditions attend its implementation:

1. Outside of *force majeure*, the consultant fails to deliver or perform the outputs and deliverables within the period/s specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the consultant prior to the delay;
2. As a result of *force majeure*, the consultant is unable to deliver or perform a material portion of the outputs and deliverables for a period of not less than sixty (60) calendar days after the consultant's receipt of the notice from the Procuring Entity stating that the circumstance of *force majeure* is deemed to have ceased; or
3. The consultant fails to perform any other obligation under the contract.

The rescission of the contract shall be accompanied by the confiscation by the Procuring Entity of the consultant's performance security. The consultant will also be recommended for blacklisting. The consultant shall be paid on a *quantum meruit* basis.

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 consultant 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, coercive, and obstructive 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.

The consultant shall be paid on a *quantum meruit* basis.

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

Yes. The Procuring Entity should terminate the contract if the consultant 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 consultant, 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 consultant.

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

The consultant may terminate its agreement with the Procuring Entity if the latter is in material breach of its obligations pursuant to the contract and has not remedied the same within sixty (60) calendar days following its receipt of the consultant's notice specifying such breach.

The consultant 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 consultant its performance security and unpaid claims.

Contract Termination for Convenience

May termination be allowed for reasons other than those attributable to the consultant?

The Procuring Entity, by written notice sent to the consultant, 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;
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;
3. Funding for the project has been withheld or reduced by higher authorities through no fault of the Procuring Entity; or
4. Any circumstance analogous to the foregoing.

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

Warranty

Is a warranty security required to be posted?

Posting of a warranty security does not apply to procurement of consulting services. However, consultants providing consulting services for detailed engineering design and/or construction supervision shall be held responsible for failure of the structure due to faulty and/or inadequate design and specifications and construction supervision. The review made by the Procuring Entity shall not release the consultant from the responsibility except when substantial changes have been made by the Procuring Entity without the conformity of the consultant.

General Procurement Activities and Timeline for Consulting Services

Below are the earliest possible time and the maximum period allowed for procurement of consulting services. **(2016 IRR Annex C)** The shortest possible time is 29 calendar days and the maximum period is 180 calendar days. 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 ABC of PhP1M and below
Advertisement/ Posting of Request for Expression of Interest	7 CDs	Day 1 to 7	7 CDs	Day 1 to 7	
Eligibility Check and Short Listing	1 CD	Day 8	20 CDs	Day 8 to 27	
Pre-bid Conference	1 CD	Day 9	<i>Whenever necessary</i>	Day 9 to 70	<ul style="list-style-type: none"> • Not earlier than 7 CDs from Day 1 of posting • At least 12 CDs before deadline of submission and receipt of bids
Deadline for Submission and Receipt of Bids/Bid Opening	1 CD	Day 21	75 CDs	Day 82	
Bid Evaluation	1 CD	Day 22	21 CDs	Day 83 to 103	
Approval of Ranking by the HoPE	1 CD	Day 23	2 CDs	Day 104 to 105	
Notification for Negotiation	1 CD	Day 24	3 CDs	Day 106 to 108	
Negotiation	1 CD	Day 25	10 CDs	Day 109 to 118	
Post-qualification	1 CD	Day 26	30 CDs	Day 119 to 148	
Approval of Resolution/ Issuance of Notice of Award	1 CD	Day 27	15 CDs	Day 149 to 163	
Contract Preparation and Signing	1 CD	Day 28	10 CDs	Day 164 to 173	
Approval of Contract by Higher Authority	<i>1 CD</i>		20 CDs or 30 CDs		<i>If necessary</i>
Issuance of Notice to Proceed	1 CD	Day 29	7 CDs	Day 174 to 180	
TOTAL TIME		29 CDs		180 CDs	<i>Excluding Approval of Higher Authority</i>

Case Study: Procurement of Consulting Services

A government agency wanted to engage the services of a consultant for the detailed engineering of its ICT building. During the pre-procurement conference, it was agreed upon by the BAC and other participants that the use of the quality-based evaluation procedure would be recommended in the selection of consultants. The head of agency approved the use of said evaluation procedure.

The project, which has an approved budget of ₱6,500,000, was advertised on 12 November 2015 in a newspaper of nationwide general circulation, and posted in the agency's website, the PhilGEPS, and a conspicuous place in the agency's premises. Fifteen (15) firms responded by submitting their eligibility documents on or before the deadline specified in the Request for Expression of Interest (REI).

During the eligibility check conducted by the BAC on 24 November 2015, the BAC declared eight (8) firms as ineligible for failing to pass all the eligibility requirements. The 8 ineligible firms received their notice of ineligibility before the meeting adjourned. The seven (7) other firms were declared by the BAC as eligible for shortlisting. One of the 8 ineligible firms, Company X, filed a request for reconsideration with the BAC on 02 December 2015. After an assessment of the justification provided by the said ineligible bidder, the BAC decided on 04 December 2015 to grant its request for reconsideration and declared Company X as eligible.

After evaluating the eligibility documents submitted by the 8 eligible bidders based on the criteria specified in the REI, the BAC determined the ratings of the 8 bidders as follows:

- 1) Company A - 90.5 points
- 2) Company B - 85.5 points
- 3) Company C - 75.5 points
- 4) Company D - 69.5 points
- 5) Company E - 69.0 points
- 6) Company F - 68.5 points
- 7) Company G - 51.5 points
- 8) Company X - 49.5 points

The BAC deliberated on the number of firms to be included in the shortlist, and agreed to have a shortlist of six (6) firms. The top 6 firms were informed of their inclusion in the shortlist through a letter dated 22 December 2015 and signed by the BAC Chairman. The Notice of Eligibility and Short Listing was forwarded to the 6 firms on 23 December 2015 stating, among others, the place and deadline for the submission of the technical and financial proposals.

A pre-bid conference was scheduled on 13 January 2016, while the deadline for submission of technical and financial proposals was set on 22 January 2016, 10:00 a.m., at the Conference Room, 3rd floor of the agency's building.

The BAC specified that the attendance of the 6 firms in the pre-bid conference is mandatory, and that failure to attend would be considered a ground for disqualification. All 6 firms attended the pre-bid conference and the minutes of the pre-bid conference were issued to the 6 bidders on 16 January 2016.

Five of the six firms submitted their technical and financial proposals on or before the 22 January 2016, 10:00 a.m. deadline, at the 3rd floor Conference Room. The sixth firm (Company F) arrived at the 3rd floor Conference Room at 10:03 a.m. and insisted that its technical and financial proposals be accepted as they were in the building at 9:57 a.m., as recorded in the security guard's logbook. The BAC decided to accept the technical and financial proposals of Company F.

The BAC started opening the technical envelopes of the six firms at the time indicated in the Notice of Eligibility and Short Listing to determine the presence of the required technical documents. All the firms, except Company F, submitted all the required technical documents.

Company F was declared disqualified by the BAC for failure to pass all the technical requirements. After agreeing with the declaration of the BAC on its disqualification, Company F accepted its financial proposal that was returned unopened by the BAC.

Prior to the detailed evaluation of the technical documents submitted by the five technically complying firms, the BAC deliberated on the sub-criteria and the corresponding weights. To more appropriately consider the requirements of the project, the general criteria were further subdivided. Based on the approved criteria, the BAC rated the five firms, resulting in the following rankings:

- 1) Company A - 88.5 points
- 2) Company B - 81.5 points
- 3) Company C - 71.5 points
- 4) Company D - 68.0 points
- 5) Company E - 65.5 points

The BAC sent a letter to Company A dated 16 February 2016, informing the firm that it submitted the highest rated bid, and thus inviting it for contract and financial negotiations on 19 February 2016 at 9:00 a.m. The authorized representative of Company A met with the BAC and discussed, among others, its financial proposal. Upon opening of the financial proposal of Company A, the submitted bid price was read as ₱6,800,000, exceeding the ABC by ₱300,000. The BAC checked the calculation of company A and it determined the correct bid price to be ₱6,550,000, still exceeding the ABC by ₱50,000. Company A offered a discount of ₱50,000 so that the cost of its financial proposal would not exceed the ABC. Satisfied with the high technical score obtained by Company A, the BAC accepted the discount offered.

Negotiations were successfully completed on 22 February 2016. Company A was considered to have submitted the highest rated and responsive bid after its successful post-qualification on 26 February 2016.

The BAC will deliberate on the award of contract. What steps, if any, are not consistent with the provisions of the 2016 IRR relating to the procurement of consulting services?

Analysis:

1. The request for reconsideration by Company X, which was declared by the BAC to be ineligible, should not have been favorably considered by the BAC as it was filed eight (8) days after it received the notice of ineligibility. Section 55.1 provides that prospective bidders should file a request for reconsideration within 3 calendar days upon receipt of written notice or verbal notification.
2. During the pre-procurement conference, the BAC should have already determined the number of shortlist of consultants, as provided in Section 24.5.2. The Section further provides that "(s)hould only one (1) or less than the required number apply for eligibility and short listing, pass the eligibility check, and/or pass the minimum score required in the short listing, the BAC shall consider the same." Determining the number of shortlist and the minimum score during actual shortlisting gives the BAC the opportunity to have a lesser or larger number of shortlist, from three (3) to seven (7), to favor a preferred firm.
3. The BAC is a recommendatory body. It should have obtained the approval of the Head of the Procuring Entity for its recommended shortlist before inviting all the firms in the shortlist to submit proposals, as provided in Section 24.5.4.
4. Section 22.3 provides that attendance to the pre-bid conference should not be mandatory, and should be conducted at least twelve (12) days before the deadline for the submission and receipt of bids. Conducting it nine (9) days before the deadline may not give the shortlisted bidders enough time to revise their proposals if these were affected by agreements reached during the pre-bid conference. To be binding on both parties, any agreements reached during the pre-bid conference should be stated in writing and issued as a Supplemental/Bid Bulletin.
5. The technical and financial proposals of Company F should not have been accepted by the BAC as these were submitted at the designated place, which is the 3rd floor Conference Room

of the agency's building and not just any place, beyond the deadline. Section 25.6 provides that "(b)ids submitted after the deadline should not be accepted by the BAC."

6. The evaluation criteria for the technical proposals should also have been agreed upon by the BAC during the pre-procurement conference. Although the BAC has not yet started evaluating the technical proposals when it finalized the evaluation criteria and could claim that they did not skew the criteria to favor a particular bidder, a losing bidder can exploit the situation and complain otherwise.

7. Upon completion of the evaluation of the technical proposals and the ranking of the short listed consultants, the BAC should not have immediately invited the bidder submitting the Highest Rated Bid for contract negotiations. The BAC should have first sought the approval of the HoPE for the ranking of the short listed consultants as provided under Section 33.2.1(a)(iii).

8. When the BAC calculated the cost of the financial proposal of Company A and determined that it exceeded the ABC, it should have disqualified Company A at this point as Section 31.1 provides that the ABC shall be the upper limit or ceiling for acceptable bid prices. The discount offered by Company A should not have been accepted as this is tantamount to an improvement of its bid. Since Company A should have been disqualified, Company B should be invited by the BAC for negotiations as it has the second highest technical score. If negotiations and post-qualification were successful, Company B would be determined to have submitted the Highest Rated and Responsive Bid, and recommended for award of contract.