THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184

THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT

RULE I – GENERAL PROVISIONS

Section 1. Short Title and Purpose

This 2016 Revised Implementing Rules and Regulations[2], hereinafter called the IRR, is promulgated pursuant to Section 75 of Republic Act No. (R.A.) 9184, otherwise known as the "Government Procurement Reform Act," for the purpose of prescribing the necessary rules and regulations for the modernization, standardization, and regulation of the procurement activities of the Government of the Philippines (GoP).(a)

Section 2. Declaration of Policy

The provisions of this IRR are in line with the commitment of the GoP to promote good governance and its effort to adhere to the principles of transparency, accountability, equity, efficiency, and economy in its procurement process. It is the policy of the GoP that procurement of Goods, Infrastructure Projects and Consulting Services shall be competitive and transparent, and therefore shall undergo competitive bidding, except as provided in Rule XVI of this IRR.(a)

Section 3. Governing Principles on Government Procurement

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

a) Transparency in the procurement process and in the implementation of procurement contracts through wide dissemination of bid opportunities and participation of pertinent non-government organizations.

b) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in competitive bidding.

c) Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method.

d) System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with GoP are, when warranted by circumstances, investigated and held liable for their actions relative thereto.

e) Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the Act and this IRR, and that all these contracts are performed strictly according to specifications.

[2] The 2016 Revised IRR was approved by the Government Procurement Policy Board (GPPB) through its Resolution 13-2016, dated 9 August 2016, and published in the Official Gazette on 29 August 2016. It took effect sixty (60) days after its publication or on 28 October 2016.

Section 4. Scope and Application of the IRR

4.1 This IRR shall apply to all procurement of any branch, agency, department, bureau, office, or instrumentality of the GoP, including government-owned and/or -controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).

4.2 Any Treaty or International or Executive Agreement to which the GoP is a signatory affecting the subject matter of the Act and this IRR shall be observed. In case of conflict between the terms of the Treaty or International or Executive Agreement and this IRR, the former shall prevail.

4.3 Unless the Treaty or International or Executive Agreement expressly provides another or different procurement procedures and guidelines, R.A. 9184 and this IRR shall apply to Foreign-funded Procurement of Goods, Infrastructure Projects, and Consulting Services by the GoP.

The GoP negotiating panels shall, as its default position, adhere to R.A. 9184 and this IRR, or at the very least, selection through competitive bidding, in all Foreign-funded Procurement. If the Treaty or International or Executive Agreement states otherwise, then the negotiating panel shall ensure that the reasons for the adoption of a different rule or method of procurement are clearly reflected in the records of discussion.(a)

4.4 This IRR shall not apply to the following activities:

a) Procurement of Goods, Infrastructure Projects and Consulting Services funded from Foreign Grants covered by R.A. 8182, as amended by R.A. 8555, entitled "An Act Excluding Official Development Assistance (ODA) from the Foreign Debt Limit in order to Facilitate the Absorption and Optimize the Utilization of ODA Resources, Amending for the Purpose Paragraph 1, Section 2 of R.A. 4860, As Amended," unless the GoP and the foreign grantor/foreign or international financing institution agree otherwise;

b) Acquisition of real property which shall be governed by R.A. 10752[3], entitled "An Act Facilitating the Acquisition of Right-Of-Way Site or Location for National Government Infrastructure Projects," and other applicable laws, rules and regulations; and

c) Public-Private sector infrastructure or development projects and other procurement covered by R.A. 6957, as amended by R.A. 7718, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes," as amended: *Provided, however*, That for the portions financed by the GoP, in whole or in part, the provisions of the Act and this IRR shall apply.(a)

4.5 The following are not procurement activities under R.A. 9184 and this IRR:

a) Direct financial or material assistance given to beneficiaries in accordance with the existing laws, rules and regulations, and subject to the guidelines of the concerned agency;

[3] Repealed R.A. 8974

b) Participation in local or foreign scholarships, trainings, continuing education, conferences, seminars or similar activities that shall be governed by applicable COA, CSC, and DBM rules;

c) Lease of government-owned property as lessor for private use;

d) Hiring of Job Order Workers;

e) Joint Venture under the revised NEDA Guidelines (GOCC and Private Entities), and Joint Venture Agreements by LGU with Private entities; and

f) Disposal of Property and Other Assets of the Government.(n)

Section 5. Definition of Terms

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

a) ***Act.*** Refers to R.A. 9184, entitled "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for other Purposes," otherwise known as the Government Procurement Reform Act.

b) ***Approved Budget for the Contract (ABC).*** Refers to the budget for the contract duly approved by the HoPE, as provided for in the General Appropriations Act (GAA), continuing, and automatic appropriations, in the case of national government agencies (NGAs); the corporate budget for the contract approved by the governing board, pursuant to Executive Order (E.O). No. 518, s. 1979, in the case of GOCCs and GFIs, and R.A. 8292 in the case of SUCs; the budget approved by the Sanggunian through an appropriations ordinance in the case of LGUs. For multi-year contracts, for which a Multi-Year Obligational Authority (MYOA) or an equivalent document is required, the ABC shall be that incorporated in the project cost reflected in the MYOA or equivalent document.

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

c) ***Bid.*** Refers to a signed offer or proposal to undertake a contract submitted by a bidder in response to and in consonance with the requirements of the Bidding Documents. For purposes of, and throughout this IRR, the term "Bid" shall be equivalent to and be used interchangeably with "Proposal" and "Tender."(5.d)

d) ***Bidder.*** Refers to a contractor, manufacturer, supplier, distributor and/or consultant who submits a bid in response to the requirements of the Bidding Documents.(5.ea)

e) ***Bidding Documents.*** Refer to the documents issued by the Procuring Entity as the basis for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the Goods, Infrastructure Projects and/or Consulting Services required by the Procuring Entity.(5.f)

f) ***Bids and Awards Committee (BAC)***. Refers to the Committee established in accordance with Rule V of this IRR.(5.c)

g) ***Common-Use Supplies and Equipment (CSE).*** Refer to those goods, materials and equipment that are used in the day-to-day operations of Procuring Entities in the performance of their functions. For the purpose of this IRR, CSE shall be those included in the Electronic Catalogue of the PhilGEPS.(a)

h) ***Competitive Bidding.*** Refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract. For purposes of, and throughout this IRR, the terms "Competitive Bidding" and "Public Bidding" shall have the same meaning and shall be used interchangeably.

i) ***Consulting Services.*** Refer to services for infrastructure projects and other types of projects or activities of the GoP requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the GoP to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. General principles on Consulting Services are provided for in Annex "B" of this IRR.

j) ***Domestic Bidder.*** Refers to any person or entity offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.

k) ***Domestic Entity***. Refers to an individual or a sole proprietor who is a citizen of the Philippines or a partnership, corporation, cooperative, or association duly organized under the laws of the Philippines and of which at least seventy five percent (75%) of the interest or outstanding capital stock belongs to citizens of the Philippines, habitually established in business and habitually engaged in the manufacture or sale of the merchandise covered by his bid, and the business has been in existence for at least five (5) consecutive years prior to the advertisement and/or posting of the Invitation to Bid.[4]

l) ***Executive Agreements***. Refer to International Agreements except that they do not require legislative ratification.

m) ***Expendable Supplies.*** Refer to articles which are normally consumed in use within one (1) year or converted in the process of manufacture or construction, or those having a life expectancy of more than one (1) year but which shall have decreased substantially in value after being put to use for only one (1) year (*e.g.*, medicines, stationery, fuel, and spare parts).

n) ***Foreign Bid.*** Refers to any offer of articles, materials or supplies not manufactured or not to be manufactured in the Philippines, substantially from articles, materials, or

[4] Preference to domestic entities, provided for under Commonwealth Act 138, dated 7 November 1936, which has been expressly repealed by R.A. 10667, The Philippine Competition Act of 2015, shall no longer be applied.

supplies of the growth, production, or manufacture, as the case may be, of the Philippines.

o) ***Foreign-funded Procurement.*** Refers to the acquisition of goods, consulting services, and the contracting for infrastructure projects by the GoP which are wholly or partly funded by Foreign Loans or Grants pursuant to a Treaty or International or Executive Agreement. For purposes of, and throughout this IRR, the term "foreign-funded procurement" shall have the same meaning as and shall be used interchangeably with "foreign-funded projects" or "foreign-assisted projects."

p) ***Foreign Grants***. Refer to grants with no repayment obligations and are provided in monetary form, goods, works, and consultancy services, among others.

q) ***Foreign Loans***. Refer to loans, credits, and indebtedness with private foreign banks or with foreign governments, agencies, or instrumentalities of such foreign governments, foreign financial institutions, or other international organizations with whom, or belonging to countries with which, the Philippines has diplomatic relations, as may be necessary and upon such terms and conditions as may be agreed upon, to enable the GoP to finance, either directly or through any government office, agency or instrumentality or any government-owned and controlled corporation, industrial, agricultural or other economic development purposes or projects authorized by law.

r) ***Goods.*** Refer to all items, supplies, materials and general support services, except Consulting Services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the Procuring Entity for such services. The term "related" or "analogous services" shall include, but is not limited to, lease of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity.(a)

s) ***Government Procurement Policy Board (GPPB)***. Refers to the Body created in accordance with Rule XX of this IRR.

t) ***Head of the Procuring Entity (HoPE).*** Refers to: (i) the head of the agency or body, or his duly authorized official, for NGAs and the constitutional commissions or offices, and other branches of government; (ii) the governing board or its duly authorized official, for GOCCs, GFIs and SUCs; or (iii) the local chief executive, for LGUs: *Provided*, *however,* That in an agency, department, or office where the procurement is decentralized, the head of each decentralized unit shall be considered as the HoPE, subject to the limitations and authority delegated by the head of the agency, department, or office.(a)

u) ***Infrastructure Projects.*** Include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings,

and other related construction projects of the government. For purposes of, and throughout this IRR, the term "Infrastructure Projects" shall have the same meaning as, and shall be used interchangeably with, "civil works" or "works."

v) ***International Agreement***. Refers to a contract or understanding, regardless of nomenclature, entered into between the GoP and another government or foreign or international financing institution in written form and governed by international law, whether embodied in a single instrument or in two (2) or more related instruments.

w) ***Non-expendable Supplies***. Refer to articles which are not consumed in use and ordinarily retain their original identity during the period of use, whose serviceable life is more than one (1) year and which add to the assets of the GoP (*e.g.*, furniture, fixtures, transport and other equipment). For this IRR, the term non-expendable supplies shall include semi-expendable property.(a)

x) ***Philippine Government Electronic Procurement System (PhilGEPS)***. Refers to the **electronic** System as provided in Section 8 of this IRR. For purposes of, and throughout this IRR, the term "PhilGEPS" shall have the same meaning as, and shall be used interchangeably with, "G-EPS" referred to in the Act.

y) ***Philippine National***. Refers to an individual or a sole proprietor who is a citizen of the Philippines or a partnership, corporation, or association organized under the laws of the Philippines of which at least sixty percent (60%) of the capital or interest is owned by citizens of the Philippines, or cooperatives registered with the Cooperative Development Authority.(a)

z) ***Portal***. Refers to a website that integrates a wide variety of contents for the purpose of attracting and aggregating multiple users together in a central virtual space.

aa) ***Procurement.*** Refers to the acquisition of goods, consulting services, and the contracting for infrastructure projects by the Procuring Entity. In case of projects involving mixed procurements, the nature of the procurement, *i.e.*, Goods, Infrastructure Projects or Consulting Services, shall be determined based on the primary purpose of the contract. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of R.A. 10752 and other applicable laws, rules and regulations.(a)

bb) ***Procuring Entity***. Refers to any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of the GoP (NGA), including GOCC, GFI, SUC and LGU procuring goods, infrastructure projects and consulting services.

cc) ***Treaties***. Refer to international agreements entered into by the GoP which require legislative ratification after executive concurrence.

dd) ***Universal or Commercial Banks***. Refer to universal or commercial banks duly authorized under R.A. 8791, otherwise known as "The General Banking Act of 2000."

Section 6. Standardization of Procurement Process and Forms

6.1 To systematize the procurement process, avoid confusion and ensure transparency, the GPPB shall pursue the development and approval of generic procurement

manuals, standard Bidding Documents, and forms, including those to be used for major procurement like drugs and textbooks.(a)

6.2 Procuring Entities are mandated to use the Generic Procurement Manuals (GPMs), Philippine Bidding Documents (PBDs), and other standard forms issued by the GPPB. However, whenever necessary, to suit the particular needs of the Procuring Entity, modifications may be made, particularly for major and specialized procurement, subject to the approval of the GPPB.(a)

RULE II – PROCUREMENT PLANNING

Section 7. Procurement Planning and Budgeting Linkage

7.1. All procurement shall be within the approved budget of the Procuring Entity and should be meticulously and judiciously planned by the Procuring Entity. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan (APP). For purposes of this IRR, a procurement project shall be considered crucial to the efficient discharge of governmental functions if it is required for the day-to-day operations or is in pursuit of the principal mandate of the Procuring Entity concerned. The APP shall include provisions for foreseeable emergencies based on historical records. In the case of Infrastructure Projects, the APP shall consider the appropriate timing/phasing of related project activities, such as, engineering design and acquisition of right-of-way site or location, to reduce/lower project costs.(a)

7.2. No procurement shall be undertaken unless it is in accordance with the approved APP, including approved changes thereto. The APP must be consistent with the duly approved yearly budget of the Procuring Entity and shall bear the approval of the HoPE or second-ranking official designated by the HoPE to act on his behalf.(a)

7.3. The APP shall be formulated and revised only in accordance with the following guidelines:

7.3.1. Upon issuance of the budget call in the case of NGAs, SUCs, Constitutional Commissions or Offices, or similar document for GOCCs, GFIs and LGUs, the Procuring Entity shall prepare its indicative APP for the succeeding calendar year to support its proposed budget taking into consideration the budget framework for that year in order to reflect its priorities and objectives.(a)

7.3.2. In the preparation of the indicative APP, the end-user or implementing units of the Procuring Entity shall formulate their respective Project Procurement Management Plans (PPMPs) for their different programs, activities, and projects (PAPs). The PPMP shall include:

a) information on whether PAPs will be contracted out, implemented by administration in accordance with the guidelines[5] issued by the GPPB, or consigned;

[5] Refer to Appendix 1 for the Revised Guidelines for the Implementation of Infrastructure Projects By Administration.

b) the type and objective of contract to be employed;

c) the extent/size of contract scopes/packages;

d) the procurement methods to be adopted, and indicating if the procurement tasks are to be outsourced as provided in Section 7.3.3 of this IRR;

e) the time schedule for each procurement activity and for the contract implementation; and

f) the estimated budget for the general components of the contract.

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

Based on the specific needs, the end-user or implementing units of the Procuring Entity shall be responsible for the preparation of all documents necessary for the procurement activity, including but shall not be limited to, the technical specifications, scope of work, or terms of reference.(a)

7.3.3. In order to hasten project implementation, Procuring Entities which may not have the proficiency or capability to undertake a particular procurement, as determined by the HoPE concerned, may outsource the procurement tasks by:

a) Requesting other GoP agencies to undertake such procurement for them, through the execution of a memorandum of agreement containing specific arrangements, stipulations and covenants, in accordance with government budgeting, accounting and auditing rules;

b) Engaging private procurement agents to directly undertake the procurement for them, subject to the guidelines to be issued by the GPPB; or

c) Recruiting or engaging consultants to assist them directly and/or train their staff in the management of the procurement function.(53.6a)

7.3.4. The PPMPs shall then be submitted to the Procuring Entity's Budget Office for evaluation in order to ensure consistency with the Procuring Entity's budget proposal and compliance with existing budgeting rules. The PPMPs included in the budget proposal shall be forwarded to the BAC Secretariat for consolidation into an indicative APP, and to the BAC for final recommendation of the appropriate procurement modality. For this purpose, the indicative APP shall include the following:

a) Name of Procurement Project;

b) Procurement Management Office (PMO)/end-user/implementing unit;

c) Method of Procurement;

d) Schedule of identified procurement activities as reflected in the APP form approved by the GPPB[6];

e) Source of funds;

f) Indicative ABC; and

g) Other relevant descriptions of the project, if applicable.

The indicative APP and budget proposal shall be simultaneously submitted to the HoPE and/or other oversight bodies for approval.(a)

7.3.5. As soon as the GAA, corporate budget, or appropriation ordinance, as the case may be, becomes final, the end-user or implementing units shall revise and adjust the PPMPs to reflect the budgetary allocation for their respective PAPs. The revised PPMPs shall be submitted to the BAC, through its Secretariat, for the final recommendation of the methods of procurement. The indicative APP shall then be revised and approved in accordance with Section 7.2 of this IRR. The APP shall be submitted to the GPPB on or before the end of January of the budget year, and shall be posted in accordance with E.O. 662, series of 2007, as amended.(a)

7.4. Changes to the individual PPMPs and the consolidated APP may be undertaken every six (6) months or as often as may be required by the HoPE. The respective end-user or implementing units of the Procuring Entity shall be responsible for the changes to the PPMPs, while the BAC Secretariat shall be responsible for the consolidation of these PPMPs into an APP, which shall be subject to the approval of the HoPE.

Changes in the APP, if any, for the budget year shall be submitted to the GPPB in July of the current budget year, and in January of the following budget year.(a)

7.5. The ABC as reflected in the approved APP shall be at all times consistent with the appropriations for the project authorized in the GAA, continuing, and automatic appropriations, the corporate budget, and the appropriations ordinance, as the case may be.(a)

7.6. To facilitate the immediate implementation of procurement of Goods, Infrastructure Projects or Consulting Services, even pending approval of the GAA, corporate budget or appropriations ordinance, as the case may be, and notwithstanding Section 7.2 hereof, the Procuring Entity may undertake the procurement activities short of award.

NGAs, SUCs, Constitutional Commissions or Offices are encouraged to start their procurement activities immediately after the National Expenditure Program (NEP) has been submitted by the President to Congress, provided that the HoPE has approved the corresponding indicative APP. This will facilitate the awarding of procurement

[6] Refer to Appendix 2 for the Annual Procurement Plan (APP) format.

contracts after the enactment of the GAA, enabling the timely implementation and completion of programs and projects.

For a contract with a period not exceeding one (1) year, the ABC shall be based on the amount in the indicative APP as included in the proposed national budget submitted by the President to Congress; for GOCCs, on budget levels as proposed to the governing board; or for LGUs, on budget levels as proposed in the executive budget submitted to the Sanggunian. In the case of multi-year contracts, for which a MYOA or an equivalent document is required, the ABC shall be the amount reflected in the MYOA or equivalent document.

No award of contract shall be made until the GAA, corporate budget or appropriations ordinance, as the case may be, has been approved or enacted.(n)

RULE III – PROCUREMENT BY ELECTRONIC MEANS

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

8.1. *The PhilGEPS*

8.1.1. To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be a single portal that shall serve as the primary source of information on all government procurement. The PhilGEPS shall serve as the primary and definitive source of information on government procurement. For this purpose, the Electronic Procurement System (EPS) established in accordance with E.O. 322, s. 2000, and E.O. 40, s. 2001, shall continue to be managed by the DBM-PS under the supervision of the GPPB, as the PhilGEPS, in accordance with this IRR.

8.1.2. To take advantage of the significant built-in efficiencies of the PhilGEPS and the volume discounts inherent in bulk purchasing, all Procuring Entities shall utilize the PhilGEPS for the procurement of Common-Use Supplies in accordance with the rules and procedures to be established by the GPPB. With regard to the procurement of non-common use items, Infrastructure Projects, and Consulting Services, agencies may hire service providers through competitive bidding to undertake their electronic procurement: *Provided, however,* That these service providers meet the following minimum requirements:

a) Comply with the provisions of the Act and this IRR, and R.A. 8792, otherwise known as the "Electronic Commerce Act;"

b) Linked to the PhilGEPS, particularly with regard to the posting of all bid opportunities and awards;

c) Allow parallel manual submission of bids to the Procuring Entity;

d) Ensure that the BAC shall have complete control of the bidding process, and that the BAC's sole authority to open bids is strictly observed;

e) Its system must be virus-resilient and must provide sufficient security which is at least equivalent to that employed by the PhilGEPS, such as, but not limited to, firewall and encryption devices;

f) Must provide for the use of electronic signatures and other current electronic authentication devices;

g) Must have sufficient redundant back-up facilities;

h) Must have provisions for linkage to the Procuring Entity's Financial Management Information System (FMIS), Logistics Management Systems, and other internal information systems that may interact with the procurement process; and

i) Electronic payment facilities, if used, shall comply with all laws, rules and regulations issued by the Government.

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

8.2. *Features of the PhilGEPS*

8.2.1. The Electronic Bulletin Board

a) The PhilGEPS shall have a centralized electronic bulletin board for posting procurement opportunities, notices, awards and reasons for award. All Procuring Entities are required to post all procurement opportunities, results of bidding and related information in the PhilGEPS bulletin board.

b) Procuring Entities shall post the Invitation to Bid for Goods and Infrastructure Projects or the Request for Expression of Interest for Consulting Services, in the electronic bulletin board in accordance with Section 21 of this IRR.

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

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

b) Registration shall entail the submission of the requirements specified by the DBM-PS. Submission of these requirements may be done on-line at the PhilGEPS website or physically at the PhilGEPS office. Registration shall be effective for one year and may be renewed, provided that the manufacturer, supplier, distributor, contractor or consultant concerned maintains its registration current and updated at least once a year, or more frequently when needed.

c) Manufacturers, suppliers, distributors, contractors and consultants applying for registration must also indicate their account number with a bank duly licensed by the *Bangko Sentral ng Pilipinas* (BSP) to facilitate

payment as well as the posting of bid and performance security, when applicable. Any information submitted in connection with this subsection shall be kept confidential.

d) The PhilGEPS shall deny registration to or exclude from the registry any party that is found to have willfully misrepresented any of the information provided in the application for registration or who is in the "blacklist" of the Government or any of its Procuring Entities in accordance with Section 69.4 of this IRR, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB.

e) A manufacturer, supplier, distributor, contractor or consultant applying for registration shall be required to provide an e-mail address to which all communications from the BAC and the Procuring Entity shall be sent. The e-mail address provided shall be considered as such applicant's information system for purposes of reckoning the date of sending or receipt of electronic messages or documents.

f) Registered manufacturers, suppliers, distributors, contractors and consultants shall secure a digital certificate from the government-accredited certification authority to be able to participate in the procurement activities of the PhilGEPS.

g) Registration with the PhilGEPS is not an accreditation and thus not tantamount to a finding of eligibility, nor is it a guaranty that a manufacturer, supplier, distributor, contractor or consultant may participate in a competitive bidding without first being determined to be eligible for that particular competitive bidding.

8.2.3. <u>The Electronic Catalogue</u>

a) The PhilGEPS shall have a centralized electronic catalogue of common and non-common use goods, supplies, materials and equipment.

b) Procuring Entities shall procure common-use goods, supplies, materials and equipment from the Electronic Catalogue in the PhilGEPS. To be able to use the PhilGEPS, Procuring Entities shall be required to register and designate the officials or personnel authorized to transact with and operate the PhilGEPS from such Procuring Entities' terminals.

c) Procuring Entities without internet access may avail of the PhilGEPS Public Access Terminals which shall be installed at DBM-designated locations in the provinces and in Metro Manila: *Provided, however*, That they shall comply with Section 8.3 of this IRR.

d) The Electronic Catalogue may also feature non-common use items that may be procured directly and without competitive bidding by Procuring Entities from suppliers through the PhilGEPS Virtual Store: *Provided, however*, That for an item to be carried in the Electronic Catalogue for this purpose, the supplier thereof must have been determined as the Lowest Calculated Responsive Bidder in a previous bidding conducted by

DBM-PS or by a Procuring Entity for DBM-PS: *Provided, further*, That such item will be featured in the Electronic Catalogue for a maximum period of six (6) months unless another supplier offers a price lower by at least five percent (5%) and such supplier is determined by the DBM-PS or by the Procuring Entity that conducted the previous bidding for DBM-PS to meet the eligibility and bidding requirements for the item, in which case the item from the latter supplier will be that featured in the Electronic Catalogue for the remainder of the six (6)-month period.

8.2.4. Additional Features

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

8.2.4.1. Virtual Store

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

8.2.4.2. Electronic Payment

The PhilGEPS may support e-payment functions to pay for goods purchased through the Virtual Store to manage the generation of purchase orders and the payment of bids processed through the system.

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

a) Generate purchase orders from a bid notice, award notice or contract;

b) Support approval process for purchase orders before any payment or fund transfer is processed;

c) Have a process to submit request for payment upon delivery of goods and/or services and the completion of the approval process; and

d) Have the ability to interface with the designated bank of the Procuring Entity and suppliers to support the electronic transfer of funds.

8.2.4.3. Electronic Bid Submission[7]

The PhilGEPS may support the implementation of e-Bid submission processes, which includes creation of electronic bid forms, creation of

[7] Refer to Appendix 3 for the Guidelines for Electronic Bidding (E-Bidding).

bid box, delivery of bid submissions, notification to supplier of receipt of bids, bid receiving and electronic bid evaluation. This facility shall cover all types of procurement for Goods, Infrastructure Projects and Consulting Services.

8.3. *Use of the PhilGEPS*

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

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

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

8.4.1. Pre-bid conferences shall be conducted in accordance with Section 22 of this IRR.(a)

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

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

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

8.5.1. To ensure the widest dissemination of the Invitation to Bid/Request for Expression of Interest, manufacturers, suppliers, distributors, contractors and/or consultants shall register with the PhilGEPS. All Procuring Entities already maintaining an electronic registry upon the effectivity of this IRR shall integrate the same with that of the PhilGEPS. A manufacturer, supplier, distributor, contractor or consultant duly registered with the PhilGEPS may participate in a procurement undertaken by any Procuring Entity, provided that the said manufacturer, supplier, distributor, contractor or consultant maintains its registration current and updated in accordance with the provisions of this IRR, and its registration is proper and relevant to the particular type of procurement.

8.5.2. All bidders shall upload and maintain in PhilGEPS a current and updated file of the following Class "A" eligibility documents under Sections 23.1(a) and 24.1(a):

a) Registration Certificate;
b) Mayor's/Business Permit or its Equivalent Document;
c) Tax Clearance;
d) Philippine Contractors Accreditation Board (PCAB) license and registration; and
e) Audited Financial Statements.

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

These documents shall be accompanied by a Sworn Statement in a form prescribed by the GPPB stating that the documents submitted are complete and authentic copies of the original, and all statements and information provided therein are true and correct. Upon receipt of the said documents, the PhilGEPS shall process the same in accordance with the guidelines on the Government of the Philippines – Official Merchants Registry (GoP-OMR)[8].(a)

8.5.3. Registered bidders determined to be eligible may submit their bids at any time before the closing date specified in the Bidding Documents. The PhilGEPS shall bar all incoming bids after such prescribed date and time.(a)

8.5.4. The PhilGEPS shall have a feature that allows the electronic submission of eligibility requirements and bids.

8.5.5. Upon receipt of a bid, the PhilGEPS shall generate and send a message to the bidder acknowledging such receipt.

8.6. *Opening of Bids under the PhilGEPS*

8.6.1. The BAC shall have the sole authority to open the bids.

8.6.2. Only the financial proposals of bidders whose technical proposals meet the minimum technical requirements shall be opened or decrypted.

8.6.3. An update of all procurement contracts, regardless of whether procurement is done electronically or manually, shall be posted on the PhilGEPS bulletin board. The update shall include, but shall not be limited to, the status of procurement contracts, including the names of contract awardees and the amount of the contract.

[8] Refer to Appendix 4 for the Guidelines for the Use of the Government of the Philippines – Official Merchants Registry (GoP-OMR).

8.6.4. Without prejudice to criminal prosecution under the applicable provisions of the Act and this IRR, R.A. 8792, R.A. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," and other applicable penal laws, public officials and employees who commit any of the following acts shall be deemed to have committed grave misconduct and shall be sanctioned and/or penalized in accordance with the applicable Civil Service rules and regulations:

a) Opening or decryption, by whatever means, of bids submitted through the PhilGEPS ahead of the appointed time for the opening or decryption of such bids;

b) Causing the unauthorized disclosure of any information or document submitted through the PhilGEPS;

c) Hacking into or cracking the PhilGEPS, or aiding another person to hack into or crack the same; or

d) Any other act that breaches or violates the security, integrity, and confidentiality of the PhilGEPS.

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

8.7. *Observers*

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

Section 9. Security, Integrity and Confidentiality

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

a) *Security* – The PhilGEPS shall be protected from unauthorized access or interference through the incorporation of security features such as, but not limited to, firewalls. Periodic tests shall be conducted to ensure that the system cannot be breached.

b) *Integrity* – The PhilGEPS shall ensure that no person, including the system administrators and chairperson and members of the BAC, shall be able to alter the contents of bids submitted through the system or read the same ahead of the stipulated time for the decryption or opening of bids. For this purpose, bids submitted through the PhilGEPS shall be sealed through electronic keys. The authenticity of messages and documents submitted through the PhilGEPS shall also be ensured by the use of electronic signatures.

c) *Confidentiality* – The PhilGEPS shall ensure the privacy of parties transacting with it. For this purpose, no electronic message or document sent through the system shall be divulged to third parties unless such electronic message or document was sent after

the sender was informed that the same will be made publicly available. The PhilGEPS shall protect the intellectual property rights over documents, including technical designs, submitted in response to Invitations to Bid.

d) *Audit Trail* – The PhilGEPS shall include a feature that provides for an audit trail for on-line transactions, and allows the Commission on Audit (COA) to verify the security and integrity of the system at any time.

e) *Performance Tracking* – The performance of manufacturers, suppliers, distributors, contractors and consultants shall be tracked to monitor compliance with delivery schedules and other performance indicators. Similarly, the performance of Procuring Entities shall be tracked to monitor the settlement of their obligations to manufacturers, suppliers, distributors, contractors and consultants.

RULE IV – COMPETITIVE BIDDING

Section 10. Competitive Bidding

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

RULE V – BIDS AND AWARDS COMMITTEE

Section 11. The BAC and its Composition

11.1. *BAC Structure*

11.1.1. Each Procuring Entity shall establish in its head office a single BAC to undertake the functions specified in Section 12 of this IRR in order to facilitate professionalization and harmonization of procedures and standards. In line with the standardization of procurement procedures and the thrust towards strengthening the procurement function to increase operational efficiency and effectiveness, Heads of Procuring Entities shall aim to consolidate or unify all procurement activities of the organization, whether locally-funded or foreign-assisted, and whether pertaining to Goods, Infrastructure Projects or Consulting Services.

11.1.2. However, to expedite the procurement process for practical intents and purposes, the HoPE may create separate BACs where the number and complexity of the items to be procured shall so warrant. The BACs may be organized either according to: (a) geographical location of PMO or end-user or implementing units of the Procuring Entity; or (b) nature of procurement. Similar committees for decentralized and lower level offices may also be formed when deemed necessary by the HoPE.

11.2. *BAC Composition*

11.2.1. The HoPE shall designate at least five (5) but not more than seven (7) members to the BAC of unquestionable integrity and procurement proficiency.

11.2.2. The BAC for NGAs, departments, bureaus, offices, or instrumentalities of the GoP, including the judicial and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs shall be composed of the following:

Regular Members:

a) Chairperson, who is at least a third (3rd) ranking permanent official of the Procuring Entity;

b) An officer, who is at least a fifth (5th) ranking permanent official, or if not available, an officer of the next lower rank with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the legal or administrative area of the Procuring Entity: *Provided,* That in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third (3rd) ranking permanent personnel or if not available, an officer of the next lower rank;

c) An officer, who is at least a fifth (5th) ranking permanent official, or if not available, an officer of the next lower rank with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the finance area of the Procuring Entity: *Provided,* That in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third (3rd) ranking permanent personnel or if not available, an officer of the next lower rank;

Provisional Members:

d) An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement; and

e) A representative from the end-user or implementing unit who has knowledge of procurement laws and procedures. When procurement tasks are outsourced to another GoP agency as a procurement agent pursuant to Section 7.3.3, a representative from the Procuring Entity may be designated as a provisional member to the BAC. For this purpose, the procuring entity shall recommend the provisional member to be designated.

The Chairperson and the Vice-Chairperson shall also be designated by the HoPE. Moreover, the Vice-Chairperson shall be a regular member of the BAC. For purposes of this IRR, the term "permanent" shall refer to a *plantilla* position within the Procuring Entity concerned.(a)

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

a.) For Provinces, Cities, and Municipalities
   i. One representative each from the regular offices under the Office of the Local Chief Executive such as, but not limited to, the following: Office of the Administrator, Budget Office, Legal Office, Engineering Office, General Services Offices; and

ii. A representative from the end user unit.

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

b.) For Barangays:

i. The BAC shall be composed of at least five (5), but not more than seven (7) regular members of the Sangguniang Barangay, except the Punong Barangay.

ii. The Punong Barangay, being the Local Chief Executive, shall designate the Chairperson, Vice-Chairperson, and members of the BAC.(a)

11.2.4. The HoPE may designate alternate BAC members, who shall have the same qualifications as that of the members originally designated under Section 11.2.2 of this IRR. The alternate members shall attend meetings of the BAC and receive the proportionate honoraria, whenever the original members are absent. The alternate members shall have the same term as the original members.(a)

11.2.5. In no case shall the HoPE and/or the approving authority be the Chairperson or a member of the BAC.

11.2.6. Unless sooner removed for a cause, the members of the BAC shall have a fixed term of one (1) year reckoned from the date of appointment, renewable at the discretion of the HoPE. Upon expiration of the terms of the current members, they shall continue to exercise their functions until new BAC members are designated. In case of resignation, retirement, separation, transfer, re-assignment, removal, or death, the replacement shall serve only for the unexpired term: *Provided, however,* That in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes, a member shall be suspended or removed by the HoPE.

Section 12. Functions of the BAC

12.1. The BAC shall have the following functions: (a) advertise and/or post the invitation to bid/request for expressions of interest; (b) conduct pre-procurement and pre-bid conferences; (c) determine the eligibility of prospective bidders; (d) receive and open bids; (e) conduct the evaluation of bids; (f) undertake post-qualification proceedings; (g) resolve requests for reconsideration; (h) recommend award of contracts to the HoPE or his duly authorized representative: (i) recommend the imposition of sanctions in accordance with Rule XXIII; (j) recommend to the HoPE the use of Alternative Methods of Procurement as provided in Rule XVI hereof; k) conduct any of the Alternative Methods of Procurement; l) conduct periodic assessment of the procurement processes and procedures to streamline procurement activities pursuant to Section 3(c) of this IRR; and m) perform such other related functions as may be necessary, including the creation of a Technical Working Group (TWG) from a pool of technical, financial, and/or legal experts to assist in the following:

1.) Review of the Technical Specifications, Scope of Work, and Terms of Reference;

2.) Review of Bidding Documents;

3.) Shortlisting of Consultants;

4.) Eligibility Screening;

5.) Evaluation of Bids;

6.) Post-Qualification; and

7.) Resolution of Request for Reconsideration.

To the extent possible, the BAC in central offices shall render necessary assistance to its regional or lower office BACs to facilitate the conduct of procurement from pre-procurement conference to the post-qualification stage.(a)

12.2. The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by the Act and this IRR, and it shall prepare a Procurement Monitoring Report (PMR) in the form prescribed by the GPPB[9]. The PMR shall cover all procurement activities specified in the APP, whether ongoing and completed, from the holding of the pre-procurement conference to the issuance of notice of award and the approval of the contract, including the standard and actual time for each major procurement activity. The PMR shall be approved and submitted by the HoPE to the GPPB in printed and electronic format within fourteen (14) calendar days after the end of each semester. The PMR shall likewise be posted in accordance with E.O. 662, s. 2007, as amended.(a)

12.3. *Quorum*

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

12.4. *Meetings*

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

Section 13. Observers

13.1. To enhance the transparency of the process, the BAC shall, during the eligibility checking, shortlisting, pre-bid conference, preliminary examination of bids, bid evaluation, and post-qualification, invite, in addition to the representative of the

[9] Refer to Appendix 5 for the Procurement Monitoring Report (PMR) Format

COA, at least two (2) observers, who shall not have the right to vote, to sit in its proceedings where:

1. At least one (1) shall come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, for example:

    a) For Infrastructure Projects, national associations of constructors duly recognized by the Construction Industry Authority of the Philippines (CIAP), such as, but not limited to the following:

        (1) Philippine Constructors Association, Inc.; or
        (2) National Constructors Association of the Philippines, Inc.

    b) For Goods, a specific relevant chamber-member of the Philippine Chamber of Commerce and Industry.

    c) For Consulting Services, a project-related professional organization accredited or duly recognized by the Professional Regulation Commission or the Supreme Court, such as, but not limited to:

        (1) Philippine Institute of Civil Engineers (PICE);
        (2) Philippine Institute of Certified Public Accountants (PICPA); or
        (3) Confederation of Filipino Consulting Organizations; and

2. The other observer shall come from a non-government organization (NGO).(a)

13.2. The observers shall come from an organization duly registered with the Securities and Exchange Commission (SEC) or the Cooperative Development Authority (CDA), and should meet the following criteria:

    a) Knowledge, experience or expertise in procurement or in the subject matter of the contract to be bid;

    b) Absence of actual or potential conflict of interest in the contract to be bid; and

    c) Any other relevant criteria that may be determined by the BAC.

13.3. Observers shall be invited at least five (5) calendar days before the date of the procurement stage/activity. The absence of observers will not nullify the BAC proceedings: *Provided,* That they have been duly invited in writing. The Procuring Entities should ensure that the invitation is received at least five (5) calendar days before each procurement activity. In the event that a procurement activity has to be postponed, the observers shall be notified immediately of the change in schedule. (a)

13.4. The observers shall have the following responsibilities:

    a) To prepare the report either jointly or separately indicating their observations made on the procurement activities conducted by the BAC for submission to the HoPE, copy furnished the BAC Chairperson. The report shall assess the extent of the BAC's compliance with the provisions of this IRR and areas of improvement in the BAC's proceedings;

b) To submit their report to the Procuring Entity and furnish a copy to the GPPB and Office of the Ombudsman/Resident Ombudsman. If no report is submitted by the observer within seven (7) calendar days after each procurement activity, then it is presumed that the bidding activity conducted by the BAC followed the correct procedure; and

c) To immediately inhibit and notify in writing the Procuring Entity concerned of any actual or potential interest in the contract to be bid.(a)

13.5. Observers shall be allowed access to or be provided with the following documents free of charge upon their request: (a) minutes of BAC meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) APP and related PPMP; and (e) opened proposals. In all instances, observers shall be required to enter into a confidentiality agreement with the concerned Procuring Entity in accordance with the form prescribed by the GPPB.[10](a)

Section 14. BAC Secretariat / Procurement Unit

14.1. The HoPE shall create a Secretariat which will serve as the main support unit of the BAC. An existing organic office within the Procuring Entity may also be designated to serve as Secretariat. To strengthen and promote the professionalization of the organizations' procuring unit, the HoPE may create procurement units that may serve concurrently as BAC Secretariat in accordance with the guidelines issued by DBM. The Secretariat shall have the following functions and responsibilities:

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

b) Organize and make all necessary arrangements for BAC and the TWG meetings and conferences;

c) Prepare minutes of meetings and resolutions of the BAC;

d) Take custody of procurement documents and other records and ensure that all procurements undertaken by the Procuring Entity are properly documented;

e) Manage the sale and distribution of Bidding Documents to interested bidders;

f) Advertise and/or post bidding opportunities, including Bidding Documents, and notices of awards;

g) Assist in managing the procurement processes;

h) Monitor procurement activities and milestones for proper reporting to relevant agencies when required;

i) Consolidate PPMPs from various units of the Procuring Entity to make them available for review as indicated in Section 7 of this IRR and prepare the APP; and

[10] Confidentiality Agreement based on the 2014 Procurement Observer's Guide. Refer to Appendix 6 for the Confidentiality Agreement Format.

j) Act as the central channel of communications for the BAC with end-user or implementing units, PMOs, other units of the line agency, other government agencies, providers of goods, infrastructure projects, and consulting services, observers, and the general public.(a)

14.2. In case of an existing *ad hoc* Secretariat, the HoPE shall assign full-time support staff to their BAC Secretariat. The head of the Secretariat in central offices shall be at least a fifth (5th) ranking permanent employee or, if not available, a permanent employee of lower rank; or shall be at least a third (3rd) ranking permanent employee in bureaus, regional offices and sub-regional/ district offices, or if not available, a permanent employee of lower rank. In addition to integrity, Heads of Procuring Entities shall consider procurement proficiency as a factor in designating the head of the Secretariat and Procurement Unit.(a)

14.3. To expedite the procurement process, the HoPE shall ensure that the members of the BAC, its Secretariat and TWG, shall give utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the said assignments at hand are completed.(a)

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

The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the DBM shall promulgate the necessary guidelines[11]. The Procuring Entity may also grant payment of honoraria to the BAC Secretariat and the TWG members, subject to the relevant rules of the DBM.

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

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

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

The HoPE is encouraged to attend similar procurement training and capacity development activities.(a)

RULE VI - PREPARATION OF BIDDING DOCUMENTS

Section 17. Form and Contents of Bidding Documents

17.1. The Bidding Documents shall be prepared by the Procuring Entity following the standard forms and manuals prescribed by the GPPB. The Bidding Documents shall include the following:

[11] Refer to Appendix 7 for the Guidelines on the Grant of Honoraria to Government Personnel Involved in Government Procurement

a) ABC;

b) Invitation to Bid/Request for Expression of Interest;

c) Eligibility Requirements;

d) Instructions to Bidders, including scope of bid, documents comprising the bid, criteria for eligibility, bid evaluation methodology/criteria in accordance with the Act, and post-qualification, as well as the date, time and place of the pre-bid conference (where applicable), submission of bids and opening of bids;

e) Terms of Reference, for Consulting Services;

f) Scope of work, where applicable;

g) Plans/Drawings and Technical Specifications;

h) Form of Bid, Price Form, and List of Goods or Bill of Quantities;

i) Delivery Time or Completion Schedule;

j) Form, Amount, and Validity Period of Bid Security;

k) Form, Amount, and Validity of Performance Security and Warranty; and

l) Form of Contract and General and Special Conditions of Contract.

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

In mixed procurements, the Procuring Entity shall specify in the Bidding Documents the requirements, criteria and other conditions of the bidding procedures and of the ensuing contract as applicable to each component of the project. In the preparation of Bidding Documents, the Procuring Entity shall ensure compliance with existing laws, rules and regulations, especially those concerning licenses and permits required for the project, in accordance with Section 34.2 of this IRR.(a)

17.3. To provide prospective bidders ample time to examine the Bidding Documents and to prepare their respective bids, the concerned BAC shall make the Bidding Documents available from the time the Invitation to Bid / Request for Expression of Interest is first advertised/posted until the deadline for the submission and receipt of bids.(a)

17.4. Bidders may be asked to pay a fee to recover the cost for the preparation and development of the Bidding Documents pursuant to the Guidelines on the Sale of Bidding Documents[12]. The Procuring Entity shall post the complete Bidding Documents at its website and the PhilGEPS website from the time the Invitation to Bid/Request for Expression of Interest is advertised. Bidding Documents may be downloaded from any of the said websites: *Provided,* That upon submission of their bids, the bidders shall pay the applicable fee, if required. The Bidding Documents

[12] Refer to Appendix 8 for the Guidelines on the Sale of Bidding Documents.

may also be secured from the BAC Secretariat upon payment of the corresponding fee, if required.(a)

17.5. 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 this IRR.(n)

17.6. *Detailed Engineering for the Procurement of Infrastructure Projects*

No bidding and award of contract for Infrastructure Projects shall be made unless the detailed engineering investigations, surveys and designs, for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the HoPE concerned or his duly authorized representative, pursuant to the recommendation of the end-user or implementing unit and in accordance with the provisions of Annex "A"[13] of this IRR. In case of projects with pending acquisition of right-of-way site or location, the procurement process may commence, but no award of contract shall be made until an authority or permit to enter is issued by the property owner; or a notarized deed of sale or deed of donation is executed in favor of the government; or a writ of possession is issued by a court of competent jurisdiction, as the case may be.

The exception is in case of design and build scheme, wherein the bidders shall be allowed to submit its preliminary engineering designs as part of its bid. The procedures for the procurement and contract implementation of Infrastructure Projects using a design and build scheme shall be in accordance with the provisions of Annex "G"[14] of this IRR.(a)

Section 18. Reference to Brand Names

Specifications for the procurement of Goods shall be based on relevant characteristics, functionality and/or performance requirements. Reference to brand names shall not be allowed except for items or parts that are compatible with the existing fleet or equipment of the same make and brand, and to maintain the performance, functionality and useful life of the equipment.

This Section shall also apply to the goods component of Infrastructure Projects and Consulting Services.(a)

Section 19. Access to Information

In all stages of the preparation of the Bidding Documents, the Procuring Entity shall ensure equal access to information. Prior to their official release to prospective bidders, no aspect or part of the Bidding Documents shall be divulged or released to any prospective bidder or person having direct or indirect interest in the project to be procured, or to any party, except those officially authorized in the handling of the documents.(a)

[13] Detailed Engineering for the Procurement of Infrastructure Projects.
[14] Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects.

RULE VII – INVITATION TO BID

Section 20. Pre-procurement Conference

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

a) Confirm the description and scope of the contract, the ABC, and contract duration;

b) Ensure that the procurement is in accordance with the PPMP and APP;

c) Determine the readiness of the procurement at hand, including, among other aspects, the following:

i) availability of appropriations and programmed budget for contract. For the purpose of pre-procurement conference, pending the approval or enactment of the GAA, corporate budget or appropriations ordinances, as the case may be, the certification of availability of funds refers to the amount in the indicative APP consistent with the NEP, or MYOA or its equivalent document, the proposed corporate budget or executive budget, in accordance with Section 7.6 of this IRR on procurement activities short of award;

ii) completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;

iii) completion of the detailed engineering according to the prescribed standards in the case of Infrastructure Projects; and

iv) confirmation of the availability of right-of-way site or location, and the possession of affected properties, subject to Section 17.6 of this IRR.

d) Review, modify and agree on the criteria for eligibility screening, evaluation, and post-qualification;

e) Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities; and

f) Reiterate and emphasize the importance of confidentiality, in accordance with Section 19 of this IRR, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing.(a)

20.2. The holding of a pre-procurement conference may not be required for small procurements, *i.e.*, procurement of Goods costing Two Million Pesos (₱2,000,000.00) and below, procurement of Infrastructure Projects costing Five Million Pesos

(₱5,000,000.00) and below, and procurement of Consulting Services costing One Million Pesos (₱1,000,000.00) and below.

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

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

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

a) For the procurement of:

i) Goods, the name of the contract to be bid and a brief description of the goods to be procured;

ii) Infrastructure Projects, the name and location of the contract to be bid, the project background and other relevant information regarding the proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works; and

iii) Consulting services, the name of the contract to be bid, a general description of the project and other important or relevant information;

b) The name of the project, identification and number of lots or items specific to the bidding, as well as the basis of evaluation of the project, lots, or items, where applicable;

c) A general statement on the criteria to be used by the Procuring Entity for the eligibility check, the short listing of prospective bidders, in the case of the procurement of Consulting Services, the examination and evaluation of bids, post-qualification, and award;

d) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;

e) ABC for the project, lot, or item to be bid;

f) The source of funding;

g) The place, time and website where the Bidding Documents may be secured or downloaded, and, where required, the price of the Bidding Documents, in accordance with Section 17.4 of this IRR;

h) The contract duration or delivery schedule;

i) The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned Procuring Entity, as well as its designated contact person; and

j) Such other necessary information deemed relevant by the Procuring Entity.(a)

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

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

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

b) Posted continuously in the PhilGEPS website, the website of the Procuring Entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for seven (7) calendar days starting on date of advertisement; and

c) 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: *Provided,* That advertisement shall not be required for contracts to be bid with an ABC of Ten Million Pesos (₱10,000,000.00) and below for the procurement of goods, Fifteen Million Pesos (₱15,000,000.00) and below for the procurement of Infrastructure Projects, and Five Million Pesos (₱5,000,000.00) and below for the procurement of Consulting Services.

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

Section 22. Pre-bid Conference

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

22.2. The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids, but not earlier than seven (7) calendar days from the PhilGEPS posting of the Invitation to Bid or Bidding Documents and in the case of Consulting Services, from the determination of the shortlisted consultants. 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, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.(a)

22.3. The pre-bid conference shall discuss, clarify and explain, among other things, the eligibility requirements and the technical and financial components of the contract to

be bid including questions and clarifications raised by the prospective bidders before and during the Pre-Bid Conference.

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 manufacturers, suppliers, distributors, contractors and/or consultants that also have videoconferencing capabilities may conduct their pre-bidding conferences electronically. The Pre-Bid Conference is open to prospective bidders, and in case of procurement of consulting services, the shortlisted bidder, but attendance shall not be mandatory.(a)

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

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

22.5. *Supplemental/Bid Bulletins*

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

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

22.5.3. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted in the PhilGEPS, the website of the Procuring Entity concerned, if available, and at any conspicuous place within the premises of the Procuring Entity. It shall be the responsibility of all those who have properly secured the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC. However, bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with Section 26 of this IRR.(a)

RULE VIII – RECEIPT AND OPENING OF BIDS

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

23.1. For purposes of determining the eligibility of bidders using the criteria stated in Section 23.4 of this IRR, only the following documents shall be required by the BAC, using the forms prescribed in the Bidding Documents:

a) Class "A" Documents

Legal Documents

i) Registration certificate from SEC, Department of Trade and Industry (DTI) for sole proprietorship, or CDA for cooperatives.

ii) Mayor's/Business permit issued by the city or municipality where the principal place of business of the prospective bidder is located, or the equivalent document for Exclusive Economic Zones or Areas.

In cases of recently expired Mayor's/Business permits, it shall be accepted together with the official receipt as proof that the bidder has applied for renewal within the period prescribed by the concerned local government unit, provided that the renewed permit shall be submitted as a post-qualification requirement in accordance with Section 34.2 of this IRR.

iii) Tax clearance per E.O. 398, s. 2005, as finally reviewed and approved by the Bureau of Internal Revenue (BIR).

Technical Documents

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

v) Statement of the bidder's Single Largest Completed Contract (SLCC) similar to the contract to be bid, except under conditions provided for in Sections 23.4.1.3 and 23.4.2.4 of this IRR, within the relevant period as provided in the Bidding Documents in the case of Goods.

All of the above statements shall include all information required in the PBDs prescribed by the GPPB.

vi) In the case of procurement of Infrastructure Projects, a valid Philippine Contractors Accreditation Board (PCAB) License or Special PCAB License in case of Joint Ventures, and registration for the type and cost of the contract to be bid.

Financial Documents

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

viii) The prospective bidder's computation of Net Financial Contracting Capacity (NFCC). However, in the case of procurement of Goods, a bidder may submit a committed Line of Credit from a Universal or Commercial Bank, in lieu of its NFCC computation.

b) Class "B" Document

For Goods, valid joint venture agreement (JVA), in case the joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners should be included in the bid, stating that they will enter into and abide by the provisions of the JVA in the event that the bid is successful. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security.

For Infrastructure Projects, JV bidders shall submit a JVA in accordance with R.A. 4566 and its IRR.

Each partner of the joint venture shall submit their respective PhilGEPS Certificates of Registration in accordance with Section 8.5.2 of this IRR. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance: *Provided,* That the partner responsible to submit the NFCC shall likewise submit the Statement of all of its ongoing contracts and Audited Financial Statements.(a)

23.2. In case of foreign bidders, the eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines.(a)

23.3. To facilitate determination of eligibility, the BAC of a Procuring Entity shall use the contents of the PhilGEPS electronic registry of manufacturers, suppliers, distributors, contractors, and/or consultants, in accordance with Section 8.5.2 of this IRR.(23.4a)

23.4. *Eligibility Criteria*

23.4.1. For the procurement of Goods:

23.4.1.1. The following shall be eligible to participate in the bidding for the supply of goods:

a) Duly licensed Filipino citizens/sole proprietorships;

b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;

c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;

d) Cooperatives duly organized under the laws of the Philippines; or

e) Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: *Provided, however*, That Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.(23.5.1.1a)

23.4.1.2. Foreign bidders may be eligible to participate under any of the following circumstances in accordance with the guidelines[15] issued by the GPPB:

a) When provided for under any Treaty or International or Executive Agreement as provided in Section 4 of the Act and this IRR;

b) When the foreign supplier is a citizen, corporation or association of a country, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines;

c) When the goods sought to be procured are not available from local suppliers; or

d) When there is a need to prevent situations that defeat competition or restrain trade.(23.5.1.2a)

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

[15] Refer to Appendix 9 for the Guidelines in the Determination of Eligibility of Foreign Suppliers, Contractors, and Consultants to Participate in Government Procurement Projects.

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

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

b) The largest of these similar contracts must be equivalent to at least half of the percentage of the ABC as required above.

For this purpose, the similar contracts mentioned under (a) and (b) above must have been completed within the period specified in the Invitation to Bid. The Procuring Entity may clarify in the Bidding Documents the definition or description of what it considers to be a similar project.(23.5.1.3a)

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

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

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

For purposes of computing the foreign bidders' NFCC, the value of the current assets and current liabilities shall be based on their Audited Financial Statements prepared in accordance with international financial reporting standards.(23.5.1.4a)

23.4.1.5. If the prospective bidder submits a committed Line of Credit, it must be at least equal to ten percent (10%) of the ABC to be bid: *Provided,* That if the same is issued by a foreign Universal or Commercial Bank, it shall be confirmed or authenticated by a local Universal or Commercial Bank. (n)

23.4.2. For the procurement of Infrastructure Projects:

23.4.2.1. The following persons/entities shall be allowed to participate in the bidding for Infrastructure Projects:

a) Duly licensed Filipino citizens/sole proprietorships;

b) Partnerships duly organized under the laws of the Philippines and of which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;

c) Corporations duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines;

d) Cooperatives duly organized under the laws of the Philippines; or

e) Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: *Provided, however*, That in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%): *Provided, further,* That joint ventures in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement: *Provided, finally,* That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.(23.5.2.1a)

23.4.2.2. Foreign bidders may be eligible to participate in the procurement of Infrastructure Projects when provided for under any Treaty or International or Executive Agreement as provided in Section 4 of the Act and this IRR.(23.5.2.2)

23.4.2.3. In accordance with R.A. 4566, entitled "An Act Creating the Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes," the persons/entities enumerated in Section 23.4.2.1 of this IRR may participate in competitive bidding if he has been issued a license by the PCAB to engage or act as a contractor.(23.5.2.3a)

23.4.2.4. The prospective bidder must have completed an SLCC that is similar to the contract to be bid, and whose value, adjusted to current prices using the PSA consumer price indices, must be at least fifty percent (50%) of the ABC to be bid: *Provided, however*, That contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines as prescribed by the PCAB.

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

Moreover, a contract shall be considered "similar" to the contract to be bid if it has the same major categories of work. The Procuring Entity may clarify in the Bidding Documents what is regarded as major categories of work.(23.5.2.5a)

23.4.2.5. The SLCC shall be supported by an Owner's Certificate of Final Acceptance issued by the project owner other than the contractor or a final rating of at least Satisfactory in the Constructors Performance Evaluation System (CPES). In case of contracts with the private sector, an equivalent document shall be submitted.(23.5.2.4a)

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

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

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

For purposes of computing the foreign bidders' NFCC, the value of the current assets and current liabilities shall be based on their Audited Financial Statements prepared in accordance with international financial reporting standards.(23.5.2.6a)

23.5. GOCCs may be eligible to participate in Competitive Bidding only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not attached agencies of the Procuring Entity. The GPPB shall promulgate the necessary guidelines for this provision.(23.6)

23.6. Notwithstanding the eligibility of a bidder, the Procuring Entity concerned reserves the right to review the qualifications of the bidder at any stage of the procurement process if the Procuring Entity has reasonable grounds to believe that a misrepresentation has been made by the said bidder, or that there has been a change in the 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 bidder which will affect the capability of the bidder to undertake the project so that it fails the eligibility criteria, the Procuring Entity shall consider the said bidder as ineligible and shall disqualify it from obtaining an award or contract, in accordance with Rules XXI, XXII, and XXIII of this IRR.(23.7a)

Section 24. Eligibility Requirements and Short Listing for Consulting Services

24.1. For purposes of determining the eligibility and short list of bidders in accordance with Sections 24.4 and 24.5 of this IRR, only the following documents shall be required by the BAC, using the forms prescribed in the Bidding Documents:

a) Class "A" Documents

Legal Documents

i) Registration certificate from SEC, DTI for sole proprietorship, or CDA for cooperatives.

ii) Mayor's/Business permit issued by the city or municipality where the principal place of business of the prospective bidder is located, or the equivalent document for Exclusive Economic Zones or Areas.

In cases of recently expired Mayor's/Business permits, it shall be accepted together with the official receipt as proof that the bidder has applied for renewal within the period prescribed by the concerned local government unit: *Provided*, That the renewed permit shall be submitted as a post-qualification requirement in accordance with Section 34.2 of this IRR.

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.

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 Bidding Documents. The statement shall include all information required in the PBDs prescribed by the GPPB.

v) Statement of the consultant specifying its nationality and confirming that those who will actually perform the service are registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions, including their respective curriculum vitae.

Financial Document

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

b) Class "B" Document

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

24.2. In the case of foreign consultants, the eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines.(a)

24.3. *Eligibility Criteria*

24.3.1. The following persons/entities shall be allowed to participate in the bidding for Consulting Services:

a) Duly licensed Filipino citizens/sole proprietorships;

b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;

c) Corporations duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;

d) Cooperatives duly organized under the laws of the Philippines; or

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

24.3.2. When the types and fields of consulting services in which the foregoing persons/entities wish to engage involve the practice of professions regulated by law, those who will actually perform the services shall be Filipino citizens

and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

24.3.3. In order to manifest trust and confidence in and promote the development of Filipino consultancy, foreign consultants may be hired in the event Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, as determined by the HoPE subject to the submission of the documents in accordance with Section 37.1.4(a)(iv).(a)

24.4. *Eligibility Check of Prospective Bidders*

24.4.1. The eligibility envelopes of prospective bidders for procurement of Consulting Services shall be submitted on or before the deadline specified in the Request for Expression of Interest, and shall be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders.(a)

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

24.4.3. To facilitate determination of eligibility, the BAC of a Procuring Entity shall use the contents of the PhilGEPS electronic registry of manufacturers, suppliers, distributors, contractors, and/or consultants, in accordance with Section 8.5.2 of this IRR. However, foreign consultants participating in the procurement by a Philippine Foreign Service Office or Post shall be allowed to submit their eligibility documents under Section 24.1 of this IRR, in lieu of the PhilGEPS Certificate of Registration: *Provided*, That the winning bidder should register with the PhilGEPS in accordance with Section 37.1.4 of this IRR.(a)

24.5. *Short Listing of Prospective Bidders*

24.5.1. With respect to a particular contract for Consulting Services to be bid, the concerned Procuring Entity shall only consider for short listing those consultants whose contracts, as identified in the eligibility documents submitted for registration, are similar in nature and complexity to the contract to be bid, based on the Request for Expression of Interest.

24.5.2. The BAC shall draw up the short list of consultants from those who have been determined as eligible in accordance with the provisions of this IRR. The number of short listed consultants, which shall be determined in the pre-procurement conference, shall consist of three (3) to seven (7) consultants, with five (5) as the preferable number. Should only one (1) or less than the required number apply for eligibility and short listing, pass the eligibility check, and/or pass the minimum score required in the short listing, the BAC shall consider the same. The shortlisted bidders shall then be required to pay the fee for the Bidding Documents, if applicable, subject to the provisions of Section 17.4 of this IRR.(a)

24.5.3. The BAC shall specify in the Request for Expression of Interest the set of criteria and rating system for short listing of consultants to be used for the

particular contract to be bid, which shall consider the following, among others:

a) Applicable experience of the consultant and members in case of joint ventures, considering both the overall experiences of the firm or, in the case of new firms, the individual experiences of the principal and key staff, including the times when employed by other consultants;

b) Qualification of personnel who may be assigned to the job vis-à-vis extent and complexity of the undertaking; and

c) Current workload relative to capacity.

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

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

24.7. Notwithstanding the eligibility of a consultant and/or inclusion in the short list of consultants, the Procuring Entity concerned reserves the right to review his qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said consultant, or that there has been a change in the consultant's capability to undertake the project from the time he submitted his eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the consultant which will affect the capability of the consultant to undertake the project so that the consultant fails the preset eligibility criteria, the Procuring Entity shall consider the said consultant as ineligible and shall disqualify him from submitting a bid or from obtaining an award or contract, in accordance with Rules XXI, XXII, and XXIII of this IRR.

Section 25. Submission and Receipt of Bids

25.1. Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under Section 23.1 of this IRR for the procurement of Goods and Infrastructure Projects, and the second shall contain the financial component of the bid.

25.2. The first envelope shall contain the following technical information/documents, at the least:

a) <u>For the procurement of Goods</u>:

i) PhilGEPS Certificate of Registration and membership in accordance with Section 8.5.2 of this IRR, except for foreign bidders participating in the procurement by a Philippine Foreign Service Office or Post, which shall

submit their eligibility documents under Section 23.1 of this IRR: *Provided*, That the winning bidder shall register with the PhilGEPS in accordance with Section 37.1.4 of this IRR;

ii) Statement of all Ongoing Government and Private Contracts;

iii) Statement of SLCC;

iv) NFCC Computation or committed Line of Credit;

v) JVA or the Duly Notarized Statement in accordance with Section 23.1(b) of this IRR, if applicable;

vi) Bid security in the prescribed form, amount and validity period;

vii) Technical Specifications, which may include production/delivery schedule, manpower requirements, and/or after-sales service/parts, if applicable;

viii) Omnibus Sworn Statement in accordance with Section 25.3 of this IRR; and

ix) For foreign bidders claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos, a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item or product.

b) <u>For the procurement of Infrastructure Projects</u>:

i) PhilGEPS Certificate of Registration and membership in accordance with Section 8.5.2 of this IRR, except for foreign bidders participating in the procurement by a Philippine Foreign Service Office or Post, which shall submit their eligibility documents under Section 23.1 of this IRR: *Provided*, That the winning bidder shall register with the PhilGEPS in accordance with Section 37.1.4 of this IRR.

ii) PCAB License and Registration;

iii) Statement of all Ongoing Government and Private Contracts;

iv) Statement of SLCC;

v) NFCC Computation;

vi) JVA, if applicable;

vii) Bid security in the prescribed form, amount and validity period;

viii) Project Requirements, which shall include the following:

(1) Organizational chart for the contract to be bid;

(2) List of contractor's personnel (*e.g.*, Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the contract to be bid, with their complete qualification and experience data;

(3) List of contractor's major equipment units, which are owned, leased, and/or under purchase agreements, supported by proof of ownership or certification of availability of equipment from the equipment lessor/vendor for the duration of the project, as the case may be; and

ix) Omnibus Sworn Statement in accordance with Section 25.3 of this IRR;

c) <u>For the procurement of Consulting Services:</u>

i) The bid security in the prescribed form, amount and validity period;

ii) Organizational chart for the contract to be bid;

iii) List of completed and ongoing projects;

iv) Approach, work plan, and schedule: *Provided, however*, That for architectural design, submission of architectural plans and designs shall not be required during the consultant's selection process;

v) List of key personnel to be assigned to the contract to be bid, with their complete qualification and experience data; and

vi) Omnibus Sworn Statement in accordance with Section 25.3 of this IRR.(a)

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

(a) The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract accompanied by the duly notarized Special Power of Attorney, Board/Partnership Resolution, or Secretary's Certificate, whichever is applicable;

(b) It is not "blacklisted" or barred from bidding by the GoP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;

(c) Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;

(d) It is authorizing the HoPE or his duly authorized representative/s to verify all the documents submitted;

(e) It complies with the disclosure provision under Section 47 of the Act and this IRR, in relation to other provisions of R.A. 3019;

(f) It complies with existing labor laws and standards;

(g) It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs;

(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.[25.2(a)(iv), 25.2(b)(iv), 25.2(c)(iv)a]

25.4. The second envelope shall contain the financial information/documents as specified in the PBDs.

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

a) For Goods, a maximum period of forty-five (45) calendar days.

b) For Infrastructure Projects, the following maximum periods:

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

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

25.6. Bids, including the eligibility requirements under Section 23.1 of this IRR, submitted after the deadline shall not be accepted by the BAC. The BAC shall record in the minutes of bid submission and opening, the bidder's name, its representative and the time the late bid was submitted.(a)

25.7. To ensure transparency and accurate representation of the bid submission, the BAC Secretariat shall notify in writing all bidders whose bids it has received through its PhilGEPS-registered physical address or official e-mail address. The notice shall be issued within seven (7) calendar days from the date of the bid opening.(n)

25.8. The original copy of the bid form shall be typed or written in ink and shall be signed by the bidder or its duly authorized representative.(n)

25.9. Unsealed or unmarked bid envelopes shall be rejected. However, bid envelopes that are not properly sealed and marked, as required in the Bidding Documents, shall be accepted, provided that the bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The BAC shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid, or for its premature opening.(n)

Section 26. Modification and Withdrawal of Bids

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

26.2. A bidder may, through a letter, withdraw its bid before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline shall be subject to appropriate sanctions as prescribed in this IRR. A bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped received by the BAC before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

Section 27. Bid Security

27.1. All bids shall be accompanied by a bid security, payable to the Procuring Entity concerned as a guarantee that the successful bidder shall, within ten (10) calendar days from receipt of the notice of award, enter into contract with the Procuring Entity and furnish the performance security required in Section 39 of this IRR, except when Section 37.1 of this IRR allows a longer period. Failure to enclose the required bid security in the form and amount prescribed herein shall automatically disqualify the bid concerned.

27.2. The bidder shall submit a Bid Securing Declaration, or any form of Bid Security, in an amount not less than the required percentage of the ABC in accordance with the following schedule:(a)

Form of Bid Security	**Amount of Bid Security (Not less than the required percentage of the ABC)**
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. For biddings conducted by LGUs, the cashier's/manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.(a)	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. For biddings conducted by LGUs, bank draft/guarantee, or irrevocable letter of	

credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument. (a)	
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%)

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

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

27.5. A Bid Securing Declaration is an undertaking which states, among others, that the bidder shall enter into contract with the Procuring Entity and furnish the required performance security within ten (10) calendar days, as indicated in the Bidding Documents, from receipt of the Notice of Award, and commits to pay the corresponding amount as fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as required in the guidelines[16] issued by the GPPB.(a)

27.6. In no case shall the bid security be returned later than the expiration of the bid validity period indicated in the Bidding Documents, unless it has been extended in accordance with Section 28.2 of this IRR.(a)

Section 28. Bid Validity

28.1. Bids and bid securities shall be valid for a reasonable period as determined by the HoPE concerned, which shall be indicated in the Bidding Documents, but in no case shall the period exceed one hundred twenty (120) calendar days from the date of the opening of bids.

28.2. Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, the Procuring Entity concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security.

Section 29. Bid Opening

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

[16] Refer to Appendix 10 for the Guidelines on the Use of Bid Securing Declaration.

In case the bids cannot be opened as scheduled due to justifiable 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.

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

RULE IX – BID EVALUATION

Section 30. Preliminary Examination of Bids

30.1. The BAC shall open the first bid envelopes in public to determine each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements, as prescribed in this IRR. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion, as stated in the Instructions to Bidders. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed." Otherwise, the BAC shall rate the said first bid envelope as "passed."(a)

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

30.3. For the procurement of Goods where, due to the nature of the requirements of the project, the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically unequal bids is likely to occur, a two (2)-stage bidding procedure may be employed. In these cases, the Procuring Entity concerned shall prepare the Bidding Documents, including the technical specification in the form of performance criteria only. Under this procedure, prospective bidders shall be requested at the first stage to submit their respective eligibility requirements if needed, and initial technical proposals only (no price tenders). The concerned BAC shall then evaluate the technical merits of the proposals received from eligible bidders vis-à-vis the required performance standards. A meeting/discussion shall then be held by the BAC with those eligible bidders whose technical tenders meet the minimum required standards stipulated in the Bidding Documents for purposes of drawing up the final revised technical specifications/requirements of the contract. Once the final revised technical specifications are completed and duly approved by the concerned BAC, copies of the

same shall be issued to all the bidders identified in the first stage who shall then be required to submit their revised technical tenders, including their price proposals in two (2) separate sealed envelopes in accordance with this IRR, at a specified deadline, after which time no more bids shall be received. The concerned BAC shall then proceed in accordance with the procedure prescribed in this IRR.

30.4. For the procurement of Consulting Services, the detailed implementation of the procedure specified in this Section shall be as provided in Section 33 of this IRR.

Section 31. Ceiling for Bid Prices

31.1. The ABC shall be the upper limit or ceiling for acceptable bid prices. If a bid price, as evaluated and calculated in accordance with this IRR, is higher than the ABC, the bidder submitting the same shall be automatically disqualified. There shall be no lower limit or floor on the amount of the award.

31.2. For Foreign-funded Procurement, the ABC shall be applied as the ceiling: *Provided,* That the following conditions are met:

a) Bidding Documents are obtainable free of charge on a freely accessible website. If payment of Bidding Documents is required by the Procuring Entity, payment could be made upon the submission of bids.

b) The Procuring Entity has procedures in place to ensure that the ABC is based on recent estimates made by the engineer or the responsible unit of the Procuring Entity and that the estimates are based on adequate detailed engineering (in the case of Infrastructure Projects) and reflect the quality, supervision and risk and inflationary factors, as well as prevailing market prices, associated with the types of Goods or Infrastructure Projects to be procured.

c) The Procuring Entity has trained cost estimators on estimating prices and analyzing bid variances. In the case of Infrastructure Projects, the Procuring Entity must also have trained quantity surveyors.

d) The Procuring Entity has established a system to monitor and report bid prices relative to ABC and engineer's/Procuring Entity's estimate.

e) The Procuring Entity has established a monitoring and evaluation system for contract implementation to provide a feedback on actual total costs of Goods and Infrastructure Projects.

However, the GoP and the foreign government/foreign or international financing institution may agree to waive the foregoing conditions.(a)

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

32.1. Members of the BAC, its staff and personnel, Secretariat and TWG, as well as Observers, are prohibited from making or accepting any communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award. However, the BAC, through its Secretariat, may ask in writing the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing.(a)

32.2. For the procurement of Goods and Infrastructure Projects, the BAC shall evaluate the financial component of the bids to determine the Lowest Calculated Bid using the following steps:

32.2.1. The BAC shall immediately conduct a detailed evaluation of all bids using non-discretionary criteria in considering the following:

a) Completeness of the bid. Unless the Instructions to Bidders specifically allow partial bids, bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, bill of quantities, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a zero (0) or a dash (-) for the said item would mean that it is being offered for free to the Government, except those required by law or regulations to be provided for; and

b) Arithmetical corrections. Consider computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications if expressly allowed in the Bidding Documents. Any adjustment shall be calculated in monetary terms to determine the calculated prices.(a)

32.2.2. The BAC shall evaluate all bids on an equal footing to ensure fair and competitive bid comparison. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.

32.2.3. In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; (b) total price per item and unit price for the item as extended or multiplied by the quantity of that item, the latter shall prevail; (c) stated total price and the actual sum of prices of component items, the latter shall prevail; (d) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail.

32.2.4. Bids shall then be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, to identify the Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, which exceed the ABC shall be disqualified.

32.3. After all bids have been received, opened, examined, evaluated, and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding bid securities and the minutes or proceedings of the bidding. The Abstract of Bids shall contain the following:

a) Name of the contract and its location, if applicable;

b) Time, date and place of bid opening; and

c) Names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.

32.4. The entire evaluation process for the procurement of Goods and Infrastructure Projects shall be completed within seven (7) calendar days from the deadline for receipt of proposals.(a)

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

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

33.2. The purpose of bid evaluation is to determine the Highest Rated Bid using the following steps:

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

a) Quality-Based Evaluation Procedure

i) A two-stage procedure shall be adopted whereby each consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes.

ii) After receipt of bids, the technical proposals shall first be opened and evaluated, in accordance with Section 33.2.2 of this IRR. The BAC shall rank the consultants in descending order based on the numerical ratings of their technical proposals and identify the Highest Rated Bid: *Provided*, *however*, That the Highest Rated Bid shall pass the minimum score indicated in the Bidding Documents.

iii) The HoPE shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC.

iv) After approval by the HoPE of the Highest Rated Bid, its financial proposal shall then be opened. The BAC shall, within three (3) calendar days, notify and invite the consultant with the Highest Rated Bid for the opening of financial proposal for the purpose of conducting negotiations with the said consultant. In the letter of notification, the BAC shall inform the consultant of the issues in the technical proposal the BAC may wish to clarify during negotiations.

v) Negotiations shall be in accordance with Section 33.2.5 of this IRR: *Provided,* That the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount

shall not exceed the amount indicated in the envelope and the ABC as stated in the Bidding Documents.

b) Quality-Cost Based Evaluation Procedure

i) The technical proposal together with the financial proposal shall be considered in the evaluation of consultants. The technical proposals shall be evaluated first using the criteria in Section 33.2.2 of this IRR. The financial proposals of the consultants who meet the minimum technical score shall then be opened.

ii) The financial and technical proposals shall be given corresponding weights with the financial proposal given a minimum weight of fifteen percent (15%) up to a maximum of forty percent (40%). The weight of the technical criteria shall be adjusted accordingly such that their total weight in percent together with the weight given to the financial proposal shall add to one hundred percent (100%). The exact weights shall be approved by the HoPE upon the recommendation of the BAC and indicated in the Bidding Documents. The BAC shall rank the consultants in descending order based on the combined numerical ratings of their technical and financial proposals and identify the Highest Rated Bid.

iii) The HoPE shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC.

iv) After approval by the HoPE of the Highest Rated Bid, the BAC shall, within three (3) calendar days, notify and invite the consultant with the Highest Rated Bid for negotiation in accordance with Section 33.2.5 of this IRR, except for the financial proposal under item (e) thereof.(a)

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

a) Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;

b) Experience and capability of the consultant which include records of previous engagement and quality of performance in similar and in other projects; relationship with previous and current clients; and, overall work commitments, geographical distribution of current/impending projects and attention to be given by the consultant. The experience of the consultant to the project shall consider both the overall experiences of the firm and the individual experiences of the principal and key staff including the times when employed by other consultants; and

c) Plan of approach and methodology with emphasis on the clarity, feasibility, innovativeness and comprehensiveness of the plan approach,

and the quality of interpretation of project problems, risks, and suggested solutions.

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

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

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

33.2.5. Negotiations shall cover the following:

a) Discussion and clarification of the terms of reference and scope of services;

b) Discussion and finalization of the methodology and work program proposed by the consultant;

c) Consideration of appropriateness of qualifications and pertinent compensation, number of man-months and the personnel to be assigned to the job, taking note of over-qualified personnel, to be commensurate with the compensation of personnel with the appropriate qualifications, number of man-months and schedule of activities (manning schedule);

d) Discussion on the services, facilities and data, if any, to be provided by Procuring Entity concerned;

e) Discussion on the financial proposal submitted by the consultant; and

f) Provisions of the contract.

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

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

33.3. There should be no replacement of key personnel before the awarding of contract, except for justifiable reason as may be determined by the BAC, such as, illness,

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

33.4. The entire evaluation process, including the submission of the results thereof to the HoPE for approval, shall be completed in not more than twenty-one (21) calendar days after the deadline for receipt of proposals. The proposal with the highest score shall be identified as the Highest Rated Bid.

RULE X – POST-QUALIFICATION

Section 34. Objective and Process of Post-Qualification

34.1. The Lowest Calculated Bid/Highest Rated Bid shall undergo post-qualification in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents.

34.2. Within five (5) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Bid or Highest Rated Bid, the bidder shall submit 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 post-qualification requirements on time, or a finding against the veracity thereof, shall disqualify the bidder for award: *Provided*, That in the event that a finding against the veracity of any of the documents submitted is made, it shall cause the forfeiture of the Bid Security in accordance with Section 69 of this IRR.(a)

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

a) Legal Requirements. To verify, validate, and ascertain licenses, certificates, permits, and agreements submitted by the bidder, and the fact that it is not included in any "blacklist" as provided in Section 25.3 of this IRR. For this purpose, the GPPB shall maintain a consolidated file of all "blacklisted" suppliers, contractors, and consultants.

b) Technical Requirements. To determine compliance of the goods, infrastructure projects, or consulting services offered with the requirements specified in the Bidding Documents, including, where applicable:

i) Verification and validation of the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, for the procurement of Infrastructure Projects and Consulting Services;

ii) Verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts, if any of these ongoing contracts shows:

a. Negative slippage of at least fifteen percent (15%) in any one project or a negative slippage of at least ten percent (10%) in each of two (2) or more contracts;

b. Failure of the contractor to commence repair works on ongoing contracts within seven (7) calendar days and to complete them within thirty (30) calendar days after receipt of the Procuring Entity's notice of defects and deficiencies;

c. Failure of the contractor to commence repair works on contracts with pending certificates of acceptance within thirty (30) calendar days and complete them within ninety (90) days after receipt of the Procuring Entity's notice of defects and failures; or

d. Substandard quality of work as per contract plans and specifications, or unsatisfactory performance of the contractor’s obligations as per contract terms and conditions, at the time of inspection.

If the BAC verifies any of these deficiencies to be due to the contractor’s fault or negligence, the agency shall disqualify the contractor from the award, for the procurement of Infrastructure Projects.

iii) Verification and/or inspection and testing of the goods/product, after-sales and/or maintenance capabilities, in applicable cases, as well as checking the following:

a. Delay in the partial delivery of goods amounting to ten percent (10%) of the contract price in its ongoing government and private contracts;

b. If any of these contracts shows the bidder’s failure to deliver or perform any or all of the goods or services within the period(s) specified in the contract or within any extension thereof granted by the Procuring Entity pursuant to a request made by the supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price; or

c. Unsatisfactory performance of the supplier’s obligations as per contract terms and conditions at the time of inspection.

If the BAC verifies any of these deficiencies to be due to the bidder's fault or negligence, the BAC shall disqualify the bidder from the award, for the procurement of Goods.

iv) Ascertainment of the authenticity of the bid security and its correctness as to type, amount, form and wording, and validity period, as required in the Bidding Documents.

c) Financial Requirements. To verify, validate and ascertain the bid price proposal of the bidder and, whenever applicable, the required committed Line of Credit in the amount specified and over the period stipulated in the Bidding Documents, or the bidder's NFCC to ensure that the bidder can sustain the operating cash flow of the transaction. (a)

34.4. If the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid passes all the criteria for post-qualification, it shall declare the said bid as the LCRB or HRRB[17], and recommend to the HoPE the award of contract to the said bidder at its submitted bid price or its calculated bid price, whichever is lower or, in the case of quality-based evaluation procedure, submitted bid price or its negotiated price, whichever is lower.

34.5. If, however, the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it.

34.6. Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second Lowest Calculated Bid/Highest Rated Bid. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the LCRB or HRRB.

34.7. If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next Lowest Calculated Bid/Highest Rated Bid, and so on until the LCRB or HRRB, as the case may be, is determined for award, subject to Section 37 of this IRR.

34.8. The post-qualification process shall be completed in not more than twelve (12) calendar days from the determination of the Lowest Calculated Bid/Highest Rated Bid. In exceptional cases, the post-qualification period may be extended by the HoPE, but in no case shall the aggregate period exceed forty-five (45) calendar days for Goods and Infrastructure Projects, or thirty (30) calendar days in Consulting Services.

In case of post-disqualification of the bidder with the lowest calculated bid/highest rated bid, the BAC shall be given the same fresh period to conduct the post-qualification of the next lowest calculated bid/highest rated bid until a bidder is post-qualified or failure of bidding is declared based on Section 35.1(c) of this IRR.(a)

Section 35. Failure of Bidding

35.1. The BAC shall declare the bidding a failure when:

a) No bids are received;

[17] In case of a tie among bidders, refer to Appendix 11 for the Tie-Breaking Method.

b) All prospective bidders are declared ineligible;

c) All bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of Consulting Services, there is no successful negotiation; or

d) The bidder with the LCRB, HRRB, SCRB or SRRB refuses, without justifiable cause, to accept the award of contract, and no award is made in accordance with Section 40 of the Act and this IRR.

35.2. In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.

35.3. Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of this IRR.

35.4. All bidders who have initially responded to the Invitation to Bid/Request for Expression of Interest and have been declared eligible or short listed in the previous biddings shall be allowed to submit new bids. The BAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding(s).

35.5. Should there occur a second failure of bidding, the Procuring Entity may resort to negotiated procurement, as provided for in Section 53.1 of this IRR.

Section 36. Single Calculated/Rated and Responsive Bid Submission

A Single Calculated and Responsive Bid (SCRB) or a Single Rated and Responsive Bid (SRRB) shall be considered for award if it falls under any of the following circumstances:

a) If after advertisement, only one prospective bidder applies for eligibility check, in accordance with the provisions of this IRR, and it meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements;

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

c) If after the eligibility check, more than one bidder meets the eligibility requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements.

In all instances, the Procuring Entity shall ensure that the ABC reflects the most advantageous prevailing price for the Government.(a)

RULE XI – AWARD, IMPLEMENTATION AND TERMINATION OF THE CONTRACT

Section 37. Notice and Execution of Award

37.1. *Contract Award*

37.1.1. The BAC shall recommend to the HoPE the award of contract to the bidder with the LCRB, HRRB, SCRB, or SRRB after the post-qualification process has been completed.

To facilitate the approval of the award, the BAC shall submit the following supporting documents to the HoPE:

a) Resolution of the BAC recommending award;

b) Abstract of Bids;

c) Duly approved program of work or delivery schedule, and Cost Estimates;

d) Document issued by appropriate entity authorizing the Procuring Entity to incur obligations for a specified amount; and

e) Other pertinent documents required by existing laws, rules, and/or the Procuring Entity concerned.

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

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

37.1.3. In case of approval, the HoPE shall immediately issue the Notice of Award to the bidder with the LCRB, HRRB, SCRB or SRRB.

In the event of disapproval, which shall be based only on valid, reasonable, and justifiable grounds as provided for under Section 41 of this IRR, the HoPE shall notify the BAC and the bidder in writing of such decision and the grounds for it.

When applicable, the BAC shall conduct a post-qualification of the bidder with the next Lowest Calculated Bid or Highest Rated Bid, as provided in Section 34.6 of this IRR.

A request for reconsideration may be filed by the bidder with the HoPE within three (3) calendar days from receipt of the notice of disapproval. The HoPE shall resolve with finality the request for reconsideration within seven (7) calendar days from the filing thereof and furnish the bidder a copy of the

resolution immediately from its promulgation. In no case shall the request for reconsideration stay or delay the bidding process. However, the request for reconsideration must first be resolved before any award is made.(a)

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

a) Submission of the following documents within ten (10) calendar days from Notice of Award:

i) Valid JVA, if applicable;

ii) In the case of procurement by a Philippine Foreign Office or Post, the PhilGEPS Registration Number of the winning foreign bidder;

iii) A valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders in Infrastructure Projects, when the Treaty or International or Executive Agreement expressly allows submission of such license and registration as a pre-condition to the Notice of Award; or

iv) In the case of Consulting Services, the SEC Certificate of Registration of the foreign consulting firm, 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, where applicable.

b) Posting of performance security in accordance with Section 39 of this IRR;

c) Signing of the contract as provided in Section 37.2 of this IRR; and

d) Approval by higher authority, if required, as provided in Section 37.3 of this IRR.(a)

37.1.5. Contract award shall be made within the bid validity period provided in Section 28 of this IRR.

37.1.6. The BAC, through the Secretariat, shall post, within three (3) calendar days from its issuance, the Notice of Award in the PhilGEPS, the website of the Procuring Entity, if any, and any conspicuous place in the premises of the Procuring Entity.

37.2. *Contract Signing*

37.2.1. The winning bidder shall post the required Performance Security and enter into contract with the Procuring Entity within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.

37.2.2. The Procuring Entity shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.

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

a) Contract Agreement;

b) Bidding Documents;

c) Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;

d) Performance Security;

e) Notice of Award of Contract; and

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

37.3. *Contract Approval by Higher Authority*

When further approval of higher authority is required, the approving authority for the contract or his duly authorized representative shall be given a maximum of twenty (20) calendar days from receipt thereof to approve or disapprove it. In the case of GOCCs, the concerned board or its duly authorized representative shall be given a maximum of thirty (30) calendar days from receipt thereof to approve or disapprove it.(a)

37.4. *Notice to Proceed*

37.4.1. The concerned Procuring Entity shall issue the Notice to Proceed together with a copy or copies of the approved contract to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful bidder.(a)

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

Section 38. Period of Action on Procurement Activities

38.1. The procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the Procuring

Entity concerned. All members of the BAC shall be on a "jury duty" type of assignment until the Notice of Award is issued by the HoPE in order to complete the entire procurement process at the earliest possible time.
For purposes of this section, the term "jury duty" shall be understood to mean a state by which the members give utmost priority to BAC assignment over all the other duties and responsibilities until the requirements for the said assignments at hand are completed.

38.2. The maximum periods and the recommended earliest possible time for action on specific procurement activities are provided for in Annex "C"[18] of this IRR. In case the deadline for each activity falls on a non-working day (*i.e.* Saturday and Sunday), legal holiday, or special non-working holiday, the deadline shall be the next working day.(a)

38.3. If no action on the contract is taken by the HoPE or the appropriate approving authority within the periods specified in this IRR, the contract concerned shall be deemed approved: *Provided, however,* That where further approval by the Office of the President is required, the contract shall not be deemed approved unless and until the Office of the President gives actual approval to the contract concerned.

Section 39. Performance Security

39.1. To guarantee the faithful performance by the winning bidder of its obligations under the contract in accordance with the Bidding Documents, it shall post a performance security prior to the signing of the contract.

39.2. The performance security shall be in an amount not less than the required percentage of the total contract price in accordance with the following schedule: (a)

Form of Performance Security	**Amount of Performance Security (Not less than the required percentage of the Total Contract Price)**
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. For biddings conducted by LGUs, the cashier's/manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.(a)	Goods and Consulting Services – Five percent (5%) Infrastructure Projects – Ten percent (10%)
b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: *Provided, however*, That it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. For biddings conducted by LGUs, bank draft/guarantee, or irrevocable letter of credit may be issued by other banks certified by the	

[18] Recommended Earliest Possible Time and Maximum Period Allowed For the Procurement of Goods, Infrastructure Projects, and Consulting Services.

BSP as authorized to issue such financial instrument. (a)	
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%)

39.3. The performance security shall be denominated in Philippine Pesos and posted in favor of the Procuring Entity, which shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.

39.4. The performance security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.

39.5. The performance security may be released by the Procuring Entity after the issuance of the Certificate of Final Acceptance, subject to the following conditions:

a) Procuring Entity has no claims filed against the contract awardee or the surety company;

b) It has no claims for labor and materials filed against the contractor; and

c) Other terms of the contract.(a)

39.6. For the procurement of Infrastructure Projects, the winning bidder shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements, as the case may be. The winning bidder shall cause the extension of the validity of the Performance Security to cover approved contract time extensions.

39.7. In case of a reduction in the contract value, or, in the case of procurement of Infrastructure Projects, for partially completed works under the contract which are usable and accepted by the GoP, and the use of which, in the judgment of the implementing agency or the Procuring Entity, will not affect the structural integrity of the entire project, the said agency or Procuring Entity shall allow a proportional reduction in the original performance security: *Provided*, That any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original Performance Security.

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

40.1. If the bidder with the LCRB, HRRB, SCRB or SRRB fails, refuses or is unable to submit the documents required under Section 37.1 of this IRR or to make good its bid by entering into a contract with the Procuring Entity or post the required Performance Security within the period stipulated in this IRR or in the Bidding Documents, the bid security shall be forfeited and the appropriate sanctions provided in this IRR and existing laws shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder.

40.2. In the case of the failure, refusal or inability of the bidder with LCRB or HRRB to submit the documents required under Section 37.1 of this IRR or to enter into contract and post the required Performance Security, as provided in this Section, the BAC shall disqualify the said bidder, and shall initiate and complete the post-qualification process on the bidder with the second Lowest Calculated Bid/Highest Rated Bid: *Provided, however,* That in the case of Consulting Services, the second Highest Rated Bid has successfully undergone the negotiation stage in accordance with Section 33.2.5 of this IRR. This procedure shall be repeated until the LCRB or HRRB is determined for award. However, if no bidder passes post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the Procuring Entity concerned may enter into a negotiated procurement.

40.3. In the case of failure, refusal or inability of the bidder with the SCRB or SRRB to submit the documents required under Section 37.1 of this IRR or to enter into contract and post the required Performance Security, as provided in this Section, the BAC shall disqualify the said bidder, and shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Sections 21 and 25 of this IRR. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the Procuring Entity concerned may enter into a negotiated procurement.

Section 41. Reservation Clause

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

a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;

b) If the BAC is found to have failed in following the prescribed bidding procedures; or

c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GoP, as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HoPE; (ii) if the project is no longer necessary as determined by the HoPE; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.(a)

Section 42. Contract Implementation and Termination

42.1. The contract implementation guidelines for the procurement of goods, supplies and materials are provided for in Annex "D" of this IRR.

42.2. The contract implementation guidelines for the procurement of infrastructure projects are provided for in Annex "E" of this IRR.

42.3. The contract implementation guidelines for the procurement of consulting services are provided for in Annex "F" of this IRR.

42.4. The contract termination guidelines as provided for in Annex "I" of this IRR.(n)

42.5. No incentive bonus, in whatever form or for whatever purpose, shall be allowed.(42.4)

42.6. Procuring Entities may cause the issuance of the letter of credit in favor of a local or foreign suppliers: *Provided*, That no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the Procuring Entity in accordance with the delivery schedule provided for in the contract have been concluded: *Provided, further*, That the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and must be stated in the Bidding Documents.(42.5a)

RULE XII – DOMESTIC AND FOREIGN PROCUREMENT

Section 43. Procurement of Domestic and Foreign Goods

43.1. *Scope and Application*

43.1.1. Consistent with the GoP's obligations under international treaties or agreements, goods may be obtained from domestic or foreign sources: *Provided, however,* That the procurement thereof shall be open only to eligible suppliers, manufacturers and distributors: *Provided, further,* That in the interest of availability, efficiency and timely delivery of goods, the Procuring Entity may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality, in accordance with the provisions of Commonwealth Act No. 138.

43.1.2. The Procuring Entity shall give preference to materials and supplies produced, made and manufactured in the Philippines, subject to the conditions herein below specified. The award shall be made to the lowest Domestic Bidder, provided his bid is not more than fifteen percent (15%) in excess of the lowest Foreign Bid.(a)

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

43.2. *Procedures and Guidelines*

43.2.1. The preference shall be applied when the lowest Foreign Bid is lower than the lowest bid offered by a Domestic Bidder. The Procuring Entity shall ensure that both bids are responsive to the minimum requirements as specified in the Bidding Documents.(a)

43.2.2. For evaluation purposes, the lowest Foreign Bid shall be increased by fifteen percent (15%).

43.2.3. In the event that the lowest bid offered by a Domestic Bidder does not exceed the lowest Foreign Bid as increased, the Procuring Entity shall award the contract to the Domestic Bidder at the amount of the lowest Foreign Bid.(a)

43.2.4. If the Domestic Bidder refuses to accept the award of contract at the amount of the Foreign Bid within two (2) calendar days from receipt of written advice from the BAC, the Procuring Entity shall award the contract to the bidder offering the Foreign Bid.

43.2.5. The award of contract shall be subject to post-qualification and submission of all the documentary requirements under this IRR.(n)

RULE XIII – BIDDING OF PROVINCIAL PROJECTS

Section 44. Bidding of Provincial Projects

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

Section 45. Provincial Bidders

In accordance with Section 45 of the Act, the right to match accorded to provincial bidders is no longer available after 26 January 2008.

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

Section 46. Lease Contracts

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

RULE XV – DISCLOSURE OF RELATIONS

Section 47. Disclosure of Relations

47.1 All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the HoPE, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user or implementing unit, and the project consultants, by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR. For this reason, relation to the

aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the Procuring Entity notwithstanding the act of such persons inhibiting themselves from the procurement process. On the part of the bidder, this provision shall apply to the following persons:

a) If the bidder is an individual or a sole proprietorship, to the bidder himself;

b) If the bidder is a partnership, to all its officers and members;

c) If the bidder is a corporation, to all its officers, directors, and controlling stockholders;

d) If the bidder is a cooperative, to all its officers, directors, and controlling shareholders or members; and

e) If the bidder is a joint venture, the provisions of items (a), (b), (c), or (d) of this Section shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.(a)

47.2. All bidders also found to have conflicting interests with each other shall be disqualified to participate in the procurement at hand, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. A bidder may be considered to have conflicting interests with another bidder in any of the events described in paragraphs (a) through (c) below and a general conflict of interest in any of the circumstances set out in paragraphs (d) through (j) below:

a) A bidder has controlling shareholders in common with another bidder;

b) A bidder receives or has received any direct or indirect subsidy from any other bidder;

c) A bidder has the same legal representative as that of another bidder for purposes of this bid;

d) A bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another bidder or influence the decisions of the Procuring Entity regarding this bidding process. This will include a firm or an organization 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;

e) A bidder submits more than one bid in this bidding process. However, this does not limit the participation of subcontractors in more than one bid;

f) A bidder who participated as a consultant in the preparation of the design or technical specifications of the Goods and related services that are the subject of the bid;

g) A bidder who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;

h) If a consultant combines the function of consulting with those of contracting and/or supply of equipment;

i) 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

j) 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 for a project shall not be recruited for the project in question.(n)

RULE XVI – ALTERNATIVE METHODS OF PROCUREMENT

Section 48. Alternative Methods

48.1. Subject to the prior approval of the HoPE, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the alternative methods of procurement provided in this Rule. In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained.

48.2. In accordance with Section 10 of this IRR, as a general rule, the Procuring Entities shall adopt competitive bidding as the general method of procurement and shall see to it that the procurement program allows sufficient lead time for such competitive bidding. Alternative methods of procurement shall be resorted to only in highly exceptional cases provided for in this Rule.

48.3. The method of procurement to be used shall be as indicated in the approved APP. If the original method of procurement recommended in the APP was competitive

bidding but cannot be ultimately pursued, the BAC, through a resolution, shall justify and recommend the change in the method of procurement to be approved by the HoPE. Such changes must be reflected in the APP to be submitted to the GPPB, pursuant to Section 7.4 of this IRR.(a)

Section 49. Limited Source Bidding

49.1 *Limited Source Bidding*, otherwise known as selective bidding, is a method of procurement of Goods and Consulting Services that involves direct invitation to bid by the Procuring Entity from the list of pre-selected suppliers or consultants[19] with known experience and proven capability on the requirements of the particular contract. This alternative method of procurement may be employed under any of the following conditions:

a) Procurement of highly specialized types of goods (*e.g.*, sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the competitive bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or

b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.(49.1a)

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

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

The BAC of the concerned Procuring Entity shall directly invite all the suppliers or consultants appearing in the pre-selected list. All other procedures for competitive bidding shall be undertaken, except for the advertisement of Invitation to Bid/Request for Expression of Interest under Section 21.2.1 of this IRR.

Section 50. Direct Contracting

Direct Contracting or single source procurement is a method of procurement of Goods that does not require elaborate Bidding Documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned Procuring Entities under any of the following conditions:

[19] Refer to Appendix 12 for the Pre-Selection Procedure in the Conduct of Limited Source Bidding.

a) Procurement of Goods of proprietary nature which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets, and copyrights prohibit others from manufacturing the same item;

b) When the procurement of critical components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or

c) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the GoP.

Section 51. Repeat Order

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

a) Unit prices of the repeat order must be the same as or lower than those in the original contract: *Provided,* That such prices are still the most advantageous to the GoP after price verification;

b) The repeat order will not result in splitting of contracts, requisitions, or purchase orders, as provided for in Section 54.1 of this IRR;

c) Except in cases duly approved by the GPPB, the repeat orders shall be availed of only within six (6) months from the date of the Notice to Proceed arising from the original contract: *Provided*, That there has been a partial delivery, inspection and acceptance of the goods within the same 6-month period; and

d) Repeat orders shall not exceed twenty-five percent (25%) of the quantity of each item in the original contract. In order not to exceed the 25% threshold, the goods under the original contract must be:

   i. Quantifiable
   ii. Divisible; and
   iii. Consisting of at least four (4) units per item.(a)

Section 52. Shopping

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

   a) When there is an unforeseen contingency requiring immediate purchase: *Provided, however,* That the amount shall not exceed the thresholds prescribed in Annex "H"[20] of this IRR.

[20] Consolidated Guidelines for the Alternative Methods of Procurement.

b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding the thresholds prescribed in Annex "H" of this IRR.

52.2. The phrase "ordinary or regular office supplies" shall be understood to include those supplies, commodities, or materials which are necessary in the transaction of official businesses, and consumed in the day-to-day operations.

However, office supplies shall not include services such as repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services.(a)

52.3. Under Section 52.1 (b) of this IRR, at least three (3) price quotations from bona fide suppliers shall be obtained.

52.4. The thresholds prescribed in Annex "H" of this IRR shall be subject to a periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons.

Section 53. Negotiated Procurement

Negotiated Procurement is a method of procurement of Goods, Infrastructure Projects and Consulting services, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant in any of the following cases:

53.1. ***Two Failed Biddings***. Where there has been failure of competitive bidding or Limited Source Bidding for the second time as provided in Section 35 of the Act and this IRR.(a)

53.2. ***Emergency Cases***. In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In the case of Infrastructure Projects, the Procuring Entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP[21].

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

53.4. ***Adjacent or Contiguous***. Where the subject contract is adjacent or contiguous to an ongoing Infrastructure Project or Consulting Service where the consultants have unique experience and expertise to deliver the required service: *Provided, however,* That (a) the original contract is the result of a Competitive Bidding; (b) the subject contract to be negotiated has similar or related scopes of work; (c) it is within the contracting capacity of the contractor/consultant; (d) the contractor/consultant uses

[21] Refer to Appendix 13 for the Guidelines on Implementation of Infrastructure Projects Undertaken by the AFP Corps of Engineers.

the same prices or lower unit prices as in the original contract less mobilization cost; (e) the amount of the contiguous or adjacent work involved does not exceed the amount of the ongoing project; and (f) the contractor/consultant has no negative slippage/delay: *Provided*, *further*, That negotiations for the procurement of the contiguous or adjacent work are commenced before the expiry of the original contract.(a)

53.5. ***Agency-to-Agency.*** Procurement of Goods, Infrastructure Projects and Consulting Services from another agency of the GoP, such as the DBM-PS, which is tasked with a centralized procurement of Common-Use Supplies for the GoP in accordance with Letters of Instruction No. 755 and E.O. 359, s. 1989.

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

1. The requirement is for:

    a. Work of art; commissioned work or services of an artist for a specific artist skills (*e.g.*, Singer, poet, writer, painter, sculptor, etc.);

    b. Scientific, academic, scholarly work or research, or legal services;

    c. Highly-specialized life-saving medical equipment, as certified by the Department of Health (DOH);

    d. Scientific, technical, economic, business, trade or legal journal, magazine, paper, subscription, or other exclusive statistical publications and references; or

    e. Media documentation, advertisement, or announcement through television, radio, newspaper, internet, and other communication media.

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

2. The construction or installation of an infrastructure facility where the material, equipment, or technology under a proprietary right can only be obtained from the same contractor.(n)

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

53.8. ***Defense Cooperation Agreement.*** Upon prior approval by the President of the Philippines, and when the procurement for use by the AFP involves major defense equipment or materiel and/or defense-related consultancy services, when the

expertise or capability required is not available locally, and the Secretary of National Defense has determined that the interests of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations: *Provided, however*, That the performance by the supplier of its obligations under the procurement contract shall be covered by a performance security in accordance with Section 39 of this IRR.

53.9. ***Small Value Procurement***. Procurement of Goods, Infrastructure Projects and Consulting Services, where the amount involved does not exceed the threshold prescribed in Annex "H" of this IRR: *Provided,* That in case of Goods, the procurement does not fall under shopping in Section 52 of this IRR.(a)

53.10. ***Lease of Real Property and Venue***. Lease of real property and venue for official use, subject to Annex "H" of this IRR.(a)

53.11. ***NGO Participation***. When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the Procuring Entity may enter into a Memorandum of Agreement with an NGO, subject to the guidelines[22] issued by the GPPB for the purpose.(a)

53.12. ***Community Participation***. Where, in the interest of project sustainability or to achieve certain specific social objectives, it is desirable in selected projects, or its components, to call for participation of local communities in the delivery of goods, including non-consulting services, and simple infrastructure projects, subject to the Community Participation Procurement Manual (CPPM) issued by the GPPB.(a)

53.13. ***United Nations Agencies, International Organizations or International Financing Institutions.*** Procurement from specialized agencies of the United Nations, International Organizations or International Financing Institutions, of any of the following: (a) small quantities of off-the-shelf goods, primarily in the fields of education and health; (b) specialized products where the number of suppliers is limited, such as but not limited to vaccines or drugs; or (c) Goods, Infrastructure Projects and Consulting Services, involving advanced technologies, techniques and innovations not locally available as certified by the HoPE, when it is most advantageous to the government.(a)

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

54.1. Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of GoP contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this IRR, particularly the necessity of competitive bidding and the requirements for the alternative methods of procurement.

For Infrastructure Projects to be implemented by phases, the Procuring Entity shall ensure that there is a clear delineation of work for each phase, which must be usable and structurally sound. It shall also ensure the conduct of the detailed engineering activities for each phase as provided for in Annex "A" of this IRR.(a)

[22] Refer to Appendix 14 for the Guidelines on Non-Governmental Organization Participation in Public Procurement.

54.2. For alternative methods of procurement, the Procuring Entity may dispense with the advertisement in the newspaper and posting requirement as prescribed in Section 21.2.1 of this IRR.
For the following modalities, however, the BAC, through its Secretariat, shall post the invitation or request for submission of price quotations/proposals in the PhilGEPS website, the website of the Procuring Entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity for a period of at least three (3) calendar days:

1. Section 49 Limited Source Bidding;

2. Section 52.1(b) Shopping for ordinary office supplies and equipment not available in DBM-PS (for ABC above Fifty Thousand Pesos (₱50,000.00));

3. Section 53.1 Two Failed Biddings;

4. Section 53.9 Small Value Procurement (For ABC above Fifty Thousand Pesos (₱50,000.00)); and

5. Section 53.11 NGO Participation.(a)

54.3. In all instances of alternative methods of procurement, the BAC, through the Secretariat, shall post, for information purposes, the notice of award, contract or purchase order, including notice to proceed if necessary, in the PhilGEPS website, the website of the Procuring Entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity, except for contracts with ABC of Fifty Thousand Pesos (₱50,000.00) and below.(a)

54.4. Except for Limited Source Bidding under Section 49 of this IRR, submission of bid securities may be dispensed with.

54.5. *Performance and Warranty Securities*.

Performance and/or warranty securities are required for the following alternative methods of procurement, in accordance with Sections 39 and 62 of this IRR:

Alternative Method of Procurement	**Performance Security (PS)**	**Warranty Security (WS)**
Limited Source Bidding	✓	For highly specialized types of goods, WS is required.
Direct Contracting	x	✓
Repeat Order	x	✓
Two Failed Biddings	✓	✓ In no case shall WS be required in the procurement of Consulting Services.

Emergency Cases	Procuring Entity may require PS depending on the nature of the procurement project. However, for Infrastructure Projects, PS is required.	Procuring Entity may require WS depending on the nature of the procurement project. In no case shall WS be required in the procurement of Consulting Services.
Take-over of Contracts	✓	✓
Adjacent/Contiguous	✓	For Infrastructure Projects, WS is required.
Small Value Procurement	Procuring Entity may require PS depending on the nature of the procurement project. However, for Infrastructure Projects, PS is required.	Procuring Entity may require WS depending on the nature of the procurement project. In no case shall WS be required in the procurement of Consulting Services.

54.6. Manufacturers, suppliers, distributors, contractors, and/or consultants are mandated to register with PhilGEPS and provide a PhilGEPS Registration Number in the following alternative methods of procurement as a condition for award of the contract:

a. Section 50 - Direct Contracting

b. Section 52.1 (b) - Shopping for Ordinary Office Supplies and Equipment not available in DBM-PS

c. Section 53.3 - Take Over of Contracts (Only for New Bidders, if any.)

d. Section 53.6 - Scientific, Scholarly, or Artistic Work, Exclusive Technology and Media Services

e. Section 53.7 - Highly Technical Consultants

f. Section 53.9 - Small Value Procurement

g. Section 53.10 - Lease of Real Property and Venue

h. Section 53.11 - NGO Participation

For purposes of Limited Source Bidding under Section 49 and Two Failed Biddings under Section 53.1, the BAC shall require the submission of a certificate of PhilGEPS registration in accordance with Section 8.5.2 of this IRR.(a)

54.7. The specific terms, conditions and documentary requirements, including the limitations and restrictions, for the application of each of the alternative methods mentioned in this article shall be provided for in Annex "H" of this IRR and guidelines specifically issued for this purpose.(n)

RULE XVII – PROTEST MECHANISM

Section 55. Protests on Decisions of the BAC

55.1. Decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration within the three (3) calendar days upon receipt of written notice or upon verbal notification. The BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The bidder shall not be allowed to submit additional documents to correct any defects in the bid submitted.

If a failed bidder signifies his intent to file a request for reconsideration, the BAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.(a)

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

55.3. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration. A protest shall be made by filing a verified position paper with the HoPE concerned, accompanied by the payment of a non-refundable protest fee, which shall be paid in cash in accordance with the following schedule:(a)

ABC RANGE	PROTEST FEE
₱50 million and below	0.75% of the ABC
More than ₱50 million to ₱100 million	₱500,000.00
More than ₱100 million to ₱500 million	0.5% of the ABC
More than ₱500 million to ₱1 billion	₱2,500,000.00
More than ₱1 billion to ₱2 billion	0.25% of the ABC
More than ₱2 billion to ₱5 billion	₱5,000,000.00
More than ₱5 billion	0.1 % of the ABC

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

a) The name of bidder;

b) The office address of the bidder;

c) The name of project/contract;

d) The implementing office/agency or Procuring Entity;

e) A brief statement of facts;

f) The issue to be resolved; and

g) Such other matters and information pertinent and relevant to the proper resolution of the protest.

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

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 is 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.

Section 56. Resolution of Protests

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

Section 57. Non-interruption of the Bidding Process

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

Section 58. Resort to Regular Courts; Certiorari

58.1. Court action may be resorted to only after the protests contemplated in this Rule shall have been completed, *i.e.*, resolved by the HoPE with finality. The regional trial court shall have jurisdiction over final decisions of the HoPE. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

58.2. This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of the GoP.

58.3. The head of the BAC Secretariat of the Procuring Entity concerned shall ensure that the GPPB shall be furnished a copy of the cases filed in accordance with this Section.

RULE XVIII – SETTLEMENT OF DISPUTES

Section 59. Arbitration

59.1. If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the contract covered by the Act and this IRR, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

59.2. Any and all disputes arising from the implementation of a contract covered by the Act and this IRR shall be submitted to arbitration in the Philippines according to the provisions of R.A. 876, otherwise known as the "Arbitration Law" and R.A. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": *Provided, however*, That disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of the Act and this IRR: *Provided, further,* That by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

Section 60. Appeals

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

RULE XIX – CONTRACT PRICES AND WARRANTIES

Section 61. Contract Prices

61.1. For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price adjustment and escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB[23], or when a Treaty or International or Executive Agreement expressly allows it pursuant to Section 4 of this IRR.

61.2. In cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the GoP, promulgated after the date of bid opening, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis.(17a)

61.3. Any request for price escalation under extraordinary circumstances shall be submitted by the concerned entity to the National Economic and Development Authority (NEDA) with the endorsement of the Procuring Entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

[23] Refer to Appendix 15 for the Guidelines for Contract Price Escalation.

For purposes of this Section, "extraordinary circumstances" shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines, and upon the recommendation of the Procuring Entity concerned.

61.4. All contracts shall be denominated and payable in Philippine currency, and this shall be stated in the Bidding Documents: *Provided, however*, That subject to the guidelines[24] issued by the GPPB, the Procuring Entity may provide in the Bidding Documents that obligations may be paid in foreign currency; *Provided, further,* That should the Procuring Entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening for purposes of bid comparison and evaluation.

Section 62. Warranty

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

The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least one percent (1%) of every progress payment, or a special bank guarantee equivalent to at least one percent (1%) of the total contract price. The said amounts shall only be released after the lapse of the warranty period or, in the case of Expendable Supplies, after consumption thereof: *Provided, however*, That the supplies delivered are free from patent and latent defects and all the conditions imposed under the contract have been fully met.(a)

62.2. For the procurement of Infrastructure Projects, the following warranties shall be made:

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

a) any damage or destruction of the works except those occasioned by *force majeure*; and

b) safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work.(a)

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

62.2.2.1. The contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure on account of the use of materials of inferior quality, within ninety (90) days from the time the HoPE has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the Procuring Entity

[24] Refer to Appendix 16 for the Guidelines on Procurements Involving Foreign-Denominated Bids, Contract Prices, and Payment Using Letters of Credit.

shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

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

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

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

a) Contractor – Where Structural Defects/Failures arise due to faults attributable to improper construction, use of inferior quality/substandard materials, and any violation of the contract plans and specifications, the contractor shall be held liable;

b) Consultants – Where Structural Defects/Failures arise due to faulty and/or inadequate design and specifications as well as construction supervision, then the consultant who prepared the design or undertook construction supervision for the project shall be held liable;

c) Procuring Entity's Representatives / Project Manager / Construction Managers and Supervisors – The project owner's representative(s), project manager, construction manager, and supervisor(s) shall be held liable in cases where the Structural Defects/Failures are due to his/their willful intervention in altering the designs and other specifications; negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project;

d) Third Parties - Third Parties shall be held liable in cases where Structural Defects/Failures are caused by work undertaken by them such as leaking pipes, diggings or excavations,

underground cables and electrical wires, underground tunnel, mining shaft and the like, in which case the applicable warranty to such structure should be levied to third parties for their construction or restoration works.

e) Users - In cases where Structural Defects/Failures are due to abuse/misuse by the end-user or implementing unit of the constructed facility and/or non–compliance by a user with the technical design limits and/or intended purpose of the same, then the user concerned shall be held liable.

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

a) Permanent Structures: Fifteen (15) years

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

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

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

c) Other Structures: Two (2) years

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

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

Form of Warranty Security	**Amount of Warranty Security (Not less than the required percentage of the Total Contract Price)**
a) Cash or Letter of Credit issued by a Universal or	Five percent (5%)

Commercial Bank: *Provided, however*, That the Letter of Credit shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. For biddings conducted by LGUs, the Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.(a)	
b) Bank guarantee confirmed by a Universal or Commercial Bank. For biddings conducted by LGUs, the bank draft/guarantee may be issued by other banks certified by the BSP as authorized to issue such financial instrument. (a)	Ten percent (10%)
c) Surety bond callable upon demand issued by GSIS or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

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

62.2.4. In case of Structural Defects/Failure occurring during the applicable warranty period provided in Section 62.2.3.2 hereof, the Procuring Entity shall undertake the necessary restoration or reconstruction works and shall be entitled to full reimbursement by the parties found to be liable for expenses incurred therein upon demand, without prejudice to the filing of appropriate administrative, civil, and/or criminal charges against the responsible persons as well as the forfeiture of warranty securities posted in favor of the Procuring Entity.

RULE XX – THE GOVERNMENT PROCUREMENT POLICY BOARD

Section 63. Organization and Functions

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

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

b) To formulate and amend public procurement policies, rules and regulations, and amend, whenever necessary, this IRR;

c) To prepare a generic procurement manual and the standard bidding forms for procurement;

d) To ensure the proper implementation by Procuring Entities of the Act, this IRR and all other relevant rules and regulations pertaining to public procurement;

e) To establish a sustainable training program to develop the capacity of Government procurement officers and employees, and to ensure the conduct of regular procurement training programs by and for Procuring Entities; and

f) To conduct an annual review of the effectiveness of the Act and recommend any amendments thereto, as may be necessary.(a)

63.2. *The GPPB Technical Support Office*

The GPPB shall create a Technical Support Office (TSO) which shall provide support in the performance of its duties and responsibilities specified in the Act and this IRR. The TSO shall be an attached agency of the DBM and shall be under its administrative supervision for general oversight and for budgeting purposes.

The GPPB shall determine the TSO's organizational structure and staffing, subject to DBM approval. The TSO shall be headed by an Executive Director of good moral character, unquestionable integrity, and known probity, to be appointed by the Secretary of the DBM as Chair of the GPPB. All other officials and employees of the TSO shall be appointed likewise by the Chair of the GPPB, upon favorable recommendation of the TSO's Executive Director.(a)

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

a) Research-based procurement policy recommendations and rule-drafting;

b) Development and updating of generic procurement manuals and standard bidding forms;

c) Management and conduct of training on procurement systems and procedures;

d) Evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems and procedures;

e) Monitoring the compliance to the Act and assisting Procuring Entities improve their compliance;

f) Monitoring the implementation and effectiveness of the PHILGEPS; and

g) Secretariat support.

63.4. In addition to the powers granted under the Act and this IRR, the GPPB shall absorb all the powers, functions and responsibilities of the Procurement Policy Board created under E.O. 359, s. 1989. All functions related to procurement policy-making of the Infrastructure Committee of the NEDA Board are transferred to the GPPB.

Section 64. Membership

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

RULE XXI – PENAL CLAUSE

Section 65. Offenses and Penalties

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

a) Opening any sealed bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.

b) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in this IRR.

c) Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take a particular action which favors, or tends to favor a particular bidder.

d) Splitting of contracts which exceed procedural purchase limits to avoid competitive bidding or to circumvent the limits of approving or procurement authority.

e) Abuse by the HoPE of his power to reject any and all bids as mentioned under Section 41 of the Act and this IRR, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of the Act and this IRR.

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

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

65.2. Private individuals who commit any of the following acts, and any public officer who conspires with them, shall upon conviction, suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

a) When two or more bidders agree and submit different bids as *bona fide* bidders, all the while knowing that the bid(s) of one or more of them was so much higher than the other that the latter could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest bid.

b) When a bidder maliciously submits different bids through two or more persons, corporations, partnerships or any other business entity in which he has an interest, to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.

c) When two or more bidders enter into an agreement which calls upon one or more of them to refrain from bidding for procurement contracts, or which requires one or more of them to withdraw Bids already submitted, in order to secure an undue advantage to any one of them.

d) When a bidder, by himself or in connivance with others, employs schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

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

65.3. Private individuals who commit any of the following acts, and any public officer conspiring with them, shall upon conviction, suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

a) Submitting eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in competitive bidding.

b) Submitting Bidding Documents of whatever kind and nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the competitive bidding.

c) Participating in a competitive bidding using the name of another or allowing another to use one's name for the purpose of participating in a competitive bidding.

d) Withdrawing a bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or refusing to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

65.4. It is understood that the above penalties and offenses shall cover all types of procurement whether done manually or electronically.

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

Section 66. Jurisdiction

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

RULE XXII – CIVIL LIABILITY

Section 67. Civil Liability in Case of Conviction

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

Section 68. Liquidated Damages

All contracts executed in accordance with the Act and this IRR shall contain a provision on liquidated damages which shall be payable by the contractor in case of breach thereof. For the procurement of Goods, Infrastructure Projects and Consulting Services, the amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.001) of the cost of the unperformed portion for every day of delay. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances.(a)

RULE XXIII – ADMINISTRATIVE SANCTIONS

Section 69. Imposition of Administrative Penalties

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

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

b) Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening, or any other stage of the competitive bidding.

c) Allowing the use of one's name, or using the name of another for purposes of competitive bidding.

d) Withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

e) Refusal or failure to post the required performance security within the prescribed time.

f) Termination of the contract due to the default of the bidder.

g) Refusal to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification.

h) Any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor.

i) All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons.

69.2. In addition to the penalty of suspension, the bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.

69.3. The HoPE may delegate to the BAC the authority to impose the aforementioned administrative penalties.

69.4. The procedures for the suspension or blacklisting of suppliers, contractors, or consultants for GoP projects shall be undertaken in accordance with the guidelines[25] issued by the GPPB.

Section 70. Preventive Suspension

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

Section 71. Lifting of Suspension and Removal of Administrative Disabilities

Lifting of preventive suspension pending administrative investigation, as well as removal of administrative penalties and disabilities shall be in accordance with the provisions of Sections 52 and 53, Chapter 6, Subtitle A (Civil Service Commission), Title I, Book V of E.O. 292, otherwise known as the Administrative Code of 1987.

RULE XXIV – LEGAL ASSISTANCE AND INDEMNIFICATION OF BAC MEMBERS

Section 72. Private Legal Assistance

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

Section 73. Indemnification of BAC Members

73.1. The GPPB shall establish an equitable indemnification package[26] for public officials providing services in and for the BAC, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all reasonable fees, costs, and expenses incurred by such persons in connection with any administrative, civil or criminal action, suit or proceeding to which they may be, or have been made, a party, by reason of the lawful performance of their official functions and duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion, or otherwise held liable or guilty of the complaints or charges.

73.2. In the event of a settlement or compromise, indemnification shall be confined only on matters covered by the settlement, for which the Procuring Entity had been

[25] Refer to Appendix 17 for the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants.

[26] Refer to Appendix 18 for the Guidelines for Legal Assistance and Indemnification of Bids and Awards Committee (BAC) Members and its Support Staff.

advised by counsel, that, the public officials to be indemnified have not committed gross negligence or misconduct or grave abuse of discretion in the performance of their functions and duties.

73.3. The members of the BAC and its support staff, such as the members of the TWG and the BAC Secretariat, shall also be entitled to medical assistance for injuries incurred in the performance of their functions.

RULE XXV – FINAL PROVISIONS

Section 74. Amendment

74.1. As the need arises, this IRR may be amended by the GPPB.

74.2. Any amendment to this IRR shall be applicable to all procurement activities, the advertisement or invitation of which were issued after the date of effectivity of the said amendment.

Section 75. Repealing Clause

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

This IRR repeals Memorandum Order No. 119 dated 18 September 2003, otherwise known as the "Implementing Rules and Regulations Part A": GPPB Resolution 03-2009 dated 22 July 2009, otherwise known as the Revised Implementing Rules and Regulations; and relevant portions of E.O. 301, s. 1987 entitled "Decentralizing Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal." Any other issuance, executive order, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of this IRR is hereby repealed, modified or amended accordingly.

Section 76. Separability Clause

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

Section 77. Transitory Clause

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

77.2. In cases where the advertisements or invitations for bids were issued before the effectivity of this IRR, Procuring Entities may continue adopting the procurement procedures, rules, and regulations provided in the Revised IRR of 2009 or other applicable laws, as the case may be.(a)

Section 78. Effectivity Clause

This IRR shall take effect sixty (60) calendar days after its publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of this IRR.(a)

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

1. Detailed engineering shall proceed only on the basis of the feasibility or preliminary engineering study made which establishes the technical viability of the project and conformance to land use and zoning guidelines prescribed by existing laws. The findings contained in the feasibility study, if undertaken for the project, shall be examined. If, in the course of this exercise, it is found that changes would be desirable in the design standards of principal features, as proposed, specific recommendations for such changes shall be supported by detailed justifications, including their effects on the cost, and (if necessary) the economic justification.

2. A schedule of detailed engineering activities shall include the following:

    a) Survey
    b) Site Investigation
    c) Soils and Foundation Investigation
    d) Construction Materials Investigation
    e) Preparation of Design Plans
    f) Preparation of Technical Specifications
    g) Preparation of Quantity and Cost Estimates
    h) Preparation of Program of Work
    i) Preparation of Proposed Construction Schedule (and estimated Cash Flow for projects with Schedule over Six (6) Months)
    j) Preparation of Site or Right-of-Way Plans including Schedule of Acquisition
    k) Preparation of Utility Relocation Plan
    l) Preparation and Submission of Design Report
    m) Environmental Impact Statement for critical project as defined by the Department of Environment and Natural Resources (DENR)
    n) Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered
    o) Value Engineering Studies
    p) Preparation of Bid/Tender Documents$_{(a)}$

3. Work under detailed engineering shall include, but not necessarily be limited to, the following:

    a) Design Standards – Design standards shall be in accordance with appropriate standards and accepted detailed engineering practice adopted by the agency concerned. Design standards for structures shall take into account, among other things, the seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage.

    b) Field Surveys And Investigations – Necessary field surveys and investigations which may include aerial, hydrographic, topographic, hydrologic, sub-surface, monumenting and other surveys shall be carried out in accordance with the design guidelines, criteria and standards adopted by the agency concerned. All survey and investigation works shall be prepared in a manner satisfactory to carry out accurate design and production of plans that will permit quantity estimates to be made within plus or minus ten percent (10%) of the final quantities of the completed structure.

c) Contract Plans – The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the procuring entity concerned, incorporating at least the following:

i) Site development plan
ii) Plans and profile sheet
iii) Typical sections and details
iv) Drainage details where applicable
v) Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed
vi) Other details which may be required by the head of the agency

d) Quantities – All construction quantities shall be computed to a reasonable accuracy of not more than plus or minus ten percent (10%) of the final quantities of the as-built structure.

e) Special Provisions – Specifications shall be prepared for specific terms of work or methods of construction, measurement and payment under each contract, which are not covered by Standard Construction and Material Specifications adopted by the procuring entity concerned.

f) Unit Prices – These shall be prepared for each contract using costs based on reasonable approved current prices as projected over the proposed construction period, divided into local and foreign exchange costs, as the case may be.

g) Approved Budget for the Contract – the ABC to be bid shall be prepared by official(s) duly designated by the Head of the Procuring Entity concerned or by his duly authorized official. It shall be approved by the Head of the Procuring Entity or his duly designated official.

Since the contracts are fixed price contracts, the ABC to be bid shall provide for the projected movements of construction costs over the construction period considering the projected inflation and foreign exchange rates as issued by the Development Budget Coordination Committee (DBCC). It shall also show the local and foreign currency requirements, as the case may be.

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

h) Bidding Documents – These shall be prepared as provided for in the IRR.

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

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

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

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

k) Warranty Period – Likewise, the Bidding Documents shall specify the type of project and the corresponding warranty period required by the procuring entity.

l) Value Engineering – For major projects as specified by the agency, value engineering shall be conducted according to accepted standards and practices. Value engineering shall analyze alternative schemes of achieving the projects objectives in order to delete or reduce non-essential features and lessen the life cycle costs of the projects without sacrificing the quality and integrity of the structure, while maintaining its essential function, performance, and safety.

m) Site or Right-of-Way Acquisition Plans and Resettlement Action Plans – These shall be prepared based on parcellary surveys and socio-economic surveys of households affected by the project.

4. For projects to be implemented by phases, the Procuring Entity shall ensure that there is a clear delineation of work for each phase, which must be usable, and structurally sound. It shall also ensure the conduct of the detailed engineering activities for each phase as provided for in Item 2 of this Guidelines.(n)

5. As a requirement for the procurement of infrastructure works, the concerned consultants/government officials who prepared and approved the detailed engineering shall issue a certification that the detailed engineering surveys and designs have been conducted according to the prescribed agency standards and specifications in conformance with the provisions of this Annex, and that the detailed engineering outputs are adequate for the procurement at hand. The approval by the authorized government officials of detailed engineering surveys and designs undertaken by

consultants neither diminishes the responsibility of the latter for the technical integrity of the surveys and designs nor transfer any part of that responsibility to the approving officials.

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

ANNEX "B"
GENERAL PRINCIPLES ON CONSULTING SERVICES

1. Definition

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

2. The Need for Consultants

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

3. Independence of Consultants

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

4. Hiring of Consultants

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

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

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

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

5. Organization of Consultants[27]

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

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

6. Types of Consulting Services

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

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

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

a) To establish investment priorities and sector policies - Studies for this objective include, among others, basic resource inventories, such as, river basin surveys, transport sector surveys, and studies of alternative development patterns and of sectors on a regional or nationwide scale.

b) To determine the basic features and the feasibility of individual projects - Studies for this objective include, among others, the functional design,

[27] Refer to Appendix 19 for the Revised Guidelines on the Recognition of Umbrella Organization of Consultants.

project site selection, architectural and space programming and physical layout of specific projects, preliminary design and cost estimates, and the economic, financial and environmental impact analyses required for project evaluation.

c) To define and propose changes in governmental policies, operations and institutions necessary for the successful implementation or functioning of investment projects - Studies for this objective include, among others, analysis of project related organizations, administrative problems, planning machinery, regulatory and marketing policies, accounting, and management systems, manpower resources and training requirements.

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

a) Pre-Design Phase – establishes the general size and scope of the project and its location on the site. The services include but are not limited to reconnaissance, topographical and other engineering and land surveys, soils investigations, preparation of preliminary architectural/engineering designs, layouts, outline specifications, preliminary cost estimates and specific recommendations prior to actual design;

b) Basic Design Phase – includes the preparation of detailed plans, designs, working drawings, specifications, detailed cost estimates and tender documents required for invitations of bids for construction works and equipment; and

c) Support Services During Construction – includes assistance and advice in securing bids, tabulation and analysis of bid results, and making recommendations on the award of construction contracts, and in preparing formal contract documents; preparation of supplementary drawings required to suit actual field conditions; checking detailed construction and as-built drawings, shop and erection drawings submitted by contractors; making periodic visits to check on the general progress of work and quality of materials and workmanship; observing performance tests and start-up and making report thereon; and making a final inspection and reporting of completed project.

6.4. Construction Supervision. These include the following:

a) Inspection and expediting of the work;

b) Verification and checking of quantities and qualities of work accomplished by the contractor as against the approved plans, specifications, and programs of work;

c) Issuance of instruction for corrections of defects on the work;

d) Verification and recommendation for approval of statements of work accomplished and certificate of project completed by the contractor;

e) Review and recommendation for approval of progress and final billings of the contractor; and

f) Provision of record or as-built drawings of the completed projects.

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

6.5. Management and Related Services. These may include the following:

a) Sector policy and regional development studies;

b) Planning, feasibility, market, economic, financial, technical, operations and sociological studies;

c) Project management, including procurement advisory services, impact monitoring, and post-evaluation services;

d) Production management, inventory control, and productivity improvement;

e) Marketing management and systems;

f) Information and communications technology services, including but not limited to, information systems design and development, and network design and installation;

g) Institutional strengthening, organization development, manpower requirements, training and technology transfer;

h) General management consultancy; and

i) Other related services.

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

a) Institution building, including organization and management studies, and business process re-engineering and development;

b) Design and execution of training programs at different levels;

c) Provision of staff to carry out certain functions and to train their replacements; and

d) Tasks relating to economic and financial studies such as those of tariff structures.

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

a) Soils investigation;

b) Studies, tests and process determination performed to establish design criteria for water facilities;

c) Detailed mill, shop, and/or laboratory inspection of materials and equipment;

d) Land surveys, establishment of boundaries and monuments, and related office computations and drafting;

e) Parcellary surveys;

f) Engineering surveys (for design and construction) and photogrammetry;

g) Assistance in litigation arising from the development or construction of projects and in hearings before various approving and regulatory agencies;

h) Investigation involving detailed consideration of the operation, maintenance, and overhead expenses; and the preparation of rate schedules; earning and expense statements, feasibility studies, appraisals, evaluations, and material audits or inventories required for certification of force account construction performed by the agencies;

i) Preparation of environmental statements and assistance to the agencies in public hearings;

j) Preparation of operating instructions and manuals for facilities and training of personnel and assistance in initial operation of facilities;

k) Designs to meet unique and/or above normal requirements brought about by severe earthquakes, tornadoes, or blasts, or satisfy unique or abnormal tolerances, safety requirements, etc.;

l) Site and physical planning;

m) Environmental and other aspects of planning;

n) Housing;

o) Interior design;

p) Studies on preservation and restoration of historical, cultural, and artworks;

q) Landscaping;

r) Construction management; and

s) Defense systems design, including self-reliance defense program.

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

ANNEX "C"
RECOMMENDED EARLIEST POSSIBLE TIME AND MAXIMUM PERIOD ALLOWED FOR THE PROCUREMENT OF GOODS AND SERVICES

Section	Procurement Activity	Minimum Calendar Days Recommended for Activity	Operational Timeline (Recommended Earliest Possible Time)	Maximum Calendar Days Allowed for Activity	Operational Timeline (Maximum Period Allowed)	Conditions / Remarks
20	Pre-Procurement Conference	1 CD	Day 0	*Whenever necessary*	0	Optional for ABC of ₱2,000,000.00 and below
21.2.1	Advertisement / Posting of Invitation to Bid	7 CDs	Days 1 to 7	7 CDs	Day 1 to 7	Start of Availability of Bidding Documents
22.2	Pre-Bid Conference	1 CD	Day 8	*Whenever necessary*	Day 8 to 40	• Optional for ABC below ₱1,000,000.00 • Not Earlier than 7 CDs from Advertisement / Posting • 12 CDs before Deadline of Submission and Receipt of Bids
25.5	Deadline of Submission and Receipt of Bids / Bid Opening	1 CD	Day 20	45 CDs	Day 52	Last day of Availability of Bidding Documents
32.4	Bid Evaluation	1 CD	Day 21	7 CDs	Day 53 to 59	
34.8	Post-Qualification	2 CDs[28]	Day 22 to 23	45 CDs	Day 60 to 104	The bidder must submit all Post-Qualification Requirements within 5 CDs from receipt of notice as bidder with LCB in accordance with Sec. 34.2.
37.1.2	Approval of Resolution/Issuance of Notice of Award	1 CD	Day 24	15 CDs	Day 105 to 119	
37.2.1	Contract Preparation and Signing	1 CD	Day 25	10 CDs	Day 120 to 129	
37.3	Approval of contract by higher authority	1CD		20 or 30 CDs		If necessary.
37.4.1	Issuance of Notice to Proceed	1 CD	Day 26	7 CDs	Day 130 to 136	
TOTAL TIME			**26 CDs**		**136 CDs**	Excluding Approval of Higher Authority, if applicable.

[28] One (1) Calendar day is allotted for the BAC to notify the Bidder that it has the Lowest Calculated Bid (LCB).

RECOMMENDED EARLIEST POSSIBLE TIME AND MAXIMUM PERIOD ALLOWED FOR THE PROCUREMENT OF INFRASTRUCTURE PROJECTS

Section	Procurement Activity	Minimum Calendar Days Recommended for Activity	Operational Timeline (Recommended Earliest Possible Time)	Maximum Calendar Days Allowed for Activity	Operational Timeline (Maximum Period Allowed)	Conditions / Remarks
20	Pre-Procurement Conference	1	Day 0	*Whenever necessary*	0	Optional for ABC of ₱5,000,000.00 and below
21.2.1	Advertisement / Posting of Invitation to Bid	7 CDs	Days 1 to 7	7 CDs	Day 1 to 7	Start of Availability of Bidding Documents
22.2	Pre-Bid Conference	1 CD	Day 8	*Whenever necessary*	Day 8 to 45 ---- Day 8 to 60	• Optional for ABC below ₱1,000,000.00 • Not Earlier than 7 CDs from Advertisement / Posting • 12 CDs before Deadline of Submission and Receipt of Bids
25.5	Deadline of Submission and Receipt of Bids / Bid Opening	1 CD	Day 20	50 CDs[29] ---- 65 CDs[30]	Day 57 ---- Day 72	Last day of Availability of Bidding Documents
32.4	Bid Evaluation	1 CD	Day 21	7 CDs	Day 58 to 64 ---- Day 73 to 79	
34.8	Post-Qualification	2 CDs[31]	Day 22 to 23	45 CDs	Day 65 to 109 ---- Day 80 to 124	The bidder must submit all Post-Qualification Requirements within 5 CDs from receipt of notice as bidder with LCB in accordance with Sec. 34.2.
37.1.2	Approval of Resolution/Issuance of Notice of Award	1 CD	Day 24	15 CDs	Day 110 to 124 --- Day 125 to 139	
37.2.1	Contract Preparation and Signing	1 CD	Day 25	10 CDs	Day 125 to 134 ---- Day 140 to 149	
37.3	Approval of contract by higher authority	1CD		20 or 30 CDs		If necessary.
37.4.1	Issuance of Notice to Proceed	1 CD	Day 26	7 CDs	Day 135 to 141 ---- Day 150 to 156	
TOTAL TIME			**26 CDs**		**141 CDs or 156 CDs**	Excluding Approval of Higher Authority, if applicable.

[29] For Infrastructure Projects ₱50,000,000.00 and below.
[30] For Infrastructure Projects above ₱50,000,000.00.
[31] One (1) Calendar day is allotted for the BAC to notify the Bidder that it has the Lowest Calculated Bid (LCB).

RECOMMENDED EARLIEST POSSIBLE TIME AND MAXIMUM PERIOD ALLOWED FOR THE PROCUREMENT OF CONSULTING SERVICES

Section	Procurement Activity	Minimum Calendar Days Recommended for Activity	Operational Timeline (Recommended Earliest Possible Time)	Maximum Calendar Days Allowed for Activity	Operational Timeline (Maximum Period Allowed)	Conditions / Remarks
20	Pre-Procurement Conference	1 CD	Day 0	*Whenever necessary*	0	Optional for ABC of ₱1,000,000.00 and below.
21.2.1	Advertisement / Posting of Request for Expression of Interest	7 CDs	Days 1 to 7	7 CDs	Day 1 to 7	Start of Availability of Bidding Documents
24.5.4	Eligibility Check and Shortlisting	1 CD	Day 8	20 CDs	Day 8 to 27	
22.2	Pre-Bid Conference	1 CD	Day 15	*Whenever necessary*	Day 34 to 70	• Optional for ABC below ₱1,000,000.00 • Not Earlier than 7 CDs from determination of shortlisted consultants. • 12 CDs before Deadline of Submission and Receipt of Bids
25.5	Deadline of Submission and Receipt of Bids / Bid Opening	1 CD	Day 27	75 CDs	Day 82	Last day of Availability of Bidding Documents
33.4	Bid Evaluation	1 CD	Day 28	21 CDs	Day 83 to 103	
33.2.1	Approval of Ranking by the HoPE	1 CD	Day 29	2 CDs	Day 104 to 105	
	Notification for Negotiation	1 CD	Day 30	3 CDs	Day 106 to 108	
33.2.5	Negotiation	1 CD	Day 31	10 CDs	Day 109 to 118	
34.8	Post-Qualification	2 CDs[32]	Day 32 to 33	30 CDs	Day 119 to 148	The bidder must submit all Post-Qualification Requirements within 5 CDs from receipt of notice as the bidder with the HRB in accordance with Sec. 34.2.
37.1.2	Approval of Resolution/Issuance of Notice of Award	1 CD	Day 34	15 CDs	Day 149 to 163	
37.2.1	Contract Preparation and Signing	1 CD	Day 35	10 CDs	Day 164 to 173	
37.3	Approval of contract by higher authority	1CD		20 or 30 CDs		If necessary.
37.4.1	Issuance of Notice to Proceed	1 CD	Day 36	7 CDs	Day 174 to 180	
TOTAL TIME			**36 CDs**		**180 CDs**	Excluding Approval of Higher Authority, if applicable.

[32] One (1) Calendar day is allotted for the BAC to notify the Bidder that it has the Highest Rated Bid (HRB).

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

1. Amendment to Order

1.1. Subject to the conditions set forth below, amendments to order may be issued at any time by the procuring entity concerned. If any such order increases or decreases the cost of, or the time required for executing any part of the work under the original contract, an equitable adjustment in contract price and/or delivery schedule shall be mutually agreed upon between the parties concerned, and the contract modified in writing.

1.2. An amendment to order may be issued only in emergency cases or during fortuitous events requiring necessary adjustments within the general scope of the contract in any one or more of the following is required in order to fully meet the requirements of the project:

a) drawings, design or specifications, if the goods to be furnished are to be specifically manufactured for the Government in accordance therewith;

b) method of shipment or packing; or

c) place of delivery.

1.3. An amendment to order may also be issued by the concerned procuring entity where there are additional items needed and necessary for the protection of the goods, which were not included in the original contract. Payments for these additional items shall be based on the unit prices in the original contract for items of goods similar to those in the original contract. If the contract does not contain any rate applicable to the additional items, then suitable prices shall mutually be agreed upon between the parties. Request for payment by the supplier for any additional items shall be accompanied by a statement with the approved supporting forms, giving a detailed accounting and record of amount for which it claims payment. The contract time shall likewise be extended if the acquisition of such additional items so warrants.

1.4. Under no circumstances shall a supplier proceed to commence work under any amendment to order unless the same has been approved by the Head of the Procuring Entity concerned or his duly authorized representative. As an exception to the rule, the Regional Director/Head concerned may authorize the immediate start of work under any amendment to order in the event of emergencies to avoid detriment to public service, or damage to life and/or property or when time is of the essence: Provided, however, That the same is valid only on items up to the point where the cumulative increase in the contract cost which has not yet been duly fully approved by the Head of the Procuring Entity concerned or his duly authorized representative does not exceed five percent (5%) of the original contract cost: Provided, further, That the corresponding amendment to order shall immediately be prepared and submitted for approval to the Head of the Procuring Entity concerned or his duly authorized representative. For an amendment to order involving a cumulative amount exceeding five percent (5%) of the original contract price, no work thereon shall be commenced unless the

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

2. **Suspension of Work**

2.1. The procuring entity may suspend the work wholly or partly by written order for a certain period of time, as it deems necessary due to force majeure or any fortuitous events as defined in the contract. The supplier shall take all reasonable steps to minimize the costs allocable to the work covered by such order during work stoppage.

2.2. Before the suspension order expires, the procuring entity concerned shall either lift such order or terminate the work covered by the same. If the suspension order is lifted, or if the period of the order expires, the supplier shall have the right to resume work. Appropriate adjustments shall be made in the delivery or contract schedule, or contract price, or both, and the contract shall be modified accordingly.

3. **Liquidated Damages**

3.1. When the supplier fails to satisfactorily deliver goods under the contract within the specified delivery schedule, inclusive of duly granted time extensions, if any, the supplier shall be liable for damages for the delay and shall pay the procuring entity liquidated damages, not by way of penalty, an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods scheduled for delivery for every day of delay until such goods are finally delivered and accepted by the procuring entity concerned.

3.2. The procuring entity need not prove that it has incurred actual damages to be entitled to liquidated damages. Such amount shall be deducted from any money due or which may become due to the supplier, or collected from any securities or warranties posted by the supplier, whichever is convenient to the procuring entity concerned. In no case shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the procuring entity concerned may rescind the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

4. **Advance Payment**

4.1. In accordance with Presidential Decree 1445, advance payment shall be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the contract amount, unless otherwise directed by the President; *Provided*, *however*, that for cases mentioned under 4.3, 4.4, and 4.5 of these guidelines, no prior approval by the President shall be necessary.

4.2. All progress payments shall first be charged against the advance payment until the latter has been fully exhausted, unless otherwise approved by the President.

4.3. A single advance payment not to exceed fifty percent (50%) of the contract amount shall be allowed for contracts entered into by a procuring entity for the

following services where requirement of down payment is a standard industry practice:

a) Hotel and restaurant services;

b) Use of conference/seminar and exhibit areas; and

c) Lease of office space.

4.4. Advance payment not to exceed fifteen percent (15%) of the contract amount, unless otherwise directed by the President, shall also be allowed for procurement of goods required to address contingencies arising from natural or man-made calamities in areas where a "State of Calamity" has been declared by appropriate authorities.

4.5. Upon submission of an irrevocable letter of credit or bank guarantee issued by a Universal or Commercial Bank, advance payment not to exceed fifteen percent (15%) of the contract amount shall be allowed and paid within sixty (60) calendar days from signing of the contract. The irrevocable letter of credit or bank guarantee must be for an equivalent amount, shall remain valid until the goods are delivered, and accompanied by a claim for advance payment.

5. **Other Rules and Guidelines**

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

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

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

1. VARIATION ORDERS - CHANGE ORDER/EXTRA WORK ORDER

1.1. Variation Orders may be issued by the procuring entity to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the Government after award of the contract, provided that the cumulative amount of the positive or additive Variation Order does not exceed ten percent (10%) of the original contract price. The addition/deletion of works under Variation Orders should be within the general scope of the project as bid and awarded. The scope of works shall not be reduced so as to accommodate a positive Variation Order. A Variation Order may either be in the form of either a change order or extra work order.

1.2. A Change Order may be issued by the implementing official to cover any increase/decrease in quantities of original work items in the contract.

1.3. An Extra Work Order may be issued by the implementing official to cover the introduction of new work necessary for the completion, improvement or protection of the project which was not included as items of work in the original contract, such as, where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.

1.4. Any cumulative positive Variation Order beyond ten percent (10%) of the original contract price shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the Head of the Procuring Entity may authorize a positive variation order that will make the cumulative value of the positive Variation Orders go beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price, subject to the guidelines to be determined by the GPPB: Provided, however, That appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).

1.5. In claiming for any Variation Order, the contractor shall, within seven (7) calendar days after such work has been commenced pursuant to Item 3.2 hereof; or, within twenty eight (28) calendar days after the circumstances or reasons justifying a claim for extra cost shall have occurred, deliver a notice giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim. The preparation and submission of Variation Orders are as follows:

a) If the procuring entity's representative/Project Engineer believes that a Change Order or Extra Work Order should be issued, he shall prepare the proposed Order accompanied with the notices submitted by the contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order, and shall submit the same to the Head of the Procuring Entity for approval.

b) The Head of the Procuring Entity or his duly authorized representative upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the appropriate technical staff or office of the procuring entity to conduct an on-the-spot investigation to verify the need for the work to be prosecuted and to review the proposed plan, and prices of the work involved.

c) The technical staff of appropriate office of the procuring entity shall submit a report of their findings and recommendations, together with the supporting documents, to the Head of the Procuring Entity or his duly authorized representative for consideration.

d) The Head of the Procuring Entity or his duly authorized representative, acting upon the recommendation of the technical staff or appropriate office, shall approve the Change Order or Extra Work Order after being satisfied that the same is justified, necessary, and in order.

e) The timeframe for the processing of Variation Orders from the preparation up to the approval by the procuring entity concerned shall not exceed thirty (30) calendar days.

2. ADDITIONAL/EXTRA WORK COSTING

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

a. For additional/extra works duly covered by Change Orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items original contract shall be used.

b. For additional/extra works duly covered by Extra Work Orders involving new work items that are not in the original contract, the unit prices of the new work items shall be based on the direct unit costs used in the original contract (*e.g.*, unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both the Government and the contractor, and provided further that the direct unit costs of new components shall be based on the contractor's estimate as validated by the procuring entity concerned via documented canvass in accordance with existing rules and regulations. The direct cost of the new work item shall then be combined with the mark-up

factor (*i.e.*, taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

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

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

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

3.2. However, under any of the following conditions, the procuring entity's representative/Project Engineer may, subject to the availability of funds and within the limits of his delegated authority, allow the immediate start of work under any Change Order or Extra Work Order:

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

ii) When time is of the essence;

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

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

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

4. ADVANCE PAYMENT

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

4.2. The advance payment shall be made only upon the submission to and acceptance by the procuring entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the procuring entity.

4.3. The advance payment shall be repaid by the contractor by deducting fifteen percent (15%) from his periodic progress payments a percentage equal to the percentage of the total contract price used for the advance payment.

4.4. The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.

5. PROGRESS PAYMENT

5.1. Once a month, the contractor may submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed.

5.2. The procuring entity's representative/project engineer shall check the contractor's monthly SWA and certify the amount to be paid to the contractor as progress payment. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

5.3. The procuring entity shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:

a) Cumulative value of the work previously certified and paid for.

b) Portion of the advance payment to be recouped for the month.

c) Retention money in accordance with the condition of contract.

d) Amount to cover third party liabilities.

e) Amount to cover uncorrected discovered defects in the works.

6. RETENTION MONEY

6.1. Progress payments are subject to retention of ten percent (10%) referred to as the "retention money." Such retention shall be based on the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by the procuring entity, are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.

6.2. The total "retention money" shall be due for release upon final acceptance of the works. The contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit of from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to Government, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the Government shall be valid for a duration to be determined by the concerned implementing office/agency or procuring entity and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

7. CONTRACT COMPLETION

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

8. LIQUIDATED DAMAGES

8.1. Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the procuring entity for liquidated damages, and not by way of penalty, an amount, as provided in the conditions of contract, equal to at least one tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for every day of delay.

8.2. A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned procuring entity.

8.3. To be entitled to such liquidated damages, the procuring entity does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or collect such liquidated damages from the retention money or other securities posted by the contractor whichever is convenient to the procuring entity.

8.4. In case that the delay in the completion of the work exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the contractor, the procuring entity concerned may rescind the contract, forfeit the contractor's performance security and takeover the prosecution of the project or award the same to a qualified contractor through negotiated contract.

8.5. In no case however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the contract shall

automatically be taken over by the procuring entity concerned or award the same to a qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause and impose other appropriate sanctions.

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

9. SUSPENSION OF WORK

9.1. The procuring entity shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to force majeure or any fortuitous events or for failure on the part of the contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the procuring entity or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The contractor shall immediately comply with such order to suspend the work wholly or partly.

9.2. The contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:

a. There exist right-of-way problems which prohibit the contractor from performing work in accordance with the approved construction schedule.

b. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.

c. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.

d. There is failure on the part of the procuring entity to deliver government-furnished materials and equipment as stipulated in the contract.

e. Delay in the payment of contractor's claim for progress billing beyond forty-five (45) calendar days from the time the contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

9.3. In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the contractor, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

10. EXTENSION OF CONTRACT TIME

10.1. Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, the procuring entity shall determine the amount of such extension; provided that the procuring entity is not bound to take into account any claim for an extension of time unless the contractor has, prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the procuring entity notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the contractor of any claim. Upon receipt of full and detailed particulars, the procuring entity shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in the procuring entity's opinion, the findings of facts justify an extension.

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

10.3. Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.

10.4. No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.

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

11. ACCREDITATION OF TESTING LABORATORIES

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

12. EVALUATION OF CONTRACTORS PERFORMANCE

12.1. *Subject and Scope*

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

12.2. *Evaluation Guidelines*

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

12.3. *Implementation Mechanism for CPES*

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

12.4. *Submission and Dissemination of Evaluation Results*

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

12.5. *Utilization of Evaluation Results*

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

13. OTHER RULES AND GUIDELINES

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

a) Sub-contracting;

b) Interference with Traffic and Adjoining Properties;

c) Clearance of Project Site of Obstruction;

d) Inspection and Testing;

e) Daywork;

f) Measurement of Works; and

g) Other Implementation Aspects.

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

1. Advance Payment for Mobilization

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

2. Cost of Consulting Services

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

3. Other Rules and Guidelines

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

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

1. SCOPE AND APPLICATION

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

2. PURPOSE

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

3. GUIDING PRINCIPLES

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

3.1. **Advantages:**

a) Since both design and construction are in the hands of the contractor, there is a single point of responsibility for quality, cost, and schedule adherence, including the risks related to design. This precludes buck-passing and finger-pointing between the designer and the builder.

b) Because design and construction periods can overlap, the total design and construction time, as well as the final project cost, will be significantly reduced.

c) The procuring entity is assured of quality considering that the larger responsibility implicit in the design-build scheme serves as motivation for high quality of the facility to be provided. Once the requirements of the procuring entity are defined in performance terms, the designer-builder is responsible for producing the results accordingly. The designer-builder warrants to the procuring entity that the design documents are complete and free from error.

d) The procuring entity does not need to spend much time and money in seeing to it that the work is done by the contractor exactly as indicated by the design documents prepared by the designer, and in coordinating and arbitrating between separate design and construction contracts.

3.2. **Disadvantages:**

a) Procuring Entities should, however, take into account that in utilizing the design and build scheme for a particular project, contractors are given too much discretion in determining the project cost and there is difficulty in

predicting its final cost until the actual commencement of construction. This, however, can be addressed by prescribing that the bid/contract price should not exceed the Approved Budget for Contract (ABC) of the procuring entity and that the contract price is a fixed lump sum amount.

b) Considering that the extent of the integration of design and construction of the project is exceptionally dependent on the contractor, there may be cases when the end-result may not be exactly in accordance with what the procuring entity has required. These cases can be avoided if the procuring entity adequately defines the output or performance specifications and parameters.

4. DEFINITION OF TERMS

a. **Approved Budget for the Contract (ABC).** This shall be a lump sum amount that shall cover the cost of design and construction works *(at the option of the procuring entity)* based on the conceptual design and performance specifications and in accordance with applicable provisions of the law or agency guidelines. The ABC shall be calculated based on either the approximate quantities of work of the conceptual design, from standardized designs or from cost records of previous projects of similar kind.

b. **Bidding Documents for Design and Build Scheme.** These shall basically be similar to the Bidding Documents for infrastructure projects and shall also include the performance specifications and parameters to be followed by the design and build contractors and the method for allocation of risks for the design and build contract, among others.

c. **Conceptual Design**. This shall describe the general idea of the procuring entity with regard to the completed facility and shall identify the scope or physical components and structures, specific outputs and requirements of the structures and proposed methods of construction, where necessary.

d. **Design and Build Projects.** This refers to infrastructure projects where the procuring entity awards a single contract for the architectural/engineering design and construction to a single firm, partnership, corporation, joint venture or consortium.

e. **Performance Specifications and Parameters.** The procuring entity shall define the required performance specifications and criteria and its means of measurement based on the operating outputs and in accordance with appropriate design and construction standards, legal and technical obligations and any other relevant government commitments as required by existing laws and regulations. It shall not be drawn up to favor a particular solution, design and construction method.

f. **Preliminary Investigations.** These shall include, among others, information on soil, geotechnical, hydrologic, hydraulic, seismic, traffic, and environmental conditions that shall be used to define project design criteria, to set the basis for any changed conditions and establish preliminary project cost estimates.

g. **Preliminary Survey and Mapping**. These shall determine boundaries and provide stationing along control lines to establish feature and design criteria location, and identify existing and future right-of-way limits and construction easements associated with the procuring entity's conceptual design.

h. **Project Description**. This shall define the objectives, purpose, limitations or constraints, as well as the allocation of risks between the procuring entity and the winning bidder.

i. **Utility Locations**. The procuring entity shall provide information on existing utilities in and around the project's area.

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

5.1. The Design and Build scheme shall be applied under any of the following cases:

a. For flagship, priority and fast track projects that need to be completed on a tight completion schedule, as included in the Medium Term Public Investment Program (MTPIP) for national projects and in the Regional Development Investment Plan (RDIP) for regional and provincial projects;

b. For infrastructure projects requiring advanced engineering or construction technologies or whose intellectual property rights belong to private companies;

c. For infrastructure projects where design, equipment, plant and construction can be provided exclusively by a company or where manufacturer's know-how is important in the construction of such facility; or

d. For small projects where there are previously approved drawings or standardized designs and an innovation in design and construction methods under the design and build scheme will result in lower costs and higher quality projects. Examples of these are school buildings, rural health units, among others.

5.2. All design and build projects shall be included in the Annual Procurement Plan (APP) of the procuring entity concerned and shall be subject to prior approval by the Head of the Procuring Entity or his/her duly authorized representative.

6. CREATION OF DESIGN and BUILD COMMITTEE

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

7. PRELIMINARY DESIGN AND CONSTRUCTION STUDIES

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

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

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

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

8. DETAILED ENGINEERING REQUIREMENTS

8.1. Upon award of the design and build contract, the winning bidder shall be responsible for the preparation and submission of all necessary detailed engineering investigations, surveys and designs in accordance with the provisions of Annex "A" of this IRR (with the exception of the Bidding Documents and the ABC).

8.2. The procuring entity shall ensure that all the necessary schedules with regard to the submission, confirmation and approval of the detailed engineering design and the details of the construction methods and procedures shall be included in the contract documents.

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

9. ELIGIBILITY REQUIREMENTS

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

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

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

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

a) relevant statements of all on-going, completed, awarded but not yet started design/design and build related contracts, curriculum vitae of key staff, partners or principal officers; and

b) valid licenses issued by the Professional Regulatory Commission (PRC) for design professionals.(a)

ii. Eligibility Criteria

a) The eligibility of design and build contractors shall be based on the legal, technical and financial requirements abovementioned. In the technical requirements, the design and build contractor (as solo or in joint venture/consortia) should be able to comply with the experience requirement under the IRR of R.A. 9184, where one of the parties (in a joint venture/consortia) should have at least one similar project, both in design and construction, with at least 50% of the cost of the ABC.

b) If the bidder has no experience in design and build projects on its own it may enter into subcontracting, partnerships, or joint venture with design or engineering firms for the design portion of the contract.

c) The relevant provisions under Section 23.4.2 of the IRR of R.A, 9184 on eligibility requirements shall be observed, with the following exceptions:

Joint ventures/consortia among Filipino contractors and consultants or among Filipino contractors and foreign consultants shall be allowed subject to pertinent laws and the relevant provisions of the IRR of R.A. 9184. The joint venture/consortia shall be jointly and severally responsible for the obligations and the civil liabilities arising from the design and build contract: *Provided, however,* That Filipino ownership or interest thereof shall be at least seventy five percent (75%): *Provided further,* That joint ventures/consortia in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by Filipinos and that Filipino ownership or interest shall not be less than twenty-five percent (25%): *Provided, finally,* that when the design services in which the joint

venture wishes to engage involve the practice of professions regulated by law, all those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions and where foreign designers are required, the foreign designer must be authorized by the appropriate Philippine Government professional regulatory body to engage in the practice of those professions and allied professions.

10. SUBMISSION AND RECEIPT OF BIDS

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

i. Preliminary Conceptual Design Plans in accordance with the degree of details specified by the procuring entity;

ii. Design and construction methods;

iii. List of design and construction personnel, to be assigned to the contract to be bid, with their complete qualification and experience data; and

iv. Value engineering analysis of design and construction method.

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

i. Lump sum bid prices, which shall include the detailed engineering cost, in the prescribed Bid Form;

ii. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid; and

iii. Cash flow by the quarter and payments schedule.

11. BID EVALUATION

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

11.1. **First-Step Procedure:**

i. The first step of the evaluation shall involve the review of the preliminary conceptual designs and track record submitted by the contractor as indicated in the Bidding Documents using a non-discretionary "pass/fail" criteria that involve compliance with the following requirements:

a. Adherence of preliminary design plans to the required performance specifications and parameters and degree of details;

b. Concept of approach and methodology for detailed engineering, design and construction with emphasis on the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of interpretation of project problems, risks, and suggested solutions;

c. Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;

ii. For complex or unique undertakings, such as those involving highly specialized or advanced engineering technology, eligible bidders may be required, at the option of the agency concerned, to make an oral presentation within fifteen (15) calendar days after the deadline for submission of technical proposals.

11.2. **Second-Step Procedure:**

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

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

12. POST-QUALIFICATION and AWARD OF THE CONTRACT

12.1. The LCB shall be subject to post-qualification in accordance with Section 34, Rule X of this IRR to determine its responsiveness to the eligibility and bid requirements. If after post-qualification the Lowest Calculated Bid is determined to be post-qualified it shall be considered the Lowest Calculated and Responsive Bid (LCRB) and the contract shall be awarded to the bidder. In case of post-disqualification of the LCB, the procedure under Section 34 shall also be followed.

12.2. The Head of the Procuring Entity shall approve or disapprove the recommendations of the BAC within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the LCRB.

12.3. The Head of the Procuring Entity concerned shall award the contract to the said bidder pursuant to the provisions of Section 37, Rule XI of this IRR.

13. CONTRACT IMPLEMENTATION

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

13.1. No works shall commence unless the contractor has submitted the required documentary requirements and the procuring entity has given written approval. Work execution shall be in accordance with reviewed and approved documents.

13.2. The contractor shall be responsible for obtaining all necessary information as to risks, contingencies and other circumstances which may affect the works and shall prepare and submit all necessary documents specified by the procuring entity to meet all regulatory approvals as specified in the contract documents.

13.3. The Contractor shall submit a detailed program of work within fourteen (14) calendar days after the issuance of the Notice to Proceed for approval by the procuring entity that shall include, among others:

i. The order in which it intends to carry out the work including anticipated timing for each stage of design/detailed engineering and construction;

ii. Periods for review of specific outputs and any other submissions and approvals;

iii. Sequence of timing for inspections and tests as specified in the contract documents;

iv. General description of the design and construction methods to be adopted;

v. Number and names of personnel to be assigned for each stage of the work;

vi. List of equipment required on site for each major stage of the work; and

vii. Description of the quality control system to be utilized for the project.

13.4. Any errors, omissions, inconsistencies, inadequacies or failure submitted by the contractor that do not comply with the requirements shall be rectified, resubmitted and reviewed at the contractor's cost. If the Contractor wishes to modify any design or document which has been previously submitted, reviewed and approved, the contractor shall notify the procuring entity within a reasonable period of time and shall shoulder the cost of such changes.

13.5. As a rule, changes in design and construction requirements shall be limited only to those that have not been anticipated in the contract documents prior

to contract signing and approval. The following guidelines shall govern approval for change or variation orders:

i. Change Orders resulting from design errors, omissions or non-conformance with the performance specifications and parameters and the contract documents by the contractor shall be implemented by the contractor at no additional cost to the procuring entity.

ii. Provided that the contractor suffers delay and/or incurs costs due to changes or errors in the procuring entity's performance specifications and parameters, he shall be entitled to either one of the following:

a. an extension of time for any such delays under Section 10 of Annex "E"; or

b. payment for such costs as specified in the contract documents, provided, that the cumulative amount of the variation order does not exceed ten percent (10%) of the original contract price.

13.6. The contract documents shall include the manner and schedule of payment specifying the estimated contract amount and installments in which the contract price will be paid.

13.7. The contractor shall be entitled to advance payment subject to the provisions of Section 4 of Annex "E".

13.8. The procuring entity shall define the quality control procedures for the design and construction in accordance with agency guidelines and shall issue the proper certificates of acceptance for sections of the works or the whole of the works as provided for in the contract documents.

13.9. The contractor shall provide all necessary equipment, personnel, instruments, documents and others to carry out specified tests.

13.10. All design and build projects shall have a minimum Defects Liability Period of one (1) year after contract completion or as provided for in the contract documents. This is without prejudice, however, to the liabilities imposed upon the engineer/architect who drew up the plans and specification for a building sanctioned under Article 1723 of the New Civil Code of the Philippines.

13.11. The contractor shall be held liable for design and structural defects and/or failure of the completed project within the warranty periods specified in Section 62.2.3.2 of the IRR.

14. AMENDMENTS AND FORMS

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

ANNEX "H"
CONSOLIDATED GUIDELINES FOR THE ALTERNATIVE METHODS OF PROCUREMENT

I. POLICY STATEMENT

As a general rule, all procurement shall be through Competitive Bidding. However, whenever justified by the conditions provided in Republic Act No. (R.A.) 9184 and its revised Implementing Rules and Regulations (IRR), the Procuring Entity may, in order to promote economy and efficiency, resort to any of the alternative methods of procurement provided in Rule XVI of the IRR of R.A. 9184.

The Alternative Methods of Procurement shall be resorted to only in the highly exceptional cases provided for in this Guidelines and subject to the prior approval of the Head of the Procuring Entity (HOPE) upon recommendation of the Bids and Awards Committee (BAC). In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained.

II. PURPOSE

This Guidelines is formulated by the Government Procurement Policy Board (GPPB) to provide a single source of information for Alternative Methods of Procurement commonly resorted to by procuring entities; and to prescribe the terms, conditions, rules and procedures for covered Alternative Methods of Procurement for Goods, Infrastructure Projects, and Consulting Services.

III. SCOPE

This Guidelines shall apply to the national government, its branches, constitutional offices, departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units.

Excluded from this Guidelines are the following:

A. Infrastructure projects undertaken through the Armed Forces of the Philippines Corps of Engineers (AFPCOE), for purposes of Sections 53.2 (Emergency Cases) and 53.5 (Agency-to-Agency) of the IRR of R.A. 9184, which shall continue to be governed by the Guidelines on the Implementation of Infrastructure Projects Undertaken by the AFP Corps of Engineers under GPPB Resolution No. 09-2005.

B. Limited Source Bidding under Section 49, Negotiated Procurement under Sections 53.8 (Defense Cooperation Agreement), 53.11 (NGO Participation), 53.12 (Community Participation), and 53.13 (UN Agencies).

IV. GENERAL GUIDELINES

A. **Annual Procurement Plan (APP).** The method of procurement, *e.g.,* competitive bidding or any of the alternative methods of procurement, to be utilized by the Procuring Entity shall be indicated in the APP to be approved by the HOPE. If the original mode of procurement in the APP cannot be ultimately pursued, the BAC assisted by its Secretariat, the Technical Working Group, and by the appropriate End-

User or relevant office, as the case may be, shall justify and recommend through a BAC Resolution such change in the mode of procurement to be approved by the HOPE. The changes must be reflected in the APP and submitted to the GPPB in accordance with Section 7.4 of the IRR of R.A. 9184.

B. **Prohibition on Splitting of Government Contracts[33].** Splitting of Government Contracts, which means the division or breaking up of government contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of R.A. 9184 and its IRR, particularly the necessity of competitive bidding and the requirements for the alternative methods of procurement, is prohibited.

   For infrastructure projects to be implemented by phases, the Procuring Entity shall ensure that there is a clear delineation of work for each phase, which must be usable and structurally sound. It shall also ensure the conduct of the detailed engineering activities for each phase as provided for in Annex "A" of the IRR of R.A. 9184.

C. **Unnecessary, Excessive, Extravagant and Unconscionable Expenditures.** The Procuring Entity shall ensure that the objectives and purpose of the contract do not constitute an unnecessary, excessive, extravagant, or unconscionable expenditure.

D. **Confidentiality of Bidding Documents.** The procurement documents are strictly confidential and shall not be divulged or released to any person prior to the advertisement or posting of the procurement opportunity, except to those officially authorized in the handling of these documents.

   However, in procurements involving and affecting national security, the disclosure of procurement documents 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.

E. **Advertisement and Posting of Procurement Opportunity[34].** For alternative methods of procurement, the Procuring Entity may dispense with the advertisement in the newspaper and posting requirement as prescribed in Section 21.2.1 of the IRR of R.A. 9184.

   For the following alternative methods, however, the BAC, through its Secretariat, shall post the procurement opportunity [*e.g.*, Request for Quotation (RFQ) or Request for Proposal (RFP)] in the Philippine Government Electronic Procurement System (PhilGEPS) website, the website of the Procuring Entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity for a period of at least three (3) calendar days:

   1) Section 52.1(b) – Shopping for ordinary office supplies and equipment not available in the Department of Budget and Management-Procurement Service (DBM-PS), for projects with Approved Budget for the Contract (ABC) above Fifty Thousand Pesos (₱50,000.00);

[33] Section 54.1, IRR of R.A. 9184.
[34] Section 54.2, IRR of R.A. 9184.

2) Section 53.1 – Two Failed Biddings; and

3) Section 53.9 – Small Value Procurement, for projects with ABC above Fifty Thousand Pesos (₱50,000.00);

F. **Documentary Requirements.** The mandatory documents to be submitted by suppliers, manufacturers, distributors, contractors and consultants are enumerated in Appendix A of this Guidelines.

G. **PhilGEPS Registration[35].** Manufacturers, suppliers, distributors, contractors, and/or consultants are mandated to register with the PhilGEPS and provide a PhilGEPS Registration number in the following alternative methods of procurement *as a condition for award of the contract*:

1) Section 50 – Direct Contracting;

2) Section 52.1(b) – Shopping for ordinary office supplies and equipment not available in DBM-PS;

3) Section 53.3 – Take Over of Contracts *(Only for New Bidders, if any.)*;

4) Section 53.6 – Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services;

5) Section 53.7 – Highly Technical Consultants;

6) Section 53.9 – Small Value Procurement; and

7) Section 53.10 – Lease of Real Property and Venue.

For purposes of Negotiated Procurement under Section 53.1 (Two Failed Biddings), the BAC shall require the submission of a Certificate of PhilGEPS Registration in accordance with Section 8.5.2 of the IRR of R.A. 9184.

H. **Observers.** For Negotiated Procurement under Section 53.1 (Two-Failed Biddings), observers shall be invited in accordance with Section 13 of the IRR of R.A. 9184. For other alternative methods of procurement, observers may be invited by the Procuring Entity as it may deem necessary.

I. **Reference to Brand Names[36].** Specifications for the procurement of Goods shall be based on relevant characteristics, functionality and/or performance requirements. Reference to brand names shall not be allowed except for items or parts that are compatible with the existing fleet or equipment of the same make and brand and will maintain the performance, functionality and useful life of the equipment. This rule shall also apply to the goods component of infrastructure projects and consulting services.

J. **Delegation of Authority.** The conduct of Shopping and Negotiated Procurement under Emergency Cases, Small Value Procurement and Lease of Real Property and

[35] Section 54.6, IRR of R.A. 9184.
[36] Section 18, R.A. 9184 and its IRR.

Venue may be delegated to the End-user unit or any other appropriate bureau, committee, or support unit duly authorized by the BAC through a Resolution approved by the HOPE.

For Shopping under Section 52.1(a) and Negotiated Procurement under Emergency Cases, due to the urgent nature of the attendant circumstances, the BAC and the HOPE through a Resolution and Office Order, respectively, may delegate to specific officials, personnel, committee or office in the Procuring Entity the conduct of Shopping and award of contract to efficiently and expeditiously deal with the emergency sought to be addressed.

For record and monitoring purposes, all awards shall be immediately reported with all supporting documents to the HOPE, through the BAC, to ensure compliance with all the conditions and requirements provided for under R.A. 9184, its IRR and related guidelines.

K. **Mandatory Review.** The BAC shall conduct a mandatory review and evaluation of the terms, conditions, specifications, cost estimates in the RFQ or RFP, if none or less than the required number of quotations or proposals are received, despite the extension of deadline for the third time.

Based on its findings, the BAC may revise the terms and conditions and specifications, and if necessary, adjust the ABC, subject to the required approvals, and repeat the procurement process.

L. **Notice of Award; Contact Approval; Notice to Proceed.**

1) Except in *Shopping*, and *Negotiated Procurement* through *Emergency Cases, Agency-to-Agency* and *Small Value Procurement*, the following procedures shall apply in the issuance of the Notice of Award (NOA), Contract/Purchase Order (PO) and Notice to Proceed (NTP) for the Alternative Methods of Procurement identified in this Guidelines, thus:

   a. The BAC shall recommend to the HOPE the award of contract. Within a period not exceeding fifteen (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 Supplier, Contractor or Consultant. In the event the HOPE shall disapprove the recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, addressed to the BAC.

   b. The Supplier, Contractor or Consultant shall immediately enter into contract with the Procuring Entity upon receipt of the NOA. Upon transmission of the signed contract/PO, the HOPE or his duly authorized representative shall immediately sign the contract/PO provided that all the relevant documentary requirements are submitted.

   c. The HOPE or his duly authorized representative shall issue the NTP, if necessary, and a copy of the approved contract to the Supplier, Contractor or Consultant within three (3) calendar days from the date of

approval of the contract by the appropriate government approving authority.

2) **Posting of Notice of Award, Contract and Notice to Proceed[37].** Unless the contract involves and affects national security as determined by the HOPE in accordance with Section IV(D) of this Guidelines, the BAC, through its Secretariat, shall post the NOA, Contract/PO, including the NTP if necessary, for information purposes, in the PhilGEPS website, the website of the Procuring Entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity within ten (10) days from their issuance, except for contracts with ABC of Fifty Thousand Pesos (₱50,000.00) and below.

M. **Bid, Performance and Warranty Securities[38].**

Bid security may be dispensed with. However, performance and/or warranty securities are required for the following alternative methods of procurement, in accordance with Sections 39 and 62 of the IRR as summarized below:

Alternative Method of Procurement	Performance Security (PS)	Warranty Security (WS)
Direct Contracting	**x**	✓
Repeat Order	**x**	✓
Two-Failed Biddings	✓	✓ In no case shall WS be required in the procurement of Consulting Services.
Emergency Cases	Procuring Entity may require PS depending on the nature of the procurement project. However, for Infrastructure Projects, PS is required.	Procuring Entity may require WS depending on the nature of the procurement project. In no case shall WS be required in the procurement of Consulting Services.
Take-over of Contracts	✓	✓
Adjacent/Contiguous	✓	For Infrastructure Projects, WS is required.
Small Value Procurement	Procuring Entity may require PS depending on the nature of the procurement project. However, for Infrastructure Projects, PS is required.	Procuring Entity may require WS depending on the nature of the procurement project. In no case shall WS be required in the procurement of Consulting Services.

[37] Section 54.3, IRR of R.A. 9184.
[38] Sections 54.4 and 54.5, IRR of R.A. 9184.

N. **Blacklisting.** Suspension or blacklisting of suppliers, contractors, or consultants shall be made in accordance with the *Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants*. A suspended or blacklisted supplier, contractor or consultant shall not be allowed to participate in all procurement opportunities of the government for the duration of the suspension or blacklisting, regardless of the modality of procurement employed by the Procuring Entity.

V. SPECIFIC GUIDELINES

A. ***DIRECT CONTRACTING***[39]

1. **Definition.** Direct Contracting or single source procurement is a method of procurement of goods that does not require elaborate Bidding Documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct Contracting may be resorted to under any of the following conditions:

    a) Procurement of goods of proprietary nature which can be obtained only from the proprietary source, *i.e.,* when patents, trade secrets, and copyrights prohibit others from manufacturing the same item;

    b) When the procurement of critical components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or

    c) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

    To justify the need to procure through the Direct Contracting method, the End-User should conduct a survey of the industry and determine the supply source. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. Moreover, the End-User must justify the necessity for an item that may only be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms.

2. **Procedure**

    a) The BAC shall prepare the RFQ or pro-forma invoice together with the terms and conditions of sale, and shall send the same to the identified direct supplier.

    b) Simplified negotiations on the terms and conditions of the contract may be conducted by the BAC to ensure that the supplier is technically, legally and financially capable to deliver the goods at the most advantageous price and contract for the Government.

[39] Section 50, R.A. 9184 and its IRR.

c) The BAC shall recommend to the HOPE the award of contract in favor of the supplier. Award of contract shall be made in accordance with Section IV(L) of this Guidelines.

B. ***REPEAT ORDER***[40]

1. **Definition.** *Repeat Order* is a method of procurement of goods from the previous winning bidder, whenever there is a need to replenish goods subject to the following conditions:

   a) The goods were procured under a contract previously awarded through Competitive Bidding;

   b) Unit prices must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the government after price verification;

   c) The repeat order will not result in splitting of contracts, requisitions, or purchase orders, as provided for in Article IV(B) of this Guidelines;

   d) Except in cases duly approved by the GPPB, repeat orders shall be availed of only within six (6) months from the date of the NTP arising from the original contract, provided that there has been a partial delivery, inspection and acceptance of the goods within the same period;

   e) Repeat orders shall not exceed twenty-five percent (25%) of the quantity of each item in the original contract. In order not to exceed the 25% threshold, the goods under the original contract must be:

      i. Quantifiable;
      ii. Divisible; and
      iii. Consisting of at least four (4) units per item.

2. **Procedure**

   a) Upon determination of the need to replenish the goods earlier procured through competitive bidding, the End-User unit shall prepare the necessary Purchase Request for the procurement of additional goods, after a careful study and confirmation of the prevailing market price of the goods to be re-ordered and comparing this with the price of the goods in the original contract, accompanied by the appropriate justification why the re-ordering is being pursued.

   b) When all the conditions are present, the BAC shall recommend to the HOPE the award of contract through Repeat Order. Award of contract shall be made in accordance with Section IV(L) of this Guidelines.

[40] Section 51, R.A. 9184 and its IRR.

C. ***SHOPPING***[41]

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

   a) When there is an unforeseen contingency requiring immediate purchase, the amount shall not exceed the following:

      i. For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, Two Hundred Thousand Pesos (₱200,000)

      ii. For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1st Class	200,000	200,000	100,000
2nd Class	200,000	200,000	100,000
3rd Class	200,000	160,000	100,000
4th Class	160,000	120,000	100,000
5th Class	120,000	100,000	100,000
6th Class	100,000	100,000	100,000

In the case of *barangays*, Fifty Thousand Pesos (₱50,000).

   b) Procurement of ordinary or regular office supplies and equipment not available in the DBM-PS, in the amount not to exceed the following:

      i. For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, One Million Pesos (₱1,000,000)

      ii. For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1st Class	1,000,000	1,000,000	200,000
2nd Class	1,000,000	1,000,000	200,000
3rd Class	1,000,000	800,000	200,000
4th Class	800,000	600,000	100,000
5th Class	600,000	400,000	100,000
6th Class	400,000	200,000	100,000

In the case of *barangays*, Fifty Thousand Pesos (₱50,000).

   The phrase *"ordinary or regular office supplies"* shall be understood to include those supplies, commodities, or materials which are necessary in the transaction of its official businesses, and consumed in the day-to-day office operations.

[41] Section 52, R.A. 9184 and its IRR.

However, office supplies shall not include services such as repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services.

2. **Procedure**

a) **Shopping under Section 52.1(a)**

i. The End-User unit or the duly authorized official or personnel shall submit a purchase request to the BAC indicating the urgency to address an identified need of the Procuring Entity and the unforeseen contingency that caused its necessity.

ii. The BAC shall immediately prepare the RFQ, indicating the specifications, quantity, ABC, and other terms and conditions of the contract.

iii. The RFQ may be sent directly to the supplier of known technical, legal and financial qualifications. Due to the attendant circumstances and the urgency of the procurement, the supplier shall immediately respond to the RFQ and signify its technical, legal and financial capability to supply and deliver the goods to be procured. Posting of the RFQ may be dispensed with.

iv. The BAC shall immediately validate the technical, legal and financial capability of the supplier to supply and deliver the goods by requiring the submission of relevant documents or through other verifiable means to prove the capability of the Supplier.

v. Upon confirmation and ascertainment of such capability, the BAC shall recommend to the HOPE the award of contract in favor of the supplier with the Single or Lowest Calculated and Responsive Quotation. In case of approval, the HOPE shall immediately enter into a contract with the said supplier.

b) **Shopping under Section 52.1(b)**

i. The End-User unit or the duly authorized official or personnel shall submit a purchase request to the BAC relative to the goods to be procured through Shopping.

ii. The BAC shall prepare the RFQ, indicating the specifications, quantity, ABC, and other terms and conditions of the contract.

iii. Except for those with ABCs equal to Fifty Thousand Pesos (₱ 50,000.00) and below, RFQs shall be posted for a period of at least three (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.

iv. The BAC shall send the RFQs to at least three (3) suppliers of known qualifications, and at least three (3) price quotations must be

obtained. This, notwithstanding, those who responded through any of the required postings shall be allowed to participate.

v. The deadline for submission may be extended thrice, if none or less than the required number of quotations are received. For ABCs more than Fifty Thousand Pesos (₱50,000.00), extensions of deadline shall likewise be posted for a period of three (3) calendar days in the PhilGEPS, the website of the Procuring Entity, if any, and at any conspicuous place in the Procuring Entity's premises. In case no supplier responded after the third extension, the BAC shall conduct a mandatory review in accordance with Section IV(K) of this Guidelines.

vi. Upon receipt of at least three (3) quotations within the prescribed deadline, the BAC shall prepare an Abstract of Quotations setting forth the names of those who responded to the RFQ, their corresponding price quotations, and the lowest calculated quotation submitted.

vii. The BAC shall validate the technical, legal and financial capability of the supplier to supply and deliver the goods.

viii. Upon confirmation and ascertainment of such capability, the BAC shall recommend to the HOPE the award of contract in favor of the supplier with the Lowest Calculated and Responsive Quotation. In case of approval, the HOPE shall immediately enter into a contract with the said supplier.

D. ***NEGOTIATED PROCUREMENT[42].*** *Negotiated Procurement* is a method of procurement of Goods, Infrastructure Projects and Consulting Services, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant in any of the following cases:

1. ***TWO FAILED BIDDINGS[43]***

a) **Definition.** Where there has been failure of competitive bidding or Limited Source Bidding for the second time as provided for in Section 35 of RA 9184 and its IRR, when:

i. No bids are received;

ii. All prospective bidders are declared ineligible;

iii. All bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of consulting services, there is no successful negotiation; or

iv. The bidder with the Lowest/Single Calculated Responsive Bid or Highest/Single Rated Responsive Bid refuses, without justifiable

[42] Section 53, R.A. 9184 and its IRR.
[43] Section 53.1, IRR of R.A. 9184.

cause, to accept the award of contract, and no award is made in accordance with Section 40 of RA 9184 and its IRR.

b) **Procedures**

i. After conduct of the mandatory review of the terms, conditions, specifications, and cost estimates, as prescribed in Section 35 of the IRR, the BAC, based on its findings, as assisted by its Secretariat, TWG and End-User unit may revise and agree on the technical, legal and financial eligibility requirements and technical specifications or terms of reference, and if necessary, adjust the ABC, subject to the required approvals. However, the ABC cannot be increased by more than twenty percent (20%) of the ABC for the last failed bidding.

ii. The BAC shall invite at least three (3) suppliers, contractors or consultants, including those disqualified in previous biddings for the project, for negotiations to ensure effective competition. This, notwithstanding, those who responded through any of the required postings shall be allowed to participate. Even if only one (1) bidder should respond to such invitation or posting, the BAC shall proceed with the negotiation subject to the rules prescribed hereunder.

iii. Any requirements, guidelines, documents, clarifications, or other information relative to the negotiations that are communicated by the BAC to a supplier, contractor, or consultant shall be communicated on an equal basis to all other suppliers, contractors, or consultants engaging in negotiations with the BAC relative to the procurement. The prospective bidders shall be given equal time and opportunity to negotiate and discuss the technical and financial requirements of the project to be able to submit a responsive quotation or proposal.

iv. Following completion of the negotiations, the BAC shall request all suppliers, contractors, or consultants in the proceedings to submit, on a specified date, a best offer based on the final technical and financial requirements. Pursuant to Section IV(G) of this Guidelines, the Procuring Entity shall require the submission of a Certificate of PhilGEPS Registration in accordance with Section 8.5.2 of the IRR of RA 9184.

v. The BAC shall recommend award of contract to the HOPE in favor of the supplier, contractor or consultant determined to have the Single or Lowest Calculated and Responsive Quotation (for goods and infrastructure projects) or Single or Highest Rated and Responsive Proposal (for consulting services). Award of contract shall be made in accordance with Section IV(L) of this Guidelines.

2. ***EMERGENCY CASES[44].***

a) **Instances when Negotiated Procurement under Emergency Cases may be resorted to:**

i. In case of imminent danger to life or property during a state of calamity, or

ii. When time is of the essence arising from natural or man-made calamities or

iii. Other causes where immediate action is necessary:

a) to prevent damage to or loss of life or property, or

b) to restore vital public services, infrastructure facilities and other public utilities.

In all instances of Negotiated Procurement under this Section, the HOPE shall confirm in writing the existence and veracity of the ground or grounds relied upon before approving the ensuing contract.

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; or, b) when time is of the essence; or, c) immediate action is necessary, the Procuring Entity, through the HOPE, BAC, its Secretariat and End-User unit, should consider appropriate timing or the proximity of time between the actual procurement activity to be conducted and the emergency sought to be addressed, such that when the reason or cause for the emergency has already been abated, adoption of competitive bidding as the primary mode of procurement shall be considered.

When the ground 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.[45]

b) **Procedure**

i. The End-User unit or the duly authorized official or personnel shall submit a request to the BAC or the HOPE, as the case may be, accompanied by appropriate supporting documents identifying the emergency sought to be addressed, and the necessary goods, civil works or consulting services (*e.g.*, Technical Specifications, Scope of Work or Terms of Reference) that have to be procured to address the emergency.

ii. Upon preparation of the appropriate procurement documents, the BAC may directly negotiate with a supplier, contractor or consultant

[44] Section 53.2, IRR of R.A. 9184.
[45] Section 16, R.A. 10121.

with technical, legal and financial capability to deliver the goods, execute the works and perform the services to address the emergency. Upon confirmation and ascertainment of such capability to address the emergency, the HOPE, upon recommendation of the BAC, shall immediately award the contract to the Supplier, Contractor or Consultant.

3. ***TAKE-OVER OF CONTRACTS***[46]

a) **Instances when Take-over of contracts may be resorted to:**

i. The contract, previously awarded through Competitive Bidding, has been rescinded or terminated for causes provided for in the contract and existing laws; and

ii. Where immediate action is necessary:

a) to prevent damage to or loss of life or property, or

b) to restore vital public services, infrastructure facilities and other public utilities.

b) **Procedure**

i. The BAC shall post-qualify and negotiate with the second lowest calculated/highest rated bidder for the project under consideration at the said bidder's own original bid price, applicable to the remaining works to be done. Authority to negotiate contracts for projects under the foregoing exceptional cases shall be subject to prior approval by the HOPE concerned, within their respective limits of approving authority.

ii. If negotiation fails, then the BAC shall post-qualify and negotiate with the next lowest calculated/highest rated bidder at the said bidder's own original bid price.

iii. If the negotiation fails another time, the process is repeated until all the bidders from the previous bidding have been considered.

iv. If the negotiation fails and there is no bidder left from the previous bidding or if the original awardee is a Single Calculated Responsive Bidder/Single Rated Responsive Bidder, the BAC may either invite at least three (3) suppliers/contractors/consultants to submit their bids, or resort to any other appropriate alternative method of procurement.

v. In case of successful post-qualification and negotiation, the BAC shall recommend to the HOPE the award of contract with the said supplier, contractor or consultant. Award of contract shall be made in accordance with Section IV(L) of this Guidelines.

[46] Section 53.3, IRR of R.A. 9184.

4. ***ADJACENT OR CONTIGUOUS***[47]

a) **Definition.** Where the subject contract is adjacent or contiguous to an on-going Infrastructure Project or Consulting Service where the consultants have unique experience and expertise to deliver the required service, subject to the following conditions:

i. Original contract is the result of a Competitive Bidding;

ii. Subject contract to be negotiated has similar or related scopes of work;

iii. It is within the contracting capacity of the contractor/consultant considering the legal, technical (*e.g.*, PCAB license, SLCC) and financial (*e.g.*, NFCC for the contiguous project) requirements for eligibility;

iv. In determining the SLCC, NFCC and PCAB license, the sum of the value of the remaining works for the existing contract and the ABC of the contiguous or adjacent work shall be considered;

v. The contractor/consultant uses the same prices or lower unit prices as in the original contract less mobilization cost;

vi. The ABC of the contiguous or adjacent work involved does not exceed the contract amount of the ongoing project;

vii. The contractor/consultant has no negative slippage/delay in the original contract during the time of negotiation; and

viii. Negotiations for the procurement are commenced before the expiry of the original contract.

In infrastructure projects, the phrase "adjacent or contiguous" refers to projects that are in actual physical contact with each other or in the immediate vicinity such that the required equipment and other resources can easily be mobilized**;** while in consulting services, it pertains to the linkage or relationship of the subject matters, outputs or deliverables required.

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

b) **Procedure**

i. The BAC shall negotiate with the contractor or consultant for the ongoing infrastructure project or consulting services (*e.g.*, scope of work or terms of reference, unit price and other terms and conditions of the contract).

[47] Section 53.4, IRR of R.A. 9184.

ii. In case of successful negotiation, the BAC shall recommend to the HOPE the award of contract in favor of the contractor or consultant. Award of contract shall be made in accordance with Section IV(L) of this Guidelines.

5. ***AGENCY-TO-AGENCY***[48]

a) **Definition.** Procurement from another agency of the government (i.e., Servicing Agency) that has the mandate to deliver goods or services or to undertake infrastructure projects or consultancy services as required by the Procuring Entity.

Agency-to-Agency Agreements shall be governed by the Guidelines, unless otherwise provided by a special law, such as in the case of Procurement of Printing Services from Recognized Government Printers[49] and Procurement of Common-use Supplies and Equipment from the DBM-PS.

All procurement to be undertaken by the Servicing Agency, including those required for the project, shall continue to be governed by the provisions of R.A. 9184.

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

b) **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 the government is more efficient and economical for the government, subject to the following conditions:

i. 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;

ii. Servicing Agency has the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency;

iii. Servicing Agency has the absorptive capacity to undertake the project;

iv. Servicing Agency owns or has access to the necessary tools and equipment required for the project;

v. Sub-contracting is not allowed. However, the servicing agency may implement the infrastructure project in-house, by job-order, or through the *pakyaw* contracting system; and

[48] Section 53.5, IRR of R.A. 9184.
[49] Refer to Appendix 20 for the Guidelines on the Procurement of Printing Services.

vi. For procurement of infrastructure projects, the Servicing Agency must have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand.

c) **Procedure**

i. The End-User unit shall justify to the BAC that the resort to Agency-to-Agency is more efficient and economical to the government.

ii. It shall likewise secure a certificate from the relevant officer of the Servicing Agency that the latter complies with all the foregoing conditions.

iii. 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.

iv. In case of approval, the HOPE shall enter into a Memorandum of Agreement (MOA) with the Servicing Agency.

6. ***SCIENTIFIC, SCHOLARLY OR ARTISTIC WORK, EXCLUSIVE TECHNOLOGY AND MEDIA SERVICES[50].***

a) **Definition.** Where Goods, Infrastructure Projects and Consulting Services can be contracted to a particular supplier, contractor, or consultant as determined by the HOPE, for any of the following reasons:

i. The requirement is for:

a) Work of art; commissioned work or services of an artist for specific artistic skills (*e.g.*, singer, performer, poet, writer, painter, sculptor, etc.)

b) Scientific, academic, scholarly work or research, or legal services;

c) Highly-specialized life-saving medical equipment, as certified by the Department of Health;

d) Scientific, technical, economic, business, trade or legal journal, magazine, paper, subscription, or other exclusive statistical publications and references; or

e) Media documentation, advertisement, or announcement through television, radio, newspaper, internet, and other communication media.

Due to the nature of the information to be disseminated, alongside principles of transparency, efficiency and economy,

[50] Section 53.6, IRR of R.A. 9184.

award to more than one (1) supplier may be made by the Procuring Entity.

ii. The construction or installation of an infrastructure facility where the material, equipment, or technology under a proprietary right can only be obtained from the same contractor.

To justify the need to procure through this negotiated modality, the End-User shall conduct a market study and determine the probable sources. This study should confirm that the supplier, contractor or 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.

b) **Procedure**

i. The BAC shall undertake the negotiation with a technically, legally and financially capable supplier, contractor or consultant based on the Technical Specifications, Scope of Work or Terms of Reference prepared by the End-User.

ii. Upon successful negotiation, the BAC shall recommend the award of contract to the HOPE in accordance with Section (IV)(L) of this Guidelines.

7. ***HIGHLY TECHNICAL CONSULTANTS***[51]

a) **Definition.** Procurement of consultancy contract involving an individual consultant, subject to the following conditions:

i. The individual consultant will be hired to do work that is either:

a) Highly technical or proprietary; or

b) Primarily confidential or policy determining, where trust and confidence are the primary consideration.

ii. 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 shall exceed the term of the latter.

b) **Procedure**

i. The End-User Unit shall justify to the BAC the engagement of the individual in accordance with the conditions set forth in this Section.

ii. The BAC shall undertake the negotiation with the individual consultant based on the Terms of Reference prepared by the End-User. Considering the nature of the consultancy work, the negotiations need not be elaborate, it is enough that the BAC has validated that the individual is legally, technically and financially

[51] Section 53.7, IRR of R.A. 9184.

capable to undertake and fulfill the consultancy work based on the Terms of Reference.

iii. The BAC shall recommend to the HOPE the award of contract to the individual consultant. Award of contract shall be made in accordance with Section (IV)(L) of this Guidelines.

8. *SMALL VALUE PROCUREMENT (SVP)*[52]

a) **Definition.** Procurement of (a) goods not covered by Shopping under Section 52 of the IRR of RA 9184, (b) infrastructure projects, and (c) consulting services, where the amount involved does not exceed the following threshold:

i. For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, One Million Pesos (₱ 1,000,000)

ii. For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1st Class	1,000,000	1,000,000	200,000
2nd Class	1,000,000	1,000,000	200,000
3rd Class	1,000,000	800,000	200,000
4th Class	800,000	600,000	100,000
5th Class	600,000	400,000	100,000
6th Class	400,000	200,000	100,000

In the case of *barangays*, Fifty Thousand Pesos (₱ 50,000).

b) **Procedure**

i. The End-User shall submit a request for SVP to the BAC, which indicates the technical specifications, scope of work, terms of reference, ABC and other terms and conditions.

ii. The BAC shall prepare and send the RFQs/RFPs to at least three (3) suppliers, contractors or consultants of known qualifications. This, notwithstanding, those who responded through any of the required postings shall be allowed to participate. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.

iii. Except for those with ABCs equal to Fifty Thousand Pesos (₱ 50,000.00) and below, RFQs shall be posted for a period of three (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.

[52] Section 53.9, IRR of R.A. 9184.

iv. Pre-bid conference may be conducted at the discretion of the BAC, in order to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the RFQ/RFP.

v. After the deadline for submission of quotations/proposals, an Abstract of Quotations/Ratings shall be prepared setting forth the names of those who responded to the RFQ/RFP, their corresponding price quotations/ratings.

vi. The BAC shall recommend to the HOPE the award of contract in favor of the supplier or contractor with the Single or Lowest Calculated and Responsive Quotation (for goods or infrastructure projects), or consultant with the Single or Highest Rated and Responsive Proposal (for consulting services). In case of approval, the HOPE shall immediately enter into contract with the said supplier, contractor or consultant.

9. ***LEASE OF REAL PROPERTY AND VENUE[53].***

a) **Definition.** Procurement covering lease of real property and venue for official use, where:

i. **Real Property** refers to land and buildings (office spaces or units) and constructions of all kinds adhered to the soil.

ii. **Venue** refers to training centers, convention halls, hotels, and similar establishments catering to trainings, seminars, conferences, conventions, symposia and similar gatherings requiring the official participation of government officials and employees. This may include meals and accommodation depending on the requirements of the Procuring Entity.

iii. **Lessee** refers to any government agency temporarily occupying a real property on the basis of a contract executed with the private individual, partnership, cooperative, association, or corporation having absolute ownership over such real property.

iv. **Lessor** refers to any government agency or private individual, partnership, cooperative, association, or corporation having absolute ownership over the real property or venue to be leased.

b) **Policy Considerations**

i. *Publicly-owned vis-a-vis privately-owned real property and venue*

It is preferred that government agencies lease publicly-owned real property or venue from other government agencies.

[53] Section 53.10, IRR of R.A. 9184.

If there is an available publicly-owned real property or venue that complies with the requirements of the Procuring Entity, it may enter into a contract of lease with the government-agency owner.

In the event that the Procuring Entity would resort to privately-owned real property or venue, the End-User unit shall justify that the same is more efficient and economical to the government.

ii. *Location*

The location of the real property or venue to be leased should have been meticulously selected by the Procuring Entity after taking into consideration, among others, the need for prudence and economy in government service and the suitability of the area in relation to the mandate of the office, and its accessibility to its clients. In the lease of venue, other factors such as the nature of the event or the level of security in the proposed location may also be taken into account.

iii. *ABC and rental rates*

The ABC shall be set using the mid point of the range obtained from the results of the market analysis on the prevailing lease rates for real property or venue within the vicinity of the selected location complying with the criteria and technical specifications of the End-User Unit. In no case shall the rental rates, including additional expenses, such as association dues in the case of lease of real property, exceed the ABC.

As a general rule, rental rates are considered reasonable when they represent or approximate the value of what the Lessee gets in terms of accommodation, facility, amenities, and convenience from the leased real property or venue, and the Lessor gets an equitable return of capital or investment.

Rental rates should also be within the prevailing market rates for lease of real property or venue with the same or similar condition or classification and located within the vicinity. Rental rate refers to the amount paid by the Lessee for the use and/or occupancy of the privately-owned real property to the Lessor, where payment is usually made on a monthly basis.

iv. *Technical Specifications*

Technical Specification shall be prepared taking into consideration the rating factors under Appendix B of this Guidelines.

c) **Procedures for Lease of Privately-Owned Real Property and Venue**

i. Real Property

a) The BAC shall invite at least three (3) prospective Lessors to submit sealed price quotations.

On a specified date, submitted price quotations shall be opened to determine the Lowest Calculated Quotation. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.

b) The real property being offered by the Lessor with the Single or Lowest Calculated Quotation shall be rated in accordance with the technical specifications and the reasonableness of its price quotation shall be determined in accordance with the methodology prescribed in Appendix B.

c) Upon determination of the responsiveness and reasonableness of the quotation, the BAC shall recommend to the HOPE the award of contract in favor of the Lessor with the Single or Lowest Calculated and Responsive Quotation. Award of contract shall be made in accordance with Section IV(L) of this Guidelines.

ii. Venue

a) The BAC shall send the RFQ to at least three (3) venues within the vicinity of the selected location. Receipt of at least one (1) quotation is sufficient to proceed with the evaluation thereof.

b) The venue being offered by the Lessor with the Lowest Calculated Quotation shall then be rated in accordance with the technical specifications prepared pursuant to Appendix B of this Guidelines. Compliance rating with technical specifications may be conducted through ocular inspection, interviews, or other forms of due diligence.

c) Upon determination of the responsiveness of the quotation, the BAC shall recommend to the HOPE the award of contract in favor of the Lessor with the Single or Lowest Calculated and Responsive Quotation. Award of contract shall be made in accordance with Section IV(L) of this Guidelines

VI. REPEALING CLAUSE

This Consolidated Guidelines for Alternative Methods of Procurement (Consolidated Guidelines) repeals the following Guidelines: Guidelines for Shopping and Small Value Procurement[54], Guidelines for Agency-to-Agency Agreements[55], and Guidelines for Lease of Privately-Owned Real Estate and Venue[56].

Any other guidelines, administrative order, office order, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of the Consolidated Guidelines are hereby repealed, modified or amended accordingly.

[54] GPPB Resolution 09-2009, dated 23 November 2009.
[55] GPPB Resolution 018-2007, dated 31 May 2007.
[56] GPPB Resolution 08-2009, dated 3 November 2009.

VII. EFFECTIVITY CLAUSE

This Consolidated Guidelines for Alternative Methods of Procurement shall take effect sixty (60) calendar days after its publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) copies of this Annex "H".

ANNEX "H"

APPENDIX A
DOCUMENTARY REQUIREMENT
ALTERNATIVE METHODS OF PROCUREMENT

I. This Appendix prescribes for the documents that the BAC shall require from suppliers, contractors and consultants for Alternative Methods of Procurement, except for Repeat Order, Shopping under Section 52.1(a), and Negotiated Procurement under Sections 53.1 (Two-Failed Biddings), and 53.5 (Agency-to-Agency) of the IRR of RA 9184.

II. The BAC shall indicate in the RFQ or RFP at what stage of the procurement process these requirements must be submitted, i.e., submission of offer/s, evaluation of offer/s, before issuance of Notice of Award or prior to payment.

Alternative Modality	Mayor's/ Business Permit	Professional License /Curriculum Vitae (Consulting Services)	PhilGEPS Reg. Number	PCAB License (Infra.)	NFCC (Infra.)	Income/ Business Tax Return	Omnibus Sworn Statement
I. Direct Contracting [Section 50]	✓		✓			✓ For ABCs above P500K	
II. Shopping [Sec 52.1(b)]	✓		✓				
III. Negotiated Procurement							
A. Emergency Cases (Section 53.2)]	✓			✓	✓ For ABCs above P500K	✓ For ABCs above P500K	✓
B. Take-Over of Contracts (Section 53.3.2; for new bidders)	✓	✓	✓	✓	✓		
C. Adjacent/ Contiguous (Section 53.4)				✓	✓		
D. Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services (Section 53.6)	✓	✓	✓			✓ For ABCs above P500K	

Alternative Modality	Mayor's/ Business Permit	Professional License /Curriculum Vitae (Consulting Services)	PhilGEPS Reg. Number	PCAB License (Infra.)	NFCC (Infra.)	Income/ Business Tax Return	Omnibus Sworn Statement
E. Highly Technical Consultant (Section 53.7)		✓	✓				
F. Small Value Procurement (Section 53.9)	✓	✓	✓	✓		✓	✓
G. Lease of Real Property Or Venue (Section 53.10)	✓		✓			✓ Except for gov't agencies as lessors	

***For individuals engaged under Sec. 53.6, 53.7 and 53.9 of the IRR of RA 9184, only the BIR Certificate of Registration shall be submitted in lieu of DTI Registration and Mayor's Permit.**

III. Procuring Entities already maintaining an updated file of any of the bidder's above-mentioned requirements, whether through the PhilGEPS Certificate of Registration and Membership or its own records, may no longer require its re-submission.

ANNEX "H"

APPENDIX B
DOCUMENTARY REQUIREMENT
ALTERNATIVE METHODS OF PROCUREMENT

LEASE OF REAL PROPERTY AND VENUE:

RATING FACTORS AND DETERMINATION OF REASONABLENESS OF RENTAL RATES

A. TABLE OF RATING FACTORS FOR LEASE OF REAL PROPERTY

	RATING FACTORS	WEIGHT (%)	RATING
I.	**Location and Site Condition**		
	1. Accessibility	(25)	
	2. Topography and Drainage	(20)	
	3. Sidewalk and waiting shed	(15)	
	4. Parking space	(15)	
	5. Economic potential	(10)	
	6. Land classification, utilization, and assessment	(10)	
	7. Other added amenities	(5)	
		100	
II.	**Neighborhood Data**		
	1. Prevailing rental rate	(20)	
	2. Sanitation and health condition	(20)	
	3. Adverse influence	(15)	
	4. Property utilization	(15)	
	5. Police and fire station	(15)	
	6. Cafeterias	(10)	
	7. Banking/postal/telecom	(5)	
		100	
III.	**Real Property**		
	1. Structural condition	(30)	
	2. Functionality		
	a. Module	(6)	
	b. Room arrangement	(6)	
	c. Circulation	(6)	
	d. Light and ventilation	(6)	
	e. Space requirements	(6)	
	3. Facilities		
	a. Water supply and toilet	(6)	
	b. Lighting system	(6)	
	c. Elevators	(6)	
	d. Fire escapes	(6)	

	RATING FACTORS	WEIGHT (%)	RATING
	e. Fire fighting equipment	(6)	
	4. Other requirements		
	a. Maintenance	(5)	
	b. Attractiveness	(5)	
		100	
IV.	**Free Services and Facilities**		
	1. Janitorial and security	(20)	
	2. Air conditioning	(20)	
	3. Repair and maintenance	(20)	
	4. Water and light consumption	(20)	
	5. Secured parking space	(20)	
		100	
I.	**Location and Site Condition**	× (.20) =	
II.	**Neighborhood Data**	× (.20) =	
III.	**Real property**	× (.50) =	
IV.	**Free Services and Facilities**	× (.10) =	
	FACTOR VALUE		

Note: Weight of each rating factor may be changed as long as total weight per classification is equivalent to 100. Figures in parenthesis are samples. Procuring Entity must determine passing rate before inviting bids from Lessors. A bid is determined to be responsive if it is equal to or higher than the passing rate.

B. DETERMINATION OF REASONABLENESS OF RENTAL RATES

1. The reasonableness of rental rates may be determined using any of the following methods.

1.1. *Computation based on Observed Depreciation*

This method uses the following formula and a depreciation rate determined after meticulous ocular inspection of the actual condition of the real property:

Reproduction Cost	=	Estimated Unit Construction Cost × (1 – Depreciation Rate)
Formula Rate	=	Reproduction Cost × Monthly Capitalization Rate
Rental Rate	=	Formula Rate × Factor Value
Monthly Rental	=	Rentable Area × Rental Rate

1.1.1. The following weights may be used in arriving at the observed depreciation rate:

Status	Depreciation (%)
Good	20
Fair	40
Poor	60
Very poor	80

1.1.2. Reproduction Cost refers to the estimated total cost of replacing the real property with the same utility.

1.1.3. Capitalization Rate refers to the interest rate on the cost or value of the property.

1.1.4. Rentable Area refers to the total area of the real property in square meters being occupied or to be occupied by the Lessee less the common area like lobby, stairway, elevator hall, common comfort room, machine room for air conditioner, and other areas of common use by the public or upper floor occupants.

1.1.5. Factor Value refers to the rating factor where locations and site conditions, neighborhood data and real property structural condition, functionality, facilities and other requirements, including free services and facilities offered by the Lessor are considered. The rating factors and its corresponding weights are provided in Table A of this Appendix.

1.2. *Computation based on Straight Line Depreciation*

This method uses the following formula:

Age of Real Property	=	Current Year – Year of Construction
Depreciation Rate	=	Please See Table of Structural Depreciation
Reproduction Cost	=	Estimated Unit Construction Cost × (1 – Depreciation Rate)
Formula Rate	=	Reproduction Cost × Monthly Capitalization Rate
Rental Rate	=	Formula Rate × Factor Value
Monthly Rental	=	Rentable Area × Rental Rate

1.2.1. Depreciation rate shall be determined using the following Table of Structural Depreciation provided by the DPWH:

	ESTIMATED LIFE OF REAL PROPERTY			
AGE	WOODEN FRAME (40 years)	SEMI-CONCRETE (60 years)	REINFORCED CONCRETE (75 years)	STRUCTURAL REINFORCED (100 years)
	Percentage (%) of estimated life			
1	3	2.5	2	1.5
2	6	4.5	3.8	2.8
3	8.9	6.9	5.6	4.2
4	11.7	9	7.4	5.5
5	14.5	11.1	9.1	6.7
6	17.2	13.1	10.7	8.1
7	19.8	15.1	12.3	9.3
8	22.4	17	13.9	10.5
9	25	18	15.5	11.8
10	27.5	20.7	17.9	13

	ESTIMATED LIFE OF REAL PROPERTY			
AGE	WOODEN FRAME (40 years)	SEMI-CONCRETE (60 years)	REINFORCED CONCRETE (75 years)	STRUCTURAL REINFORCED (100 years)
	Percentage (%) of estimated life			
11	29.9	22.5	18.5	14.2
12	32.2	24.5	20	15.3
13	34.5	26.6	21.4	16.4
14	36.8	27.7	22.8	17.5
15	39	29.3	24.3	18.6
20	49.1	37	30.8	24.8
25	57.7	43.8	36.8	29
30	65	50	42.4	33.6
35	70	55.6	47.5	38
40	75	60.6	52.2	42.1
45		65	56.5	46
50		68.9	60.5	49.6
55		72.3	64.1	53.1
60		75	67.3	56.3
65			70.3	59.3
70			73	62
75			75	64.5
80				67
85				69.3
90				71.4
95				73.3
100				75

1.2.2. Estimated Unit Construction Cost refers to the estimated prevailing cost of construction per square meter of the real property being appraised. The respective Estimated Unit Construction Cost of types of real property for each region may be obtained from the Bureau of Maintenance of the DPWH.

1.2.3. Reproduction Cost, Capitalization Rate, Rentable Area and Factor Value shall have the same meaning as those referred Items 1.1.2 to 1.1.5.

1.3. *Comparative Market Price Analysis*

This method is based on the conduct of comparative market analysis on the prevailing lease rates for real properties within the vicinity of the selected location complying with the criteria and technical specifications of the Procuring Entity. In the lease of vacant lot or other land spaces, the Procuring Entity shall likewise consider the zonal valuation issued by the city or municipality having jurisdiction over the property.

2. If the price quotation of the prospective Lessor does not exceed the computed monthly rental or is within the prevailing market rates, the rental rate offered may be regarded as reasonable, and its quotation may then be considered for award.

3. Sample Computations for Observed Depreciation and Straight Line Depreciation:

A 5-storey office building made of reinforced concrete structure with mechanical equipment, i.e., elevator, air conditioning system, etc.

Date of Construction	1987
Estimated Unit Construction Cost	P25,000/sq.m
Depreciation	20% (Good condition)
Capitalization Rate	20% (Variable based on bank rate)
Factor Value	90% (Based on rating)

COMPUTATION BASED ON OBSERVED DEPRECIATION

Reproduction Cost = Estimated Unit Construction Cost × (1 – Depreciation Rate)
= P25,000/sq.m. (1 – 0.20)
= P20,000/sq.m.

Formula Rate = Reproduction Cost × Monthly Capitalization Rate
= 20,000 (0.20/12) = 20,000 (0.0167)
= P334/sq.m./mo.

Rental Rate = Formula Rate × Factor Value
P334 (0.90)
300.60/sq.m./mo. *say* 300/sq.m.

Rentable Area = 200.00 sq.m.

Monthly Rental = Rentable Area × Rental Rate
= 200/sq.m. × P300/sq.m./mo.
= P60,000.00/mo.

COMPUTATION BASED ON STRAIGHT LINE DEPRECIATION

Age of Real Property	=	Current Year – Year of Construction
	=	2007 – 1987
	=	20 years
Depreciation Rate	=	*See* Appendix B for the Table of Structural Depreciation
Reproduction Cost	=	Estimated Unit Construction Cost × (1 – Depreciation Rate)
	=	P25,000/sq.m. (1 – 0.248)
	=	P18,800/sq.m.
Formula Rate	=	Reproduction Cost × Monthly Capitalization Rate
	=	P18,800 (0.20/12) = 18,800 (0.0167)
	=	P313.96/sq.m./mo.
Rental Rate	=	Formula Rate × Factor Value
	=	P313.96 (0.90)
	=	P282.56/sq.m./mo. *say* P285.00/sq.m.

Rentable Area	=	200.00 sq.m.
Monthly Rental	=	Rentable Area × Rental Rate
	=	200 sq.m. × P285.00/sq.m.
	=	P57,000.00/mo.

C. TABLE OF RATING FACTORS FOR LEASE OF VENUE

	RATING FACTORS	WEIGHT (%)	RATING
I.	**Availability**	**100**	
II	**Location and Site Condition**		
	1. Accessibility	(50)	
	2. Parking space	(50)	
		100	
III.	**Neighborhood Data**		
	1. Sanitation and health condition	(25)	
	2. Police and fire station	(25)	
	3. Restaurant	(25)	
	4. Banking and Postal	(25)	
		100	
IV.	**Venue**		
	a. Structural condition	(20)	
	b. Functionality		
	a. Conference Rooms	(10)	
	b. Room arrangement (*e.g.*, single, double, etc.)	(5)	
	c. Light, ventilation, and air conditioning	(5)	
	d. Space requirements	(5)	
	c. Facilities		
	a. Water supply and toilet	(4)	
	b. Lighting system	(5)	
	c. Elevators	(4)	
	d. Fire escapes	(4)	
	e. Fire fighting equipment	(4)	
	f. Internet and Telecommunications	(4)	
	g. Audio visual equipment	(5)	
	d. Other requirements		
	a. Maintenance	(5)	
	b. Attractiveness	(5)	
	c. Security	(5)	
	e. Catering Services	(5)	
	f. Client's satisfactory rating	(5)	
		100	
I.	**Availability**	X (.5) =	
II.	**Location and Site Condition**	X (.1) =	
III.	**Neighborhood Data**	X (.05) =	

IV.	**Venue**	X (.35) =	
FACTOR VALUE			

Note: Weight of each rating factor may be changed as long as total weight per classification is equivalent to 100. Figures in parenthesis are samples. Procuring Entity must determine passing rate before inviting bids from Lessors. A bid is determined to be responsive if it is equal to or higher than the passing rate.

ANNEX "I"
GUIDELINES ON TERMINATION OF CONTRACTS

I. PURPOSE, SCOPE, AND APPLICATION

These guidelines aim to promote fairness in the termination of procurement contracts and to prescribe contract conditions and measures to enable government to protect its interests. For this purpose, policies and procedures relating to the whole or partial termination of government procurement contracts of goods, infrastructure projects, and consulting services are herein established.

II. DEFINITION OF TERMS

1. **Coercive Practice** means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.

2. **Collusive Practice** means a scheme or arrangement including practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels to prevent free and open competition.

3. **Corrupt Practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution. It also means entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profits or will profit thereby; and similar acts as provided in Republic Act 3019.

4. **Fraudulent Practice** means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Procuring Entity.

5. **Head of the Procuring Entity** refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or controlled corporations; or (iii) the local chief executive, for local government units. Provided, that in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.

6. **Implementing Unit** refers to the unit or office having direct supervision or administration over the implementation of the contract such as the Project Management Office or the End-User Unit.

7. **Termination in Part** means the termination of a part but not all, of the work that has not been completed and accepted under a contract.

8. **Termination in Whole** means the termination of all of the work that has not been completed and accepted under a contract.

9. **Show Cause** refers to a notice which the Procuring Entity is required to issue prior to terminating a contract. The purpose of a show cause notice is to enable the contractor to present its position why the contract should not be terminated.

10. **Verified Report** refers to the report submitted by the Implementing Unit to the Head of the Procuring Entity setting forth its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate.

III. GROUNDS FOR TERMINATION OF CONTRACTS

A. Termination for Default

1. In contracts for Goods:

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

   a) Outside of *force majeure*, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;

   b) As a result of *force majeure*, the Supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of *force majeure* is deemed to have ceased; or

   c) The Supplier fails to perform any other obligation under the Contract.

2. In contracts for Infrastructure Projects:

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

   a) Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870;

   b) Due to the Contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; or

   c) The Contractor:

      i. abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;

ii. does not actually have on the project site the minimum essential equipment listed on the Bid necessary to prosecute the Works in accordance with the approved work plan and equipment deployment schedule as required for the project;

iii. does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;

iv. neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or

v. sub-lets any part of the contract works without approval by the Procuring Entity.

3. In contracts for Consulting Services:

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

a) 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;

b) 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

c) The Consultant fails to perform any other obligation under the contract.

B. **Termination for Convenience**

The Procuring Entity may terminate the Contract, in whole or in part, at any time for its convenience. The Head of the Procuring Entity may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.

C. **Termination for Insolvency**

The Procuring Entity shall terminate the contract if the Supplier/Contractor/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 Supplier/Contractor/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 Supplier/Contractor/Consultant.

D. **Termination for Unlawful Acts**

The Procuring Entity may terminate the contract in case it is determined *prima facie* that the Supplier/Contractor/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:

a) Corrupt, fraudulent, collusive and coercive practices;

b) Drawing up or using forged documents;

c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and

d) Any other act analogous to the foregoing.

E. **Termination by Contractor/Consultant**

1. In contracts for Infrastructure Projects:

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

a) Failure of the Procuring Entity to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of the contract; or

b) The prosecution of the work is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.

2. In contracts for Consulting Services:

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.

IV. PROCEDURES FOR TERMINATION OF CONTRACTS

1. **Verification.** Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached.

2. **Notice to Terminate.** Upon recommendation by the Implementing Unit, the Head of the Procuring Entity shall terminate contracts only by a written notice to

the Supplier/Contractor conveying the termination of the contract. The notice shall state:

a) that the contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;

b) the extent of termination, whether in whole or in part;

c) an instruction to the Supplier/Contractor/Consultant to show cause as to why the contract should not be terminated; and

d) special instructions of the Procuring Entity, if any.

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

3. **Show Cause.** Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier/Contractor/Consultant shall submit to the Head of the Procuring Entity a verified position paper stating why the contract should not be terminated.

   If the Supplier/Contractor/Consultant fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating the contract.

4. **Rescission of Notice of Termination.** The Procuring Entity may, at anytime before receipt of the Supplier's/Contractor's/Consultant's verified position paper to withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's/Contractor's/Consultant's receipt of the notice.

5. **Decision.** Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Procuring Entity shall decide whether or not to terminate the contract. It shall serve a written notice to the Supplier/Contractor/Consultant of its decision and, unless otherwise provided, the Contract is deemed terminated from receipt of the Supplier/Contractor/Consultant of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate.

6. **Contract Termination Review Committee (CTRC).** The Head of the Procuring Entity may create a committee to assist him in the discharge of his function under these Guidelines. All decisions recommended by the CTRC shall be subject to the approval of the Head of the Procuring Entity.

7. **Take-over of Contracts.** If a Procuring Entity terminates the contract due to default, insolvency, or for cause, it may enter into a Negotiated Procurement pursuant to Section 53(c) of R.A. 9184 and 53.3 of its IRR.

8. **Procuring Entity's Options in Termination for Convenience in Contracts for Goods.** The goods that have been performed or are ready for delivery within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate

shall be accepted by the Procuring Entity at the contract terms and prices. For goods not yet performed or ready for delivery, the Procuring Entity may elect:

a) to have any portion delivered or performed and paid at the contract terms and prices; and/or

b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed or performed goods and for materials and parts previously procured by the Supplier.

If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for the Procuring Entity which cannot be sold in open market, it shall be allowed to recover partially from the contract, on a *quantum meruit* basis. Before recovery may be made, the fact of loss must be established under oath by the Supplier to the satisfaction of the Procuring Entity before recovery may be made.

9. **Notice by Contractor/Consultant.** The Contractor/Consultant must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The Contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

V. AMENDMENTS

1. In the implementation of these Guidelines, the Government Procurement Policy Board (GPPB) may introduce modifications hereto through the amendment of its specific provisions as the need arises.

2. Any amendment to these Guidelines shall be applicable to government projects advertised for bid after the effectivity of the said amendment.

APPENDIX

GPPB Guidelines and Other Issuances

APPENDIX 1
REVISED GUIDELINES FOR THE IMPLEMENTATION OF INFRASTRUCTURE PROJECTS BY ADMINISTRATION

1.0 Purpose and Coverage

These guidelines shall provide rules for the implementation of projects "by administration" by all Departments, Bureaus, Offices and Agencies of the National Government (NGA), Government-Owned and/or Controlled Corporations (GOCCs), Government Financing Institutions (GFIs), State Universities and Colleges (SUCs), and Local Government Units (LGUs).

Projects undertaken "by administration" by the Armed Forces of the Philippines Corps of Engineers (AFPCOE) shall be governed by the guidelines issued by the GPPB through Resolution 09-2005 dated 28 April 2005.

2.0 Definition of Terms

For purposes of these guidelines, the following terms shall be defined as follows:

2.1 **"By Administration"** refers to the procedure by which the implementation of an infrastructure project is carried out under the administration and supervision of the concerned agency through its own personnel.

2.2 **Implementing Agency** refers to any government unit undertaking the construction of an infrastructure project.

2.3 **Job-Contractor** refers to a person or entity who carries out, under his own responsibility, supervision and control, the performance or completion of a specific job, service or work which has been farmed out by another for the latter's benefit.

2.4 **Job-order** refers to employment of individuals to undertake piece or lump sum works, or intermittent jobs of short duration not exceeding six months on a daily basis.

2.5 **Labor-only Contractor** refers to a person or entity that engages in the supply of workers/laborers to an employer but does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed perform activities directly related to the principal business of the employer.

2.6 **Pakyaw** refers to a system of hiring a labor group for the performance of a specific work and/or service incidental to the implementation of an infrastructure project by administration whereby tools and materials are furnished by the implementing agency. For the specific work/service output, a lump-sum payment is made either through the group leader or divided among the pakyaw workers and disbursed using a payroll system.

2.7 **Semi-skilled Work/Job** refers to a work/job which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or

other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

2.8 **Skilled Work/Job** refers to work that requires qualifications in which a person uses judgment to determine the machine and manual operations in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work.

2.9 **Unskilled Work/Job** refers to work which needs little or no judgment that can be learned on the job in a short period of time. The job may or may not require considerable strength.

3.0 Conditions and Requirements for the use of "By Administration"

3.1 Projects undertaken by Administration shall be included in the approved Annual Procurement Plan (APP) of the procuring entity concerned. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, or the project to be undertaken by administration has not been previously included, the BAC, through a resolution shall justify and recommend the change in the mode of procurement or the updating of the APP to be approved by the Head of the Procuring Entity.

3.2 To undertake projects by administration, the implementing agency must:

a. have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand, and

b. own the tools and construction equipment to be used or have access to such tools and equipment owned by other government agencies.

The criteria for evaluating the track record and capability of implementing agencies shall be in accordance with the guidelines to be issued by the Department of Public Works and Highways in consultation with the leagues enumerated under the Local Government Code.

3.3 Any project costing Twenty Million Pesos (₱ 20,000,000) or less may be undertaken by administration or force account by the implementing agency concerned. A project costing over Twenty Million Pesos (₱ 20,000,000) may be undertaken by the agency concerned only in the following cases:

a. emergency arising from natural calamities or where immediate action is necessary to prevent imminent loss of life or property;

b. to comply with government commitments, as certified by the concerned government authority;

c. failure to award a contract after competitive bidding for a valid cause;

d. termination or rescission of contract;

e. areas with critical peace and order problems as certified by the Local Peace and Order Council;

PROVIDED, that prior authority shall be obtained from the Secretary of Public Works and Highways, if the project cost is Twenty Million (₱ 20,000,000) up to Fifty Million Pesos (₱ 50,000,000.00), or from the President of the Philippines, upon the favorable recommendation of the Secretary of Public Works and Highways, if the project cost is more than Fifty Million Pesos (₱ 50,000,000.00).[57]

3.4 No contractor shall be used by the procuring entity, directly or indirectly for works undertaken by administration.

3.5 Procurement of tools and construction equipment shall be subject to the rules on public bidding.

3.6 For projects funded by the National Government and implemented by a Local Government Unit, the latter shall be required to post the necessary warranty security in accordance with Section 62 of RA 9184 and its IRR.[58]

3.7 The manual labor component of projects undertaken by administration may be undertaken in-house by the implementing agency concerned, by job-order or through the pakyaw contracting system. In-house labor is undertaken if the workers are employees or personnel occupying regular *plantilla* positions in the implementing agency. Job-order contracts shall be governed by relevant Commission on Audit (COA) and/or Civil Service Commission (CSC) rules.

4.0 Pakyaw Contracting System

4.1 Pakyaw labor shall be drawn from the vicinity of the project, or Pakyaw labor groups belong to various Barangay Associations contiguous to the project site. Unskilled labor should be drawn from the Barangay where the project is located; semi-skilled labor shall be recruited within the municipality, preferably within the Barangay; skilled labor shall be recruited within the province but preferably within the Barangay/Municipality.

4.2 The formation of Pakyaw Groups should actively involve the Barangay leaders and the community. A Project Facilitator (PF) shall be appointed by the implementing agency to assist in the organization of the Pakyaw Groups and in the preparation of the Pakyaw Contracts. The PF shall, for purposes of informing the community of the project and of organizing pakyaw groups, shall convene community meetings, with the assistance of the Barangay Chairperson/s. The PF shall cause the registration of all unemployed or underemployed members of the community who are interested to join Pakyaw groups being formed for the project.

4.3 The Pakyaw workers should be formed into groups of workers based on the lump sum works. In case of competitive selection, pakyaw groups which were not selected for a particular lump sum work may choose to compete for other works requiring pakyaw groups.

[57] Amended through GPPB Resolution 07-2009, dated 30 September 2009, published in The Daily Tribune on 2 December 2009.
[58] As amended by GPPB-Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

4.4 Where there is competition for the award of Pakyaw works, the pakyaw labor contract shall be awarded through competitive selection with at least three (3) Pakyaw Groups participating. There is deemed to be a competition for the award of pakyaw contracts when the number of laborers who registered during the community meeting is more than what is reasonably needed for the lump sum work required under the project. The competitive selection shall be done on a "per-output" basis. And the winner(s) shall be determined based on what group(s) undertake(s) to deliver the desired output at the lowest rate, either per item of output or per lump sum work, within the required period.

4.5 For purposes of Item 4.4 hereof, the number of members per group shall be determined by the Project Facilitator to ensure that at least three Pakyaw Groups are organized for the competitive selection. The determination by the Project Facilitator of the number of members per Pakyaw Group shall be exercised with regard to the objective of providing work to as many laborers as possible.

4.6 A Group Leader shall be elected from among the members of the group who shall be the signatory to the Pakyaw Contract and any other documents pertaining to the work on behalf of the Pakyaw Group. He may be replaced at any time by the group through an election for that purpose, after due notice to the Project Facilitator and the Barangay Chairperson. Any such replacement shall not invalidate any previous Pakyaw Contract.

4.7 In no case may Pakyaw Groups be regular or licensed contractors or organized by and/or under the management of a regular or licensed contractor. Laborers supplied by job-contractors/labor-only contractors are likewise disqualified to become members of the Pakyaw groups when the job-contracting/labor-only contracting is specifically carried out for the purpose.

4.8 The amount of a pakyaw labor contract per project shall not exceed Five Hundred Thousand Pesos (₱ 500,000.00) per pakyaw group.

5.0 Repealing Clause

This set of guidelines repeals GPPB Resolution 13-2005 approving and adopting the Guidelines for the Implementation of Infrastructure Projects through Negotiated Procurement under Sec. 54.2 (d) of IRR[59] of RA 9184 and by Administration.

6.0 Effectivity

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[60]

[59] As amended by GPPB-Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

[60] Issued through GPPB Resolution 018-2006, dated 06 December 2006, and published in the Official Gazette on 09 April 2007.

APPENDIX 2
GPPB CIRCULAR 08-2015
PREPARATION OF THE ANNUAL PROCUREMENT PLAN (APP)

1.0 Purpose

1.1. This Circular[61] is being issued to reiterate the requirement of preparing the APP and inform all procuring entities to prepare the APP in the format approved by the GPPB.

1.2. The accurate preparation of the APP fosters meticulous and judicious procurement planning at the agency level.

1.3. This is also being issued to clarify that the APP-Common-Use Supplies and Equipment (APP-CSE), which is to be submitted to the Department of Budget and Management – Procurement Service (DBM-PS) on or before 15 November of every year pursuant to Administrative Order (AO) No. 17 Series of 2012, and DBM Circular Letter No. 2013-14, for the purpose of determining the quarterly cash requirements for common supplies, materials, and equipment of the agency and for the over-all management of the central procurement of common-use supplies and equipment by the DBM-PS, is different from the APP prescribed by Republic Act (R.A.) No. 9184 and its associated issuances.

2.0 Scope

All Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units.

3.0 Preparation and Submission of APP

3.1. Section 7 of R.A. No. 9184 and its revised Implementing Rules and Regulations (IRR) mandates the preparation of the APP which should include procurements considered crucial to the efficient discharge of governmental functions.

3.2. On 30 March 2015, the Office of the President issued Administrative Order No. 46 Series of 2015 which included the submission of the APP to the GPPB-TSO within the first month of the year, and for those who have not submitted, to comply before the end of April, as one of the measures to speed up the procurement procedures.

4.0 APP Prescribed Form

4.1. Per GPPB Resolution No. 20-2015, the GPPB approved the revised format of the APP (attached as Annex "A"), to be used by all procuring entities where all of

[61] Issued on 16 July 2015.

their procurement activities for the year, including the requirements in its APP-CSE, are reflected.

The APP shall contain the following information, among others:

1. Name of the project/procurement;
2. Project management office/end-user unit;
3. General description of the project/procurement;
4. Procurement methods to be adopted;
5. Time schedule for a) advertisement/posting; b) submission and receipt/opening of bids; c) award of contract; d) contract signing
6. Source of funds; and
7. Approved Budget for the Contract.

5.0 This Circular shall take effect immediately.

6.0 For guidance and compliance.

Annex A

(Name of Agency) Annual Procurement Plan for FY ____

Code (PAP)	Procurement Program/Project	PMO/ End-User	Mode of Procurement	Schedule for Each Procurement Activity			Source of Funds	Estimated Budget (PhP)			Remarks (brief description of Program/Project)
				Ads/Post of IB/REI	Sub/Open of Bids	Notice of Award	Contract Signing		Total	MOOE	CO	

APPENDIX 3
GUIDELINES FOR ELECTRONIC BIDDING (E-BIDDING)

1.0 POLICY STATEMENT

To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Pursuant to Section 8, Republic Act 9184 (RA 9184) in relation to Section 8.2.4.3 Rule III of the Revised Implementing Rules and Regulations (Revised IRR), the Philippine Government Electronic Procurement System (PhilGEPS) shall support the implementation of Electronic Bid (e-Bid) submission processes, which includes creation of electronic bid forms, creation of bid box, delivery of bid submissions, notification to supplier of receipt of bids, bid receiving and electronic bid evaluation. This facility shall cover all types of procurement for goods, infrastructure projects and consulting services.

2.0 SCOPE AND PURPOSE

These Guidelines are formulated to provide rules and procedures that shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices, and instrumentalities of the Government, including government-owned and/or controlled corporations ("GOCCs"), government financial institutions ("GFIs"), state universities and colleges ("SUCs") and local government units ("LGUs") in the procurement of goods, infrastructure projects and consulting services through electronic means utilizing the PhilGEPS.

3.0 DEFINITION OF TERMS

3.1. For purposes of these Guidelines, the following terms, or words and phrases shall mean or be understood as follows:

3.1.1. *Bidder's On-line Nominee* – refers to the person duly authorized by an On-Line Bidder to create and/or electronically submit electronic documents comprising the eligibility documentary requirements, and the technical and financial proposals, and who is issued a Pass Phrase as the digital signature.

3.1.2. *Bid Notice Creator* – refers to a member of the Bids and Awards Committee (BAC) or its Secretariat specifically designated by the BAC to be responsible for creating the electronic Bid Notices/Supplements, or by the Head of the Procuring Entity in creating notices of award.

3.1.3. *Bid Notice Approver*– refers to a member of the BAC Secretariat specifically designated by the BAC to be responsible for reviewing the electronic Bid Notices/Supplements created by the Bid Notice Creator, and approving the uploading and electronic posting/transmittal of Bid Notices/Supplements in PhilGEPS.

3.1.4. *Bid Opener* – refers to a member of the BAC or its Secretariat specifically designated by the BAC to open and record all bid submissions, decrypt electronic bids, record or input the results of bid opening, evaluation and post-qualification in the PhilGEPS.

3.1.5. *Bid Payment Modality* – refers to the mode by which a Registered Merchant pays the bid document fee directly to the collecting/disbursing officer of the procuring entity until such time that the PhilGEPS electronic payment facility becomes available.

3.1.6. *Certified Member*– refers to a Registered Merchant granted a Certified Membership Status by PhilGEPS.

3.1.7. *Certified Membership Status* – refers to a privilege given to a Registered Merchant that has applied for and paid the annual administrative fee which enables the member, depending on the classification, to access and utilize certain functionalities of the PhilGEPS, such as, automatically receiving Bid Notifications, downloading of bid documents, electronic submission of bid proposals, among others.

3.1.8. *Document Library* – electronic repository of documents uploaded into PhilGEPS, with controlled accessibility.

3.1.9. *Electronic document* – refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically.

3.1.10. *On-line Bidder* – refers to a Certified Member participating electronically in bidding.

3.1.11. *Pass Phrase* – is the unique identifier exclusively provided by the Bidder's Online Nominee, all registered users of the agencies, and all other users of PhilGEPS such as, but not limited to COA Auditors, NGOs, PhilGEPS Administrator, that is used in encrypting and decrypting bid submissions.

3.1.12. *Portable Document Format* (PDF) – refers to a file format that has captured all the elements of a printed document as an electronic image that can be viewed, navigated, printed, copied but cannot be edited or changed.

3.1.13. *Registered Merchant* – refers to manufacturers, suppliers, distributors, contractors, and consultants already registered in the GOP-OMR, and who can access posted bid notices.

3.1.14. *Response Forms* – refers to technical and financial forms that are editable and can be populated with information.

3.1.15. *System Failure* – refers to the PhilGEPS hardware failure or server software issue such that the system is totally not accessible to users. It does not refer to the failure of the user's computer, internet access or any power interruption, which is beyond the control of the PhilGEPS.

3.2. Terms, words, and phrases used in these Guidelines shall have the same meaning as those that are defined in RA 9184 and RA 8792, otherwise known as the Electronic Commerce Act, and their respective Implementing Rules and Regulations, and the Guidelines for the Use of the Government of the Philippines – Official Merchants Registry (GoP-OMR).

4.0 GENERAL GUIDELINES

4.1. All Procuring Entities are mandated to fully use the PhilGEPS in accordance with RA 9184 and its IRR, and the policies, guidelines, and circulars issued by the GPPB.

4.2. All Procuring Entities shall register with the PhilGEPS and shall undertake measures to ensure their access to the on-line network in order to facilitate open, speedy and efficient on-line transmission, conveyance and use of electronic data messages or electronic documents. Further, the PhilGEPS shall assist procuring entities ensure their on-line connectivity and provide training for their personnel responsible for the operation of the system from their terminals.

4.3. The rules and regulations governing the manual method of procurement shall apply whenever the rules in these Guidelines are silent.

4.4. The Invitation to Bid, including the Bidding Documents shall clearly state whether Electronic Bidding is available for the procurement opportunity.

4.5. The provisions under Section 13 of the IRR on Observers shall apply without prejudice to full compliance with the requirement under Section 8.7 of the IRR.

4.6. Only bidders who pay the Bid Document Fee shall be allowed to participate in the e-bidding activities and submit a bid.

4.7. A procurement process or activity which is suitable for automatic evaluation by electronic means, without any intervention by the Procuring Entity, shall be the preferred modality.

4.8. PhilGEPS must establish a user help desk or a call center which offers centralized customer service (telephone- based service, live chat, e-mails) and support functions that will both cater to procuring entities and Registered Merchants to effectively and efficiently address issues and problems during their procurement operations.

4.9. PhilGEPS and/or the Procuring Entity must provide Online Bidders common access points to the Internet to enable them to submit electronic bids.

4.10. Prospective bidders, who submit their bids electronically, shall not be allowed to submit bids manually. Any bid modifications shall likewise be submitted electronically, provided that this is done before the deadline for submission and receipt of electronic bids.

4.11. These guidelines shall also apply when procuring entities resort to any of the

Alternative Modes of Procurement specifically Shopping under Section 52.1(b) and Negotiated Procurement under Section 53.1 (two-failed biddings) and Section 53.9 (small value procurement), subject to the prior approval of the Head of the Procuring Entity in order to promote economy and efficiency, and whenever justified by the conditions provided in RA 9184 and its IRR.

5.0 INVITATION TO BID (IB)

5.1. Procuring Entities, through their respective Bid Notice Creators, shall create an electronic Invitation to Bid in accordance with the contents provided for under Section 21.1 of the IRR of RA 9184 to provide prospective bidders sufficient information for the contract to be bid ("Bid Notices") using the electronic bid facility under PhilGEPS. Only Bid Notices that have been verified and approved by the Bid Notice Approver shall be posted in the PhilGEPS Electronic Bulletin Board.

5.2. Procuring Entities shall upload a complete set of bidding documents in the PhilGEPS website which will be available from the time the Bid Notice is posted, and which PDF version can be downloaded free of charge by Registered Merchants until the deadline for the submission and receipt of bids.

5.3. Registered Merchants who have set their bid-match profiles shall automatically be notified through electronic mail (e-mail) and/or through the Registered Merchant's respective PhilGEPS "Pending Task" page of posted Bid Notices.

5.4. Only Registered Merchants who pay the Bid Document Fee through the Bid Payment Modality shall be allowed to download complete bidding documents *and* bid response forms.

6.0 PRE-BID CONFERENCE

6.1. For contracts to be bid where the conduct of Pre-Bid Conference is required under Section 22 of the IRR, the same procedure governing the manual method will also apply.

6.2. Procuring Entities with videoconferencing capabilities may conduct their pre-bidding conferences electronically provided that their Registered Merchants shall also have similar capabilities and facilities.

6.3. During the conduct of the Pre-Bid Conference, Registered Merchants may send requests for clarification through the PhilGEPS online facility, which shall be read during the meeting and shall form part of the minutes, unless the Procuring Entity has previously decided that only those who have purchased the Bidding Documents shall be allowed to participate in the pre-bid conference and raise or submit written queries or clarifications.

6.4. The minutes of the pre-bid conference shall be recorded as an electronic document made electronically available to all participating Registered Merchants through the PhilGEPS Electronic Bulletin Board not later than three (3) calendar days after the pre-bid conference.

6.5. Requests for clarification(s) on any part of the Bidding Documents or for an interpretation must be in writing and submitted to the BAC of the procuring entity concerned, either electronically through PhilGEPS or otherwise, at least ten (10) calendar days before the deadline set for the submission and receipt of bids.

6.6. Only Bid Bulletins/Supplements approved by the Bid Notice Approver shall be posted in the PhilGEPS at least seven (7) calendar days before the deadline for the submission and receipt of bids. PhilGEPS shall automatically notify through e-mail all Registered Merchants who have downloaded the bidding documents and paid the Bid Document Fee.

7.0 REGISTRY SYSTEM

7.1. To facilitate determination of eligibility, and subject to the GOP-OMR guidelines, procuring entities may use the registry system of PhilGEPS that allows submission and/or recording/entry of eligibility requirements simultaneously with registration.

7.2. Only a Certified Member with the appropriate classification can avail of the PhilGEPS advance eligibility submission by uploading their electronic documents to the PhilGEPS document library, which can be accessed for current or future procurements.

7.3. Submission of eligibility requirements to the PhilGEPS document library is not tantamount to a finding of eligibility.

8.0 SUBMISSION OF BIDS

8.1. On-line Bidders may submit their eligibility requirements to the Procuring Entity through the e-bidding facility of PhilGEPS.

8.2. Joint Ventures

8.2.1. In case of joint venture, each partner of the joint venture must: (i) be registered in the PhilGEPS, (ii) secure Certified Membership Status, and (iii) electronically send their respective eligibility documents.

8.2.2. The joint venture partners must identify and designate the Primary and Secondary Partner(s).

8.2.3. Before the PhilGEPS will accept submissions of technical and financial proposals from the Primary Partner, there must be a confirmation from the Secondary Partner(s) as to existence of, or agreement to enter into, a joint venture.

8.2.4. Upon Confirmation, the Primary Partner shall be required by PhilGEPS to upload the Joint Venture Agreement or a duly notarized statement.

8.3. On-line Bidders, or the Primary Partner in the case of Joint Ventures, shall electronically submit their bids through the Bidder's On-line Nominee, at any time before the closing date and time specified in the bidding documents.

8.4. The actual time of bid submission of an On-line Bidder shall be the time indicated on the PhilGEPS Server when the bidder clicks the "Submit" button which shall be automatically recorded by PhilGEPS. Upon receipt of a bid, the PhilGEPS shall automatically generate a bid receipt page that can be printed by the on-line bidder. This contains the recorded "submission time" which shall be considered as the Official Submission Time of the bidder.

8.5. An On-line Bidder may modify its bid at any time before the closing date and time for the submission and receipt of bids.

8.6. An On-line Bidder may withdraw its bid before the deadline for the submission and receipt of bids.

8.7. The PhilGEPS shall bar all incoming bids after the closing date and time.

9.0 BID SECURITY

9.1. On-line bidders may submit the bid security in cash through the PhilGEPS electronic payment facility.

9.2. In case of other forms of bid security, the on-line bidder shall prepare and submit a scanned copy of the bid security together with the electronic bid. However, the original bid security must be submitted to the BAC concerned before the end of business hours on the day of bid submission, a failure of which shall automatically render the bid submission as non-compliant.

9.3. If the on-line bidder sends the original bid security through registered mail or private courier, the indicated date of receipt by the postal service or private courier shall be considered as the date of submission to the BAC concerned, without prejudice to any verifications during post-qualification.

10.0 EXTENSION OF BID CLOSING DATE

10.1. In case of system failure, the rules provided for in Annex 1 shall automatically apply regarding extension of the bid closing date.

11.0 OPENING OF BIDS

11.1. Upon receipt of manually-filed bids, the Bid Opener, before the Bid Opening, but immediately after the deadline for submission of bids, shall record and input into PhilGEPS E-bidding module the date and time each of the bid was manually received, including the name of the bidder's authorized representative.

11.2. The BAC shall open the bids immediately after the deadline for submission and receipt of bids, and on the bid opening date.

11.3. Before the decryption of electronic bids, the Bid Opener must first login to PhilGEPS and only then can BAC members input their respective USER IDs and PASSWORDS, *provided however*, that PhilGEPS decryption will not take place unless all the members present and logging-in constitute quorum.

11.4. The Bid Opener shall publicly open the first bid envelopes of bidders who submitted bids manually to determine each bidder's compliance with the documents required to be submitted for eligibility, that is, legal, technical and financial eligibility documents; and for the technical requirements. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the bidder "passed" in relation to the eligibility and technical documents in the first envelope.

11.5. After all the manually submitted first envelopes of bidders were opened, and the results and findings were encoded in the PhilGEPS Preliminary Examination Report facility, the Bid Opener shall thereafter proceed to decrypt the electronic First Bid Envelopes submitted by the On-line Bidders to determine each bidder's compliance with the required eligibility and technical documents following the steps and procedures outlined in Section 11.4 hereof. Thereafter, the Bid Opener shall input the findings and results into the PhilGEPS' Preliminary Examination Report facility.

11.6. Immediately after determining compliance with the requirements in the first envelope, the Bid Opener shall forthwith open the manually submitted second bid envelope of each eligible bidder whose first bid envelope was rated "passed." The second envelope of each complying bidder shall be opened within the same day.

11.7. After all the manually submitted second envelopes of bidders were opened, and the results and findings were encoded in the PhilGEPS Preliminary Examination Report facility, the Bid Opener shall thereafter proceed to decrypt the electronic Second Bid Envelopes of each On-line Bidders whose electronic first bid envelope was rated "passed" to determine each bidder's compliance with the required financial documents following the steps and procedures outlined in Section 11.6 hereof.

11.8. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid concerned as "failed". The Bid Opener shall then input the findings and results into the PhilGEPS' Preliminary Examination Report facility.

Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.

11.9. PhilGEPS shall automatically send an electronic mail to all bidders who failed in the preliminary examination of the first and/or second envelope.

12.0 BID EVALUATION

Goods and Infrastructure
For the procurement of goods and infrastructure projects, the purpose of bid evaluation is to determine the Lowest Calculated Bid using the following steps:

12.1. The BAC shall immediately conduct a detailed evaluation of all bids using non-discretionary criteria in considering the following:

a) Completeness of the bid. Unless the Instructions to Bidders specifically allow partial bids, bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, bill of quantities, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a "0" (zero) or dash (-) for the said item would mean that it is being offered for free to the Government; and

b) Arithmetical corrections. Correct computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications if expressly allowed in the Bidding Documents. Any adjustment shall be calculated in monetary terms to determine the calculated prices.(a)

12.2. The BAC shall evaluate all bids on an equal footing to ensure fair and competitive bid comparison. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.

12.3. In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; (b) total price of the item and unit price of the item as extended or multiplied by the quantity of that item, the latter shall prevail; (c) stated total price and the actual sum of prices of component items, the latter shall prevail; (d) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail.

12.4. Bids shall then be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, to identify the Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, which exceed the ABC shall be disqualified.

12.5. After all bids have been received, opened, examined, evaluated, and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding bid securities and the minutes or proceedings of the bidding. The Abstract of Bids shall contain the following:

a) Name of the contract and its location, if applicable;

b) Time, date and place of bid opening; and

c) Names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.

The entire evaluation process for the procurement of goods and infrastructure projects shall be completed within seven (7) calendar days from the deadline for receipt of proposals. However, for infrastructure projects costing Fifty Million Pesos (₱ 50,000,000) and below, the entire evaluation process shall be completed in not more than five (5) calendar days from the deadline for receipt of proposals.

12.6. After conducting the detailed evaluation of all bids using non-discretionary criterion, the Bid Opener shall input and record the results of the evaluation into the PhilGEPS' Evaluation Summary Report facility.

12.7. The PhilGEPS shall automatically rank the bidders in ascending order based on their total calculated bid prices to identify the LCB as evaluated and corrected for computational errors, and other bid modifications. Total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, which exceed the ABC shall be disqualified. After all bids have been received, opened, examined, evaluated, and ranked, the system shall thereafter generate the Abstract of Bids in the form of PhilGEPS Evaluation Summary Report.

12.8. The BAC shall manually prepare a Resolution whether approving or denying the Abstract of Bids generated by the system. However, after the BAC Resolution approving the Abstract of Bids is uploaded in the PhilGEPS, an electronic message shall be automatically sent to all bidders who participated informing them that the Abstract of Bids is available for downloading.

Consulting Services

12.9. To determine the Highest Rated Bid (HRB), the BAC shall immediately conduct a detailed evaluation of all bids using the steps provided for under Section 33 of the IRR of RA 9184.

12.10. After conducting the detailed evaluation of all bids using non-discretionary criteria, the Bid Opener shall input and record the results of the evaluation into the PhilGEPS' Summary Report facility.

12.11. The PhilGEPS shall automatically rank the bidders in descending order based on their total score to identify the HRB. After all bids have been received, opened, examined, evaluated, and ranked, the system shall thereafter generate the Abstract of Bids.

12.12. The BAC shall manually prepare a Resolution whether approving or denying the Abstract of Bids generated by the system. However, after the BAC Resolution approving the Abstract of Bids is uploaded in the PhilGEPS, an electronic message shall be automatically sent to all bidders who

participated informing them that the Abstract of Bids is available for downloading.

13.0 POST QUALIFICATION

13.1 The Lowest Calculated Bid ("LCB")/Highest Rated Bid ("HRB") shall undergo post-qualification pursuant to Rule X of the IRR in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents.

13.2 Within one (1) day after the approval of the Abstract of Bids, the bidder with the LCB/HRB should be notified through electronic mail that the bidder shall undergo post-qualification and submit the post-qualification requirements within three (3) calendar days as provided for under Section 34.2 of the IRR.

13.3 If the BAC determines that the bidder with the LCB/HRB passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid (LCRB)/ Highest Rated Responsive Bid (HRRB), and recommend to the Head of the Procuring Entity the award of contract to the said bidder at its submitted bid price or its calculated bid price, whichever is lower or, in the case of quality-based evaluation procedure, submitted bid price or its negotiated price, whichever is lower.

13.4 If, however, the BAC determines that the bidder with the LCB/HRB fails the criteria for post-qualification, it shall immediately notify the said bidder electronically in writing of its post-disqualification and the grounds for it.

13.5 Immediately after the BAC has electronically notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second LCB/HRB. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the LCRB/HRRB.

13.6 If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next LCB/HRB, and so on until the LCRB or HRRB, as the case may be, is determined for award, subject to Section 37 of the IRR.

13.7 The post-qualification process shall be completed in not more than seven (7) calendar days from the determination of the LCB/HRB. In exceptional cases, the post-qualification period may be extended by the Head of the Procuring Entity, but in no case shall the aggregate period exceed thirty (30) calendar days.

13.8 The BAC or its Bid Opener shall record and encode the post-qualification results of manually submitted documents in the PhilGEPS. For electronic documents submitted online, the BAC or its Bid Opener shall decrypt the documents and the results recorded automatically.

13.9 After recording the post-qualification summary and uploading the BAC

resolution declaring the bidder with the LCRB/HRRB in the PhilGEPS, an electronic message shall be automatically sent to all bidders who participated informing them that the Notice of LCRB/HRRB is available for downloading.

14.0 AWARD

14.1 The BAC shall recommend to the Head of the Procuring Entity the award of contract to the bidder with the LCRB/HRRB or the Single Calculated/Rated Responsive Bid after the post-qualification process has been completed.

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

a) Resolution of the BAC recommending award;

b) Abstract of Bids;

c) Duly approved program of work or delivery schedule, and Cost Estimates;

d) Document issued by appropriate entity authorizing the procuring entity to incur obligations for a specified amount; and

e) Other pertinent documents required by existing laws, rules, and/or the procuring entity concerned.

14.2 In case of approval, the Head of the Procuring Entity (HOPE) shall immediately issue the Notice of Award to the bidder with the LCRB/HRRB. In the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, copy furnished the BAC.

14.3 Upon approval by the HOPE of the BAC recommendation to award the contract to the LCRB/HRRB, the Notice of Award ("NOA") shall be created by the Bid Notice Creator in the PhilGEPS upon instruction of the HOPE, *provided however*, that the NOA shall only be created and issued to the LCRB/HRRB if no request for reconsideration or protest is received by, or inputted in PhilGEPS.

14.4 Upon issuance of the NOA to the LCRB/HRRB, an electronic message shall be automatically sent to all bidders who participated informing them of the results of the bidding process.

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

a) Submission of the following documents within the prescribed period:

i) Valid JVA, if applicable, within ten (10) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the LCRB or HRRB, as the case may be; or

ii) In the case of infrastructure projects, valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders, within thirty (30) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the LCRB, when the Treaty or International or Executive Agreement expressly allows submission of the PCAB license and registration for the type and cost of the contract to be as a pre-condition to the Notice of Award;

b) Posting of performance security in accordance with Section 39 of this IRR;

c) Signing of the contract as provided in Section 37.2 of the IRR; and

d) Approval by higher authority, if required, as provided in Section 37.3 of the IRR.

14.6 Contract award shall be made within the bid validity period provided in Section 28 of the IRR.

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

14.8 After the contract signing and submission of the Performance Bond, the Bid Notice Creator shall update the "proceed date" and the "contract start and end dates" and upload a copy of the Notice to Proceed and approved Contract in the PhilGEPS.

15.0 APPLICATION OF RA 9184 AND ITS REVISED IRR

In case of silence, ambiguity, or vagueness of the provision embodied in this Guidelines, the procedures and processes contained in RA 9184 and its revised IRR shall suppletorily apply.

16.0 EFFECTIVITY

These Guidelines shall take effect fifteen (15) calendar days after its publication in the Official Gazette or in a newspaper of general nationwide circulation.[62]

[62] Issued through GPPB Resolution 23-2013, dated 30 July 2013, and published in The Daily Tribune on 03 November 2014.

Annex 1

System Downtime Coverage	Extension	Automatic Extension of Bid Closing Time
less than2 hours within 6 hours prior to bid closing time/date	No	None
Greater than 2 hours	Yes	24 Hours after the PhilGEPS system has been restored
Within 2 hours prior to bid closing time	Yes	24 hours after the PhilGEPS system has been restored
> 24 hours prior to bid closing time	Yes	48 hours after the PhilGEPS system has been restored
> 48 hours prior to bid closing time	Yes	72 Hours after the PhilGEPS system has been restored

APPENDIX 4
GUIDELINES FOR THE USE OF THE GOVERNMENT OF THE PHILIPPINES - OFFICIAL MERCHANTS REGISTRY (GoP-OMR)

1.0 POLICY STATEMENT

To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be a single portal that shall serve as the primary source of information on all government procurement. *(Section 8, Republic Act No. 9184 (R.A. 9184); Section 8.1.1, Rule III, Revised Implementing Rules and Regulations (Revised IRR))*

The Philippine Government Electronic Procurement System (PhilGEPS) shall serve as the primary and definitive source of information on government procurement. *(Sec. 8.1.1, Rule III, Revised IRR)*

2.0 SCOPE AND PURPOSE

These Guidelines shall govern the general procedures for the use of the Government of the Philippines-Official Merchants Registry ("GoP-OMR"), the electronic database developed and maintained by PhilGEPS pursuant to Section 8.2.2 of the Revised IRR of R.A. 9184.

3.0 DEFINITION OF TERMS

3.1. For purposes of these Guidelines, the following terms, or words and phrases shall mean or be understood as follows:

3.1.1. **Government of the Philippines-Official Merchants Registry (GoP-OMR)** – refers to the centralized electronic database of manufacturers, suppliers, distributors, contractors, and consultants developed and maintained by the PhilGEPS office pursuant to Section 8.2.2 of the Revised IRR of R.A. 9184.

3.1.2. **Merchant** – refers to manufacturers, suppliers, distributors, contractors, and consultants already registered or still applying for registration in the GoP-OMR.

3.2. Terms, words, and phrases used in these Guidelines shall have the same meaning as those that are defined in R.A. 9184 and its Revised Implementing Rules and Regulations.

4.0 GENERAL PROVISIONS

4.1 The GoP-OMR shall be the centralized electronic database of merchants for purposes of government electronic procurement.

Subject to Sections 7 to 9 herein, all existing registries of merchants, electronic or manual, used and maintained by procuring entities for government procurement shall be integrated with the GoP-OMR.

4.2. The PhilGEPS office shall not determine the eligibility of merchants. The PhilGEPS office's evaluation of the eligibility requirements shall be for the sole purpose of determining the approval or disapproval of the merchant's application for registration.

4.3. A merchant's registration and membership in the GoP-OMR is neither contract-specific nor understood to be tantamount to a finding of eligibility. Neither shall the merchant's successful registration in the GoP-OMR be relied upon to claim eligibility for the purpose of participation in any public bidding.

4.4. The determination of the eligibility of merchants, whether registered with the GoP-OMR or not, shall remain with the Bids and Awards Committee (BAC). The BAC's determination of validity of the eligibility requirements shall be conclusive to enable the merchant to participate in the public bidding process.

5.0 REGISTRATION AND MEMBERSHIP OF MERCHANTS

5.1. The PhilGEPS office shall develop and implement the necessary procedures for the registration and membership of merchants in the GoP-OMR.

5.2. Subject to Section 6, the procedures for registration of merchants shall prescribe the following requirements:

5.2.1. duly accomplished PhilGEPS Registration Form;

5.2.2. an account number with a bank duly licensed by the Bangko Sentral ng Pilipinas (BSP), which shall be used to facilitate financial transactions such as, but not limited to, the payment of fees; charges; bid, performance, and warranty securities; and similar costs;

5.2.3. a secure e-mail address, which shall be used for all communications between the BAC and the PE;

5.2.4. a digital certificate secured from the government-accredited certification authority, once such facility becomes available.

5.2.5. eligibility requirements as provided in R.A. 9184 and its Revised IRR; and,

5.2.6. a certification, stating that (a) the eligibility requirements filed in connection with registration in the GoP-OMR, are authentic copies of the original; (b) the same requirements are complete; and (c) all statements and information provided in these are true and correct.

5.3. Merchants shall submit their registration documents either by sending electronic copies of the requirements using the PhilGEPS website; or by sending printed copies to the PhilGEPS office.

Failure to submit the registration requirements prescribed in Section 5.2 herein shall result in the disapproval of the application for registration.

5.4. The PhilGEPS office shall receive and process all applications for registration, and shall have the sole power to approve or disapprove any application in accordance with its registration procedures, subject to existing laws, rules and regulations, and these Guidelines.

5.5. Approval of the application shall amount to the registration of the merchant in the GoP-OMR. Disapproval shall prevent the registration of the merchant in the GoP-OMR until such time that it satisfactorily complies with the requirements.

5.6. The PhilGEPS office shall deny registration to or exclude from the GoP-OMR any merchant (a) that is found to have willfully misrepresented any of the information provided in the application for registration, or (b) that is in the "blacklist" of a PE. For this purpose, exclusion from the registry shall result in the cancellation of the merchant's account in the PhilGEPS website.

5.6.1. This exclusionary rule also applies to any merchant that has been subjected to the blacklisting rules of foreign governments, and foreign or international financing institutions, if such rules have been recognized by the Government Procurement Policy Board (GPPB).

5.6.2. The PE shall immediately notify the PhilGEPS office and the GPPB regarding its "blacklisting" of a merchant by forwarding a copy of the Blacklisting Order to PhilGEPS and GPPB. Upon receipt of the Blacklisting Order, the PhilGEPS office shall exclude the merchant from the GoP-OMR.

6.0 MEMBERSHIP CLASSIFICATION

6.1. The PhilGEPS office shall develop a merchants' membership classification that will define the extent of a merchant's access to and use of the PhilGEPS website, and include the rules and procedures for acquiring, maintaining, relinquishing, changing, or renewing a membership status in the registration procedure mentioned in Section 5.1 hereof.

6.2. Merchants shall have the option to choose its membership classification based on the categories provided by the PhilGEPS office. Merchants shall be entitled to a Certificate of Registration and Membership depending on the chosen classification and payment of the corresponding membership fee determined by the PhilGEPS office.

6.3. A Certificate of Registration and Membership shall be valid and effective for a period of one (1) year from the date of issuance as indicated therein. This Certificate may be renewed; ***provided***, that the merchant maintains its records in the GoP-OMR current and updated at least once a year or more frequently as may be necessary; ***provided further***, that the merchant's failure to maintain its records current and updated shall result in the downgrading of the merchant's membership classification in accordance with the procedures of the PhilGEPS office, notwithstanding the fact that the one-year validity of the Certificate of Membership has not yet expired.

7.0 INTEGRATION OF EXISTING ELECTRONIC REGISTRIES

7.1. The following rules shall apply only to electronic registries that simultaneously allow submission and/or recording/entry of eligibility requirements with registration:

7.2. All existing electronic merchant registries used and maintained by PEs shall be integrated into the GoP-OMR. Upon integration, the PE shall henceforth use the GoP-OMR for government procurement purposes, and shall cease using the prior registry.

7.3. The PE shall coordinate with the PhilGEPS office to determine whether the existing registry is compatible with the GoP-OMR.

7.4. After a finding of compatibility, the PE shall integrate its registry with the GoP-OMR.

If the registries are incompatible, the PE shall cease using its registry and use the GoP-OMR. The PE shall be given sufficient amount of time to effect the shutdown of its electronic registry and the shift to the use of the GoP-OMR. The PE and the PhilGEPS office shall coordinate with each other for this purpose.

8.0 REGISTRIES WITH OTHER FUNCTIONALITIES

If a PE uses and maintains an electronic registry with functionalities aside from submission and/or recording of eligibility requirements, it shall use the GoP-OMR as its merchant registry but may be allowed to continue using the other functionalities of its system.

9.0 MANUAL REGISTRIES

PEs that maintain manual registries shall be encouraged to shift to the use of the GoP-OMR. If the PE decides to retain the use of its manual registry, it may do so; provided, however, that when the PE shifts to an electronic registry, it shall use the facilities of the GoP-OMR. After the shift, the PE shall henceforth use the GoP-OMR for government procurement purposes.

10.0 AMENDMENTS

In the implementation of these Guidelines, the Government Procurement Policy Board (GPPB) may introduce modifications through the amendment of its provisions as the need arises.

11.0 EFFECTIVITY

These Guidelines shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general nationwide circulation, and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[63]

[63] Issued through GPPB Resolution 12-2012, dated 1 June 2012, and published in The Daily Tribune on 28 December 2012.

APPENDIX 5
GPPB CIRCULAR 03-2015
PROCUREMENT MONITORING REPORT (PMR) FORMAT

1.0 Purpose

This Circular[64] is being issued to remind the Procuring Entities of the requirement on the submission of the PMR for every semester in accordance with Section 12.2 of the IRR of RA 9184.

2.0 Coverage

All Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government-Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units.

3.0 Country Procurement Assessment Report (CPAR)

3.1 2012 CPAR

The 2012 Country Procurement Assessment Report (CPAR) noted that the results of the APCPI yield a 41% compliance rate for the preparation of PMRs among the pilot agencies, and a lower rate of 18% for the posting of these reports at the agency websites.

3.2 GPPB Data

When consolidated into a national database, information from the annual PMR will serve as a source for national procurement statistics and the Government Procurement Policy Board can use the data to analyze performance, trends, and reform-related issues.

4.0 Procurement Monitoring Report and Submission to GPPB

4.1 The **Procurement Monitoring Report (PMR)** is a semestral report on procurement activities specified in the Annual Procurement Plan (APP), whether ongoing and completed. The PMR shall cover major activities from the holding of the pre-procurement conference to the issuance of notice of award, the approval of the contract, delivery/completion, and acceptance/turnover, including the standard and actual time for each major procurement activity. (Section 1.2, IRR of EO 662)

4.2 Pursuant to Sections 12.1of the IRR of RA 9184, PMR shall be approved and submitted by the HOPE to the GPPB in printed and electronic format[65] within **fourteen (14) calendar days after the end of each semester**.

5.0 This Circular shall take effect immediately.

6.0 For guidance and compliance.

[64] Issued on 20 March 2015.
[65] Format amended through GPPB Resolution No. 08-2017, dated 10 March 2017

ANNEX B

(Name of Agency) Procurement Monitoring Report as of month/day/year

Code (As reflected in the APP)	Procurement Program/Project	PMO/ End-User	Mode of Procurement	Actual Procurement Activity												Source of Funds	ABC (PhP)			Contract Cost (PhP)			List of Invited Observers	Date of Receipt of Invitation									Remarks (Explaining changes from the APP)
				Pre-Proc Conference	Adv/Post of IB	Pre-bid Conf	Eligibility Check	Sub/Open of Bids	Bid Evaluation	Post-Qual	Notice of Award	Contract Signing	Notice to Proceed	Delivery/ Completion	Inspection & Acceptance		Total	MOOE	CO	Total	MOOE	CO		Pre-bid Conf	Eligibility Check	Sub/Open of Bids	Bid Evaluation	Post-Qual	Delivery/ Completion/ Acceptance (If applicable)				
COMPLETED PROCUREMENT ACTIVITIES																																
																	0			0												

APPENDIX 6
CONFIDENTIALITY AGREEMENT FORMAT

OBSERVERS CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (hereinafter "Agreement") is made and entered into this ____ day of _____, _____, by and between:
(date) **(month)** **(year)**

_____
(First party's details)

and

_____
(Second party's details)

DEFINITION OF CONFIDENTIAL INFORMATION

1. As used in this Agreement, "confidential information" shall mean all information and materials including, without limitation, market analyses, cost estimates, technical specifications, evaluation criteria and results, and any documentation, analyses, compilations, forecasts, studies or other procurement-related documents prepared based on any of the foregoing that is provided by the party disclosing ("Disclosing Party") to the party receiving ("Receiving Party") information under this Agreement, whether oral, written, or in any other medium.

HANDLING OF CONFIDENTIAL INFORMATION

2. The Receiving Party shall maintain the secrecy of the Disclosing Party's Confidential Information and shall exert all reasonable efforts to preserve the confidentiality of such information, including, but not limited to, the implementation of reasonable physical security measures and operating procedures.

3. The Receiving Party agrees that at all times and notwithstanding any termination or expiration of this Agreement, it will hold in strict confidence and not disclose to any third party all Confidential Information received from the Disclosing Party, except as approved in writing by the latter. The receiving party shall be prohibited from using the Confidential Information for purposes other than compliance with its obligations as an Observer under Republic At 9184 and its Implementing Rules and Regulations.

4. Access to Confidential Information of the Disclosing Party shall only be granted by the Receiving Party to its employees or authorized representatives, when their knowledge of such information becomes necessary, provided that such persons have signed confidentiality agreements or are otherwise bound by confidentiality obligations which contain the minimum terms, restrictions and limitations provided herein.

PERIOD AND TERMINATION

5. This Agreement shall be effective for a period of _____, and shall automatically terminate thereafter. Notwithstanding the termination or expiration of this Agreement, all obligations contained therein shall remain valid, effective and binding upon the Receiving Party, his successors and assigns.

6. Upon termination or expiration of this Agreement, or otherwise upon the Disclosing Party's request, all Confidential Information furnished to the Receiving Party shall be promptly returned to the Disclosing Party, or at the Disclosing Party's express request, shall be destroyed. In case of destruction as requested by the Disclosing Party, the same shall be confirmed in writing by the Receiving Party.

EQUITABLE REMEDIES

7. The Receiving Party acknowledges that any breach of this Agreement may cause irreparable harm to the Disclosing Party for which the latter is entitled to seek, among others, indemnification for damages, as well as injunctive or other equitable remedies as may be allowed by law.

MISCELLANEOUS

8. The Receiving Party shall not transfer or assign this Agreement to any other person or entity, whether by operation of law or otherwise, without the prior written consent of the Disclosing Party. Any such attempted assignment shall be void and of no effect.

9. In case any provision of this Agreement is declared by a competent authority to be unenforceable or invalid, such declaration shall not render this Agreement unenforceable or invalid as a whole. The unenforceable or invalid provision shall be changed and interpreted so as to best accomplish the objectives of such provision, subject to existing laws, rules and regulations.

10. This Agreement is the complete and exclusive agreement regarding the disclosure of Confidential Information between the parties, and replaces or supersedes any and all prior oral or written communications and agreements between the parties regarding Confidential Information without prejudice to the rules and regulations concerning restrictions on disclosure of information such as on matters involving national security, diplomatic or foreign relations, intelligence and other classified information.

IN WITNESS WHEREOF, the parties hereto have executed this Confidentiality Agreement as of the date and year first above written.

_____ _____

SIGNED IN THE PRESENCE OF:

_____ _____

[ACKNOWLEDGMENT]

APPENDIX 7
GUIDELINES ON THE GRANT OF HONORARIA TO GOVERNMENT PERSONNEL INVOLVED IN GOVERNMENT PROCUREMENT

DBM BUDGET CIRCULAR 2004-5A[66]

1.0 Background

Budget Circular (BC) No. 2004-5A, dated March 23, 2004, provides the guidelines on the grant of honoraria to government personnel involved in government procurement consistent with Republic Act 9184 (Government Procurement Reform Act). Certain provisions thereof need further clarification particularly on the entitlement to honoraria when alternative modes of procurement are used, the definition of a "successful procurement project", and the funding source for payment of honoraria.

2.0 Purpose

To amend BC No. 2004-5 and reissue the guidelines on the grant of honoraria to qualified personnel.

3.0 Coverage

This circular shall apply to all national government agencies (NGAs), and its instrumentalities, including state universities and colleges (SUCs), government-owned or -controlled corporations (GOCCs) and local government units (LGUs).

4.0 Rationale

Honoraria is a form of compensation granted to individuals for the performance of tasks or involvement in activities beyond their regular functions. Equity calls for equal compensation for performance of substantially similar duties, with substantially similar degrees of responsibility. Propriety dictates that only persons who have successful completed their tasks or participated in accomplished activities ought to be accomplished.

5.0 Guidelines

5.1 The chairs and members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) may be paid honoraria only for successfully completed procurement projects. In accordance with Section 7 of the Implementing Rules and Regulations Part A (IRR-A) of RA No. 9184, a procurement project refers to the entire project identified, described, detailed, scheduled and budgeted for in the Project Procurement Management Plan prepared by the agency.

A procurement project shall be considered successfully completed once the contract has been awarded to the winning bidder.

5.2 The payment of honoraria shall be limited to procurement that involves competitive bidding. Competitive bidding activities are present only in:

[66] Issued on 7 October 2005.

- Open and competitive;
- Limited source bidding;
- Negotiated procurement under Section 53 (a) of the IRR, where there has been failure of bidding for the second time; and
- Negotiated procurement under Section 53 (b) of the IRR following the procedures under Section 54.2 (b) thereof, whereby the procuring entity shall draw up a list of at least (3) suppliers or contractors which will be invited to submit bids.

Conversely, honoraria will not be paid when procurement is thru:

- Direct contracting;
- Repeat order;
- Shopping;
- Negotiated procurement under Section 53 (b) of the IRR following the procedures under Section 54.2 (d) thereof, whereby the procuring entity directly negotiates with previous supplier, contractor or consultant, or when the project is undertaken by administration or thru the AFP, in case of infrastructure projects; and
- Negotiated procurement under Section 53 (c) to (g) of the IRR.

5.3 The honoraria of each person shall not exceed the rates indicated below per completed procurement project:

	Maximum Honorarium rate per procurement project
BAC Chair	₱ 3,000.00
BAC Members	₱ 2,500.00
TWG Chair and Members	₱ 2,000.00

5.4 The average amount of honoraria per month over one year shall not exceed twenty five percent (25%) of the basic monthly salary. The honoraria, however, shall be paid only upon the successful completion of each procurement.

5.5 To be entitled to honoraria, personnel should be duly assigned as chair or member of the BAC or the TWG by the head of the department/agency concerned.

5.6 The members of the BAC Secretariat who are performing the attendant functions in additions to their regular duties in other non-procurement units of the agency may likewise be paid honoraria at the same rate as the TWG Chair and Members, subject to the same regulations.

The members of the BAC Secretariat whose positions are in the Procurement Unit of the agency shall not be entitled to honoraria. The payment of overtime services may be allowed, subject to existing policy on the matter.

5.7 Heads of government entities are prohibited from paying honoraria to personnel involved in procurement activities outside of those covered herein.

5.8 By reason of jurisprudence, a Department Undersecretary or Assistant Secretary who concurrently serves in the BAC, in whatever capacity, shall not be entitled to honoraria.

5.9 In lieu of honoraria, the payment of overtime services may be allowed for the administrative staff, such as clerks, messengers and drivers supporting the BAC, the TWG and the Secretariat, for procurement activities rendered in excess of official working hours. The payment of overtime services shall be in accordance with the existing policy on the matter.

5.10 Those who are receiving honoraria for their participation in procurement activities shall no longer be entitled to overtime pay for procurement-related services rendered in excess of official working hours.

6.0 Funding Source[67]

6.1 The amount necessary for the payment of the honoraria and overtime pay authorized herein shall be sourced only from the following:

- Proceeds from sale of bid documents;
- Fees from contractor/supplier registry;
- Fees charged for copies of minutes of bid openings, BAC resolutions and other BAC documents;
- Protest fees;
- Liquidated damages; and
- Proceeds from bid/performance security forfeiture.

6.2 Pursuant to the DOF-DBM-COA Permanent Committee Resolution No. 2005-2 dated June 2005, all agencies are authorized to treat the collections from the sources identified in item 6.1 hereof as trust receipts to be used as exclusively for the payment of honoraria and overtime pay herein authorized. Agencies may utilize up to one hundred percent (100%) of the said collections for the payment of honoraria and overtime pay subject to the guidelines in item 5.0 of this Circular. Any excess in the amount collected shall be remitted by NGAs to the Bureau of the Treasury. In the case of GOCCs and LGUs, the same shall form part of their corporate or local government funds, respectively.

6.3 The total amount of honoraria and overtime pay to be paid for procurement-related activities shall not exceed the said collections.

6.4 In cases of deficiency in collections from the sources identified in item 6.1 above, the amount of honoraria and overtime pay shall be adjusted proportionately for all those entitled thereto.

7.0 Saving Clause

Cases not covered by the provisions of this Circular shall be referred to the Secretary of Budget and Management for Resolution.

[67] Refer to DBM Budget Circular No. 2007-3 for amendments.

8.0 Repealing Clause

This Circular supersedes BC No. 2004-5 dated March 23, 2004.

9.0 Effectivity

This Circular shall take effect immediately.

DBM BUDGET CIRCULAR 2007-3[68]

1.0 Purpose

1.1 To amend item no. 6.1 of BC 2004-5A which provides the funding source for payment of honoraria and overtime pay to government personnel involved in government procurement as authorized under Republic Act No. 9184 (Government Procurement Reform Act), as follows:

- Honoraria – for Chairs and Members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG); and,
- Overtime Pay – For administrative staff supporting the BAC and TWG.

1.2 To identify additional funding source for payment of honoraria and overtime pay to the aforecited personnel; and

1.3 To revise other related provisions of BC No. 2004-5A (i.e., items 6.3 and 6.4) in order to clarify the manner of payment of said benefits.

2.0 Coverage

This Circular shall apply to all national government agencies (NGAs) including state universities and colleges (SUCs), government-owned or controlled corporations (GOCCs) and local government units (LGUs).

3.0 Guidelines

3.1 The amount necessary for payment of honoraria and overtime pay authorized under BC No. 2004-5A dated October 7, 2005 shall be sourced from the following:

3.1.1 Collections from successfully completed procurement projects limited, however, to activities prior to awarding of contracts to winning bidders:

- Proceeds from sale of bid documents;
- Fees from contractor/supplier registry;
- Fees charged for copies of minutes of bid openings, BAC resolutions and other BAC documents;
- Protest fees; and,
- Proceeds from bid security forfeiture.

3.1.2 Savings realized from the current year specific budget of the agency under the General Appropriations Act (GAA).

[68] Issued on 29 November 2007.

3.1.3 In the case of GOCCs, savings from the DBM-approved corporate operating budgets.

3.1.4 In the case of LGUs, savings from the local budgets approved by their respective Sanggunian subject to the pertinent provisions of R.A. 7160 (Local Government Code of 1991).

3.2 Savings refer to portions or balances of agencies' budgets as referred to in items 3.1.2, 3.1.3 and 3.1.4 above, free from any obligation of encumbrance which are:

3.2.1 still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized;

3.2.2 arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absences without pay; and,

3.2.3 realized from the implementation of collective negotiation agreements which resulted in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services at lesser cost.

3.3 In the use of savings, priority shall be given to augmentation of the amounts set aside for mandatory expenditure items provided under the General Provisions of the General Appropriations Act (GAA). It is understood that the use of agency savings for payment of honoraria and overtime pay for procurement activities shall be made only after satisfying said mandatory expenditure items.

3.4 The manner of payment of honoraria and overtime pay to entitled government personnel to be charged against collections from successfully completed procurement projects (activities prior to awarding of contracts to winning bidders) enumerated under item 6.1.1 and savings cited under item 6.2 shall be in accordance with item 6.5, except use of savings by national government agencies which shall follow the General Provision of the GAA on the disbursement of funds, i.e., through the National Treasury and/or authorized servicing banks under the Modified Disbursement Scheme.

3.5 In cases of deficiency in collections from procurement activities and non-availability of agency savings, the amount of honoraria and overtime pay shall be adjusted proportionately for all those entitled thereto.

4.0 Saving Clause

All other provisions of BC 2004-5A not consistent with this Circular shall remain in force and effect.

5.0 Effectivity

This Circular shall take effect immediately.

APPENDIX 8
GUIDELINES ON THE SALE OF BIDDING DOCUMENTS

1.0 POLICY STATEMENT

As provided in Section 17.4 of the Implementing Rules and Regulations (IRR) of Republic Act 9184, bidders may be asked to pay for bidding documents to recover the cost of their preparation and development. The BAC shall issue the bidding documents to the prospective bidders upon payment of the corresponding cost thereof to the collecting/disbursing officer of the procuring entity concerned.

2.0 PURPOSE

These guidelines are formulated to provide standard rates for the sale of bidding documents 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.

3.0 SCOPE AND APPLICATION

These guidelines shall apply to the national government, its branches, constitutional offices, departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units.

4.0 GENERAL GUIDELINES

4.1. Procuring entities shall make the bidding documents available on the same date the advertisement and/or posting of the Invitation to Bid was made pursuant to Section 17.3 of the IRR of RA 9184.

4.2. As required in Section 21.1(g)[69] of the IRR of RA 9184, the price of the bidding documents must be included in the Invitation to Bid/Request for Expression of Interest in order to inform all prospective bidders of the cost of its acquisition.

4.3. The BAC shall issue the bidding documents to any prospective bidder upon payment of the standard rate of the bidding documents.

4.4. The standard rate for the sale of bidding documents shall be based on the fixed rate on a fixed range approach and shall be applicable in the procurement of goods, consulting services, and the contracting for infrastructure projects by the procuring entity, whether procured by way of public bidding or any of the alternative methods of procurement that utilize processes and procedures in competitive bidding.

4.5. Procuring entities are proscribed to adopt any internal rule or practice that establish fees that are inconsistent or beyond the standard rate for the sale of bidding documents set forth in these guidelines.

[69] As amended by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.

4.6. The proceeds from the sale of the bidding documents shall continue to be used for the payment of honoraria as provided for in Budget Circular No. 2004-5A, dated 7 October 2005, or to augment the funds for the procuring entity's legal assistance and indemnification package as provided in the Guidelines for Legal Assistance and Indemnification of Bids and Awards Committee Members and its Support Staff.

5.0 STANDARD RATES

The cost of bidding documents shall correspond to the ABC range as indicated in the table below. This shall be the maximum amount of fee that procuring entities can set for the acquisition of bidding documents.

Approved Budget for the Contract	**Maximum Cost of Bidding Documents (in Philippine Peso)**
500,000 and below	500.00
More than 500,000 up to 1 Million	1,000.00
More than 1 Million up to 5 Million	5,000.00
More than 5 Million up to 10 Million	10,000.00
More than 10 Million up to 50 Million	25,000.00
More than 50 Million up to 500 Million	50,000.00
More than 500 Million	75,000.00

6.0 REPEALING CLAUSE

Any other guidelines, administrative order, office order, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of these Guidelines is hereby repealed, modified, or amended accordingly.

7.0 EFFECTIVITY

These guidelines shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[70]

[70] Issued through GPPB Resolution 04-2012, dated 24 February 2012, and published in The Daily Tribune on 20 August 2012.

APPENDIX 9
GUIDELINES IN THE DETERMINATION OF ELIGIBLITY OF FOREIGN SUPPLIERS, CONTRACTORS, AND CONSULTANTS TO PARTICIPATE IN GOVERNMENT PROCUREMENT PROJECTS

1.0 GENERAL POLICY

In line with the economic policies enunciated in the Constitution, particularly on the promotion of Filipino labor, domestic materials, and locally produced goods, Republic Act No. 9184, in consonance with Republic Act No. 5183, adopts as general principle the preference for Filipino nationals in the award of Government's procurement contracts.

However, in light of the principles of economic exchange and expansion of trade and exports with other countries on the basis of equality and reciprocity, with due regard to the government's initiatives in the prohibition and/or regulation of monopolies and other situations that restrain trade and fair competition, qualified foreign nationals may be eligible to participate in the public procurement of goods, infrastructure projects and consultancy services; provided, however, that provisions on domestic preference, Most-Favored Nation (MFN) status and non-discrimination treatments under applicable laws and treaties are complied with.

2.0 SCOPE, APPLICATION AND PURPOSE

These guidelines shall govern procurement of goods, infrastructure projects, and consulting services by all Departments, Bureaus, Offices and Agencies of the National Government, Government-Owned and/or Controlled Corporations, Government Financing Institutions, State Universities and Colleges, and Local Government Units and are formulated to clarify procurement policy on the eligibility of foreign bidders to participate in domestically-funded public procurement opportunities, within the framework of national and international economic and trade policies.

3.0 DEFINITION OF TERMS

For purposes of these guidelines, the following terms or words and phrases shall be defined as follows:

3.1. **Foreign Consultant** refers to an individual, sole proprietorship, partnership, corporation or joint venture other than those provided under Section 24.3.1 of the IRR [71] of R.A. 9184.

3.2. **Foreign Contractor** refers to a citizen of a foreign country or an entity where Filipino ownership or interest is less than seventy five percent (75%) offering infrastructure related services other than consulting services.

3.3. **Foreign Supplier** refers to a citizen of a foreign country or an entity where Filipino ownership or interest is less than sixty percent (60%) who is engaged in the manufacture or sale of the merchandise or performance of the general services covered by his bid.

[71] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

3.4. **Local Consultant** refers to an individual, sole proprietorship, partnership, corporation or joint venture as provided in Section 24.3.1 of the IRR [72] of R.A. 9184 and complying with the relevant requirements therein.

3.5. **Local Contractor** refers to a Filipino citizen or sole proprietorship; or partnership duly organized under the laws of the Philippines and of which at least seventy-five percent (75%) of the interest belongs to the citizens of the Philippines; or a corporation duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines, duly licensed under Philippine laws to undertake infrastructure activities in the Philippines.

3.6. **Local Supplier** refers to any citizen of the Philippines, or any corporate body or commercial company duly organized and registered under the laws of the Philippines where Filipino ownership or interest is at least sixty percent (60%), habitually established in business and engaged in the manufacture or sale of the merchandise or performance of the general services covered by his bid.

4.0 FOREIGN SUPPLIERS, CONTRACTORS, AND CONSULTANTS ELIGIBLE TO PARTICIPATE

4.1. In the procurement of goods, regardless of the procurement method used, foreign bidders may be eligible to participate under any of the following circumstances:

4.1.1. When the goods sought to be procured are not available from local suppliers, subject to Item 5 herein; or

4.1.2. When there is a need to prevent situations that defeat competition or restrain trade, subject to Item 6 herein; or

4.1.3. When the foreign supplier, manufacturer and/or distributor is a citizen, corporation or association of a country the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines, irrespective of the availability of goods from local suppliers, subject to Item 7 herein[73]; or,

4.1.4. When provided for under any treaty or international or executive agreement.

4.2. In the procurement of infrastructure projects, foreign contractors may be eligible to participate in the bidding when provided for under any treaty or international or executive agreement as provided under Section 23.4.2.2[74] of the IRR of R.A. 9184 or if they form a joint venture with local contractors; provided that their interest in or ownership of the joint venture shall not exceed twenty-five percent (25%). However, where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity which meets the seventy-five

[72] *Ibid.*
[73] *Ibid.*
[74] As amended by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.

percent (75%) under Section 23.4.2.1[75] of the IRR of R.A. 9184, they may be eligible to participate in the bidding.[76]

4.3. In the procurement of consulting services, foreign consultants may be hired if local consultants do not have the sufficient expertise, capability, and capacity to render the services required under the project, as determined by the head of the procuring entity, in accordance with Section 24.3.3 of the IRR of R.A. 9184.[77]

5.0 GOODS ARE NOT AVAILABLE FROM LOCAL SUPPLIERS

5.1. In the procurement of goods not available from Local Suppliers, the procuring entity may invite foreign suppliers, manufacturers and/or distributors to participate in the procurement process.

5.2. For purposes of these guidelines, goods are not available from Local Suppliers when, at any time before advertisement for their procurement, it is determined that no Local Supplier is capable to supply the required goods to the Government, in which case, foreign suppliers, manufacturers and/or distributors may be invited to participate in the bidding. Therefore, the head of the procuring entity or his duly authorized representative shall certify that, after diligent market research conducted by the procuring entity, the goods sought to be procured are not available from Local Suppliers. In addition, when applicable, the procuring entity shall secure a certification from the appropriate Government regulatory body, such as, but not limited to, the Bureau of Product Standards of the Department of Trade and Industry (DTI) for electrical products, mechanical/building & construction materials, chemicals, foods and other consumer products, and the Bureau of Food and Drugs of the Department of Health (DOH) for drugs, medicine, and other related medical devices, that based on its available records, the goods sought to be procured are not available from Local Suppliers.

5.3. If despite the availability of the goods sought to be procured, no local supplier is interested to participate in the procurement process, the head of the procuring entity shall certify that it has advertised the same for public bidding and shall make a statement that no local supplier participated in the bidding and that the same is due to reasons not attributable to the procuring entity.

5.4. In the case mentioned in Item 5.3, for purposes of inviting foreign suppliers, the bidding requirements and conditions, as advertised, shall not be modified or changed. Otherwise, modifications and/or changes in the requirements and conditions of the bidding shall disallow the procuring entity to resort to invitation of foreign bidders.

[75] *Ibid.*
[76] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.
[77] *Ibid.*

5.5. The procurement of unavailable goods must be through competitive or public bidding unless conditions prescribed under R.A. 9184 and its IRR[78] warrant resort to alternative methods of procurement.

6.0 THERE IS NEED TO PREVENT SITUATIONS THAT DEFEAT COMPETITION OR RESTRAIN TRADE

6.1. In cases where the procuring entity intends to procure goods from an exclusive local manufacturer, supplier, distributor, or dealer through direct contracting under Section 50 (c) of the IRR,[79] when said method is recommended by the BAC and approved by the Head of the Procuring Entity, and reflected in the approved Annual Procurement Plan, it shall, before commencing any negotiations with a local supplier, post through the website of the procuring entity, if any, and in the Philippine Government Electronic Procurement System (PhilGEPS), an invitation to foreign manufacturers to submit a manifestation of its intention to participate. Should any foreign manufacturer submit such manifestation within the period prescribed in the invitation, the procuring entity shall commence the conduct of public bidding. If no foreign manufacturer submits such manifestation within the said period, the procuring entity may proceed with the intended procurement through direct contracting with the said exclusive local manufacturer, supplier, distributor, or dealer.

7.0 RECIPROCITY RULE IN THE PROCUREMENT OF GOODS

7.1. In the procurement of goods, a supplier, manufacturer and/or distributor who is a citizen, corporation or association of a country whose laws or regulations grant reciprocal rights or privileges allowing Filipino nationals to participate in public procurement in their country, are allowed to participate in government procurement projects.

7.2. The procuring entity shall confirm from the list of countries, provided in Annex "I" of the IRR and as shown in the GPPB website, with which the Philippines enjoys reciprocal rights on matters of eligibility of its nationals in public procurement abroad. Pending the issuance of the list or in case the foreign bidder's country is not in said list, the bidder claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos shall submit a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item/product.[80] [3]

7.3. The said certification[81] shall be validated during post-qualification of bidders.

8.0 EFFECTIVITY

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation

[78] *Ibid.*
[79] *Ibid.*
[80] *Ibid.*
[81] *Ibid.*

and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[82]

[82] Issued through GPPB Resolution 018-2005, dated 12 September 2005, and published in the Official Gazette on 27 March 2006.

APPENDIX 10
GUIDELINES ON THE USE OF BID SECURING DECLARATION

1.0 SCOPE AND APPLICATION

These Guidelines shall govern the use of Bid Securing Declaration as an additional form of bid security under the Implementing Rules and Regulations (IRR) of Republic Act No. 9184, otherwise known as "The Government Procurement reform Act".

These guidelines shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices, and instrumentalities of the Government, including government-owned and/or -controlled corporations ("GOCCs"), government financial institutions ("GFIs"), state universities and colleges ("SUCs"), and local government units ("LGUs").

2.0 GUIDING PRINCIPLES

In order to enhance competition and bidders' participation, reduce transactional costs, and promote economy in procurement activities of the government, the use of a Bid Securing Declaration shall be an alternative to the existing forms of bid security under the IRR.

The bidder shall have the option to use a Bid Securing Declaration or any other bid security in the form and amount enumerated under Section 27.2 of the IRR.

3.0 DEFINITION

3.1. Bid Securing Declaration is an undertaking by a prospective bidder, committing to pay the corresponding fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein.

3.2. The Bid Securing Declaration shall comply with the standard format attached hereto as Annex "A" and shall be submitted to the procuring entity in the manner prescribed under Sections 25 and 27 of the IRR.

4.0 PERIOD OF EFFECTIVITY

4.1. The Bid Securing Declaration shall be valid for a reasonable period determined by the Head of the Procuring Entity concerned and indicated in the bidding documents, which in no case shall exceed one hundred twenty (120) calendar days from the date of the opening of bids, unless duly extended by the bidder upon the request of the Head of the Procuring Entity.

4.2. The Bid Securing Declaration shall automatically expire in the following instances:

a) Upon expiration of the bid validity period, or any extension thereof pursuant to Section 28.2 of the IRR;

b) When all bidders are declared ineligible or post-disqualified and, upon receipt of the notice therefor, either failed to timely file a request for reconsideration or filed a waiver to avail of said right;

c) When the bidder declared as the Lowest Calculated and Responsive Bidder/Highest Rated and Responsive Bidder, has furnished the performance security and signed the contract.

5.0 GROUNDS FOR ENFORCEMENT OF BID SECURING DECLARATION

The Bid Securing Declaration shall be enforced when the bidder commits any act resulting to the forfeiture of bid security under Sections 23.1(b), 34.2, 40.1 and 69.1, except 69.1(f), of the IRR of RA 9184.[83]

6.0 PENALTIES

Commission of any of the acts mentioned in Section 5 of these Guidelines shall merit the following sanctions:

a) Penalty of automatic blacklisting for two (2) years in all government procurement activities;

b) Payment of fine equivalent to the amount subject to the following rules:

i) In case of multiple bidders:

Two Percent (2%) of the Approved Budget for the Contract (ABC) or the Difference between the evaluated bid prices of the bidder with the Lowest Calculated/Highest Rated Bid and the bidder with the next Lowest Calculated/Highest Rated Bid, and so on, whichever is HIGHER;

As regards the bidder with the Highest Calculated/Lowest Rated Bid, the amount shall be Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the ABC, whichever is HIGHER;

ii) In case of a single bidder:

Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the Approved Budget for the Contract, whichever is HIGHER.

iii) Violations committed prior to opening of financial envelope:

A fix amount equivalent to two percent (2%) of the ABC.

iv) The bidder shall pay the above-mentioned fine within fifteen (15) days from receipt of the written demand by the procuring entity as a result of the violation of the conditions in the Bid Securing Declaration.

[83] As amended through GPPB Resolution 15-2014, dated 20 June 2014, and published in The Manila Times on 27 November 2014.

v) The imposition of the foregoing fine is without prejudice to other legal action the government may undertake against the erring bidder.

7.0 BLACKLISTING PROCEDURE

Notwithstanding the provisions of the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants, the following provisions shall govern the blacklisting for purposes of this Guidelines:

7.1. The procuring entity shall immediately issue the blacklisting order upon determination of the grounds for enforcement of the Bid Securing Declaration provided in Section 5 hereof.

7.2. Only in cases where the notice of award is not in conformity with the Bidding Documents may the blacklisted bidder file a motion for reconsideration with the Head of the Procuring Entity within three (3) calendar days from receipt of the blacklisting order.

7.3. The blacklisted bidder shall only be delisted upon the expiration of the period of penalty and payment of the fine.

8.0 EFFECTIVITY

These Guidelines shall take effect immediately after publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[84]

[84] Issued through GPPB Resolution 03-2012, dated 27 January 2012, and published in The Daily Tribune on 20 August 2012.

APPENDIX 11
GPPB CIRCULAR 06-2005
TIE-BREAKING METHOD

1.0 Purpose

This Circular[85] is issued to advise government agencies on how to resolve cases where an occurrence of a tie among bidders takes place, i.e., two or more of the bidders are determined and declared as the Lowest Calculated and Responsive Bidder (LCRB), for the procurement of goods and infrastructure projects, or the Highest Rated and Responsive Bidder (HRRB) for the procurement of consulting services.

2.0 Coverage

All Departments, Bureaus, Offices and Agencies of the National Government, Government-Owned or Controlled Corporations (GOCCs), State Universities and Colleges (SUCs), and Local Government Units (LGUs).

3.0 Rules and Regulations

3.1 In accordance with the considerations advanced/maintained in Policy Matter No. 02-2005, issued by the Government Procurement Policy Board, procuring entities are hereby given guidance on how to resolve cases involving a tie, after post-qualification, among bidders determined and declared as LCRB or HRRB.

3.2 Procuring entities are hereby required to identify at the onset of the bidding process, and thereafter include in the bidding documents as instruction or a matter of information to prospective bidders, a ready and clear measure to be used in the event two or more of the bidders have been post-qualified as LCRB or HRRB. In all cases, the measure determined by the procuring entity shall be non-discretionary and non-discriminatory such that the same is based on sheer luck or chance. The procuring entity may use "draw lots" or similar methods of chance.

3.3 However, in lieu of the pre-determined criteria set and declared in the bidding documents, the procuring entity may opt to bring the concerned bidders to agree on a better selection criteria which should also be non-discretionary/non-discriminatory and is similarly based on sheer luck or chance.

4.0 For compliance.

[85] Issued on 05 August 2005.

APPENDIX 12
GUIDELINES AMENDING THE PRE-SELECTION PROCEDURE IN THE CONDUCT OF LIMITED SOURCE BIDDING UNDER GPPB RESOLUTION 05-2011

1.0 POLICY STATEMENT

In order to promote efficiency and economy, Limited Source Bidding, as an alternative method of procurement, may be resorted to by the procuring entity only in highly exceptional and justifiable cases as provided for in RA 9184 and its IRR, and subject to the prior approval of the Head of Procuring Entity. In doing so, the procuring entity shall ensure that the most advantageous price for the Government is obtained.[86]

2.0 PURPOSE

These guidelines are formulated to provide the procedure for the pre-selection of suppliers or consultants in the use of Limited Source Bidding as an alternative method of procurement of goods and consulting services pursuant to Section 49 of R.A. 9184 and its IRR.

3.0 SCOPE AND APPLICATION

3.1 These guidelines shall apply to national government, its branches, constitutional offices, departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units when resorting to Limited Source Bidding in the procurement of goods and consulting services.

3.2 Limited Source Bidding, otherwise known as selective bidding, is an alternative method of procurement which may be employed under any of the following conditions:

a) Procurement of highly specialized types of goods (e.g., sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the public bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or

b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.[87]

4.0 GUIDELINES

4.1. Upon determination that a procurement activity may be done through Limited Source Bidding, the procuring entity, through the Bids and Awards Committee (BAC), shall prepare a list of pre-selected suppliers or consultants which shall

[86] Section 48 of the revised Implementing Rules and Regulations of R.A. No. 9184.
[87] Section 49.1 of the revised Implementing Rules and Regulations of R.A. No. 9184.

be those appearing in a list that is maintained updated by the relevant government authority with expertise in the type of procurement concerned.

4.2 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 supplier or consultant.

4.3 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 suppliers or 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 expertise on the subject matter of procurement by virtue of its 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 IRR, the procuring entity shall resort to open competitive bidding in its selection of supplier or consultant.

4.4 In preparing the pre-selected list, the BAC, possibly with the assistance of the Technical Working Group (TWG), shall adopt a set of criteria to be used as basis in evaluating the capability of the entities. Said criteria shall take into consideration the following characteristics of the supplier/consultant:

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, equipment, or manufacturing facilities; and

c) Financial position.

In the conduct of the 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 suppliers or consultants participating in the bidding**.**

4.5 The BAC shall evaluate and submit the recommended pre-selected list to the head of the procuring entity (HOPE) for approval. The pre-selected list shall include (i) the technical specifications/terms of reference of the project, and (ii) the specific criteria used by the procuring entity for the evaluation of the preselected suppliers or consultants.

4.6 Upon approval, the HOPE shall transmit the pre-selected list to the GPPB in compliance with Section 49.2 of the IRR of RA 9184. The list must be accompanied with a certification from the HOPE: (i) justifying the recourse to Limited Source Bidding, (ii) verifying the compliance with the criteria

previously set; and (iii) certifying that the pre-selected list is a list of known suppliers or consultants where resort to public bidding will not likely result in any additional suppliers or consultants participating in the bidding.

In case the procuring entity identifies itself as the relevant government authority with the expertise on the particular type of procurement concerned, the HOPE shall also submit a certification attesting to the fact that the procuring entity has expertise on the subject matter of procurement by virtue of its mandate and nature of its functions and operations.

4.7 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.

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

4.7.2 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 IRR of RA 9184.

4.8 Pursuant to Section 49.4, the procuring entity shall post the procurement opportunity to be undertaken through Limited Source Bidding 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 acknowledgment letter.

Except for the advertisement requirement provided under Section 21.2.1 (c)[88] of the IRR of RA 9184 in the use of Limited Source Bidding as an alternative procurement modality, the procuring entity shall adopt the rules on competitive bidding as prescribed in RA 9184 and its IRR.

6.0 REPEALING CLAUSE

Any other guidelines, administrative order, office order, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of these Guidelines are hereby repealed, modified or amended accordingly.

7.0 EFFECTIVITY

These Guidelines shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[89]

[88] As amended by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.
[89] Issued through GPPB Resolution 06-2012, dated 30 March 2012, and published in The Daily Tribune on 20 August 2012.

APPENDIX 13
GUIDELINES ON IMPLEMENTATION OF INFRASTRUCTURE PROJECTS UNDERTAKEN BY THE AFP CORPS OF ENGINEERS

1.0 POLICY STATEMENT

The Armed Forces of the Philippines Corps of Engineers (AFPCOE), being an integral part of the Government, has the capability to undertake infrastructure projects. As such, it is the policy of the Government to engage the services of the AFPCOE in directly implementing projects as provided in these guidelines.

2.0 PURPOSE AND COVERAGE

These guidelines shall streamline and provide rules governing the implementation of infrastructure projects undertaken by the AFPCOE.

3.0 DEFINITION OF TERMS

3.1 **End-User Agency** – The agency that is the beneficiary of the project or source of funds of the project to be implemented by the AFPCOE.

3.2 **Implementing Unit** – The AFPCOE unit tasked to undertake the project as covered by a Construction Directive issued by the AFP Chief of Engineers or the Chief Engineers of the major services, namely: Army, Navy, and Air Force.

3.3 **Job Order** – The hiring of laborers for piece work or intermittent job of short duration not exceeding six (6) months and pay is on a daily or hourly basis. The Implementing Unit may recruit workers from the locality and directly hire them to provide the required labor for the project being undertaken, subject to applicable laws, rules and regulations. The Implementing Unit prepares a payroll that serves as the basis for the payment of wages to the workers.

3.4 **"Pakyaw" system** – The system of hiring laborers where the Implementing Unit invites, through appropriate procurement procedures, "pakyaw" groups to submit price quotations for the labor component required for a specified piece of work. The "pakyaw" groups shall comprise a group of laborers residing within the vicinity of the project site, and shall not be a regular licensed contractor.

3.5 **Projects Undertaken by Administration -** An infrastructure project is said to be undertaken by administration, from the point of view of the AFPCOE, if the Implementing Unit undertakes the project using its organic personnel through force account and/or "pakyaw" system, equipment and tools, as well as procures the construction supplies and materials necessary for project completion, and manages the project implementation.

4.0 TYPES OF PROJECTS THAT MAY BE UNDERTAKEN BY ADMINISTRATION

The following types of projects may be undertaken by administration by the AFPCOE:

4.1. DND-AFP infrastructure projects – Projects involving the construction, maintenance, and repair of facilities and utilities of the Department of National Defense (DND), Armed Forces of the Philippines (AFP), and other DND bureaus and agencies. These include infrastructure projects funded out of the DND appropriations and the proceeds of the disposition of military camps/stations under Republic Act 7227 which are intended for the replication of AFP facilities affected by such disposition.

4.2. End-User Agency infrastructure projects in high security risk areas – Projects funded by other government agencies and covered by a Memorandum of Agreement between them and the DND-AFP, to be implemented by the AFPCOE through funds transferred from the end-user agency to the DND-AFP. These include, but are not limited to, the construction and rehabilitation of roads, bridges, school buildings, housing and resettlement sites, irrigation and electrification projects and other vital facilities and utilities. However, these projects may only be undertaken by the AFPCOE in areas which are considered as high security risk areas or in areas with potential conflict or peace and order problem, as determined by the authorized officials of the DND/AFP.

4.3. Special projects - Projects categorized as listed below. The project funds shall be transferred to the DND/AFP prior to the implementation of the project subject to existing laws and regulations, and guidelines that shall be formulated by the Secretary of National Defense (SND).

4.3.1. Projects directed by the President - Projects specifically directed by the President to be undertaken by the AFPCOE for the promotion of peace and order, national development, security and stability, as specified and determined by the President.

4.3.2. Projects related to Civil Defense / Disaster Relief - Projects specifically directed by the SND as Chairman of the National Disaster Coordinating Council, in support of disaster relief and rehabilitation operations.

5.0 REQUIREMENTS FOR IMPLEMENTATION

5.1 All projects undertaken by administration should be included in the Annual Procurement Plan (APP) of the end-user, unless the same is related to Civil Defense/Disaster Relief, or is an unforeseen contingency. Moreover, the AFPCOE shall only be required to prepare the Project Procurement Management Plan (PPMP) and corresponding APP for projects funded out of DND-AFP appropriations, BCDA funds, and trust receipts managed by the AFP. For projects funded out of appropriations of other agencies, it is sufficient that the project is included in the approved APP of the end-user or source agency. In all cases, there must be an approved program of work for the project.

5.2 End-User Agency may only request AFPCOE to implement projects and transfer funds to it if the End-User Agency has no proficiency to conduct the procurement, or no technical capability to undertake the project on its own, and only if the project is located in a high security risk area or in areas with

potential conflict or peace and order problem, as determined by the authorized officials of the DND/AFP, except for projects under Section 4.3.1 hereof.

5.3 The SND or his duly authorized representative shall approve projects undertaken by administration, in accordance with the provisions of Section 23.4[90] of the Implementing Rules and Regulations (IRR)[91] of Republic Act 9184 (R.A. 9184). If the end-user is another government entity, the Chief of Engineers of the AFP or the Engineering Brigade Commander concerned and the Head of the End-User Agency or his duly authorized representative shall enter into a Memorandum of Agreement (MOA), subject to the approval of the AFP Chief-of-Staff and the SND or his duly authorized representative.

6.0 FUNDS MANAGEMENT

6.1 The approved MOA or the Memorandum shall be the basis for the transfer of funds from the End-User Agency to the GHQ-AFP. The funds shall be taken up in the Trust Account for Inter-Agency Transferred Funds for Infrastructure, which will be set up in the books of accounts of the GHQ-AFP. The GHQ-AFP shall release the funds and corresponding Cash Cover to the Implementing Unit subject to the conditions herein specified.

6.2 Liquidation for funds transferred shall be the responsibility of the Implementing Unit, subject to existing COA rules and regulations.

7.0 ARCHITECTURAL AND ENGINEERING (A&E) AND ADMINISTRATION AND SUPERVISION (A&S) EXPENSES

The budget for the project may include a provision for Architectural and Engineering (A&E), as well as Administration and Supervision (A&S) expenses, as necessary. A&E expenses shall be used to support the preparation of plans, specifications, estimates and other documents related to and necessary for the commencement of the project. A&S expenses, on the other hand, shall be used to support the project management requirements of the unit, including, but not limited to, material testing and quality control, travel for project inspection, and overhead expenses. The SND shall issue guidelines to determine the appropriate amount of A&E as well as A&S expenses. For projects funded by other agencies, however, A&E expenses shall not exceed three percent (3%) of the project cost, and A&S expenses shall not exceed three percent (3%) of the project cost, to be supported by the approved program of work in the MOA.

8.0 PROCUREMENT OF EQUIPMENT, SUPPLIES AND MATERIALS, AND SERVICES FOR THE PROJECTS UNDERTAKEN BY AFPCOE

8.1 Subject to the agreement of the DND-AFP and the End-User Agency, either the DND BAC or AFP BAC, or End-User Agency BAC shall handle all procurement of equipment, labor, supplies, materials, consultancy services and other requirements of the AFPCOE in the implementation of its mandate. In case the

[90] As amended by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.
[91] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

End-User Agency is responsible for the procurement of construction supplies and materials, the Implementing Unit shall be responsible only for hiring of labor, provision of equipment, and project management.

8.2 In the acquisition of goods, supplies and services, including construction materials and equipment, the AFPCOE shall abide with the provisions of R.A. 9184 and its IRR[92].

8.3 The Implementing Unit may hire additional labor to augment their organic personnel, if necessary; Provided, however, that the civilian labor component for the project shall not be more than sixty percent (60%), and, as far as practicable, shall be sourced from the project locality. The AFPCOE shall ensure that unskilled laborers hired are paid the minimum wage applicable to the area, and that semi-skilled and skilled workers are paid wages not exceeding the prevailing market rates in the area. In hiring the laborers and workers, the Implementing Unit may adopt either the direct hiring system or the "pakyaw" system. In the case of "pakyaw" system, Section 3 of the GPPB Guidelines for the Implementation of Projects Undertaken "By Administration" or Force Account shall be followed.

8.4 The Implementing Unit may likewise lease supplemental equipment and tools as may be needed, chargeable against project funds, in accordance with existing laws, rules and regulations on the lease of equipment. Furthermore, the same should be provided for in the approved program of work. The AFPCOE may also enter into lease contracts with option to purchase, if warranted.

9.0 AUTHORITY TO CHARGE FEES FOR RENTAL OF EQUIPMENT

In order to ensure the operational readiness and maintenance of the construction equipment of the AFPCOE, the AFP shall be authorized to charge up to one hundred percent (100%) of the authorized current Department of Public Works and Highways (DPWH) equipment rental rate for the utilization of AFP equipment in the implementation of projects, to cover the cost of equipment utilization in the project, including depreciation, operation, repair and maintenance. The rental fees collected shall be deposited in the National Treasury as mandated by Executive Order 338, dated 17 May 1996, and shall be disbursed in accordance with the provisions of COA-DBM-DOF Joint Circular No. 1-97 dated 02 January 1997.

10.0 EFFECTIVITY

10.1 These Guidelines or any amendments thereto shall take effect fifteen (15) days after publication in the Official Gazette or a newspaper of general circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines. [93]

[92] *Ibid.*

[93] Issued through GPPB Resolution 09-2005, dated 28 April 2005, and published in the Official Gazette on 13 June 2005.

APPENDIX 14
GUIDELINES ON NON-GOVERNMENTAL ORGANIZATION PARTICIPATION IN PUBLIC PROCUREMENT

1.0 POLICY STATEMENT

Section 23, Article II of the Philippine Constitution prescribes that the State shall encourage the participation of Non-Governmental Organizations (NGOs), community-based, or sectoral organizations in the promotion of the welfare of the nation.

As a general rule, all procurement shall be done through competitive public bidding. However, when an appropriation law earmarks an amount for projects to be specifically contracted out to NGOs, it is the intent of Congress to give due preference to NGOs.

2.0 SCOPE AND APPLICATION

These guidelines prescribe the allowable modes of selecting an NGO in case an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs.

These guidelines shall apply to national government, its branches, constitutional offices, departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions, and local government units.

3.0 PURPOSE

These guidelines are formulated to meet the following objectives:

3.1 If the procuring entity decides to conduct public bidding, to prescribe the rules and procedures that shall govern public bidding limited to NGOs; and

3.2 If the procuring entity decides to enter into negotiated procurement under Section 53.11 of the Implementing Rules and Regulations (IRR)[94] of Republic Act No. 9184 (R.A. 9184), to provide the necessary steps and procedures in the selection of the NGO.

4.0 GENERAL GUIDELINES

4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53.11 of the IRR.[95]

4.2 Non-Governmental Organization or NGO refers to a non-stock, non-profit domestic corporation duly registered with the Securities and Exchange Commission (SEC) or a cooperative duly registered with the Cooperative Development Authority (CDA) committed to the task of socio-economic

[94] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.
[95] *Ibid.*

development and established primarily for providing goods and services to the public.

4.3 The selected NGO shall keep and maintain separate savings account and accounting records in accordance with generally accepted accounting rules and principles, subject to visitorial audit and examination by the procuring entity or the Commission on Audit.

4.4 Unless otherwise provided by law, technical specifications prescribed for the School Building Program under the Department of Education shall be the same as those prescribed by the Department of Public Works and Highways.

4.5 For the erasure of doubt, the NGO, whether selected through public bidding or negotiated procurement, shall be required to post a performance security in accordance with Section 39 of the IRR of R.A. 9184 and a warranty in accordance with Section 62 of the IRR of R.A. 9184.

5.0 PUBLIC BIDDING LIMITED TO NGOs

5.1 If the procuring entity decides to select the NGO through competitive public bidding, it shall advertise and post Invitation to Bid/Request for Expression of Interest in accordance with Section 21.2.1 of the IRR.[96]

5.2 In addition to the information enumerated under Section 21.1 of the IRR, the Invitation to Bid/Request for Expression of Interest[97] shall also include (i) the legal basis or appropriation law or ordinance which earmarks a specific amount or project to NGOs; and (ii) a statement that the project shall be limited to NGOs.

5.3 The determination of an NGO's eligibility shall be based on the submission of the documents enumerated under Sections 23.1 and 24.1 of the IRR[98]. However:

5.3.1 In lieu of the registration certificate issued by the Securities and Exchange Commission (SEC), a cooperative may submit a registration certificate issued by the Cooperatives Development Authority (CDA);

5.3.2 In addition to the legal eligibility documents, a participating NGO must submit its latest articles of incorporation in order that the procuring entity may determine that it falls within the definition of NGO under Item 4.2 of these Guidelines;

5.3.3 To establish the financial stability of the participating NGO, audited financial statements for the past three (3) years must be submitted under Section 23.1 (a) (vii) of the IRR[99];

[96] *Ibid.*
[97] *Ibid.*
[98] *Ibid.*
[99] *Ibid.* (As amended by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.)

5.3.4 Participating NGOs need not submit the financial document prescribed Sections 23.1 (a) (viii) of the IRR[100].

5.4 Other stages of the bidding process shall be observed in accordance with the relevant provisions of the IRR[101] of R.A. 9184.

6.0 NEGOTIATED PROCUREMENT UNDER SECTION 53.11 OF IRR

6.1 To ensure transparency in the selection of NGO through negotiated procurement, posting shall be done in accordance with Sections 54.2 and 54.3 of the IRR of R.A. 9184.[102]

6.2 After the required posting period, the procuring entity shall invite at least three (3) prospective NGOs to submit sealed price quotations.

6.3 The procuring entity shall likewise require submission of the complete project proposal together with supporting feasibility studies, designs, plans, blueprints, budgets and charts.

6.4 On the date specified in the notice, the procuring entity shall open the price quotations and determine the Lowest Calculated Bid (LCB). Consistent with the nature of an NGO, no profit should be included in its bid. Thus, the procuring entity shall ensure that the LCB does not include any profit margin or mark-up.

6.5 After determination that the proposal submitted by the NGO with the Lowest Calculated Bid complies with the technical requirements of the project, the procuring entity shall require submission of the following eligibility documents to ensure that said NGO is technically, legally, and financially capable to undertake the proposed project:

Legal Documents

a) SEC or CDA registration certificate;

b) Latest articles of incorporation;

c) Valid and current mayor's permit/from the NGO's principal place of business[103];

d) Certificate of PhilGEPS[104] registration;

e) Taxpayer's Identification Number; and

f) Latest tax returns and tax clearance pursuant to Executive Order No. 398, s. of 2005;

[100] *Ibid.* (As amended by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.)
[101] *Ibid.*
[102] *Ibid.*
[103] *Ibid.*
[104] *Ibid.*

Technical Documents

g) Statement of all its ongoing and completed government and private contracts within the relevant period, where applicable, including contracts awarded but not yet started, if any in accordance with Section 23.1 (a) (iv) of the IRR[105] of R.A. 9184;

h) In the case of procurement of infrastructure projects, the prospective bidder's statement of:

h.1 Availability of its key personnel, such as project managers, project engineers, materials engineers and foremen, that may be used for construction contracts;

h.2 Personnel performing functions that are regulated by laws of the Philippines are registered professionals authorized by the appropriate regulatory body to practice those and allied professions

h.3 Availability of equipment that it owns, has under lease, and/or has under purchase agreements that may be used for construction contracts, provided that ownership of equipment is not a requisite for eligibility.

Financial Documents

i) Audited financial statements for the past three (3) years, stamped "received" by the BIR or its duly accredited and authorized institutions, showing, among others, its total and current assets and liabilities.[106]

6.6 After submission of the eligibility documents, the procuring entity shall enter into a Memorandum of Agreement (MOA) with the NGO which prescribes:

a) the terms of reference for the project

b) commitment to comply with technical requirements of the project

c) systems and procedures for project monitoring and implementation

d) timelines, such as, but not limited to, date of completion, periodic inspection or evaluation schedule, and reporting

e) terms of payment, which shall be in accordance with Item 7 herein

6.7 To guarantee its faithful performance, the selected NGO shall post a Performance Security upon the signing of the MOA in accordance with Section 39 of the IRR[107].

[105] *Ibid.* (As amended by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.)
[106] *Ibid.*
[107] *Ibid.*

6.8 After performance of its obligations under the MOA, the selected NGO shall likewise submit a warranty security in accordance with Section 62 of the IRR.

7.0 TERMS OF PAYMENT

7.1 Payment to the NGO shall be made on a staggered basis. As a general rule, the selected NGO shall not receive additional payment unless reporting/liquidation requirements of the previous payment shall have been complied with.

7.2 Release of funds to the NGO shall follow the payment schedule prescribed by the MOA or contract.

7.3 No funds may be released prior to signing of the MOA or contract.

7.4 The selected NGO shall return any amount not utilized upon completion of the project.

8.0 EFFECTIVITY

These guidelines shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general nationwide circulation.[108]

[108] Issued through GPPB Resolution 012-2007, dated 29 June 2007, and published in the Manila Times on 26 October 2007.

APPENDIX 15
REVISED GUIDELINES FOR CONTRACT PRICE ESCALATION

1.0 SCOPE AND APPLICATION

1.1. These Guidelines shall govern requests for price escalation during implementation of contracts for the procurement of goods and infrastructure projects under extraordinary circumstances pursuant to and in accordance with Section 61 of Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act" and its Implementing Rules and Regulations (IRR)[109]. No contract price escalation for consulting services shall be allowed.

1.2. These Guidelines shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices and instrumentalities of the Government, including government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).

2.0 PURPOSE

These Guidelines are being formulated to meet the following objectives:

2.1. To prescribe the rules and procedures in the approval by the Government Procurement Policy Board (GPPB) of requests for price escalation;

2.2. To ensure that the task mandated by Section 61 of R.A. 9184 shall be undertaken competently, objectively and expeditiously by the GPPB and the National Economic and Development Authority (NEDA); and

2.3. To establish the legal and technical parameters for an objective determination of events that will result to extraordinary circumstances in accordance with the Civil Code of the Philippines.

3.0 DEFINITION OF TERMS

3.1. ***Price Escalation***. Refers to an increase in the contract price during contract implementation on the basis of the existence of "extraordinary circumstances" as determined by the NEDA and upon prior approval of the GPPB.

3.2. ***Extraordinary Circumstances***. Refers to an event or occurrence, or series of events or occurrences during contract implementation which give/s rise to price escalation as may be determined by the NEDA, in accordance with the provisions of the Civil Code of the Philippines, as enumerated in Section 4 hereof.

3.3. ***Extraordinary Inflation or Deflation***. Refers to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed under Section 5.2.2 of

[109] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

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

3.4. ***Fortuitous Event***. Refers to an occurrence or happening which could not be foreseen, or even if foreseen, is inevitable. It is necessary that the contractor or supplier is free from negligence. Fortuitous events may be produced by two (2) general causes: (1) by nature, such as but not limited to, earthquakes, storms, floods, epidemics, fires, and (2) by acts of men, such as but not limited to, armed invasion, attack by bandits, governmental prohibitions, robbery, provided that they have the force of an imposition which the contractor or supplier could not have resisted.

3.5. ***WPI***. Refers to the Wholesale Price Index, which measures the monthly changes in the general price level of commodities, usually in large quantities, that flow into the wholesale trading system.

3.6. ***CPI***. Refers to the Consumer Price Index, which measures the monthly changes in the average retail prices of goods and services commonly purchased by a particular group of people in a particular area.

3.7. ***PPI***. Refers to the Producer Price Index, which measures the average change in the unit price of a commodity as it leaves the establishment of the producer.

4.0 EXTRAORDINARY CIRCUMSTANCES

For purposes of these Guidelines, the term "extraordinary circumstances" shall refer to the following articles of the Civil Code of the Philippines:

4.1. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen or which could be reasonably foreseen but are inevitable, such as, but not limited to the following:

a. Typhoons;
b. Thunderstorms;
c. Flooding of lowly areas; and
d. Vehicular accidents;

Provided that the following requisites are present:

(i) The cause of the extraordinary circumstance must be independent of the will of the parties;

(ii) The event must be either unforeseeable or unavoidable;

(iii) The event must be such as to render it difficult but not impossible for the supplier or contractor to fulfill his obligation in a normal manner or within the contemplation of the parties;

(iv) The supplier or contractor must be free from any participation in or aggravation of the injury to the procuring entity; and

(v) The allowance for price escalation should an ordinary fortuitous event occur is stipulated by the parties or the nature of the obligation requires the assumption of risk.

4.2. Article 1250, as it pertains to Extraordinary Inflation or Deflation, as defined in Section 3.3 hereof.

4.3. Article 1680, as it enumerates Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following:

a. Fire;
b. War;
c. Pestilence;
d. Unusual flood;
e. Locusts; and
f. Earthquake;

Provided that the circumstances before, during and after the event shall be taken into consideration.

5.0 REVIEW AND APPROVAL PROCESS

In the review and approval of a request for price escalation, the requesting procuring entity shall comply with the following conditions before the same can be acted upon:

5.1. Endorsement. The head of the procuring entity concerned shall endorse the request for price escalation to the NEDA, through its Director-General, accompanied by the following documents:

a. A certification from the head of the procuring entity stating that the request for price escalation is justified in accordance with R.A. 9184, its IRR, and these Guidelines;

b. A description of the nature of the requested price escalation as well as the identification of the specific legal and technical parameters stated in these Guidelines that have been complied with by the request. For the technical requirements, supporting documents shall contain information/data in accordance with Section 5.2.2 hereof;

c. Certified copy of the original contract including the original scope of work and the original contract price, as awarded;

d. Original cost estimates and/or bill of materials of the items, goods or components affected by the request for price escalation and the proposed escalated prices thereof, as applicable to the type of contract, including a summary computation by the requesting entity of the proposed escalated prices in accordance with Sections 5.2.2 or 5.3, as deemed applicable; Provided, however, that the procuring entity shall maintain a detailed computation of the proposed price escalation;

e. Original and, if applicable, revised schedule of contract implementation;

f. Original request for price escalation submitted by the

contractor/supplier to the procuring entity, including information on the quantity of materials/components and/or scope of work being proposed for price escalation;

g. Data on the price indices of the materials or goods, including the source of data used in the detailed computation of the proposed price escalation as referred to in item (d) above, covering a historical thirty (30)-month period reckoned from the date of bid opening; and

h. Other information/documents as may be required by NEDA/GPPB.

5.2. Two-Stage Review Process. The review process shall commence only after the NEDA has acknowledged the completeness of the request in accordance with this Section. A request for price escalation shall only be granted if it satisfies both the First and Second Stage reviews.

5.2.1. First Stage: Legal Parameters. This stage shall establish the legal basis for extraordinary circumstances that will allow contract price escalation. The determination shall strictly be in accordance with any of the extraordinary circumstances mentioned in Section 4 of these Guidelines.

5.2.2. Second Stage: Technical Parameters. After establishing the legal basis under the First Stage review, the request for price escalation shall be further reviewed in accordance with the technical parameters stipulated herein.

(i) The prevailing monthly price index to be used in computing the mean shall be determined based on the volatility of the price concerned. Data for a locally available good, item, or component shall be those issued/published by the appropriate entity.

(ii) In case of an international good, item, or component wherein appropriate data is not available from domestic sources, data shall be those issued/published by the appropriate foreign entity.

(iii) In case of variation orders involving work items exactly the same or similar to those in the original contract, the applicable price indices for said work items prevailing on the date of bid opening of the original contract shall be used.

(iv) In case of variation orders involving new work items, the applicable price indices for said new work items prevailing on the date the variation order was approved shall be used.

a. Ten Percent (10%) Increase. If there are no available historical data for the appropriate price indices such that Section 5.2.2 (a) above becomes inapplicable, the request for

price escalation of an item, good or component shall be reviewed pursuant to this section wherein the subject applicable price index of a request should have registered an increase of more than ten percent (10%), as determined from the prevailing price index on the date of bid opening.

In case there are no applicable price indices for the item, good, or component, the applicable general wholesale price index shall be used.

5.2.3. Detailed Technical Parameters/Applicable Price Indices for Goods. The detailed computation and validation of price escalation for goods as described in Section 5.2.2 above shall use the most appropriate price index of the commodity group under the three types of price indices, WPI, CPI, and PPI; Provided that, based on availability and applicability, the WPI for the commodity group shall first be utilized, followed by the CPI, and lastly the PPI. The indices for commodity groups shall be those presented under Annex A, as classified and issued by the National Statistics Office (NSO). For an item, good or component wherein the prevailing price index cannot be established, the review shall be conducted utilizing the most relevant and applicable index.

5.2.4. Detailed Technical Parameters/Applicable Price Indices for Infrastructure Projects. The detailed computation and validation of price escalation for infrastructure projects as described in Section 5.2.2 above shall use the fluctuation factor K representing the increase or decrease of the value of an item as a result of price fluctuation.

a. The value K varies for each item of work and is represented by the following:

$$K = a + b\,(X_i/X_o) + c\,(Y_i/Y_o) + d\,(Z_i/Z_o) + \ldots n\,(N_i/N_o)$$

Where:

a	=	is a 0.15 fixed coefficient representing contractor's profit, and other non-adjustable items.
b, c, d, … n	=	are the coefficients representing the proportionate value of each pay item to the total. b + c + d … + n = 0.85.
X_i, Y_i, Z_i, … N_i	=	are variables representing the current price indices of the cost of labor, materials and other components of the contract during the period under consideration at the time of the request for price escalation,

based on the original or duly approved revised schedule of contract implementation, subject to Section 8 hereof.

X_o, Y_o, Z_o, … N_o = are variables representing the current price indices of the cost of labor, materials and other components of the contract on the date of bid opening or approval of variation order.

The sum of a + b + x + … n must be equal to 1 (100%)

b. The fluctuation factor and its application in the parametric formula shall include, among others, those listed in Annex B.

5.3. Amount of Price Escalation to be Granted. After this determination, the amount of escalation to be granted in the case of goods should only be the remaining amount over and above the thresholds as computed under Sections 5.2.2 (a) or 5.2.2 (b) hereof. In the case of infrastructure projects, the amount to be granted shall be determined based on the following:

Where	$K > 1.05$,	$P = P_o (K - 0.05)$
Where	$0.95 \leq K \leq 1.05$,	$P = P_o$
Where	$K < 0.95$,	$P = P_o (K + 0.05)$

Where P - escalated bid/unit price
P_o - original bid/unit price
K - fluctuation factor

5.4. Period and Frequency of Requests for Price Escalation. Requests for price escalation shall only be made for cost items already incurred by the contractor/supplier, as supported by official receipts, sales invoices, or other documentary evidence. No request for price escalation shall be made for prospective application. Further, price escalation shall only be granted to those items included in a specific request; Provided further, that requests for price escalation shall be made not less than six (6) months reckoned from the date of the effectivity of the contract, and not less than six (6)-month period thereafter, except for price escalation being requested at the completion of the contract.

5.5. Misrepresentation. Any misrepresentation made by the procuring entity or the contractor/supplier in any stage of the processing of a particular request for price escalation shall cause the automatic denial/disapproval of said claim.

5.6. Recommendation/Approval. Pursuant to Section 61.3 of the IRR[110] of R.A. 9184, the burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the procuring entity requesting for such escalation. NEDA shall only respond to such request after receiving the necessary proof and documentation. Upon completion of its

[110] *Ibid.*

review pursuant to Section 5.2 hereof, NEDA shall submit its recommendations to the GPPB for appropriate action. The GPPB shall then approve/act upon the request for price escalation during one of its meetings, to be attended by the head of the procuring entity concerned or his duly authorized representative/s.

6.0 REVIEW OF CONTRACT PRICES AFTER COMPLETION OF THE CONTRACT

Upon completion of the contract, the procuring entity shall calculate the amount of price escalation supposedly due the contractor/supplier/consultant to consider likewise any downward movement in prices during the entire contract implementation period. If the resulting amount of price escalation is lower than the amount of price escalation already paid, the amount of overpayment shall be deducted by the procuring entity from the retention money, in case of infrastructure projects, or the warranty security, in case of goods, on or before its expiration.

7.0 AUTHORITY TO APPROVE CONTRACT PRICE ESCALATION

7.1. The head of the procuring entity shall not pay any contract price escalation until after the GPPB has approved the claim.

7.2. The approval by the GPPB of the request for contract price escalation shall in no way be construed as an approval or validation of any irregularity committed by the requesting entity during the procurement process.

8.0 OTHER CONDITIONS FOR APPROVAL

8.1. In case the project is behind schedule based on the approved Project Evaluation Review Technique/Critical Path Method (PERT/CPM) network or schedule, price escalation on the portion of work that should have been, but was not, actually accomplished within the period shall be based on the applicable price index for the period in which it should have been accomplished. Payment of the computed amount shall not be made until said unaccomplished portion of the work is completed and upon prior approval of the GPPB and the head of the procuring entity.

8.2. Where advance payment has been made, no price escalation shall be granted for the following:

a. That portion of work accomplished during the period corresponding to a value equal to the amount of recoupment of advance payment; and

b. The amount of materials for which advance payment was made.

9.0 AMENDMENT AND ADDENDA

The GPPB may amend these Guidelines as may be necessary. Nevertheless, the GPPB may formulate supplemental guidelines in the form of addenda or annexes for the review process as stipulated in Section 5.2 hereof without need of amending these Guidelines.

10.0 TRANSITORY CLAUSE

10.1. Claims for price escalation for contracts completed after the effectivity of these Guidelines shall be filed within two (2) years from completion of the contract concerned.

10.2. Claims for price escalation for contracts the Invitation to Apply for Eligibility and to Bid (IAEB) for which were issued after the effectivity of R.A. 9184 and completed before the effectivity of these Guidelines shall be filed not later than two (2) years from the date of effectivity of these Guidelines.

10.3. The thirty (30) – month historical data prescribed in computing for two (2) standard deviations as provided in Section 5.2.2.a shall apply to price escalation claims for contracts the IAEB for which were issued after the effectivity of these Guidelines.

11.0 EFFECTIVITY CLAUSE

These Guidelines or any amendments thereof shall take effect immediately after publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these Guidelines .[111]

[111] Published in the Manila Times on 22 October 2008.

ANNEX A. PRICE INDICES FOR COMMODITY GROUPS

The indices listed herein shall be used for the detailed computation and validation of price escalation for goods

WPI Commodity Groups:

a.1 food;
a.2 beverages and tobacco;
a.3 crude materials except fuel;
a.4 mineral fuels, lubricants and related materials;
a.5 chemicals including animal and vegetable oils and fats;
a.6 manufactured goods classified chiefly by materials;
a.7 machinery and transport equipment; and
a.8 miscellaneous manufactured articles.

CPI Commodity Groups:

b.1 food, beverages and tobacco;
b.2 clothing;
b.3 housing and repairs;
b.4 fuel, light and water;
b.5 services; and
b.6 miscellaneous.

PPI Commodity Groups.

c.1 beverage;
c.2 tobacco;
c.3 textile;
c.4 leather products;
c.5 footwear and wearing apparel;
c.6 wood and wood products;
c.7 furniture and fixtures;
c.8 paper and paper products;
c.9 publishing and printing;
c.10 chemical products;
c.11 petroleum products;
c.12 rubber products;
c.13 plastic products;
c.14 non-metallic mineral products;
c.15 miscellaneous non-metallic mineral;
c.16 glass and glass products;
c.17 cement;
c.18 basic metals;
c.19 iron and steel;
c.20 non-ferrous metal;
c.21 fabricated metal products;
c.22 machinery;
c.23 electrical machinery;
c.24 transport equipment; and
c.25 other manufacturing industries.

ANNEX B. PARAMETRIC FORMULA FOR INFRASTRUCTURE PROJECTS

The fluctuation factor and its application in the parametric formula shall include among others, any or combination of the following:

1. Common earthwork fluctuation factor for clearing and grubbing, subgrade preparation, common excavation, common borrow, embankment construction, common fill or backfill and select borrow.

   K1 = 0.15 + 0.05 (Li/Lo) + 0.60 (Ei/Eo) + 0.20 (Fi/Fo)

2. Rock excavation fluctuation factor

   K2 = 0.15 + 0.08 (Li/Lo) + 0.27 (Zi/Zo) + 0.12 (Fi/Fo) + 0.38 (Ei/Eo)

3. Structural excavation fluctuation factor

   K3 = 0.15 + 0.08 (Li/Lo) + 0.19 (Fi/Fo) + 0.58 (Ei/Eo)

4. Structural backfill fluctuation factor

   K4 = 0.15 + 0.15 (Li/Lo) + 0.17 (Fi/Fo) + 0.53 (Ei/Eo)

5. Daywork fluctuation factor for equipment

   K5 = 0.15 + 0.05 (Li/Lo) + 0.20 (Fi/Fo) + 0.60 (Ei/Eo)

6. Daywork fluctuation factor for labor

   K6 = 0.15 + 0.85 (Li/Lo)

7. Graded subbase or vase course fluctuation factor using screened or processed aggregate, granular materials, crushed adobe or the like

   K7= 0.15 + 0.02 (Li/Lo) + 0.62 (Bi/Bo) + 0.05 (Fi/Fo) + 0.16 (Ei/Eo)

8. Asphaltic materials fluctuation factor for prime or tack coat.

   K8 = 0.15 + 0.01 (Li/Lo) + 0.82(Ai/Ao) + 0.01 (Fi/Fo) + 0.01 (Ei/Eo)

9. Asphaltic concrete fluctuation factor for bituminous wearing or surface course

   K9 = 0.15 + 0.01 (Li/Lo) + 0.62 (Ai/Ao) + 0.12 (Bi/Bo) + 0.03 (Fi/Fo) + 0.07 (Ei/Eo)

10. Portland cement concrete pavement (PDCP) fluctuation factor

    K10 = 0.15 + 0.02 (Li/Lo) + 0.47 (Ci/Co) + 0.21 (Bi/Bo) + 0.02 (Di/Do) + 0.03 (Fi/Fo) + 0.10 (Ei/Eo)

11. Concrete fluctuation factor for curb, gutter and sidewalk

    K11 = 0.15 + 0.06 (Li/Lo) + 0.36 (Ci/Co) + 0.16 (Bi/Bo) + 0.03 (Di/Do) + 0.06 Fi/Fo) + 0.18 (Ei/Eo)

12. Reinforced concrete structures fluctuation factor for bridge, culvert, retaining wall, bulkhead, piles, precast, parapet wall, railing, footing, columns, supporting slab and beam

    K12 = 0.15 + 0.03 (Li/Lo) + 0.28 (Ci/Co) + 0.13 (Bi/Bo) + 0.03 (Di/Do) + 0.25 (Ri/Ro) + 0.03 (Fi/Fo) + 0.10 (Ei/Eo)

13. Reinforced concrete structures fluctuation factor for headwall, catch basin, manhole, drop inlet concrete post.

    K13 = 0.15 + 0.21 (Li/Lo) + 0.25 (Ci/Co) + 0.03 (Di/Do) + 0.19 (Ri/Ro) + 0.09 (Bi/Bo) + 0.02 (Fi/Fo) + 0.06 (Ei/Eo)

14. Reinforced concrete pipe (RCP) or culvert pipe (RCCP) fluctuation factor

    K14 = 0.15 + 0.05 (Li/Lo) + 0.61 (Qi/Qo) + 0.02 (Ci/Co) + 0.01 (Bi/Bo) + 0.04 (Fi/Fo) + 0.12 (Ei/Eo)

15. Non-reinforced concrete pipes fluctuation factor

    K15 = 0.15 + 0.13 (Li/Lo) + 0.69 (Qi/Qo) + 0.02 (Ci/Co) + 0.01 (Bi/Bo)

16. Concrete for structure Class A or B fluctuation factor

    K16 = 0.15 + 0.03 (Li/Lo) + 0.41 (Ci/Co) + 0.19 (Bi/Bo) + 0.09 (Di/Do) + 0.04 (Fi/Fo) + 0.09 (Ei/Eo)

17. Grouted rip-rap or stone masonry fluctuation factor

    K17 = 0.15 + 0.18 (Li/Lo) + 0.27 (Ci/Co) + 0.13 (Bi/Bo) + 0.07 (Fi/Fo) + 0.20 (Ei/Eo)

18. Concrete masonry (CHB) fluctuation factor

    K18 = 0.15 + 0.33 (Li/Lo) + 0.30 (Qi/Qo) + 0.13 (Ci/Co) + 0.04 (Bi/Bo) + 0.01 (Fi/Fo) + 0.04 (Ei/Eo)

19. Reinforcing steel bars fluctuation factor

    K19 = 0.15 + 0.06 (Li/Lo) + 0.67 (Ri/Ro) + 0.04 (Fi/Fo) + 0.08 (Ei/Eo)

20. Structural steel works fluctuation factor

    K20 = 0.15 + 0.03 (Li/Lo) + 0.71 (Si/So) + 0.03 (Fi/Fo) + 0.08 (Ei/Eo)

21. Demolition of concrete structure fluctuation factor

    K21 = 0.15 + 0.07 (Li/Lo) + 0.20 (Fi/Fo) + 0.58 (Ei/Eo)

22. Demolition of PCCP strip fluctuation factor

$$K22 = 0.15 + 0.09 (Li/Lo) + 0.19 (Fi/Fo) + 0.57 (Ei/Eo)$$

23. Demolition AC pavement strip fluctuation factor

$$K23 = 0.15 + 0.05 (Li/Lo) + 0.20 (Fi/Fo) + 0.60 (Ei/Eo)$$

24. Painting fluctuation factor with use of equipment

$$K24 = 0.15 + 0.28 (Li/Lo) + 0.48 (Ni/No) + 0.02 (Fi/Fo) + 0.07 (Ei/Eo)$$

25. Painting fluctuation factor using labor only

$$K25 = 0.15 + 0.19 (Li/Lo) + 0.66 (Ni/No)$$

26. Wood structure fluctuation factor for falsework, temporary wood bridge, wood guardrail

$$K26 = 0.15 + 0.06 (Li/Lo) + 0.63 (Di/Do) + 0.04 (Fi/Fo) + 0.12 (Ei/Eo)$$

27. Carpentry works fluctuation factor

$$K27 = 0.15 + 0.15 (Li/Lo) + 0.62 (Di/Do) + 0.02 (Fi/Fo) + 0.06 (Ei/Eo)$$

28. Cast and / or galvanized iron pipes fluctuation factor

$$K28 = 0.15 + 0.02 (Li/Lo) + 0.78 (Ii/Io) + 0.01 (Fi/Fo) + 0.04 (Ei/Eo)$$

29. Steel pipes fluctuation factor

$$K29 = 0.15 + 0.03 (Li/Lo) + 0 .69 (Ii/Io) + 0.03 (Fi/Fo) + 0.10 (Ei/Eo)$$

30. Asbestos cement pipes fluctuation factor

$$K30 = 0.15 + 0.02 (Li/Lo) + 0.77 (Ki/Ko) + 0.02 (Fi/Fo) + 0.04 (Ei/Eo)$$

31. PVC pipes fluctuation factor

$$K31 = 0.15 + 0.07 (Li/Lo) + 0.69 (Ji/Jo) + 0.02 (Fi/Fo) + 0.07 (Ei/Eo)$$

32. Gate valves and fire hydrants fluctuation factor

$$K32 = 0.15 + 0.04 (Li/Lo) + 0.77 (Ii/Io) + 0.01 (Fi/Fo) + 0.03 (Ei/Eo)$$

33. Check valves fluctuation factor

$$K33 = 0.15 + 0.03 (Li/Lo) + 0.79 (Pi/Po) + 0.01 (Fi/Fo) + 0.02 (Ei/Eo)$$

34. Water service connection fluctuation factor

$$K34 = 0.15 + 0.10 (Li/Lo) + 0.40 (Pi/Po) + 0.35 (Ji/Jo)$$

35. Plumbing fixtures fluctuation factor

    K35 = 0.15 + 0.08 (Li/Lo) + 0.77 (Pi/Po)

36. Plain and corrugated G.1 sheets fluctuation factor

    K36 = 0.15 + 0.09 (Li/Lo) + 0.76 (Wi/Wo)

37. Cement plaster fluctuation factor

    K37 = 0.15 + 0.38 (Li/Lo) + 0.37 (Ci/Co) + 0.10 (Bi/Bo)

38. Marble floor finish fluctuation factor

    K38 = 0.15 + 0.07 (Li/Lo) + 0.03 (Ci/Co) + 0.01 (Bi/Bo) + 0.65 (Xi/Xo) + 0.03 (Fi/Fo) + 0.06 (Ei/Eo)

39. Glazed and ceramic tiles fluctuation factor

    K39 = 0.15 + 0.12 (Li/Lo) + 0.66 (Xi/Xo) + 0.05 (Ci/Co) + 0.02 (Bi/Bo)

40. Window frames and grills fluctuation factor

    K40 = 0.15 + 0.09 (Li/Lo) + 0.53 (Si/So) + 0.06 (Fi/Fo) + 0.17 (Ei/Eo)

41. Glazing fluctuation factor

    K41 = 0.15 + 0.03 (Li/Lo) + 0.82 (Gi/Go)

42. Electrical rough-in fluctuation factor

    K42 = 0.15 + 0.16 (Li/Lo) + 0.69 (Vi/Vo)

43. Lighting fixtures and devices fluctuation factor

    K43 = 0.15 + 0.13 (Li/Lo) + 0.72 (Ui/Uo)

44. PVC waterstop (9") fluctuation factor

    K44 = 0.15 + 0.03 (Li/Lo) + 0.82 (Ji/Jo)

45. Electrical wood pole fluctuation factor

    K45 = 0.15 + 0.01 (Li/Lo) + 0.73 (Di/Do) + 0.03 (Fi/Fo) + 0.08 (Ei/Eo)

46. Wood crossarm fluctuation factor

    K46 = 0.15 + 0.11 (Li/Lo) + 0.74 (Di/Do)

47. Lightning arrester (3,000v to 15,000v) fluctuation factor

    K47 = 0.15 + 0.09 (Li/Lo) + 0.76 (Ti/To)

48. Transformers (10KVA to 50KVA) fluctuation factor

$$K48 = 0.15 + 0.01 (Li/Lo) + 0.81 (Ti/To) + 0.01 (Fi/Fo) + 0.02 (Ei/Eo)$$

49. Bare copper wire fluctuation factor

$$K49 = 0.15 + 0.04 (Li/Lo) + 0.79 (Ti/To) + 0.01 (Fi/Fo) + 0.01 (Ei/Eo)$$

50. Bare aluminum wire fluctuation factor

$$K50 = 0.15 + 0.13 (Li/Lo) + 0.69 (Ti/To) + 0.01 (Fi/Fo) + 0.02 (Ei/Eo)$$

51. Dredging fluctuation factor

$$K51 = 0.15 + 0.06 (Li/Lo) + 0.20 (Fi/Fo) + 0.59 (Ei/Eo)$$

52. General construction fluctuation factor (for others not covered by any or combination of the above 51 fluctuation factors)

$$K52 = 0.15 + 0.85 (MI/Mo)$$

Where:

Mi - current general construction price index figure
Mo - base general construction price index figure

Li - current labor index figure
Lo - base labor index figure

Ei - current equipment index figure
Eo - base equipment index figure

Ai - current asphaltic material price index figure
Ao - base asphaltic material price index figure

Bi - current aggregates material price index figure
Bo - base aggregates material price index figure

Ci - current cement price index figure
Co - base cement material price index figure

Di - current lumber material price index figure
Do - base lumber material price index figure

Fi - current automotive fuel price index figure
Fo - base automotive fuel price index figure

Gi - current glass and glazing material price index figure
Go - base glass and glazing material price index figure

Hi - current hardware material price index figure

Ho - base hardware material price index figure

Ii - current galvanized and / or cast iron pipe (Plumbing) material price index figure
Io - base galvanized and / or cast iron pipe (Plumbing) material price index figure

Ji - current polyvinyl chloride pipe (Plumbing) material price index figure
Jo - base polyvinyl chloride pipe (Plumbing) material price index figure

Ki - current asbestos cement pipe (Plumbing) material price index figure
Ko - base asbestos cement pipe (Plumbing) material price index figure

Ni - current paint material price index figure
No - base paint material price index figure

Pi - current plumbing fixture material price index figure
Po - base plumbing fixture material price index figure

Qi - current concrete products material price index figure
Qo - base concrete products material price index figure

Ri - current reinforcing steel material price index figure
Ro - base reinforcing steel material price index figure

Si - current structural steel material price index figure
So - base structural steel material price index figure

Ti - current exterior electrical material price index figure
To - base exterior electrical material price index figure

Ui - current electrical fixtures / devices material price index figure
Uo - base electrical fixtures / devices material price index figure

Vi - current electrical (rough-in) material price index figure
Vo - base electrical (rough-in) material price index figure

Wi - current metal products material price index figure
Wo - base metal products material price index figure

Xi - current tile work material price index figure
Xo - base tile work material price index figure

Zi - current blasting material price index figure
Zo - base blasting material price index figure

For the preceding formula, the following Price Indices shall be used:

General construction price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Labor cost index as published by the Department of Labor and Employment. Equipment index as published by the NSO or other appropriate/authorized government agency.

Asphaltic material price index as published by the NSO or other appropriate/authorized government agency.

Aggregates material price index as published by the NSO or other appropriate/authorized government agency.

Cement material price index as published by the NSO or other appropriate/authorized government agency.

Lumber material price index as published by the NSO or other appropriate/authorized government agency.

Automotive fuel price index as published by the NSO or other appropriate/authorized government agency.

Glass and glazing material price index as published by the NSO or other appropriate/authorized government agency.

Hardware material price index as published by the NSO or other appropriate/authorized government agency.

Galvanized and/or cast iron pipe (Plumbing) material price index as published by the NSO or other appropriate/authorized government agency.

Polyvinyl chloride pipe (Plumbing) material price index as published by the NSO or other appropriate/authorized government agency.

Asbestos cement (Plumbing) material price index as published by the NSO or other appropriate/authorized government agency.

Paint material price index as published by the NSO or other appropriate/authorized government agency.

Plumbing fixture material price index as published by the NSO or other appropriate/authorized government agency.

Concrete products material price index as published by the NSO or other appropriate/authorized government agency.

Reinforcing steel material price index as published by the NSO or other appropriate/authorized government agency.

Structural steel material price index as published by the NSO or other appropriate/authorized government agency.
Exterior electrical material price index as published by the NSO or other appropriate/authorized government agency.

Electrical (rough-in) material price index as published by the NSO or other appropriate/authorized government agency.

Electrical fixtures / devices material price index as published by the NSO or other appropriate/authorized government agency.

Metal product material price index as published by the NSO or other appropriate/authorized government agency.

Tile work material price index as published by the NSO or other appropriate/authorized government agency.

Blasting material price index as published by the NSO or other appropriate/authorized government agency.

In the absence of any price index for a specified adjustable item, the price index of the nearest related item shall be used.

ANNEX C. SAMPLE COMPUTATION FOR CONTRACT PRICE ESCALATION

I. FACTS

1. There is legal basis to claim for price escalation in accordance with Section 4 of these Guidelines.

2. The work item identified to have been affected by the extraordinary circumstance is Reinforcing Steel Bars or K19 of Annex B of these Guidelines.

$$K19 = 0.15 + 0.06 (L_i/L_o) + 0.67 (R_i/R_o) + 0.04 (F_i/F_o) + 0.08 (E_i/E_o)$$

Where L ~ refers to labor index
R ~ refers to reinforcing steel bars wholesale price index
F ~ refers to automotive fuel price index
E ~ refers to equipment price index
i ~ refers to the value of the index for the month under consideration
o ~ refers to the value of the index during opening of bid

3. The date of bid opening for the subject contract was December 2007 and the contract was implemented starting January 2008.

4. The six (6) – month period under consideration for contract price escalation is from January to June 2008.

5. The thirty (30) – month historical data for the components of K19 necessary for testing compliance with the Technical Parameters under Section 5.2.2 of these Guidelines is from July 2005 to December 2007 *(Please refer to Table 1 of this Annex for the relevant price indices provided under Annex B of these Guidelines)*.

II. COMPUTATION FOR GRANT OF PRICE ESCALATION

The following steps illustrate how to determine whether request for price escalation may be granted using the 2 Standard Deviation (STDEV) rule under Section 5.2.2.a:

1. Compute the Mean for each component of K19 using the data in Table 1 for the entire thirty (30) month period (July 2005 to December 2007).

Table 1: Computation for the Mean

K19 Component	Formula for Mean	Mean
Labor (L)	$\frac{\sum L \text{ from Jul05 to Dec07}}{30}$	343.7
Reinforcing Steel (R)	$\frac{\sum R \text{ from Jul05 to Dec07}}{30}$	524.7
Automotive Fuel (F)	$\frac{\sum F \text{ from Jul05 to Dec07}}{30}$	536.9
Equipment (E)	$\frac{\sum E \text{ from Jul05 to Dec07}}{30}$	321.4

2. Compute the 2 STDEV above Mean ($2\sigma+\mu$) of each K19 component by adding the Mean computed under Step 1 to the 2 STDEV. The 2 STDEV is computed by getting the STDEV of the thirty (30) – month historical data of each K19 component and multiplying it by 2.[112]

Table 2: Computation for the 2 STDEV above Mean

K19 Component	**STDEV** [STDEV (Jul05 to Dec07)]	**2 STDEV** [(STDEV) * 2]	**2σ+μ** [2 STDEV + Mean]
Labor (L)	14.1	28.2	***371.87***
Reinforcing Steel (R)	19.2	38.4	***563.02***
Automotive Fuel (F)	32.3	64.6	***501.50***
Equipment (E)	10.5	20.9	***342.31***

3. Establish the K19 Threshold by substituting the values of the 2 STDEV above Mean computed in Step 2 into the K19 work item formula as follows:

K19 Threshold = $0.15 + 0.06\ (2\sigma+\mu)_L + 0.67\ (2\sigma+\mu)_R + 0.04\ (2\sigma+\mu)_F + 0.08\ (2\sigma+\mu)_E$

= $0.15 + 0.06$ (***371.87***) $+ 0.67$ (***563.02***) $+ 0.04$ (501.50) $+ 0.08$ (***342.31***)

= **447.13**

4. Compute the Average Value of each price index for the six (6) – month period (January to June 2008) under consideration for contract price escalation. *(Please refer to Table 1 of this Annex)*

Table 3: Computation for Average Value of Price Index (Jan to Jun 2008)

K19 Component	**Average Value**
Labor (L)	***364.8***
Reinforcing Steel (R)	***625.1***
Automotive Fuel (F)	***542.1***
Equipment (E)	***328.7***

5. Establish K19 Average by computing the six (6) – month Average Value of the work item for the period under consideration for price escalation (January to June 2008) as follows:

K19 Average = $0.15 + 0.06\ (\text{Ave. Value})_L + 0.67\ (\text{Ave. Value})_R + 0.04\ (\text{Ave. Value})_F + 0.08\ (\text{Ave. Value})_E$

[112] Computation of the STDEV is easily done using spreadsheet applications such as Apple Numbers, Microsoft Excel, and OpenOffice.org Calc.

= 0.15 + 0.06 (***364.8***) + 0.67 (***625.1***) + 0.04 (***542.1***) + 0.08 (***328.7***)

= **488.8**

6. To determine whether request for price escalation may be granted, the K19 Average should be compared to the K19 Threshold. If K19 Average is greater than K19 Threshold, price escalation may be granted; otherwise, the request for price escalation should be denied.

7. In the above example, K19 Average is greater than K19 Threshold. Therefore, price escalation may be granted for the period of January to June 2008.

III. COMPUTATION FOR AMOUNT OF PRICE ESCALATION

After determining that price escalation may be granted for the period under consideration, the computation for the amount to be granted is done for each month of said period.

1. Compute the Monthly Rates of Increase for the period under consideration (January to June 2008) in accordance with Section 5.2.4.a of these Guidelines as follows:

K19 June = $0.15 + 0.06 (L_i/L_o) + 0.67 (R_i/R_o) + 0.04 (F_i/F_o) + 0.08 (E_i/E_o)$
= 0.15 + 0.06 (1.05) + 0.67 (1.31) + 0.04 (1.25) + 0.08 (1.12)
= **1.23**

K19 May = $0.15 + 0.06 (L_i/L_o) + 0.67 (R_i/R_o) + 0.04 (F_i/F_o) + 0.08 (E_i/E_o)$
= 0.15 + 0.06 (1.00) + 0.67 (1.16) + 0.04 (1.11) + 0.08 (1.12)
= **1.12**

K19 April = $0.15 + 0.06 (L_i/L_o) + 0.67 (R_i/R_o) + 0.04 (F_i/F_o) + 0.08 (E_i/E_o)$
= 0.15 + 0.06 (1.00) + 0.67 (1.10) + 0.04 (1.04) + 0.08 (1.12)
= **1.08**

K19 Mar = $0.15 + 0.06 (L_i/L_o) + 0.67 (R_i/R_o) + 0.04 (F_i/F_o) + 0.08 (E_i/E_o)$
= 0.15 + 0.06 (1.00) + 0.67 (1.05) + 0.04 (1.01) + 0.08 (1.12)
= **1.04**

K19 Feb = $0.15 + 0.06 (L_i/L_o) + 0.67 (R_i/R_o) + 0.04 (F_i/F_o) + 0.08 (E_i/E_o)$
= 0.15 + 0.06 (1.00) + 0.67 (1.03) + 0.04 (0.98) + 0.08 (1.12)
= **1.03**

K19 Jan = $0.15 + 0.06 (L_i/L_o) + 0.67 (R_i/R_o) + 0.04 (F_i/F_o) + 0.08 (E_i/E_o)$
= 0.15 + 0.06 (1.00) + 0.67 (1.03) + 0.04 (1.00) + 0.08 (1.12)
= **1.03**

2. Compute the Percentage Rate of Increase for the work item for each month of the period under consideration in accordance with Section 5.3 as follows:

P_{June} = P_o (1.23 – 0.05)
= **P_o (1.18)**

P_{May} = P_o (1.12 – 0.05)
= **P_o (1.07)**
P_{April} = P_o (1.08 – 0.05)
= **P_o (1.03)**
P_{Mar} = **P_o**
P_{Feb} = **P_o**
P_{Jan} = **P_o**

This shows that the Escalated Value of the work item for the months of June, May, and April is 18%, 7%, and 3%, respectively, higher than the original value of the work item.

3. Compute the Escalated Value to be granted for the work item by applying the Percentage Rate of Increase for each month to the monthly billing, which should be supported by official receipts, sales invoices, and other acceptable documentary evidence, as follows:

Table 4: Computation for the Escalated Value

Month	Percentage Rate of Increase	Monthly Billing	Escalated Value
January	0	P1 Million	0
February	0	P1 Million	0
March	0	P1 Million	0
April	3	P1 Million	P30,000
May	7	P1 Million	P70,000
June	18	P1 Million	P180,000

Table 1: Sample Price Indices of Variables Relevant to Work Item K19

Period		Labor (L)	Reinforcing Steel (R)	Automotive Fuel (F)	Equipment (E)
Year	Month	Labor Cost	Indices	Indices	Indices
	Jun	379.0	736.5	636.6	328.7
	May	362.0	652.3	565.4	328.7
	Apr	362.0	616.7	529.8	328.7
	Mar	362.0	587.6	511.0	328.7
	Feb	362.0	578.6	500.3	328.7
2008	Jan	362.0	578.6	509.3	328.7
	Dec	362.0	561.9	508.0	293.6
	Nov	362.0	561.9	497.4	299.3
	Oct	362.0	560.4	477.6	303.7
	Sep	362.0	560.4	463.5	310.4
	Aug	362.0	549.3	459.4	310.1
	Jul	350.0	549.3	451.2	308.4
	Jun	350.0	549.3	449.8	310.5
	May	350.0	535.1	440.0	313.0
	Apr	350.0	535.1	429.1	316.8
	Mar	350.0	529.5	414.4	319.5
	Feb	350.0	526.7	408.5	319.0
2007	Jan	350.0	525.3	427.1	321.0
	Dec	350.0	524.5	425.2	328.7
	Nov	350.0	526.3	426.4	328.7
	Oct	350.0	522.4	435.2	328.7
	Sep	350.0	522.6	455.2	328.7
	Aug	350.0	522.6	475.9	328.7
	Jul	350.0	530.4	471.3	328.7
	Jun	350.0	520.4	465.1	328.7
	May	325.0	513.0	455.2	328.7
	Apr	325.0	513.0	434.4	328.7
	Mar	325.0	504.3	426.3	328.7
	Feb	325.0	502.1	423.5	328.7
2006	Jan	325.0	497.8	406.2	328.7
	Dec	350.0	509.5	405.1	328.7
	Nov	325.0	509.5	416.3	328.7
	Oct	325.0	511.8	409.9	328.7
	Sep	325.0	487.7	395.4	328.7
	Aug	325.0	487.7	381.5	328.7
2005	Jul	325.0	489.8	371.8	328.7

APPENDIX 16
GUIDELINES ON PROCUREMENTS INVOLVING FOREIGN-DENOMINATED BIDS, CONTRACT PRICES AND PAYMENT USING LETTERS OF CREDIT

1.0 POLICY STATEMENT

Pursuant to Section 61 of Republic Act No. 9184 and its counterpart provision in the Implementing Rules and Regulations (IRR)[113], for the given scope of work in procurement contracts as awarded, all bid prices shall be considered as fixed prices and, therefore, not subject to price escalation during contract implementation, except under extraordinary circumstances. Thus, to ensure that this policy is carried out, it is required, as a matter of general rule and procedure, that all contracts be denominated and paid in Philippine currency; except when the procuring entity agrees that obligations shall be settled in any other currency at the time of payment, subject to conditions provided for under these guidelines.

2.0 SCOPE AND APPLICATION

These guidelines shall apply to procurement of goods involving foreign denominated bids, contract prices in foreign and local currencies, and payments for such contracts when done through Letters of Credit (LCs).

3.0 PURPOSE

These guidelines are formulated: (1) to implement the policy on fixed-pricing under Section 61 of Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act," (2) to provide procedural details in the submission and evaluation of bids when the bidders are all-foreign or mixed local and foreign; and finally, (3) to address situations where, by the use of letters of credit as mode of payment to manufacturers, suppliers and/or distributors, there is a resulting increase/decrease of the actual amount of expenditure of the procuring entity resulting from the appreciation/depreciation of the peso from the day of bid opening through the time of the opening of LC until the time of its negotiation, including the accrual of expenses by reason of the opening of letters of credit.

4.0 PREPARATION OF BIDDING DOCUMENTS

4.1. The procuring entity shall include in the Bidding Documents, as a separate item in the Schedule of Requirements and in the Special Conditions of Contract, a provisional sum to cover the possible increase of the actual amount of expenditure of the procuring entity resulting from the appreciation/depreciation of the peso from the day of bid opening through the time of the opening of LC until the time of its negotiation, including the accrual of expenses by reason of the opening of letters of credit.

4.1.1. The provisional sum shall be a fixed nominal amount as may be determined by the procuring entity depending on the type of goods to be procured. However, the provisional sum shall not exceed ten percent (10%) of the Approved Budget for the Contract (ABC). The

[113] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

provisional sum shall be included in the Annual Procurement Plan. The same shall revert to the fund of the procuring entity as savings in case of non-use.

4.1.2. In the preparation of the Annual Procurement Plan, the procuring entity shall disaggregate, when applicable, the funds allocated for the project and the provisional sum. The sum total of both funds shall be the ABC.

4.2. The face value of the LC shall be determined in accordance with the following procedures which shall be stated in the bidding documents:

4.2.1. The amount of the foreign-denominated portion of the bid stated in the contract shall be converted to Philippine peso based on the foreign exchange rate at the date of the LC opening.

4.2.2. If at the date of LC opening, the said peso equivalent is lower than the peso amount stated in the contract, the face value of the LC shall be the full amount of the foreign-denominated portion of the bid stated in the contract.

4.2.3. If at the date of LC opening, the said peso equivalent is higher than the peso amount stated in the contract, the face value of the LC shall be the full amount of the foreign-denominated portion of the bid stated in the contract, in which case, the provisional sum shall be used to cover the difference.

4.2.4. If the effect of the foreign exchange fluctuation exceeds the provisional sum, the excess thereof shall be borne by the bidder; and the face value of the LC shall be the foreign equivalent of the peso contract price plus the provisional sum.

4.3. All charges for the opening of the LC and/or incidental expenses thereto (i.e., bank commission, documentary stamp tax, cable, etc.) shall be for the account of the supplier and shall be so stated in the bidding documents.

5.0 SUBMISSION AND EVALUATION OF BIDS

5.1. All bids may be denominated wholly in local currency or wholly in foreign currency or a combination thereof; provided, however, that foreign component of bids shall cover only imported goods as supported by import documents.

5.2. For purposes of bid evaluation and comparison, bids denominated, in whole or in part, in foreign currency shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening.

6.0 CONTRACT PRICES

6.1. As a general rule, Contracts shall be denominated and paid in Philippine currency, except when the procuring entity agrees that obligations shall be

settled in any other currency, subject to conditions provided for under these guidelines.

6.1.1. In case procurement is done through competitive bidding and offers are received in foreign currency, the foreign bid shall, in determining the contract price, be converted to Philippine Peso based on the prevailing rate on the date of bid opening.

6.1.2. In case procurement is made through any of the alternative methods prescribed in the IRR[114] of R.A. 9184 that do not require the conduct of competitive bidding, and offers are received in foreign currency, the Philippine Peso amount of the contract shall be computed based on the exchange rate prevailing on the day of the signing of the contract.

6.1.3. In case of repeat order under Section 51 of the IRR[115] of R.A. 9184, the contract price, either in Philippine Peso or in foreign currency, must be the same as or lower than that in the original contract; Provided, however, that the price is still the most advantageous to the Government, after price comparison and verification.

7.0 PAYMENTS USING LETTERS OF CREDIT (LCs)

7.1. For procurement projects fully utilizing domestic funds, where the goods will be supplied by a local or foreign supplier, the procuring entity, may open LCs or similar instruments in favor of such local or foreign supplier.

7.2. In cases where the procuring entity has to incur additional expenses resulting from the opening of LC where it assumes the risk of foreign currency fluctuation from time of LC opening with the issuing bank until it is eventually negotiated with the foreign negotiating bank in the place of the foreign supplier, said expenses shall be covered by the provisional sum.

8.0 EFFECTIVITY

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[116]

[114] *Ibid.*
[115] *Ibid.*
[116] Issued through GPPB Resolution 020-2005, dated 07 October 2005, and published in the Official Gazette on 09 January 2006.

APPENDIX 17
UNIFORM GUIDELINES FOR BLACKLISTING OF MANUFACTURERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS AND CONSULTANTS

1.0 SCOPE

These guidelines shall govern the blacklisting of manufacturers, suppliers, distributors, contractors and consultants ("contractors" for brevity) involved in government procurement for offenses or violations committed during competitive bidding and contract implementation, in accordance with Section 69.4 of the Implementing Rules and Regulations ("IRR")[117] of Republic Act No. 9184 ("R.A. 9184"), otherwise known as the "Government Procurement Reform Act."

These guidelines shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices, and instrumentalities of the Government, including government-owned and/or controlled corporations ("GOCCs"), government financial institutions ("GFIs"), state universities and colleges ("SUCs"), and local government units ("LGUs").

2.0 PROHIBITION ON BLACKLISTED PERSONS/ENTITIES TO PARTICIPATE IN THE BIDDING OF GOVERNMENT PROJECTS/CONTRACTS

A person/entity that is blacklisted by a procuring entity and/or included in the Government Procurement Policy Board ("GPPB") Consolidated Blacklisting Report shall not be allowed to participate in the bidding of all government projects during the period of disqualification unless it is delisted as provided for in these guidelines.

A joint venture or consortium which is blacklisted or which has blacklisted member/s and/or partner/s as well as a person/entity who is a member of a blacklisted joint venture or consortium are, likewise, not allowed to participate in any government procurement during the period of disqualification.

In the case of corporations, a single stockholder, together with his/her relatives up to the third civil degree of consanguinity or affinity, and their assignees, holding at least twenty percent (20%) of the shares therein, its chairman and president, shall be blacklisted after they have been determined to hold the same controlling interest in a previously blacklisted corporation or in two corporations which have been blacklisted; the corporations of which they are part shall also be blacklisted.

3.0 DEFINITION OF TERMS

3.1 ***Appellate Authority***. The department, office or government unit exercising general and/or administrative supervision/control over the blacklisting agency. Department level agencies shall exercise appellate authority over offices, agencies, bureaus, government units, GOCCs and SUCs under their jurisdiction. *Provided, further,* that blacklisting decisions of government agencies that are not subject to general and/or administrative supervision/control of any department, office or government unit shall be final and executory.

[117] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

3.2 ***Award***. A written notice from the procuring entity accepting a bid or proposal.

3.3 **Blacklisting.** An administrative penalty disqualifying a person or an entity from participating in any government procurement for a given period.

3.4 **Suspension.** The administrative penalty imposed for infractions committed by a contractor during the competitive bidding stage, whereby such contractor is prohibited from further participation in the bidding process of an agency.

3.5 ***Consolidated Blacklisting Report***. A report prepared by the GPPB containing the list of suppliers, manufacturers, distributors, contractors or consultants blacklisted by procuring entities.

3.6 ***Contract Implementation***. A process of undertaking a project or contract in accordance with the contract documents.

3.7 ***Termination of Contract.*** Extinction of contract by reason of resolution or rescission under Articles 1191, 1380, 1381 of the Civil Code, Section 68 of the IRR[118] of R.A. 9184 and other applicable laws arising from the default of the contractor.

3.8 ***Delist***. Removal of a person/entity from the Consolidated Blacklisting Report.

3.9 ***Blacklisted Person/Entity***. A person/entity who was disqualified by an agency and/or is included in the GPPB Consolidated Blacklisting Report.

4.0 SANCTIONS AND GROUNDS FOR BLACKLISTING

4.1 *Competitive Bidding Stage*

During the competitive bidding stage, pursuant to Section 69 of R.A. 9184, the procuring entity shall impose on bidders or prospective bidders the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution, as provided by applicable laws, for the following violations:

1. Submission of eligibility requirements containing false information or falsified documents.

2. Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.

[118] *Ibid.*

3. Allowing the use of one's name[119], or using the name of the name of another for purpose of public bidding.

4. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

5. Refusal or failure to post the required performance security within the prescribed time.

6. Refusal to clarify or validate in writing its Bid during post qualification within a period of seven (7) calendar days from receipt of the request for clarification.

7. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.

8. All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding or submitting late bids or patently insufficient bids[120], for at least three (3) times within a year, except for valid reasons.

In addition to the penalty of suspension, the bid security posted by the concerned bidder or prospective bidder shall also be forfeited.

4.2 *Contract Implementation Stage*

Pursuant to Section 69 (6) of R.A. 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the procuring entity shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

a) Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed ("NTP");

b) Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited *to* the following:

    i. Employment of competent technical personnel, competent engineers and/or work supervisors;

[119] *Ibid.*
[120] *Ibid.*

ii. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;

iii. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;

iv. Deployment of committed equipment, facilities, support staff and manpower; and

v. Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.

c) Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the procuring entity.

d) For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract;

e) For the procurement of consulting services, poor performance by the consultant of his services arising from his fault or negligence. Any of the following acts by the consultant shall be construed as poor performance:

i. Defective design resulting in substantial corrective works in design and/or construction;

ii. Failure to deliver critical outputs due to consultant's fault or negligence; and

iii. Specifying materials which are inappropriate, substandard, or way above acceptable standards.

iv. Allowing defective workmanship or works by the contractor being supervised by the consultant.

f) For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the constructor shall be construed as poor performance:

i. Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and

ii. Quality of materials and workmanship not complying with the

approved specifications arising from the contractor's fault or negligence.

g) Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited.

5.0 PROCEDURE FOR SUSPENSION AND BLACKLISTING DURING THE COMPETITIVE BIDDING STAGE

5.1 *Initiation of Action*

Any bidder/prospective bidder or duly authorized observer may initiate the suspension and blacklisting proceedings by filing a written complaint with the Bids and Awards Committee ("BAC"). The BAC may also motu *proprio* (by itself) commence the proceedings upon *prima facie* (self-sufficient) determination that the contractor as a bidder or prospective bidder has committed any of the grounds for blacklisting during the competitive bidding stage.

At the option of the procuring entities, a reasonable fee may be required for initiating the suspension and blacklisting proceedings.

5.2 *Notification*

Upon verification of the existence of grounds for blacklisting, the BAC shall immediately notify the contractor concerned in writing, advising him that:

a) a complaint for suspension and blacklisting has been filed against him, or he has been considered by the BAC for suspension and blacklisting, stating the grounds for such;

b) he has the opportunity to show cause why he should not be suspended and blacklisted;

c) a hearing shall be conducted before the BAC, upon his request, where he may present documentary evidence, verbal testimony and cross-examine the witnesses presented against him; and

d) the consequences of being suspended and blacklisted.

Within five (5) calendar days from receipt of notification, the contractor shall submit its written answer with documentary evidence to the BAC with a manifestation for request of hearing to determine questions of fact, if he so desires. No time extension shall be allowed.

Should the contractor fail to answer within the same period, the BAC shall issue a resolution recommending to the Head of the Procuring Entity the immediate suspension of the contractor from participating in any bidding process of the agency and the forfeiture of his bid security.

5.3 *Hearings*

If a hearing is requested, the BAC shall immediately set the date and time for hearing. The hearing shall be non-litigious and shall be terminated within five (5) days.

The BAC may also invite a representative from a duly recognized private group in a sector or discipline relevant to the procurement at hand as an observer for each hearing.

If no request is made, the BAC shall make a determination of the case based on the complaint, answer, documentary evidence submitted and facts verified. If the BAC is convinced that the contractor is at fault, it shall issue a resolution recommending to the head of the agency the suspension of the contractor from participating in any bidding process of the agency and the forfeiture of his bid security.

5.4 *Decision*

The Head of the Procuring Entity shall, within fifteen (15) days from receipt of the resolution and the records of the BAC proceedings, determine whether reasonable cause exists for the suspension of the contractor and the forfeiture of the latter's bid security. If the Head of the Procuring Entity determines that such reasonable cause exists, he shall issue a decision suspending the contractor from participating in any bidding process of the agency, and further declaring that his bid security is forfeited. Otherwise, he shall dismiss the case.

The decision shall clearly and distinctly state the facts, evidence and the law on which it is based, as well as the date of effectivity of the penalty, if any.

The Head of the Procuring Entity may delegate to the BAC the authority to impose the corresponding sanction(s) provided for in these guidelines.

In case a contractor commits more than one offense or a combination of offenses for the same project/contract in a particular agency, each violation shall be meted the corresponding penalty.

5.5 *Notice of Decision*

The Head of the Procuring Entity shall furnish the suspended contractor a copy of the decision immediately from its promulgation.

5.6 *Effect of Decision*

A contractor is suspended upon receipt of the notice of decision prohibiting him from participating in the bidding process of the agency. The suspension shall remain in effect during the period of motion for reconsideration and protest and shall terminate only upon a reversal of the decision by the Head of the Procuring Entity or appellate authority.

If no motion for reconsideration or protest is filed, the decision shall become final and executory after the lapse of seven (7) calendar days from the

receipt of the notice of decision. Thereafter, the Head of Procuring Entity shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects.

5.7 *Motion for Reconsideration*

A Motion for Reconsideration may be filed by the suspended person/entity within three (3) calendar days from receipt of the notice of decision and shall be for either or both of the following causes, provided that only one (1) Motion for Reconsideration shall be filed with the blacklisting agency:

a) The decision is not in conformity with the evidence and/or facts presented; and

b) Newly discovered evidence or facts which not be discovered and produced at the investigation and which when presented would probably alter the result of the investigation.

The Head of the Procuring Entity shall resolve with finality the motion for reconsideration within seven (7) calendar days from the filing thereof and furnish suspended contractor a copy of the resolution immediately from its promulgation.[121]

5.8 *Protest from Decision*

A protest may be filed under Section 55.3 of the IRR[122] of R.A. 9184 by the suspended contractor with the appellate authority within seven (7) calendar days from receipt of the resolution of the BAC denying its request for reconsideration.

5.9 *Finality of Decision*

The decision of the agency shall become final and executory after the lapse of seven (7) calendar days from the receipt of the notice of decision or resolution on the motion for reconsideration. If a protest is filed, the affirmed, modified or reversed decision shall become final and executory upon receipt thereof by the agency and person/entity concerned.

Upon finality of the decision suspending the contractor, the Head of Procuring Entity or appellate authority shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects.

6.0 PROCEDURE FOR BLACKLISTING DURING THE CONTRACT IMPLEMENTATION STAGE

Upon termination of contract due to default of the contractor, the Head of the Procuring Entity shall immediately issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects. The performance security of said contractor shall also be forfeited.

[121] *Ibid.*
[122] *Ibid.*

7.0 STATUS OF BLACKLISTED PERSON/ENTITY

Before the issuance of a Blacklisting Order, the erring contractor may participate in the procurement of any government project except in the agency where he is suspended. But if Blacklisting Order is issued prior to the date of the notice of award ("NOA"), the blacklisted person/entity shall not be qualified for award and such project/contract shall be awarded to another bidder pursuant to R.A. 9184 and its IRR [123].

If the Blacklisting Order is issued after award of a government project/contract to the blacklisted person/entity, the awarded project/contract shall not be prejudiced by the said order: *Provided, however,* that the said offense(s) committed by the blacklisted person/entity is/are not connected with the awarded project/contract.

8.0 DELISTING

8.1 A blacklisted person/entity shall be automatically delisted after the period for the penalty shall have elapsed, unless the blacklisting agency requests the GPPB to maintain the blacklisted person/entity in the GPPB Consolidated Blacklisting Report due to justifiable reasons. In the latter case, the blacklisted person/entity shall be delisted only upon the blacklisting agency's issuance of a Delisting Order.

9.0 METHODOLOGY FOR NOTIFICATION TO THE GPPB

9.1. Unless otherwise provided in these guidelines, the blacklisting agency concerned shall submit to the GPPB, within seven (7) calendar days after the issuance of the blacklisting order/delisting orders made by the agency, the following documents:

a) Blacklisting Order duly signed by the Head of the Procuring Entity/appellate authority containing, among others, Department/Office Order or Board Resolution number, name and address of the blacklisted person/entity, license number, if applicable, Authorized Managing Officer ("AMO"), name of project/contract and location/amount, specific ground(s)/offense(s) committed as provided in Section 4 hereof, sanction imposed and its date of start and completion, date of issuance of the order to blacklist, and other conditions which can extend duration of sanctions in Section 4 hereof.

b) Delisting Order duly signed by the blacklisting agency containing, among others, Department/Office Order or Board Resolution number, name and address of the blacklisted person/entity, name of project/contract and location, specific sanction being lifted and the number of previously issued blacklisting Department/Office Orders or Board Resolutions, effectivity date of delisting, and date of delisting approval.

9.2 The GPPB shall prepare the Consolidated Blacklisting Report every quarter, based on the submitted Blacklisting Orders as provided for in Section 9.1(a) hereof and disseminate the same to procuring entities and the Commission

[123] *Ibid.*

on Audit ("COA"). The report shall be further posted in the GPPB website and the Government Electronic Procurement System ("G-EPS") and shall indicate the number of times a person/entity has been blacklisted, the type of offense/violation committed, the penalty imposed, and the blacklisting agency concerned. The GPPB shall delist from such report those whose sanctions are lifted automatically after serving the given penalty as provided for in Section 8.1 hereof and those whose sanctions are lifted through the issuance of Delisting Orders.

9.3 In the case of procurement of infrastructure projects, should a blacklisting agency decide to refer the case of its blacklisted person/entity to the Philippine Contractors Accreditation Board ("PCAB") for license suspension/revocation, it shall submit to PCAB a copy of the decision accompanied with supporting documents.

9.4 All existing blacklisting reports of the Government or any of its procuring entities, as well as the list of constructors whose licenses are suspended or revoked by the PCAB as of the date of effectivity of the IRR[124], are hereby adopted and made part of the GPPB Consolidated Blacklisting Report upon the issuance of these guidelines.

10.0 AMENDMENTS

10.1 In the implementation of these guidelines, the GPPB may introduce modifications thereto through the amendment of its specific provisions as the need arises.

10.2 Any amendment to these guidelines shall be applicable to government projects advertised for bid after the effectivity of the said amendment

11.0 EFFECTIVITY

These Guidelines or any amendments thereof shall take effect immediately after publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[125]

[124] *Ibid.*

[125] Issued through GPPB Resolution 09-2004, dated 20 August 2004, and published in the Official Gazette on 30 November 2004.

APPENDIX 18
GUIDELINES FOR LEGAL ASSISTANCE AND INDEMNIFICATION OF BIDS AND AWARDS COMMITTEE (BAC) MEMBERS AND ITS SUPPORT STAFF

1.0 SCOPE

These guidelines shall govern the indemnification package for public officials providing services in and for the Bids and Awards Committee (BAC) pursuant to and in accordance with Section 73 of Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act" and its Implementing Rules and Regulations (IRR)[126].

These guidelines shall apply to all branches, agencies, departments, bureaus, offices and instrumentalities of the Government, including Government-Owned and/or Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), State Universities and Colleges (SUCs), and Local Government Units (LGUs).

2.0 PURPOSE

These guidelines are formulated to meet the following objectives:

2.1. To prescribe the rules and procedures in granting legal assistance and indemnification to the Bids and Awards Committee (BAC) members and BAC Support Staff.

2.2. To ensure that the mandate to insulate government procurement personnel from the unnecessary loss, damage or injury arising from the lawful exercise of their functions is implemented in accordance with the provisions of R.A. 9184.

2.3. To establish the legal parameters for the effective implementation of the legal assistance and indemnification provided for BAC members and BAC Support Staff.

3.0 DEFINITION OF TERMS

3.1. ***BAC.*** Refers to the Bids and Awards Committee as defined and established in accordance with Rule V of the Implementing Rules and Regulations (IRR)[127] of RA 9184.

3.2. ***BAC members.*** Refer to the regular and provisional members of the BAC determined accordance with Rule V of the IRR.[128]

3.3. ***Indemnification.*** Refers to the assistance or remuneration given to the members of the BAC and/or the BAC Support Staff for any loss, damage, or injury caused to them by reason of the lawful performance of their duty.

[126] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.
[127] *Ibid.*
[128] *Ibid.*

3.4. ***Private Legal Assistance.*** Refers to the services of a private lawyer or external counsel engaged by or in behalf of the members of the BAC and/or the BAC Support Staff resulting from the filing against him of any criminal or civil action or proceeding for acts made in connection with the lawful performance of his functions.

3.5. ***Liability insurance.*** Refers to the insurance policy purchased and maintained by the procuring entity in favor of a member of the BAC and/or the BAC Support Staff against any liability asserted against or incurred by the person in any such capacity or arising out of the person's status as such.

3.6. ***Medical Assistance.*** The remuneration given by the procuring entity for any injury or disability incurred by members of the BAC and/or the BAC Support Staff in the lawful performance of their official functions and duties. For this purpose, "injury" means any bodily impairment arising from and in the course of procurement-related activities.

3.7. ***BAC Support Staff.*** Refers to the members of the BAC Secretariat and the Technical Working Group duly designated by the procuring entity pursuant to the provisions of Rule V of the IRR[129] of RA 9184.

4.0 GENERAL CONDITIONS

4.1. *Free Legal Assistance*

1. The procuring entity shall, to the fullest extent permitted by these guidelines, indemnify a BAC member and/or any of the BAC Support Staff who was or is a party to a pending or completed action, suit or proceeding whether civil, criminal or administrative in nature brought against him in the performance of his official functions as BAC member or as BAC Support Staff.

2. The BAC member or BAC Support Staff concerned must have engaged the services of a private lawyer or external counsel.

3. The BAC member or BAC Support Staff must have not been adjudged as guilty of gross negligence, misconduct, or grave abuse of discretion.

4. The free legal assistance shall cover actual cost of suit and attorney's fees. The attorney representing the BAC member or BAC Support Staff shall be entitled to a maximum of Five Thousand Pesos (₱ 5,000.00) per appearance which shall be paid by the procuring entity.

5. The free legal assistance shall not cover:

    a) any action or suit initiated by a BAC member or BAC Support Staff in his personal capacity or in behalf of the procuring entity, unless such action, proceeding, or claim was authorized by the head of the procuring entity or the approving authority therein; or

[129] *Ibid.*

b) any action or suit initiated by the Government against the BAC member or BAC Support Staff.

6. The BAC member or BAC Support Staff shall be entitled to actual, moral, and exemplary damages when awarded by the court. Likewise, the attorney representing the BAC member or BAC Support Staff shall be entitled to attorney's fees awarded by the court.

4.2. ***Liability Insurance***

1. The procuring entity shall have the responsibility to procure and maintain adequate liability insurance for and in behalf of its BAC members or BAC Support Staff.

2. The liability insurance policy shall cover only those liabilities asserted against the public official and incurred by him in his capacity as such BAC members or BAC Support Staff as the case may be.

3. The insurer shall pay for the loss arising from the claim or suit made against the BAC members or BAC Support Staff during the policy period wherein they serve in such capacity.

4. For purposes of this issuance, the term "loss" shall include judgments, expenses for settlement or compromise, as well as all reasonable fees and other expenses incurred by such persons in connection with any administrative, civil, or criminal action, suit or proceeding to which they may be or have been made a party by reason of the lawful performance of their official functions and duties in such capacity.

5. Provided further, that, such BAC members or BAC Support Staff shall not be adjudged in such action or proceeding to be guilty of gross negligence, misconduct, or grave abuse of discretion or guilty of any other complaint or charges.

6. In the event of settlement or compromise, indemnification shall be confined only to matters covered by the settlement, and to which the procuring entity had been advised by counsel that the person to be indemnified have not committed gross negligence, misconduct, or grave abuse of discretion in the performance of their duties and functions.

7. The procurement of liability insurance shall be subject to the setting of schedule of premium by the GPPB.

4.3. ***Medical Assistance***

1. Medical assistance shall be provided to BAC members and BAC Support Staff for Injuries/disabilities incurred in the lawful performance of their official functions and duties.

2. The claimant(s) shall be entitled to indemnification for any injury or disability resulting from the performance of their official functions as defined by law and without any contributory negligence on their part.

Provided further, that they exercised due diligence to prevent harm or injury to themselves.

3. The claimant or his/her relatives must notify the head of the procuring entity within seven (7) calendar days from the occurrence of the injury or disability.

4. The medical assistance herein provided shall consist of indemnification for medicines, laboratory and hospitalization expenses, provided that the amount claimed shall not exceed the actual amount incurred, substantiated by receipts and other supporting documents.

5. Indemnification shall only be made upon presentation of the proof of payment in connection with the injury or disability suffered.

6. The medical assistance granted herein shall be granted to the claimant as a matter of right and subject to the conditions mandated by law.

5.0 PROCEDURE FOR GRANTING LEGAL ASSISTANCE AND INDEMNIFICATION OF BAC MEMBERS

5.1. The claimant(s) shall file their respective claim(s) for legal assistance, liability insurance, or medical assistance as the case may be, with the head of the procuring entity; and shall secure the approval of the latter on the terms and conditions of the engagement of counsel.

5.2. The head of the procuring entity shall be given at least fifteen (15) to thirty (30) calendar days to examine, review, verify and validate the authenticity of the documents presented by the claimant.

5.3. Upon finding that all the requirements have been duly complied with and that all the necessary documents submitted are genuine, it shall then order the processing of the claims and the subsequent release of funds for the approved claims.

5.4. Any expenses incurred in advance by the claimant arising from the performance of his official functions in such capacity shall be subject to reimbursement upon submission of the necessary documents and approval thereof by the head of the procuring entity.

5.5. If the BAC member or its support staff is found to be not guilty for gross negligence, misconduct, or grave abuse of discretion, he shall liquidate his cash advances by presenting receipts of payment and other necessary documents mentioned in Item 5.2. On the other hand, if the BAC member or its support staff is found to be guilty for gross negligence, misconduct, or grave abuse of discretion, he shall pay the cash advances made through salary deductions or reimbursement.

6.0 FUNDING SOURCE

The funds to be used for the grant of the free legal assistance, liability insurance or medical assistance shall be taken from the agency's annual appropriation.

Protest fees, proceeds from the sale of bidding documents, and any other additional funds derived from other income-generating activities of the agency may be used to augment the funding source provided in this section.

7.0 AMENDMENTS

In the implementation of these guidelines, the GPPB may introduce modifications thereto through the amendment of its specific provisions as the need arises.

8.0 EFFECTIVITY

These guidelines or any amendments thereof shall take effect within fifteen (15) days after publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[130]

[130] Issued through GPPB Resolution 021-2005, dated 07 October 2005, and published in the Official Gazette on 09 January 2006.

APPENDIX 19
REVISED GUIDELINES ON RECOGNITION OF UMBRELLA ORGANIZATION OF CONSULTANTS

1.0 POLICY STATEMENT

Under Annex "B" of the Implementing Rules and Regulations (IRR) of Republic Act 9184 (RA 9184), the Government Procurement Policy Board (GPPB) is directed to recognize an Umbrella Organization of Consultants composing of various organizations of consultants and individual consultants in the Philippines that may be engaged by the Government on matters relating to consulting services.

The policy direction, therefore, is to encourage and foster the development of an umbrella organization that covers a wider range of professions and disciplines. In furtherance of this policy, the GPPB shall recognize for each identified major sectors of the consulting industry a UOC to perform the duties and responsibilities herein provided.

2.0 PURPOSE

The Guidelines for Recognition of Umbrella Organization of Consultants (the "Guidelines") shall set forth the criteria in and procedure for determining the UOCs to be recognized and their corresponding duties and responsibilities.

3.0 GUIDING PRINCIPLES

3.1. The GPPB shall recognize the UOC that best represents consultants who belong to a major sector of the consulting industry listed under Annex "A" hereof, which shall be updated by the GPPB whenever necessary.

3.2. The criteria shall focus on the ability and capacity of a UOC to meet the following:

a) Cover a wider range of professions and disciplines which comprise a major sector identified under Annex "A" hereof;

b) Accredit its members on the types of services in the profession or discipline falling under its recognized sub-sector/s where the members are technically and financially qualified to offer their services;

c) Maintain an updated list of accredited member individual consultants and/or associations;

d) Self-police its members for the development of the consulting industry;

e) Develop a continuing capacity development program for its members;

f) Join the government in its advocacy against graft and corruption; and

g) Assist the Philippine consulting industry, in general, and the Filipino

consultants, in particular, to develop into world class consultants that can compete in the international market.

4.0 DUTIES AND RESPONSIBILITIES OF UMBRELLA ORGANIZATION OF CONSULTANTS

4.1. A recognized UOC shall have the following duties and responsibilities:

a) Registration and accreditation of member consultants based on types of services in the profession or discipline falling under its recognized sub-sector/s where the members are technically and financially qualified to offer their services;

b) Preparation and certification of a list of fields and expertise in such fields available and the names of the accredited local consultants which shall be updated semi-annually or as often as necessary, and disseminated to concerned procuring entities;

c) Implementation of a continuing capacity development program for its member consultants, including, but not limited to, trainings/seminars/workshops on government procurement;

d) Regulation/Policing of its members for the development of the consulting industry which will include the establishment of a grievance mechanism for its members;

e) Submission of the updated list of accredited member consultants to the GPPB monthly and posting of the list at the appropriate website identified by the GPPB;

f) Immediately notify the GPPB whenever there are changes within the organizational set-up of the UOC which includes, but not limited to, amendments to articles of incorporation and by-laws, replacement of UOC's liaison officer;

g) Technical assistance to the GPPB in matters relating to the consulting industry, including assistance in identifying blacklisted consultants;

h) Assignment of observers to requesting procuring entities for procurement activities related to its profession;

i) Take measures that will help ensure the maintenance of standards on the conduct of the activities they undertake, according to its duties and responsibilities as specified herein; and

j) Supervision of the performance and compliance of its members as regards their obligations to procuring entities.

5.0 EVALUATION CRITERIA AND DOCUMENTARY REQUIREMENTS

5.1. An umbrella organization requesting recognition shall be evaluated by the

GPPB using the following criteria:

5.1.1. The Organization and its Coverage (15%)

5.1.1.1. The organization must be established and created in accordance with the laws of the Philippines.

5.1.1.2. The organization must represent a major sector of the consulting industry identified in Annex "A" hereof.

5.1.1.3. The profile, vision, mission, and objectives of the organization must be consistent with its role, duties and responsibilities as a UOC.

5.1.1.4. The organization must be composed of individual consultants and/or associations, involved in various types of services related to the profession and/or discipline comprising a major sector of a consulting industry identified in Annex "A" hereof.

5.1.1.5. In satisfaction of this criterion, the organization shall submit the following documents to the GPPB:

a) Securities and Exchange Commission (SEC) registration certificate or other documents showing existence of juridical personality;

b) Articles of Incorporation, By-Laws, and any amendments thereto reflecting its primary and secondary purposes;

c) Any other document stating the office location and contact number, profile, vision, mission, and objectives of the organization;

d) List of registered members, whether individuals or associations, with their contact numbers and addresses, as well as the corresponding professions and/or disciplines they cover, and their respective track record; and

e) Commitment by said organization to cooperate with and actively participate in the development of one umbrella organization of consultants that will encompass all professions and disciplines that may be the subject of government consultancy contracts.

5.1.2. Accreditation Process (30%)

5.1.2.1. The organization must show its ability to properly screen the applicants for membership by prescribing a standard

accreditation system.

5.1.2.2. The accreditation system must conform to and promote the goals and objectives of this Guidelines.

5.1.2.3. The organization must demonstrate its capability to oversee the performance of its members, through adoption of mechanism for monitoring and evaluation of the members, and creation of an accreditation board/committee.

5.1.2.4. For this criterion, the organization shall submit the following documents:

a) The organization shall submit its accreditation guidelines and other relevant documents that describe in detail its registration and accreditation system for both individual consultants and associations; and

b) The organization shall also submit the composition of accreditation board/committee in charge of the evaluation of members.

5.1.3. Capacity Building Program (25%)

5.1.3.1. The organization shall see to it that its members are equipped with adequate skill and expertise relevant to the type of sector of consulting industry the organization belongs.

5.1.3.2. The organization must institute programs which aim to develop the skill or competence of its members, or for overall upgrading of the members' performance ability.

5.1.3.3. In satisfaction of this criterion, the organization shall submit the program/s to be adopted by the organization for capacity building of its member organizations and individual consultants.

5.1.4. Regulation/ Policing Process (25%)

5.1.4.1. The organization adopts a regulation/policing scheme which is geared towards monitoring the adherence to the set of rules promulgated by the organization for its members.

5.1.4.2. The organization shall act as the regulatory body of all its members, and as such, it should formulate mechanisms for dispute resolution in case of conflict among its members.

5.1.4.3. The organization must establish its capability to enforce compliance of its rules upon its members.

5.1.4.4. In satisfaction of this criterion, the organization shall

submit the following documents to the GPPB:

a) The guidelines reflecting the procedure on regulation/policing by the organization of its members, including sanctions for erring members; and

b) Proposed mechanism for dispute resolution of its members.

5.1.5. Liaison (5%)

5.1.5.1. The organization must maintain active liaison with the GPPB, the relevant government agency, and various Bids and Awards Committees (BACs), as may be required by the GPPB.

5.1.5.2. In satisfaction of this criterion, the organization shall submit the following documents to the GPPB:

a) The position and name of its officers or employees who are in charge of liaising with the GPPB and other government agencies; and

b) The addresses and contact details of the above-mentioned officers and employees.

5.2. The organization must obtain a minimum evaluation rating of at least seventy-five percent (75%) to be recognized as a UOC.

6.0 APPLICATION FOR RECOGNITION

Recognition of a UOC shall be done by the GPPB under the following procedure:

6.1. The applicant-organization shall accomplish the application form prescribed by the Government Procurement Policy Board – Technical Support Office (GPPB-TSO) and submit the same to the latter including the original or certified true copies of the documents required under Section 5.

6.2. The applicant-organization shall cause the publication of its duly accomplished application form, stamped "received" by the GPPB-TSO, at least once in a newspaper of general nationwide circulation and post the same in PhilGEPS website for a period of fifteen (15) calendar days.

6.3. Questions and/or oppositions on the recognition of the applicant-organization shall be submitted to the GPPB-TSO not later than fifteen (15) calendar days from the date of publication or last day of posting, whichever is later, as mentioned in the immediately preceding paragraph.

6.4. The documents submitted by the applicant-organization and the oppositions thereto, if any, shall be evaluated by the GPPB in order to determine the capacity of the applicant-organization to perform the duties and

responsibilities of a UOC based on the given criteria for evaluation.

6.5. If the GPPB finds the organization qualified to be a UOC, it will declare such organization as the recognized UOC for the major sector listed in Annex "A" hereof, and will issue a Certificate of Recognition.

6.6. Whenever the GPPB finds that the application of the applicant-organization is insufficient to warrant recognition, the GPPB shall re-evaluate the application upon compliance by the applicant-organization of its order to revise the application and/or to submit additional documents.

7.0 PERIOD OF RECOGNITION

7.1. The recognition of UOC shall be valid for two (2) years after the issuance of the Certificate of Recognition, unless sooner revoked for a cause.

7.2. The GPPB shall conduct an annual review of the over-all performance of the UOC. It may also conduct random inspection of the activities of the UOC, as it deems necessary.

7.3. No challenge of the UOC's recognition shall be entertained for the duration of its validity.

7.4. After due process, the GPPB may, *motu proprio* or upon a valid complaint filed by any interested party, suspend or revoke the recognition of a UOC for failure to perform its duties and responsibilities as prescribed herein.

7.5. Any other sanctions the GPPB may deem to impose in the future shall be, at all instances, proportionate to the offense committed by the UOC.

8.0 REPEALING CLAUSE

The GPPB Guidelines for Recognition of Umbrella Organization of Consultants approved and adopted through GPPB Resolution 14-2004 is hereby repealed.

9.0 EFFECTIVITY CLAUSE

This shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies.[131]

[131] Issued through GPPB Resolution 02-2011, dated 28 January 2011 and published in The Daily Tribune on 21 March 2011.

ANNEX A
List of Major Sectors of the Philippine Consulting Industry

1. Agriculture pertains, but is not limited, to the following sectors/services:

a) Agricultural development
b) Agricultural production, agro processing and agro business
c) Agricultural sector development
d) Fishery and livestock

2. Disaster pertains, but is not limited, to the following sectors/services:

a) Disaster Management
b) Risk Reduction
c) Geophysical Hazards

3. Education pertains, but is not limited, to the following sectors/services:

a) Basic education
b) Education sector development
c) Non-formal education
d) Senior Secondary General Education
e) Technical education, vocational training, and skills development
f) Tertiary education

4. Energy pertains, but is not limited, to the following sectors/services:

a) Conventional energy (Fossil Fuels) exploration, development, production, utilization and distribution such as: Coal, Gas and Oil.
b) Non-Conventional Energy (Renewable Energy) exploration, development, production, utilization and distribution such as: Wind, Solar, Hydro, Geothermal, Ocean, Biomass and Alternative Fuels.
c) Electricity Power development, production, transmission and distribution
d) Energy Efficiency, Conservation and development.

5. Environment pertains, but is not limited, to the following sectors/services:

a) Environment and biodiversity
b) Forestry
c) Geosciences
d) Land management
e) Mining and mineral resources
f) Waste management
g) Water resources management
h) Water supply and sanitation

6. Finance pertains, but is not limited, to the following sectors/services:

a) Banking system
b) Business and other services
c) Capital markets and funds

d) Finance sector development and reforms
e) Housing finance
f) Micro finance
g) Pension, insurance, social security and savings
h) Public finance and expense management

7. Health and Social Welfare pertains, but is not limited, to the following sectors/services:

a) Early childhood development
b) Health and social services attached to wider programs
c) Health program
d) Nutrition
e) Social protection

8. Information and Communications Technology pertains, but is not limited, to the following sectors/services:

a) Hardware which includes: Processing and Storage, Communications, and Data Center Management
b) Software which includes: Applications, Databases, Information Security, Network, and Web Development/E-Commerce
c) ICT Management which includes: Strategic Planning, Project Management, Resource/Capacity Planning and Management, Systems Audit, Virtualization/Cloud Computing, Business Process, Change Management, Risk Management/Business Continuity, and Systems Administration

9. Infrastructure pertains, but is not limited, to the following sectors/services:

a) Architecture
b) Construction supervision
c) Engineering
d) Irrigation and drainage
e) Transportation systems and facilities
f) Value engineering
g) Vertical structures

10. Labor and Employment pertains, but is not limited, to the following sectors/services:

a) Manpower Development
b) Working Conditions
c) Occupational Safety and Hazards
d) Wage Classification

11. Law pertains, but is not limited, to the following sectors/services:

a) Contract review and drafting
b) Disputes settlement
c) Legal management
d) Legal representation

e) Legislative liaison

12. Management pertains, but is not limited, to the following sectors/services:

a) Economic management
b) Government and civil society
c) National government administration
d) Sub-national government administration
e) Support to NGOs

13. Sociology pertains, but is not limited, to the following sectors/services:

a) Community Development
b) Community Resettlement

14. Other Sectors as may be recognized by the GPPB such as, but not limited to, the following sectors/services:

a) Civil aviation
b) Military
c) Multimodal transport and sector development
d) Tourism
e) Transport and storage

APPENDIX 20
GUIDELINES ON THE PROCUREMENT OF PRINTING SERVICES

1.0 POLICY STATEMENT

1.1. Pursuant to the relevant provisions of the General Appropriations Act[132], procuring entities have the option to engage the services of private printers for their printing and publication expenditures, subject to public bidding in accordance with RA 9184 and pertinent accounting and auditing rules and regulations.

1.2. However, printing of Accountable Forms and Sensitive High Quality/Volume Requirements shall only be undertaken by the recognized government printers, namely: Bangko Sentral ng Pilipinas, National Printing Office, and APO Production Unit, Inc.

2.0 SCOPE AND APPLICATION

2.1. These guidelines shall govern the procurement of printing services for accountable forms by the national government, its branches, constitutional offices, departments, bureaus, offices, agencies, and instrumentalities, including state universities and colleges, government owned/controlled corporations, government financial institutions, and local government units.

2.2. It shall not apply to official ballots and election paraphernalia, including statement of votes, certificates of canvass, and paper seals, which is covered by Section 184 of *Batas Pambansa Blg*. 881, otherwise known as the Omnibus Election Code of the Philippines and Section 13 of RA 9369.

3.0 DEFINITION OF TERMS

For the purpose of these guidelines, the following terms shall have the corresponding meanings:

a. **Accountable Forms.** Refer to forms that are individually identified, accounted for, and afforded appropriate security. The list of accountable forms shall be provided in Annex A hereof.

b. **Recognized Government Printers (RGPs).** Refer to the printers acknowledged by the government to undertake the printing of accountable forms for other government agencies as provided for under Section 29 of RA 9970, namely, *Bangko Sentral ng Pilipinas*, National Printing Office, and APO Production Unit, Inc.

c. **Sensitive High Quality/Volume Requirements.** Refer to printing requirements that are sensitive and of high quality or high volume determined as such by the procuring entity.

[132] As amended by GPPB Resolution 04-2011, dated 25 February 2011, published in the Manila Times on 13 June 2011.

4.0 PROCEDURE

4.1. The procuring entity shall determine whether a printing expenditure is for an Accountable Form or for a Sensitive High Quality/Volume document.

4.2. The procuring entity shall prepare the technical specifications for the Accountable Forms or Sensitive High Quality/Volume printing requirement, which shall include, among others, the prescribed security features, output quantity, and target completion time.

4.3. It shall then conduct a market analysis to determine the Approved Budget for the Contract (ABC) taking into consideration the prevailing standard cost for its printing requirements.

4.3.1. The procuring entity may seek the assistance of the PCOO in determining whether no RGP is capable of undertaking the printing service.

4.3.2. Upon determination by the PCOO that no RGP can undertake the printing service due to time constraints and equipment limitations, the procuring entity may engage the services of private printers.

4.4. Thereafter, the procuring entity shall send a Request for Quotation (RFQ) to the RGPs. The quotations received will be evaluated by the procuring entity to determine which among the RGPs is most capable in performing the printing service in the most advantageous terms for the procuring entity.

4.4.1. In case the offer submitted by an RGP exceeds the ABC set by the procuring entity, it may request the Presidential Communications Operations Office (PCOO) to determine (i) whether the offer of the RGP is excessive; and (ii) set the appropriate rate for such transaction.

4.5. The procuring entity shall then engage the services of the appropriate RGP through an Agency-to-Agency Agreement pursuant to Section 53.5 of the IRR of RA 9184.

4.6. The appropriate RGP engaged by the procuring entity shall directly undertake the printing services for the contracts entered into, and cannot engage, subcontract, or assign any private printer to undertake the performance of the printing service.

5.0 EFFECTIVITY

5.1. These guidelines shall take effect immediately upon publication in the Official Gazette or in a newspaper of general circulation.[133]

[133] Issued through GPPB Resolution 05-2010, dated 29 October 2010, and published in the Philippine Star on 08 January 2011.

ANNEX A

A. Accountable forms identified by the recognized government printers.

1. Official Receipt with RP Seal (water mark)
2. Carbonless Official Receipt
3. Official Receipt with RP Seal
4. Certificate of Record of Transfer of Large Cattle
5. Certificate of Ownership of Large Cattle
6. Marriage License
7. Birth Certificate
8. Death Certificate
9. Cash Ticket P0.25
10. Cash Ticket P0.50
11. Cash Ticket P1.00
12. Cash Ticket P5.00
13. Cash Ticket P10.00
14. Real Property Tax Receipt
15. Slaughter Permit and Fee Receipts
16. City / Municipal Burial Permit and Fee Receipt
17. General Journal
18. Cash Receipts Journal
19. Cash Journal
20. Check Disbursements Journal
21. Cash Disbursements Journal
22. General Ledger
23. Subsidiary Ledger
24. Property, Plant and Equipment Ledger Card
25. Property, Plant and Equipment Ledger Card – Specific Item
26. Supplies Ledger Card
27. Construction in Progress Ledger Card
28. Investments Ledger Card
29. Registry of Appropriations and Allotments
30. Registry of Allotments and Obligations Capital Outlay (RAOCO)
31. Registry of Allotments and Obligations Maintenance and Other Operating Expenses (RAOMO)
32. Registry of Allotments and Obligations Personal Services (PS)
33. Registry of Allotments and Obligations Financial Expenses (RAOFE)
34. Registry of Allotments and Notice of Cash Allocation
35. Registry of Public Infrastructures – Specific Project
36. Registry of Public Infrastructures – Summary
37. Registry of Reforestration Projects
38. Registry of Dormant Accounts
39. Registry of Accounts Written-Off
40. Registry of Loan Availments and Repayments - Foreign Individual
41. Registry of Loan Availments and Repayments - Foreign Summary
42. Registry of Loan Availments and Repayments - Domestic Individual
43. Registry of Loan Availments and Repayments - Domestic Summary
44. Registry of Grant Availments and Utilization - Foreign Individual Donor
45. Registry of Grant Availments and Utilization - Foreign Summary
46. Registry of Grants Availments and Utilization - Domestic Individual Donor
47. Registry of Grants Availments and Utilization - Domestic Summary

48. Registry of Guaranteed Loans – Domestic
49. Registry of Guaranteed Loans – Foreign
50. Cash Receipts Record
51. Check Disbursements Record
52. Cash Disbursement Record
53. Stock Card
54. Property Card
55. Drug/s Prescriptions
56. Journal Entry Voucher
57. Allotment and Obligation Slip
58. Order of Payment
59. Disbursement Voucher
60. Petty Cash Voucher
61. General Payroll
62. Itinerary of Travel
63. Payroll Payment Slip
64. Index of Payments
65. Supplies Availability Inquiry
66. Requisition and Issue Slip
67. Purchase Request
68. Purchase Order
69. Acknowledgment Receipt for Equipment
70. Report of Collections and Deposits
71. Reports of Checks Issued
72. Report of Disbursements
73. Petty Cash Replenishment Report
74. Liquidation Report
75. Report of Supplies and Materials issued
76. Waste Materials Report
77. Inventory and Inspection
78. Report of Unserviceable Property
79. Report on the Physical Count of Property, Plant and Equipment
80. Inspection and Acceptance Report
81. Report of Accountability for Accountable Forms
82. Work, Other Animals and Breeding Stocks Ledger Card
83. Supplies Availability Inquiry
84. Abstract of Real Property Tax Collections
85. Community Tax Receipts / Certificates
86. Memorandum Receipt for Equipment, Semi-Expandable and Non-Expandable Property
87. Livestock Ledger Card (New Form)
88. Daily Statement of Collection and Accountable Form
89. Bill of Lading
90. Invoice and Receipt for Transfer
91. Abstract of Receipt and Account Current
92. Power of Attorney
93. Bond of Indemnity. For Issue of Due Warrant
94. Quarterly Report of Cash Balance of Disbursing officer
95. Reimbursement Receipt
96. Abstract of Sub-Vouchers
97. Invoice and Receipt of Accountable Forms
98. Supplies adjustment Sheet – Wide

99. Supplies Adjustment Sheet – Narrow
100. Supplies Adjustment Sheet – Small
101. Official Cash Book – Large
102. Official Cash Book – Small
103. Official Cash Book – Pocket Size
104. Request for Bonding Officials and Employees
105. Monthly Statement of Monthly Subsidiary Ledger Balance
106. L/L Bdr. / Sec. P&K A.F. 79
107. Inventory Tag Card
108. Certificate of Discharge from Prison
109. Account Current of Accountable Forms
110. Cover for Provincial Form No. 140/RPA Forms
111. Bolts for Real Property Forms
112. Summary of Collections
113. Abstract of Deposits and Trust Funds
114. Time Card for Bundy Clock
115. Treasurer's Journal of Coll'n./Dep.
116. Treasurer's Journal of Cash Disbursement
117. Treasurer's Journal of Cash Issued
118. Treasurer's Journal of Bills Rendered
119. Declaration of Real Properties-White, Front and Back
120. Declaration of Real Properties-Copies, Front and Back (1-Blue)
121. Declaration of Real Properties-Copies, Front and Back (1-Canary)
122. Declaration of Real Properties-One Side
123. Real Property Field Appraisal & Assessment Sheet, Land, Plants, & Trees
124. Real Property Field Appraisal & Assessment Sheet, Building
125. Real Property Field Appraisal & Assessment Sheet, Machinery
126. Assessment Roll
127. Journal of assessment Transaction
128. Ownership Record Form
129. Property Record Card
130. Municipal Treasurer's Account Book
131. Register of Marriage
132. Register of Birth
133. Register of Death
134. Director's Minute Book
135. Personal Appearance
136. Affidavit of Official Priest or Minister
137. Sworn Statement Advice Parent Ask
138. Comparative Statement of Market/Slaughter
139. Application of Marriage License
140. ID Certificate of Marriage License
141. Consent of Marriage
142. Notice of Re-applicants
143. Marriage Contract
144. Register of Application Marriage License
145. Certificate of Birth
146. Certificate of Death
147. Certificate of Fetal Death
148. Municipal Treasurer's Journal of Collection and Deposit
149. Certificate of Foundling
150. Register of Foundling

151. Register of Court Decree/Order
152. Register of Legal Instrument
153. Application for Vacation Leave of Absence
154. Oath of Office
155. Appointment (Rev. 1993)
156. Medical Certificate
157. Daily Time Record
158. Acceptance of Resignation
159. Service Record
160. Medical Certificate for Employment
161. Personal Data Sheet
162. Employees Leave Card
163. Court Civil Docket
164. Court Criminal Docket
165. Statement of Daily Market Purchase
166. In-Patient Record
167. Doctor's Prescription
168. Outside Patient Record form
169. Record Admission
170. Record of Person Subsisted
171. Monthly Subsistence Report
172. Pharmacist's Record of Issues
173. Pharmacist's Monthly Report of Drug Medicine Issued
174. Record of Services Outside Patients
175. Record of Hospital Collections
176. Temperature Record
177. Treatment Record
178. Patient's Ledger Card
179. Laboratory Request
180. Clinical Laboratory Record
181. Extension Post
182. Surgical Memorandum
183. Clinical Case Record
184. History Record
185. Requisition of Equipment & Supplies
186. Report of Medical Examination
187. Record of Accountable Forms
188. Local Government Code
189. Auditing Requirement Typical Disbursement
190. Paper cover
191. Checks (Personal, MDS Commercial, Commercial & Continuous Form Checks, Manager's)
192. Stickers
193. Ordinance Violation Receipts
194. Special Bank Receipts
195. Bill Assessment Form
196. Gatepass
197. Declaration of Admission
198. Tickets (Parking, Terminal Fee, Admission, RORO)
199. Admission Tickets
200. Radio Station License
201. Ship Station License

202. Television Receive License
203. Dealer's Permit
204. Aircraft Station License
205. Withdrawal Certificate for Manufactured Petroleum Products
206. Passport Slip
207. Authentication Slip
208. Form No. 89
209. Port User's Pass
210. Water Bill Receipts
211. Blank Security Paper
212. Qualification Doc. Certificate
213. Form No. 162-Certificate of Payment
214. Form No. 36-Boat Note
215. Import Entry Declaration Form
216. Form 232-Authority to Change Bond Slip
217. Form 218-Certificate of Identification
218. Form 86-Inspector Certificate of Lading
219. Form 219- Cert. of Inspection & Loading
220. Form 237- Entry Rider
221. Form 116-Statement of Receipt of Duties Collections on Informal Entry
222. Short Term Promissory Note
223. Certificate of Competency-Seafarers
224. Vehicle Pass
225. Boat Note
226. Authority to Withdraw
227. Computation Sheet
228. Authority to Issue
229. Empty Sack Receipt
230. Empty Sack Issue
231. Gas & Oil Issuance Slip
232. Guidance & Counseling Certificate
233. Electronic Letter of Authority
234. Tax Payer's Information sheet
235. Provisional Receipts
236. Provisional receipts
237. Special Allotment Release Order
238. Notice of Cash allocation
239. Service Stamps
240. Authentication Certificate
241. Postal ID's
242. Diplomas
243. Transcript of Records
244. Registration Forms
245. Departure and Arrival Card
246. Terminal Fees Tickets
247. Permit to Carry Firearms
248. Motor Vehicle Registration Certificate
249. Parking Tickets
250. Market Tickets
251. All Official Receipts of Provincial and Treasurer's Offices of Local Government Units
252. Dangerous Drugs prescription Form

253. All accountable forms of government hospitals
254. Seaman's Book
255. Passport
256. Documentary Stamps

B. Accountable forms identified as such by procuring entities, such as the following:

1. LTO and LTFRB accountable forms
2. POEA accountable forms
3. MMDA accountable forms
4. OWWA accountable forms
5. TESDA accountable forms
6. National Statistics Office accountable forms
7. Bureau of Customs accountable forms
8. SSS accountable forms
9. GSIS accountable forms
10. MARINA accountable forms
11. MMDA accountable forms
12. LRA accountable forms
13. DFA accountable forms
14. PAG-IBIG accountable forms
15. DBP accountable forms
16. PPA accountable forms
17. PRC accountable forms
18. PHILPOST accountable form
19. NFA accountable forms
20. DTI accountable forms
21. MIAA accountable forms
22. SBMA accountable forms
23. BFAD accountable forms
24. PEZA Forms 8104; 8105; 8106; 8110; 8112
25. PCSO Lotto Cards
26. NBI Clearance Forms (Local and Travel)
27. DepEd forms (Form 138; Form 137; Test Materials)
28. MMDA Motor Vehicle Violations Receipts

APPENDIX 21
GUIDELINES ON PROCUREMENT OF WATER, ELECTRICITY, TELECOMMUNICATIONS AND INTERNET SERVICE PROVIDERS

1.0 SCOPE AND APPLICATION

These guidelines shall govern the procurement of water, electricity, telecommunications (landline and cellular phone), and internet service providers by government agencies as end users.

Section 5 (h) of Republic Act No. (R.A.) 9184 defines goods as referring to all items, supplies, materials, and general support services which may be needed in the transaction of public business or in the pursuit of any government undertaking. Such definition necessarily includes the procurement of internet service providers and public utility services, such as water, electricity, and telecommunication services.

2.0 PURPOSE

These guidelines are formulated to meet the following objectives:

2.1 Prescribe the appropriate method under R.A. 9184 that applies to the procurement of water, electricity, telecommunications, and internet service providers; and

2.2 Provide additional guidelines to ensure that contractual arrangements with service providers continue to be favorable to the interest of the government applying cost-benefit analysis and, thus, remain consistent with the principles of R.A. 9184.

3.0 PROCEDURES AND GUIDELINES

3.1 *Water and Electricity Services*

Considering that water and electricity service providers are granted exclusive franchises to operate within a specific territory, procurement of water and electricity services shall be done through direct contracting under Section 50 (c) of the Implementing Rules and Regulations (IRR)[134] of R.A. 9184. This provision does not apply to the purchase of bottled water or to the procurement by any agency of the government, whether national or local, in its operation as water or electric concessionaire (e.g. repair of pumping stations).

3.2 *Telecommunications (Landline and Cellular Phones)*

3.2.1 *Existing Lines*

Telephone and cellular lines are critical in the day-to-day pursuit of public business. Their continuity ensures proper coordination within the organization and the efficient delivery of public service. Further,

[134] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

telephone and cellular numbers are usually identified with certain government agencies or a range of public services that the government may offer (e.g., 117). As such:

3.2.1.1 Contractual agreements previously entered into with telecommunication companies shall be respected.

3.2.1.2 At the end of each year, however, the procuring entity must assess the quality of service provided by its telecommunication service provider. For instance, it must compare the cost charged by its existing telephone or cellular phone service provider and the range of services it offers as against other service providers in the area.

3.2.1.3 If results of said assessment or cost-benefit analysis continue to favor the existing service provider, then the procuring entity may simply renew its services. If it does not, then the procuring entity should bid said services in accordance with Subsection 3.2.2 of these guidelines.

3.2.1.4 Repeat order under Section 51 of R.A. 9184 may be resorted to by the procuring entity if additional lines are needed during the year. For this purpose, the requirement under Section 51 (c) of the IRR that the repeat order may only be availed of within six (6) months from the effectivity period stated in the Notice to Proceed arising from the original contract may be dispensed with.[135]

3.2.2 *New Lines*

If the procuring entity does not have an existing telephone service contractor or, after conduct of a cost-benefit analysis as required in the preceding subsection, is not satisfied with the performance of its previous service contractor, the following procurement methods are prescribed:

3.2.2.1 If there is more than one service contractor operating within the area, competitive public bidding;

3.2.2.2 If there is only one service contractor operating within the area, direct contracting.

3.3 *Internet Service Providers (ISP)*

3.3.1 *Existing ISPs*

ISPs provide the initial infrastructure requirements (e.g., cabling) necessary in the provision of internet access. Changing ISPs every year may therefore prove to be more costly to government as every new ISP would have to charge the procuring entity for this initial

[135] *Ibid.*

investment. Further, changing ISPs entails interruption of internet access and, thus, any public service dependent on such access. Thus:

3.3.1.1 Contractual agreements previously entered into with ISPs shall be respected.

3.3.1.2 At the end of each year, however, the procuring entity must assess the quality of service provided by its ISP. For instance, it must compare the cost charged by said ISP and the range of services it offers as against other service providers in the area. It may also consider new technologies that may prove less costly.

In assessing the quality of service provided by its ISP, procuring entities are encouraged to consult the National Telecommunications Commission, or Commission on Information and Communication Technology, or other relevant government agencies regarding any new policy or directive in the implementation or use of new technology.

3.3.1.3 If the results of said assessment or cost-benefit analysis continue to favor the existing ISP, then the procuring entity may simply renew its services. If it does not, then the procuring entity should bid said services in accordance with subsection 3.3.2 of these guidelines.

3.3.2 *New ISPs*

If the procuring entity does not presently engage an ISP or, after conduct of a cost-benefit analysis as required in the preceding subsection, is not satisfied with the performance of its existing ISP, the following procurement methods are prescribed:

3.3.2.1 If there are more than one service contractor operating within the area, public bidding.

3.3.2.2 If there is only one service contractor operating within the area, direct contracting.

4.0 REPORTORIAL REQUIREMENT

Procurement of water, electricity, telecommunications, and internet service shall be stated in the Annual Procurement Plan of the procuring entity. It shall include the estimated budget for each service and the procurement method employed.

5.0 EFFECTIVITY

These guidelines shall take effect immediately.[136]

[136] Issued through GPPB Resolution 019-2006, dated 06 December 2006, and published in the Official Gazette on 09 April 2007.

APPENDIX 22
REVISED GUIDELINES ON INDEX-BASED PRICING FOR PROCUREMENT OF PETROLEUM, OIL, AND LUBRICANT PRODUCTS

1.0 SCOPE AND APPLICATION

These guidelines shall govern the use, under extraordinary circumstances, of an index-based pricing scheme for procurement of petroleum, oil, and lubricants (POL) in accordance with Section 61 of Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act" and its Implementing Rules and Regulations (IRR)[137] and the GPPB Guidelines for Contract Price Escalation.

These rules and procedures shall govern the procurement of POL by the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units when POL is a major operational requirement necessary for the prosecution of their principal mandate. Procurement of POL from retailers or dealers other than major suppliers as hereafter defined, or from those who are engaged in the business of selling the same to the general public for ultimate consumption and which are sold at pump prices shall not be subject to these guidelines.

2.0 PURPOSE

These guidelines are formulated to meet the following objectives:

2.1. To identify the conditions for the applicability of the index-based pricing scheme in the procurement of POL products by a procuring entity.

2.2. To prescribe the rules and procedures on the use of index-based pricing scheme for the procurement of POL.

3.0 DEFINITION OF TERMS

a. **Bid Price**- refers to the difference of the WPP of the prospective supplier less discounts given plus delivery cost, in case of procurement using the WPP index; and the sum of MOPS or ICIS-LOR assessments, the premium imposed and delivery cost, in case of procurement using the MOPS or ICIS-LOR index;

b. **Bulk Procurement –** refers to any procurement which, by the totality of its POL requirements and by their sheer volume, necessitates procurement from major suppliers for purpose of economies of scale.

c. **Total Contract Price -** refers to the aggregate of the amounts set by a procuring entity, as the ceiling, to meet the volume requirement for each type of POL product; the value of which shall not exceed the approved budget for the contract (ABC).

d. **Delivery Cost** - refers to cost of freight incurred by the Supplier from the source to the delivery point, i.e., refinery to delivery point for deliveries ex-refinery, or oil terminal/depot to delivery point for deliveries ex-depot

[137] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

e. **Discounts** - refers to the total deductions from the WPP.

f. **Expanded Value Added Tax (E-VAT) -** refers to a consumption tax on the sale or importation of goods and services in the ordinary course of business.

g. **Extraordinary Circumstance** - refers to an event or occurrence, or series of events or occurrences, before or during contract implementation, which give(s) rise to price movements in petroleum and its derivative products.

h. **Independent Commodity Information System – London Oil Report or ICIS-LOR-** refers to an information provider for the chemical and oil industry, and is part of the Reed Business Information Ltd., a private entity, based in London with office in Singapore

i. **Major Suppliers -** refer to POL wholesale suppliers and who, in the operation of their business, either maintains a refinery in the Philippines or directly imports POL products from production or trading venues.

j. **Mean of Platts Singapore or MOPS** - refers to the mean of the high and low components of a Platts assessment for oil cargoes loading from Singapore as officially released by Platts**,** a publishing/trading house based in Singapore which publishes daily information on oil price and shipping rates.

k. **Petroleum, Oil, and Lubricant or POL Products** - for purposes of these guidelines, shall refer to those enumerated in Section 5 hereof.

l. **Premium -** refers to all applicable and reasonable cost or expenses (i.e. ocean freight, marine insurance, bank charges, ocean loss, storage/handling/throughput fees, profit, margin, etc.) to arrive at a landed cost of petroleum, oil and lubricant in the Philippines.

m. **Wholesale Posted Price or WPP**- refers to the reference fuel prices individually set by local refiners and traders subject to periodic changes based on the movement in crude oil prices, foreign exchange, and all other costs as verified and confirmed by the Department of Energy (DOE).

4.0 CONDITIONS FOR APPLICABILITY OF THESE GUIDELINES

These guidelines shall be applicable in cases of bulk procurement of POL by the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units where POL procurement is a major requirement in their operations. For this purpose, procuring entities intending to use these guidelines for their POL procurement shall notify the Government Procurement Policy Board (GPPB) in writing.

POL requirements shall be considered major if the use of the same are necessary in the primary operation of the procuring entity and in the prosecution of its principal mandate. The duration of the contract to cover the POL requirement of the procuring entity shall not exceed one (1) year, without prejudice to the applicability of any guidelines that may govern multi-year contracts.

5.0 INDEX-BASED PRICING FOR PETROLEUM, OIL AND LUBRICANT PRODUCTS

5.1. The WPP index shall be used in the procurement of the following products:
   i. Premium, Unleaded or Regular Gasoline;
   ii. Automotive Diesel Oil
   iii. Jet A-1;
   iv. AVGAS

5.2. The MOPS index shall be used in the procurement of the following products:
   i. Industrial Fuel Oil;
   ii. Low Sulfur Fuel Oil; and
   iii. Industrial Diesel Oil.

5.3. In the procurement of all types of lubricant products, the procuring entity may adopt either a fixed or index-based pricing. If its assessment or cost-benefit analysis indicates that index-based pricing is more advantageous, then it shall adopt the ICIS-LOR index.

5.4. The foregoing list shall be subject to annual review, modification or re-classification by the GPPB, or as often as it deems necessary.

6.0 WPP, MOPS AND ICIS-LOR-BASED PRICING SCHEME

6.1. For the procurement of products using the WPP index, the Bid Price shall be determined based on the prospective supplier's WPP ten (10) days prior to the date of bid opening as verified with the Oil Industry Management Bureau of the Department of Energy, subject to the rules under Item 7 hereunder.

6.2. For the procurement of products using the MOPS index, the Bid Price shall be determined based on the average MOPS of the immediately preceding calendar month prior to the date of bid opening, subject to the rules under Item 7 hereunder.

6.3. For the procurement of lubricant products using the ICIS-LOR index, the Bid Price shall be determined based on the average ICIS-LOR assessments of the immediately preceding calendar month prior to the date of bid opening as officially released by ICIS-LOR, Singapore.

7.0 BID AND CONTRACT PRICES

7.1 Bid Prices for procurement using the WPP index shall be the individual WPP of the prospective supplier less the discounts given, if any, plus delivery cost. On the other hand, the Bid Price for procurement using the MOPS and ICIS-LOR indices in accordance with Sections 5.2 and 5.3 hereof shall be the MOPS or ICIS-LOR plus premium and delivery cost charged by the bidder.

7.2 Cost for E-VAT and other governmental costs which fall equally on all prospective suppliers are presumed to be included in the computation of the bid price.

8.0 BID EVALUATION AND COMPARISON OF BIDS

8.1 For purposes of bid evaluation and/or comparison of bids, regardless of the index used, the Lowest Calculated Bid shall be determined by identifying the bidder who offered the lowest Bid Price.

8.2 For purposes of payment, the discount or premium and the delivery cost stated in the contract shall be fixed from the time of the bidding through the term of the contract.

9.0 ACTUAL PRICES PAYABLE

9.1 The amount to be paid by the procuring entity for POL requirements actually delivered and duly received by it shall be: (i) the WPP less the discounts offered, if any, plus the delivery cost charged, at the date of actual delivery; or (ii) the MOPS or ICIS-LOR, plus the premium imposed and the delivery cost charged, referenced to the average of the MOPS or ICIS-LOR of the calendar month immediately preceding the date of actual delivery.

9.2 For staggered deliveries, the procuring entity shall make, after every delivery, an accounting of the amount actually payable based on the date of the delivery receipt to determine the allowable unit/volume that may still be ordered from the remaining amount allotted for each POL product. The procuring entity shall be allowed to make adjustments in the units/volume to be delivered per type of product to conform to the remaining amount in the total contract price.

9.3 For contracts stipulating consignment whereby a supplier makes a delivery of POL products to a procuring entity's holding area and payment is based on volume consumed, the actual price payable shall be determined based on the weighted average of the applicable index from the date the order is placed up until the cut-off date for payments agreed upon by the parties. The same rule shall apply for contracts where a major supplier delivers the POL products to the procuring entity through its authorized stations and/or distribution centers.

9.4 If during contract implementation, the total contract price for the project would have been consumed notwithstanding that the requirements were not fully delivered in the units/volume contemplated, no further order and payments shall be made. This provision shall form part of the bidding documents.

10.0 EFFECTIVITY

These Guidelines amend GPPB Resolution No. 09-2006, dated 10 April 2006, and shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies.[138]

[138] Issued through GPPB Resolution 011-2007, dated 31 May 2007, and published in the Official Gazette on 13 August 2007.

APPENDIX 23
GUIDELINES ON THE PROCUREMENT OF SECURITY AND JANITORIAL SERVICES

1.0 POLICY STATEMENT

Under Section 5 (h) of Republic Act No. 9184 (R.A. 9184), as reiterated in Section 5 (r) of its Implementing Rules and Regulations (IRR)[139], procurement of general support services, including non-personal or contractual services, such as security and janitorial services, falls under the definition of goods. Thus, in the procurement of security or janitorial services, the winning bid is determined by the lowest calculated and responsive bid.

It is recognized, however, that the proper and efficient procurement of security and janitorial services should be based not solely on cost, but should also take into consideration a range of other factors, such as, but not limited to, length of contract, standards of internal governance, adequacy of resources, levels of training, and adherence to labor and other social legislation.

2.0 SCOPE AND APPLICATION

These guidelines shall govern the procurement of security and janitorial services by government agencies.

These guidelines shall not apply to the procurement of other general support services, such as, repair and maintenance of equipment and furniture, trucking, hauling, and other services.

3.0 PURPOSE

These guidelines are formulated to meet the following objectives:

3.0. To prescribe an objective set of parameters in the evaluation of technical proposals for security and janitorial services;

3.1. To provide conditions on the use of multi-year contracts for security and janitorial services.

4.0 ADDITIONAL SET OF TECHNICAL PARAMETERS

4.1 Procuring entities are highly encouraged to evaluate the technical proposal of bidders using the additional set of parameters prescribed in Appendix A of these guidelines. However, considering that procuring entities have different needs and requirements, the minimum standard for each parameter shall be determined by the procuring entity.

Additional technical parameters and minimum standard for each parameter must be expressly stated under *Section VII. Technical Specifications* of the Philippine Bidding Documents for the Procurement of Goods (PBDs).

[139] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.

4.2 To determine compliance with these parameters, procuring entity may require additional documents or materials as part of the bidder's technical proposal. These additional documents or materials must be expressly stated in Section VII: Technical Specifications of the PBDs for the Procurement of Goods consistent with Section 25.2 (a) (vii) of the IRR of R.A. 9184. [140]

4.3 The procuring entity shall check compliance with the technical parameters using a non-discretionary "pass/fail" criteria

5.0 MULTI-YEAR CONTRACTS

Procuring entities may enter into multi-year contracts, but not to exceed three (3) years, in the procurement of security and janitorial services, subject to the following conditions:

5.1. The Invitation to Apply for Eligibility and to Bid must expressly state the following:

5.1.1. Duration of the contract to be bid, which should not exceed three (3) years;

5.1.2. The Approved Budget for the Contract (ABC) for the first year only.

5.2. All bid prices for a duration of three (3) years shall be fixed and shall not be adjusted during contract implementation, except for the following:

5.2.1. Increase in minimum daily wage pursuant to law or new wage order issued after date of bidding,

5.2.2. Increase in taxes; and

5.2.3. If during the term of the contract the procuring entity sees the need for an increase or decrease in the number of security guards or janitorial attendants, the resulting cost of said increase or decrease, provided that the ABC for the relevant year is not exceeded.

The procuring entity shall ensure that the foregoing allowable price adjustments are specified under Section 8.1 of the Special Conditions of Contract of the PBDs.

5.3. The Financial Proposal shall contain a breakdown of all costs, including cost of supplies and equipment, necessary for the execution of the contract.

5.4. Procuring entities shall expressly provide, under *Section Vll. Technical Specifications,* which shall form part of the contract under Section 13.1 of the General Conditions of the Contract of the PBDs, that the service provider/contractor shall maintain a satisfactory level of performance throughout the term of the contract based on a prescribed set of performance criteria.

[140] *Ibid.* (As amended by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184.)

The performance criteria to be applied shall include, among others, the following: (i) quality of service delivered; (ii) time management; (iii) management and suitability of personnel; (iv) contract administration and management; and (v) provision of regular progress reports.

5.5. Before end of each year, procuring entities shall conduct an assessment or evaluation of the performance of the service provider/contractor based on the set of performance criteria prescribed under *Section VII. Technical Specifications.*

5.6. Based on its assessment, the procuring entity may pre-terminate the contract for failure by the service provider/contractor to perform its obligations thereon following the procedure prescribed under the Guidelines on Termination of Contracts issued by the Government Procurement Policy Board under Resolution No.018-2004 dated 22 December 2004.

6.0 EFFECTIVITY

These Guidelines shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.[141]

[141] Issued through GPPB Resolution 024-2007, dated 28 September 2007, and published in the Manila Times on 26 October 2007.

APPENDIX A
ADDITIONAL SET OF TECHNICAL PARAMETERS

A. Security Services

1. Stability

    (a) Years of Experience
    (b) Liquidity of the Contractor
    (c) Organizational Set-up

2. Resources

    (a) No. of Licensed Firearms
    (b) No. and Kind of Communication Devices
    (c) No. and Kind of Motor Powered Vehicles
    (d) No. of Licensed Guards

3. Security Plan

4. Other Factors

    (a) Recruitment and Selection Criteria
    (b) Completeness of Uniforms and Other Paraphernalia

B. Janitorial Services

1. Stability

    (a) Years of Experience
    (b) Liquidity of the Contractor
    (c) Organizational set-up

2. Resources

    (a) No. and Kind of Equipment and Supplies
    (b) No. of Janitors and Supervisors

3. Housekeeping Plan

4. Other Factors

    (a) Recruitment and Selection Criteria
    (b) Completeness of Uniforms and Other Paraphernalia

APPENDIX 24
REVISED GUIDELINES ON THE EXTENSION OF CONTRACTS FOR GENERAL SUPPORT SERVICES

1.0 POLICY STATEMENT

As a general policy, extensions of contracts for general support services are discouraged.

2.0 PURPOSE

These guidelines are formulated to identify the conditions for the allowance of contract extension and to prescribe the rules and procedures governing the same, for the purpose of averting hiatus in support services essential, indispensable, or necessary in the operations of a procuring entity.

3.0 SCOPE AND APPLICATION

These guidelines shall govern the extension of ongoing contracts of general support services which are essential, indispensable, or necessary to support the operations of any of the procuring entities or for the enhancement of the welfare of its personnel to include, but shall not be limited to, non-personal or contractual services such as maintenance of equipment and furniture, janitorial and security services.

However, these guidelines shall not apply to contracts with water, electricity, telecommunications, and internet service providers, which shall be governed by the Guidelines on Procurement of Water, Electricity, Telecommunications and Internet Service Providers provided issued by the Government Procurement Policy Board under Resolution No. 19-2006, dated 6 December 2006.

4.0 GENERAL CONDITIONS FOR EXTENSION

Procuring entities may extend the duration or effectivity of an ongoing contract about to expire, under the following conditions:

4.1 No contract extension shall exceed one (1) year.

4.2 The original contract subject of the extension was awarded in accordance with the provisions of Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations (IRR).[142]

4.3 The procuring entity concerned has substantially undertaken the procurement activities required prior to award of the new contract under R.A. 9184 and its IRR.[143]

4.4 The aforesaid contract extension is undertaken due to circumstances beyond its control and the procuring entity concerned cannot award a new contract within a month after the expiration of the term of the original contract.

[142] As amended by GPPB Resolution 03-2011, dated 28 January 2011, published in the Manila Times on 6 April 2011.
[143] *Ibid.*

4.5 The contemplated extension is merely an emergency measure to maintain status quo in the operations of the Procuring Entity and to avoid interruption of service.

4.6 The current service provider has not violated any of the provisions of the original contract.

4.7 The terms and conditions of the original contract shall not be changed or modified, except when changes or modifications will redound to the advantage of the government at no additional cost to the Procuring Entity.

5.0 PROCEDURAL REQUIREMENTS

5.1 All contract extensions shall be subject to the prior approval of the Head of the Procuring Entity or his/her duly authorized representative upon recommendation of the Bids and Awards Committee.

5.2 In addition to the foregoing, if the proposed contract extension exceeds six (6) months, the Head of the Procuring Entity or his/her duly authorized representative shall immediately report to the Government Procurement Policy Board in writing of its intent to extend beyond six months.

6.0 REPEALING CLAUSE

These Guidelines repeal GPPB Resolution 08-2005 and the amendments thereto per GPPB Resolution 03-2006, dated 28 April 2005 and 11 March 2006, respectively.

7.0 EFFECTIVITY

7.1 These guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation.[144]

[144] Issued through GPPB Resolution 023-2007, dated 28 September 2007, and published in the Manila Times on 26 October 2007.

APPENDIX 25
GPPB CIRCULAR 02-2010
GUIDELINES ON COMPARISON OF BIDS SUBMITTED BY COOPERATIVES

1.0 Purpose

This Circular[145] is being issued to clarify the procedure for comparison of bids submitted by cooperatives in line with the principle that all bids shall be evaluated on an equal footing to ensure fair and competitive bid comparison.

2.0 Coverage

All Departments, Bureaus, Offices and Agencies of the National Government, including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units.

3.0 Guidelines on Comparison of Bids Involving Cooperatives and Non-Cooperatives

3.1 Under Section 32.2.2 of the Implementing Rules and Regulations (IRR) of Republic Act 9184, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax, income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates.

Such bids, including said taxes, shall be the basis for bid evaluation and comparison.

3.2 Since cooperatives are granted tax exemptions by law, they enjoy a clear advantage over non-cooperatives.

3.3 To ensure that all bids shall be evaluated on an equal footing, all taxes itemized by non-cooperatives in their bids and which cooperatives are exempt from shall be added to the bids of cooperatives strictly for purposes of evaluation and comparison.

3.4 If, after evaluation and comparison, the bid submitted by a cooperative is still determined to be the lowest bid, the taxes added during bid evaluation shall be removed. Award of contract shall be based on the original bid price, subject to Section 34.4 of the IRR.

4.0 This Circular shall take effect immediately.

5.0 For guidance and compliance.

[145] Issued on 24 November 2010.

APPENDIX 26
REVISED GUIDELINES ON THE USE OF ORDERING AGREEMENT

1.0 PURPOSE

The guidelines are formulated to prescribe the rules and procedures to govern situations where the procurement by the national government, its departments, bureaus, offices and agencies, including State Universities and Colleges (SUCs), Government-Owned and/or -Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Local Government Units (LGUs) necessitate entering into ordering agreements for necessary and desirable goods that by its nature, use, or characteristic, the quantity and/or exact time of need cannot be accurately pre-determined; and, in case of expendable or non-expendable goods, it is inadvisable for the procuring entity to carry the same in stock or commit to purchase a certain quantity within a given period.

2.0 SCOPE AND APPLICATION

2.1. These guidelines shall govern the use of Ordering Agreement by all departments, bureaus, offices, and agencies of the national government, GOCCs, GFIs, SUCs, and LGUs for goods determined to be necessary and desirable to address and satisfy the needs of the procuring entities, but by its nature, use, or characteristic, the quantity and/or exact time of need cannot be accurately pre-determined.

2.2. Ordering Agreement may be used for expendable or non-expendable goods, and services for hotel accommodation, air travel, and repair and maintenance.

2.3. Services allowed to be subject of an Ordering Agreement shall be limited to those mentioned in Section 2.2, and shall not cover procurement of consulting services, and infrastructure projects.

3.0 DEFINITION OF TERMS

3.1. **Delivery Order Contract.** Refers to a contract that authorizes and obligates a supplier/service provider to deliver certain quantity or render a particular service within an agreed period and at a fixed price per unit, item or identified service pursuant to the Ordering Agreement entered into between the procuring entity and the supplier. The Delivery Order Contract shall trigger the exercise by the procuring entity of the option to purchase in the amount, quantity, and extent not exceeding those projected in the Order Agreement List and shall constitute the actual purchase by the procuring entity.

3.2. **Ordering Agreement.** A written agreement in the nature of an option contract between the procuring entity and the Lowest Calculated and Responsive Bidder granting the procuring entity the option to either place an order for any of the goods identified in the Order Agreement List or not buy at all, within a given period of time.

3.3. **Order Agreement List.** Refers to the list of goods, and their corresponding technical specifications, scope of work, projected quantities, and fixed prices, subject of the Ordering Agreement. This shall be limited to goods that are (i)

identified to be necessary and desirable, but, by its nature, use, or characteristic, the quantity and/or exact time of need cannot be accurately pre-determined; and (ii) using an Ordering Agreement is most practical, economical, and advantageous for the procuring entity.

4.0 GENERAL CONDITIONS

4.1. Ordering Agreement may be used only upon compliance with the following requirements:

a) The Head of the Procuring entity (HOPE) determines that adopting an Ordering Agreement will be more advantageous for the procuring entity having considered the following:

(i) End-User Unit's certification that the goods in the Order Agreement List are necessary and desirable for the operations of the procuring entity, supported by the following documents:

1. Document, such as, but not limited to, feasibility study, needs analysis, or historical data, establishing the need for the acquisition of the goods in the Order Agreement List; and

2. Market study establishing the ABC for each of the goods;

(ii) Result of cost-benefit analysis supports the appropriateness of using Ordering Agreement by establishing benefits, such as, but not limited to the following:

1. Stockholding or warehousing of goods and the costs and risks accompanying it will be significantly reduced or avoided;

2. Additional cost will be lessened as the possibility of delay in the acquisition of the goods is minimized;

3. The commitment by the supplier to immediately deliver at a short notice will translate to a more efficient means of supplying goods;

4. Procuring entity will benefit from the fixed price for the duration of the Ordering Agreement;

5. Ordering at the time of actual need will result in the optimum usage of the ABC; or

6. The benefits and advantages of lean and just-in-time procurements are achieved.

(iii) The Order Agreement List is prepared in the most practical, efficient, and economical manner that will encourage competition among interested bidders in the relevant industry.

b) The procurement shall be conducted following the procedures for Competitive Bidding provided in Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).

4.2. Prices indicated in the Ordering Agreement corresponding to the subject goods in the Order Agreement List shall be fixed for the duration of the

agreement, regardless of increase or decrease in the prevailing market price at the time of actual purchase through the issuance of the Delivery Order Contract.

4.3. The Ordering Agreement shall contain (a) the Order Agreement List; (b) the terms and clauses applying to Delivery Order Contracts between the parties for its duration; and (c) methods for issuing and delivering/performing future orders under the Ordering Agreement.

5.0 PROCUREMENT PLANNING

5.1. No procurement shall be undertaken under these guidelines unless the same is in accordance with the Annual Procurement Plan (APP) and the Project Procurement Management Plan (PPMP) prepared by the procuring entity. The procuring entity, in preparing its APP, shall include, for purposes of entering into an Ordering Agreement, an Order Agreement List, which shall remain unchanged, neither to be increased or decreased after advertisement and during its life span.

5.2. The APP shall indicate the types of items considered for inclusion in the Order Agreement List. In determining the items to be listed, the procuring entity shall carefully examine and identify its needs and the probable time, period, event, or occasion the ordering may take place using, whenever applicable, assessment of Total Cost of Ownership, Life Cycle Costing, and Value for Money analysis.

5.3. The Order Agreement List shall indicate the following information:

a) Type and nature of each item;

b) Technical specifications or Scope of Work;

c) Estimated quantity of items or services;

d) Estimated contract price per item or service;

e) Total ABC including budgetary allotments per type of product or service; and

f) Other appropriate information as may be necessary.

5.4. The estimated contract price per item or service shall be determined and prepared after careful consideration of variables and factors that may affect future market prices using historical data, market study, feasibility study, and/or net present value of money.

5.5. The estimated quantity of items or services shall be determined based on the expected number to be required by the procuring entity should the need arise. The estimated quantity shall be considered as the maximum quantity allowed to be purchased by the procuring entity, which the supplier or service provider is bound to deliver or perform pursuant to the Delivery Order Contract.

6.0 COMPETITIVE BIDDING

6.1. The procuring entity shall conduct the bidding using the single stage, two-envelope procedure as prescribed in Sections 23 and 25 of RA 9184 and its IRR, whereby upon option of the procuring entity, bidders may be allowed to bid on a per item/lot/package basis as provided in the Order Agreement List. For this purpose, the procuring entity, through its BAC, shall prepare, when necessary, separate Technical Specifications/Scope of Work for every line item to be bid out and indicate, among others, an approved budget for each item, the estimated quantity it may procure when needed, and the requested delivery/performance lead time from execution of Delivery Order Contract or from any date determined by the procuring entity.

6.2. The Invitation to Bid shall indicate that the procurement will be subject to Ordering Agreement arrangement pursuant to these Guidelines.

6.3. The procedures and requirements for Competitive Bidding provided in RA 9184 and its IRR shall apply.

7.0 ORDERING AGREEMENT

7.1. Within ten (10) calendar days from receipt by the winning bidder of the Notice of Award, the winning bidder or its duly authorized representative shall formally enter into an Ordering Agreement with the procuring entity for an amount of One Peso to be paid by the procuring entity as a consideration for the option granted to the procuring entity to buy the items in the Order Agreement List when the need arises.

7.2. Ordering Agreements shall not state or imply any agreement by the procuring entity to place future contracts or make orders with the supplier/service provider.

7.3. Ordering Agreements shall include the following: (a) Order Agreement List; (b) a fixed contract price per item/service specified in the Order Agreement List; (c) delivery/service terms and conditions; (d) terms of payment; (e) specify that the perfection of the actual procurement contract shall be reckoned from the execution and issuance of the Delivery Order Contract; and (f) statement that upon the execution and issuance of the Delivery Order Contract, all rules and guidelines governing implementation of procurement contracts under RA 9184 and its IRR shall be applicable.

7.4. No modification of the Ordering Agreement during its lifetime shall be allowed.

7.5. Ordering Agreements, including the Order Agreement List, shall be valid only for the period stated in the Bidding Documents which, in no case shall exceed one (1) year from the time the Ordering Agreement was entered into and executed by the parties, and shall not be extended beyond its lifetime.

7.6. To guarantee the faithful performance by the supplier/service provider of its obligations under the Ordering Agreement, it shall post a performance security prior to the signing of the agreement based on the total contract price of the awarded items under the Ordering Agreement. The form and amount of performance security shall be those indicated in RA 9184 and its IRR.

8.0 DELIVERY ORDER CONTRACTS

8.1. When the procuring entity has determined the necessity for one or more of the items covered in the Ordering Agreement and the need to actually order these, it shall require the delivery of the item identified in the Order Agreement List in such quantity or scope and at the fixed price for which it was awarded by executing a Delivery Order Contract in favor of the supplier/service provider to obligate the latter to deliver or perform according to the terms and conditions stated in the Ordering Agreement.

8.2. The procuring entity may execute as many Delivery Order Contracts for the same line item as may be needed within the validity of the Ordering Agreement; provided that subsequent Delivery Order Contracts shall have the same unit price as originally stated in the Ordering Agreement and shall not exceed the estimated quantity in the Order Agreement List.

8.3. There is no limit on the number of Delivery Order Contracts that may be executed or issued. However, the aggregate amount of all executed or issued Delivery Order Contracts shall not exceed the total contract price specified in the Ordering Agreement. No other costs are authorized unless otherwise specified in the Ordering Agreement.

8.4. The procuring entity may execute or issue Delivery Order Contracts requiring delivery to multiple destinations or performance at multiple locations.

8.5. For purposes of participation in other public bidding activities, the aggregate of the Delivery Order Contracts for a particular item satisfactorily completed by the supplier/service provider shall be considered as one (1) contract with the cumulative amount thereof as the total contract amount. In such case, the date appearing on the certificate of acceptance issued by the procuring entity for the last delivery will be considered as the date of completion of the contract.

9.0 IMPLEMENTATION AND TERMINATION OF ORDERING AGREEMENTS

9.1. The Warranty provision for goods under Section 62 of RA 9184 and its IRR shall be observed under the Ordering Agreement, and shall be posted for each Delivery Order Contract.

9.2. After receipt by the supplier/service provider of the Delivery Order Contract from the procuring entity, it shall deliver/perform the items within the period specified in the Ordering Agreement, unless a different time is provided in the Delivery Order Contract; in which case, the period stated in the latter shall prevail.

9.3. Extension of delivery/performance time shall be upon written request of the supplier/service provider and upon approval by the procuring entity after consideration of reasonable and justifiable causes.

9.4. Failure to deliver/perform within the agreed period, including any time extension, will make the supplier/service provider liable to the procuring entity for liquidated damages at least equal to one-tenth of one percent

(.001) of the cost of the unperformed portion of the total amount of the awarded items under the Ordering Agreement for every day of delay.

9.5. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the total amount of the awarded items under the Ordering Agreement, the procuring entity shall rescind the same, without prejudice to other courses of action and remedies open to it.

9.6. Without prejudice to the provisions of applicable laws, rules, and guidelines, the Ordering Agreement shall automatically terminate under the following conditions:

a) When the total estimated quantity specified in the Ordering Agreement has been exhausted; or

b) When the specified duration of the Ordering Agreement has expired.

9.7. All other rules governing contract implementation and termination under RA 9184, its IRR, and relevant procurement policies shall be applicable.

10.0 REPEAT ORDER

10.1. No Repeat Order for an item in the Order Agreement List shall be allowed until after the procuring entity has exhausted the estimated quantity for the same item specified therein or after the Ordering Agreement has expired, whichever comes first; and subject to the conditions provided in Section 51 of RA 9184 and its IRR. For this purpose, the Repeat Order shall be availed of only within six (6) months from the date of the last or final Delivery Order Contract for a specific item where the estimated quantity has been exhausted, or, the expiration of the Ordering Agreement.

10.2. In case Repeat Order is allowed and resorted to, the twenty five percent (25%) maximum allowable quantity shall be based on the aggregate quantity of actual items ordered and delivered.

11.0 EFFECTIVITY

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing of three (3) certified copies with the University of the Philippines Law Center.[146]

[146] Issued through GPPB Resolution 01-2012, dated 27 January 2012, and published in The Daily Tribune on 20 August 2012.

APPENDIX 27
GPPB CIRCULAR 10-2015
HONORARIA OF GPPB-TSO RECOGNIZED TRAINERS

1.0 Purpose:

This Circular[147] is being issued to reiterate to all Government Agencies the mandate of GPPB Resolution No. 16-2013 requiring adherence to the standard rates on the payment of honoraria to GPPB-TSO Recognized Trainers as provided in DBM Circular No. 2007-1, and to remind all GPPB-TSO Recognized Trainers to received honoraria pursuant only to the rates prescribed under DBM Circular No. 2007-1.

2.0 Coverage:

2.1 All Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units; and

2.2 All GPPB-TSO Recognized Trainers, who serve as Lectures, Resource Persons and Speakers in Seminars, Training Programs and other similar activities on RA 9184 and its revised IRR.

3.0 Payment of Honoraria and Rate of Honoraria:

3.1 Government Agencies shall adhere to the provisions of GPPB Resolution No. 16- 2013 confirming the imposition of standard rates of honoraria mandated under DBM Circular No. 2007-1; and

3.2 GPPB-TSO Recognized Trainers who serve as Lecturers, Resources Persons or Speakers in Seminars, Training Programs and other similar activities on R.A. No. 9184 and its revised IRR shall receive honoraria only within the rates prescribed under DBM Circular No. 2007-1.

4.0 This Circular shall take effect immediately.

5.0 For guidance and compliance.

[147] Issued on 18 August 2015.

APPENDIX 28
GUIDELINES FOR THE ESTABLISHMENT OF NEGATIVE LIST OF SURETY AND/OR INSURANCE COMPANIES

1. POLICY STATEMENT

1.1. Pursuant to Sections 27.2, 39.2 and 62.2.3.3 of Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, surety bond is one of the acceptable forms of bid, performance, and warranty securities, provided it is callable upon demand and accompanied by an Insurance Commission Certificate stating that the surety and/or insurance company is authorized to issue such bond or security.

1.2. In view of the prevalence of instances when procuring entities are unable to claim on surety bonds submitted by bidders, there exists pressing need to protect procuring entities and ensure the reliability of surety bonds as an acceptable form of bid security.

1.3. The GPPB shall prepare, maintain, and update a Negative List based on the submitted names by different procuring entities, and shall be posted in the GPPB website, which shall include the name/s of the erring surety and/or insurance companies and the effectivity of their suspension.

2. PURPOSE

2.1. These Guidelines are formulated to provide the necessary steps and procedures on the establishment of a list of surety and/or insurance companies that have failed to honor their obligations on the surety bond they issued as bid, performance, and/or warranty securities of bidders participating in public procurement.

2.2. It may also serve as the first step and/or basis of government agencies in filing of complaints against erring surety and/or insurance companies with the Insurance Commission.

3. SCOPE AND APPLICATION

3.1 These Guidelines shall apply to procurement activities of all branches, constitutional commissions and offices, national government agencies (NGAs), departments, bureaus, offices, and other instrumentalities of the Government, including government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs) requiring the submission of bid, performance, or warranty security.

4. DEFINITION OF TERMS

4.1 ***Suretyship*** is an agreement whereby a party called the surety company guarantees the performance by another party called the principal or obligor, *i.e.,* bidder, of an obligation or undertaking in favor of a third party called the obligee, *i.e.,* procuring entity. It includes official recognizances, stipulations, bonds or undertakings issued by any company by virtue of and under the provisions of Act No. 536, as amended by Act No. 2206.

4.2 ***Surety Company*** includes all individuals, partnerships, associations, or corporations, including government-owned or controlled corporations or entities, engaged as principals in the insurance or suretyship business, including insurance companies issuing surety bonds, and have an existing Certificate of Authority issued by the Insurance Commission.

4.3 ***Surety Bond*** refers to a bond issued by a surety company to guarantee the performance by the bidder of an obligation or undertaking in favor of the procuring entity, *i.e.,* bid security, performance security, or warranty security.

4.4 ***Callable on Demand*** refers to the surety company's absolute, primary, and direct responsibility and liability to the procuring entity for an obligation that is accessory or collateral to the valid principal obligation contracted by a bidder by virtue of the surety's undertaking to be bound solidarily with the bidder.

4.5 ***Bid Security*** refers to the guaranty, in the form and amount prescribed, that the successful bidder shall, within ten (10) calendar days or less, as indicated in the Instructions to Bidders, from receipt of the notice of award, enter into contract with the procuring entity and furnish the performance security required in Section 39 of the IRR, except when Section 37.1 of the IRR allows a longer period.

4.6 ***Performance Security*** refers to the guaranty posted prior to the signing of the contract for the faithful performance by the winning bidder of its obligations under the contract in accordance with the Bidding Documents in an amount equal to the percentage of the total contract price in accordance with the schedule provided in Section 39.2 of the IRR.

4.7 ***Warranty Security*** refers to the guaranty that the contractor shall perform his responsibilities as prescribed in Section 62.2.3.1(a) of the IRR against "Structural Defects" or "Structural Failures" for infrastructure projects.

5. GROUNDS FOR INCLUSION IN THE NEGATIVE LIST

The following are the grounds for the inclusion of a surety company in the Negative List:

a) Refusal or failure of the surety company to honor the claim against the surety bond upon written demand of the procuring entity for whom the same was issued;

b) Issuance by the surety company of an illegal, fraudulent, false, deceptive, or illegal surety bond to serve as bid, performance, or warranty security of the bidder participating in government procurement transactions; or

c) A surety company determined by the Insurance Commission to be included in the list.

6. PROCEDURAL GUIDELINES FOR INCLUSION IN THE NEGATIVE LIST

6.1. Initiation

6.1.1. Once a bidder has been duly determined to have defaulted in the performance of its obligations as prescribed under Sections 27.1, 39.1 and 62.2.3.1 of the IRR, the head of the procuring entity (HOPE), upon recommendation of the Bids and Awards Committee (BAC) or the Implementing Unit (IU), shall forfeit the surety bond issued as bid, performance, or warranty security.

6.1.2. The procuring entity shall notify the bidder and the concerned surety company relative to the act/s committed by the bidder which would result to the forfeiture of the surety bond, and shall make a claim on the surety bond.

6.2. Verification

Upon denial of the claims on the surety bond or if the surety company committed any of the grounds enumerated under Section 5 above, the BAC/IU, shall, within a period of seven (7) calendar days, verify the existence of the aforementioned grounds and shall prepare and submit a Verified Report to the HOPE.

6.3. Show Cause Order

6.3.1. Upon receipt of the Verified Report and determination of the validity of the action, the HOPE shall issue a Show Cause Order to the surety company:

a) Stating the grounds for its issuance;

b) Requiring the surety/insurance company to show cause within seven (7) calendar days;

c) Informing the surety/insurance company of the effects of inclusion in the Negative List;

d) Providing a copy of the Verified Report; and

e) Providing other special instructions, when necessary.

6.3.2. Within a period of seven (7) calendar days from receipt of the Show Cause Order, the concerned surety company shall submit to the HOPE a Verified Position Paper stating why the company should not be included in the Negative List

6.4. Decision

6.4.1. Upon receipt of the Verified Position Paper, the HOPE shall assess, review and decide the matter, based on the representations made and evidence submitted, within a non-extendible period of ten (10) calendar days.

6.4.2. If the surety company fails, either by inaction or by default, to show cause after the lapse of the seven (7) day period, the HOPE shall issue a decision to include the concerned surety company in the Negative List.

6.4.3. If the HOPE determines that the surety company committed any of the afore-stated grounds, it shall issue a decision to include surety company in the Negative List. Otherwise, the HOPE shall dismiss the case. In either case, the decision of the HOPE shall clearly and distinctly state the facts, evidence and the law upon which it is based.

6.4.4. The HOPE may, at any time before receipt of the surety company's Verified Position Paper, withdraw the Show Cause Order if the claims on the surety bond has been settled by the surety company concerned.

6.5. Notice of Decision

The HOPE shall immediately serve a written notice of the Decision to the surety/insurance company, and upon receipt by the surety/insurance company thereof, furnish a copy of the Decision to the Insurance Commission and the GPPB, through its Technical Support Office (TSO), indicating the following:

a) Name of the surety companies;
b) Surety bond number;
c) Contract of suretyship;
d) Ground/s for its inclusion; and
e) Effects of inclusion.

6.6. Inclusion in the Negative List

6.6.1. Upon receipt of a copy of the Decision, the GPPB, through its TSO, shall include the name of the surety company in the Negative List and shall post the same at the GPPB website for a period of two (2) years, which may thereafter be extended to another period of two (2) years upon notice from the procuring entity that the surety/insurance company remains in default.

6.6.2. Upon inclusion in the Negative List, the GPPB, through its TSO, shall immediately notify the surety company of such status.

7. EFFECT OF INCLUSION IN THE NEGATIVE LIST

7.1. The inclusion in the Negative List shall result in the rejection of the surety bonds issued by the suspended surety/insurance company submitted as bid, performance, or warranty security in the relevant procurement activities of NGAs, GOCCs, GFIs, SUCs and LGUs during the period of inclusion and suspension.

7.2. The BAC shall ensure that surety bonds issued as bid, performance, or warranty security submitted are not issued by surety companies included in the list. Any bidder who submits a surety bond issued by a surety company in the Negative List shall be declared ineligible.

7.3. Considering that surety companies are subject to the jurisdiction and supervision of the Insurance Commission, the list may serve as basis for the pursuit of complaint/s filed before the Insurance Commission, if any.

8. DELISTING

The GPPB-TSO shall remove a surety company from the Negative List even before the expiration of the period upon the advice of the PE or by the IC in cases where the IC had amicably settled the matter or adjudicated the issue with finality, unless the surety or insurance company remains in default, and/or the PE has duly elevated the matter to a higher authority or court on appeal or certiorari.

9. AMENDMENTS

9.1. In the implementation of these guidelines, the GPPB may introduce modifications thereto through the amendment of its specific provisions as the need arises.

9.2. Any amendment to these guidelines shall be applicable to government projects after the effectivity of the said amendment.

10. EFFECTIVITY

These Guidelines shall take effect immediately after its publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines[148].

[148] Issued through GPPB Resolution No. 15-2012, dated 29 June 2012.

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