

VOLUME 2

Manual of Procedures for the
Procurement of Goods and
Services

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ABBREVIATIONS AND ACRONYMS

ABC	Approved Budget for the Contract
ADB	Asian Development Bank
AFP	Armed Forces of the Philippines
APP	Annual Procurement Plan
APR	Agency Procurement Request
BAC	Bids and Awards Committee
BDA	Battle Dress Attire
BDS	Bid Data Sheet
BFAD	Bureau of Food and Drugs
BIR	Bureau of Internal Revenue
BOC	Bureau of Customs
BSP	Bangko Sentral ng Pilipinas
CDA	Cooperatives Development Authority
CAF	Certificate of Availability of Funds
CFR	Cost and Freight
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid To (named place of destination)
COA	Commission on Audit
CPT	Carriage Paid To (named place of destination)
DBM	Department of Budget and Management
DBM-PS/ PS-DBM	Department of Budget and Management-Procurement Service
DDP	Delivered Duty Paid (named place of destination)
DFA	Department of Foreign Affairs
DOH	Department of Health
DOJ	Department of Justice
DTI	Department of Trade and Industry
DV	Disbursement Voucher
EFPS	Electronic Filing and Payment System

E.O.	Executive Order
EXW	Ex Works, Ex Factory or Off-the-shelf
FAP	Foreign Assisted Project
FCA	Free Carrier (named place)
FED	Firearms and Explosives Division
FOB	Free on Board
GAA	General Appropriations Act
GCC	General Conditions of Contract
GFI	Government Financial Institution
GOCC	Government-owned and/or –controlled corporation
GOP	Government of the Philippines
GPPB	Government Procurement Policy Board
GPPB-TSO	GPPB – Technical Support Office
GPRA	Government Procurement Reform Act (R.A. 9184)
IAEB	Invitation to Apply for Eligibility and to Bid
ICB	International Competitive Bidding
IFI	International Financing Institution
IPR	Intellectual Property Rights
IRR	Implementing Rules and Regulations
IRR-A	Implementing Rules and Regulations Part A of R.A. 9184
ITB	Instructions to Bidders
JBIC	Japan Bank for International Cooperation
JVA	Joint Venture Agreement
LBP	Land Bank of the Philippines
LC	Letter of Credit
LCB	Lowest Calculated Bid
LCRB	Lowest Calculated Responsive Bid (this shall have the same meaning as Lowest Evaluated and Responsive Bid [LERB] for IFIs)
LGU	Local Government Unit
LOI	Letter of Instructions
MDS	Modified Disbursement Scheme
NCA	Notice of Cash Allocation

NEDA	National Economic and Development Authority
NFCC	Net Financial Contracting Capacity
NGA	National Government Agency
NGO	Non-Government Organization
NTC	National Telecommunications Commission
NTP	Notice to Proceed
OS	Obligation Slip
PA	Philippine Army
PBDs	Philippine Bidding Documents
P.D.	Presidential Decree
PMO	Project Management Office
PNP	Philippine National Police
PPMP	Project Procurement Management Plan
PhilGEPS/ G-EPS	Philippine Government Electronic Procurement System
PWI	Procurement Watch Inc.
R.A.	Republic Act
R.A. 9184	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"
RIS	Requisition and Issuance Slip
SARO	Special Allotment Release Order
SBDs	Standard Bidding Documents
SCC	Special Conditions of Contract
SCRB	Single Calculated and Responsive Bid
SEC	Securities and Exchange Commission
SMEs	Small and Medium Enterprises
SOW	Scope of Work
SPA	Special Power of Attorney
SUCs	State Universities and Colleges
TWG	Technical Working Group
UNDB	United Nations Development Business
WB	The World Bank

SECTION 1
Introduction

Scope of Volume 2

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

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

GOODS and SERVICES 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. The term refers to, among other subjects, 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. It also refers to trucking, hauling, janitorial, security, and related or analogous services (*e.g.* rental of venues and facilities, catering services, attendance to trainings and seminars, short term services not considered as consulting 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 not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity. **(IRR-A Section 5[k])**

SECTION 2

Preparing for the Procurement of Goods and Services

Preparing for the Procurement of Goods and Services

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

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

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

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

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

Procurement Planning

Planning of the procurement of goods and services shall be in accordance with the principles of government procurement as provided for under Section 3 Volume I of this Manual.

What are the factors to be considered in planning for the procurement of Goods?

The PMO or the end-user unit should consider the following factors which have an impact on contract packaging, the procurement method to be used, and other components of Procurement Planning as discussed in Volume 1 of these Manuals:

1. **Nature of the Goods to be Procured.** Goods may be classified into different categories, such as:
 - a. common-use supplies;
 - b. inventory items;
 - c. non-common use supplies (which may include equipment or supplies that are project-specific); or
 - d. services.

“Common-use supplies” as defined in the IRR-A as those goods, materials, and equipment that are repetitively used in the day-to-day operations of procuring entities in the performance of their functions. For the purpose of the IRR-A, common-use supplies shall be those included in the Price List of the PS-DBM. **(IRR-A Section 5 [g])** Common-use supplies should be procured from the PS-DBM on a quarterly basis.

“Inventory items” include common-use supplies, goods, materials and equipment that are not in the Price List of the PS-DBM but are regularly used and kept on stock by the Procuring Entity. Inventory items that are not “common-use supplies” may be procured from commercial sources, or suppliers other than the PS-DBM. The bulk purchase of these goods may be a good strategy to lower costs and achieve administrative efficiency. Likewise, it is a good practice to monitor the consumption of these items and identify when re-orders are necessary to ensure “round-the-clock”

availability and to avoid over-the-counter purchases or purchases using petty cash funds.

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On using the PS-DBM for procurement

The Procuring Entity must consider the services of the PS-DBM in the procurement of all kinds of supplies. This will free it from the tediousness of attending to recurring transactions, and provide greater time for the procurement of high value, highly specialized requirements for its more significant projects.

“Non-common use supplies” are those goods, materials, and equipment that are neither “common-use supplies” nor “inventory items”, and may include those goods, materials and equipment that are required by the Procuring Entity for a specific project only. Since these are not used regularly, and may even be

highly specialized, these may be procured individually. There may be cases, however, when the APP will reveal that similar items are required for different projects, and in order to minimize costs, these may be procured under a single contract. For goods

that are available off-the-shelf and are of relatively low value, shopping may be resorted to, provided the conditions for the use of this alternative mode of procurement are present.

“Services” refer to general support services, except consulting services and infrastructure projects, which may be needed in support of the transaction of public businesses or in the pursuit of any government undertaking, project or activity. These include 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 (e.g. rental of venues and facilities, catering services, attendance to trainings and seminars, short term services not considered as consulting services). The terms “related services” or “analogous services” shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity.

2. **Availability of the Goods or Services in the Market.** The identification of the mode of procurement is sometimes dependent on the supply market. The procurement unit or office should, therefore, study the supply market to determine the availability of the goods. Goods that are universally available should be procured through public bidding. However, there are instances wherein alternative modes of procurement may be applicable.

Goods that are available seasonally, or those that are to be manufactured specially for the Procuring Entity only upon its order, would require more intensive planning in terms of timelines for procurement, taking into consideration manufacturing lead-time.

3. **Obsolescence, operation, and maintenance of equipment/non-consumable Goods.** In buying equipment, the Procuring Entity has to consider the operation and maintenance requirements of the goods to be procured. These refer to the availability and cost of spare parts in the local market, the skills required in operating and maintaining the equipment, and similar considerations. For example, if spare parts and maintenance services are not available locally, or, if available, are very expensive, the Procuring Entity may consider buying, instead, the substitute or equivalent product. It should be noted, however, that spare parts must be available locally. On the other hand, if the items being procured are high-technology items, or are highly specialized (e.g., fighter jets) and cannot be satisfactorily substituted by other products, the Procuring Entity may consider including the supply of spare parts, consumables and/or maintenance services for a specified period of time, as part of the contract package.

Let's make doing things easier

On Ordering Agreements

Under GPPB Resolution No. 06-2005, ordering agreements may be resorted to in situations where the procuring entity intends to procure non-inventory parts necessary to maintain the operational effectiveness of existing major equipment. The requirement thereof, although identified, becomes necessary only upon the happening of a fortuitous event. For this reason, the quantity and the exact time of need for said parts cannot be accurately pre-determined. Therefore, for reasons of economy, keeping in stock of said parts for possible future use or by procuring them for inventory would be disadvantageous to the government. This excludes parts required for routine maintenance, the volume and delivery time being determinable at an earlier period.

Obsolescence could also be a factor in deciding whether to lease or to buy equipment. It may be more economical for the Procuring Entity to consider the leases of equipment that are easily rendered obsolete, like IT equipment. (Please refer to the last paragraph on bid evaluation on this Manual)

The Procuring Entity shall also take into consideration the warranty requirements for goods under Section 62.1 of IRR-A.

What are “Technical Specifications”?

The term “technical specifications” refers to the physical description of the goods or services, as well as the Procuring Entity’s requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. The technical specifications must include the testing parameters for goods, when such testing is required in the contract.

“Functional description” is the description of the functions for which the Goods are to be utilized. For example, a ballpen is expected to write 1.5 km of straight, continuous lines.

“Performance description” refers to the manner that the Goods are required to perform the functions expected of them. For example, a ballpen that writes at 1.5km should do so continuously and smoothly, without skipping, and with the color of the ink being consistent.

“Environmental interface” refers to the environment in which the required functions are performed at the desired level. For example, a ballpen should write continuously for 1.5km on pad paper or bond paper, but not necessarily on wood or on a white board.

“Design” refers to the technical design or drawing of the goods being procured. A design standard is particularly useful in cases where the goods procured are specially manufactured for the Procuring Entity. For example, in procuring BDA for the PA, there is a specific pattern of color and shade that the BDA should follow.

What are the considerations in setting the technical specifications of the goods to be procured?

In determining the technical specifications of the goods it will procure, the PMO or end-user unit must consider the objectives of the project or the procurement at hand, and identify the standards that should be met by the goods in terms of function, performance, environmental interface and/or design. It must also conduct a market survey that will include a study of the available products or services, industry developments or standards, product or service standards specified by the authorized government entity like the Bureau of Product Standards, ISO9000 or similar local or international bodies. As a rule, Philippine standards, as specified by the Bureau of Product Standards, must be followed. For products where there are no specified Philippine standards, the standards of the country of origin or other international body may be considered. Product brochures, technical publications, industry newsletters, the industry itself, as well as the Internet, are good sources of product information. The conduct of a comparative study of the options available in the market and their relevance to the requirements of the Project is highly recommended.

In-house experts who are part of the TWG or the PMO must likewise be tapped to provide technical advice. If there are no in-house experts available to provide advice on highly technical Goods, the Procuring Entity may hire consultants to assist it in developing the technical specifications for the procurement at hand.

It is important to note that the use of brand names is prohibited by the IRR-A. Specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. Hence, a generic description of the product or service must be used.¹

¹ FAPs guidelines generally require the procuring entity to specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship should comply, except that where such international standards are unavailable or are inappropriate, national standards may be specified. For this reason, the procuring entity should refer to the pertinent provisions of the applicable standard bidding documents for the project. For example, although specifications should be based on relevant characteristics and/or performance requirements, and references to brand names, catalog numbers, or similar classifications should be avoided, in certain instances, it may be necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or its equivalent” should be added after such reference. The

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

The ABC is the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in:

1. The GAA and/or continuing appropriations, in the case of NGAs;
2. The corporate budget for the contract approved by the governing board, pursuant to E.O. No. 518, series of 1979, in the case of GOCCs and GFIs; and R.A. No. 8292, in the case of SUCs; or
3. The budget approved by the Sanggunian in the case of LGUs.

Thus, the ABC referred to in R.A. 9184 and its IRR-A basically refers to the proposed budget for the project approved by the Head of the Procuring Entity based on the APP as consolidated from various PMPs.²

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

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

1. The cost or market price of the product or service itself;
2. Incidental expenses like freight, insurance, taxes, installation costs, training costs, if necessary, and cost of inspection;
3. The cost of money, to account for government agencies usually buying on credit terms;
4. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date;
5. Quantities, considering that buying in bulk usually means lower unit prices; and
6. The supply of spare parts and/or maintenance services, if these are part of the contract package.

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

If the sum of the different cost components is lower than the appropriation for the procurement, then the ABC should be equal to the sum of the cost components. If the resulting sum is higher than the appropriation, it is advisable to review the technical specifications and the computation of the ABC. In any case, the ABC should not exceed the appropriation.

In case of adjustment of ABC due to failure of bidding, GPPB Resolution 07-2005 provides that the ABC may be adjusted upwards only under the following conditions:

specifications shall then permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

² For FAPs, reference to the standard bidding documents for the project should be made to determine the applicability of the ABC.

1. There has been failure of bidding for the second time due to all bids submitted exceeding the ABC or no bids have been submitted, or failure in the negotiated procurement after two failed biddings; and
2. There has been previous modification of the terms, conditions and specifications of the project based on Section 35 of the IRR-A, except when the project is indivisible, where the technical component is an integral part of the whole that cannot be reduced, and it constitutes the minimum requirement of the Procuring Entity for which there are no substitutes.

GPPB Resolution 07-2005 further states that the ABC may be adjusted downwards if there is a need to reflect actual market prices and/or scope of work or suit actual field conditions of the project. Upon adjustment of ABC, the Procuring Entity must conduct re-bidding with re-advertisement/posting. Any succeeding adjustment of the ABC shall be in accordance with these guidelines.

Preparing the Bidding Documents

What are Bidding Documents?

Bidding documents are documents issued by the Procuring Entity to provide prospective bidders all the necessary information that they need to prepare their bids. **(IRR-A Section 5 [f])** These clearly and adequately define, among others:

1. The objectives, scope and expected outputs and/or results of the proposed contract;
2. The technical specifications of Goods to be procured;
3. Expected contract duration, the estimated quantity in the case of procurement of goods, delivery schedule and/or time frame;
4. The obligations, duties and/or functions of the winning bidder; and
5. The minimum eligibility requirements of bidders, such as track record to be determined by the Head of the Procuring Entity. **(IRR-A Section 17.2)**

What are the contents of Bidding Documents?

The Philippine Bidding Documents (PBDs) contain the following:³

1. Invitation to Apply for Eligibility and to Bid (IAEB);
2. Instructions to Bidders (ITB);
3. Bid Data Sheet (BDS);
4. General Conditions of Contract (GCC);
5. Special Conditions of Contract (SCC);
6. Schedule of Requirements;
7. Technical Specifications of the Goods and Services to be procured; and
8. Sample Forms as annexed in the PBDs.

The specifications and other terms in the bidding documents shall reflect minimum requirements. A bidder may, therefore, be allowed to submit a superior offer. However, in the evaluation of the bids, no premium or bonus must be given as a result of this superior offer. **(IRR-A Section 17.4)** This rule is based on the nature of the procedure used to evaluate the technical proposals – a “pass/fail” method - such that the presence or absence of the technical requirements is the sole basis for determining technical compliance. After having established compliance with the technical specifications, the next factor to consider would then be the price or financial bid.

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

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

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

Who shall participate in the preparation of the Bidding Documents?

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

1. The BAC;
2. The TWG;
3. The end-user unit/PMO;
4. Consultants, if any; and
5. The BAC Secretariat / Procurement Unit.

When should you prepare the Bidding Documents?

The bidding documents must be prepared in time for presentation at the pre-procurement conference. After the conference, and before the advertisement and/or posting of the IAEB, it should be ascertained that these documents will be ready and available for issuance to prospective bidders on the day the IAEB is first advertised.

What various types and sizes of contracts may be provided in the Bidding Documents?

The bidding documents should clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate therefore. The most common types of contracts provide for payments on the basis of a lump sum, unit price, or combinations thereof.⁴

The size and scope of individual contracts will depend on the magnitude, nature, and location of the project, for example:

⁴ Reimbursable cost contracts are acceptable to IFIs only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advanced with sufficient accuracy. Such contracts should include appropriate incentives to limit costs.

1. For projects requiring a variety of goods and works, separate contracts may be awarded for the supply and/or installation of different items of equipment and plant ("plant" refers to installed equipment, as in a production facility) and for the works.
2. For a project requiring similar but separate items of equipment or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms, which could be allowed, at their option, to bid for individual contracts (slices/items) or for a group of similar contracts (package). All bids and combinations of bids should be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest calculated cost to the Procuring Entity.

Methodology: How are the Bidding Documents prepared?

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

1. ABC and source of funds;
2. Date, time and place of the pre-bid conference (where applicable), submission of bids and opening of bids;
3. Eligibility requirements;
4. ITB, including criteria for eligibility, bid evaluation and post-qualification, submission of bids, and opening of bids;
5. Scope of Work (SOW), for services;
6. Technical Specifications, which must not contain any reference to brand names;
7. Form of Bid, Price Form, and List of Goods or Bill of Quantities;
8. Delivery Time or Completion Schedule;
9. Form, amount and validity period of Bid Security;
10. Form and amount of Performance Security and Warranty; and
11. Form of Contract, GCC and SCC.

TIPS: Let's make doing things easier

To monitor the issuance of bidding documents, the BAC may label or number copies of such documents, i.e., "Copy No. 1, 2, 3, etc." or "Copy for Observer", "Copy for BAC Member No.1". The Secretariat may choose a numbering or labeling system that is appropriate for the Procuring Entity.

The Procuring Entity may require additional document requirements or specifications, where applicable and necessary for prospective bidders to prepare their respective bids. The bidding documents, as amended, shall subsequently form an integral part of the contract. (**IRR-A Section 17.3**) Statements not made in writing at any stage of the bidding process shall not modify the bidding documents.

What is a Bid Security?

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

1. Not default on its offer, and

2. Enter into contract with the Procuring Entity within ten (10) calendar days, or less as indicated in the ITB, from receipt of the Notice of Award, and furnish the performance security provided for in Section 39 of the Act and its IRR-A. **(IRR-A Section 27.1)**

A bid security must be submitted with every bid. It must be operative on the date of bid opening, and payable to the Procuring Entity.

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

The bid security shall be in any of the following forms, with the corresponding required amount:⁵ **(IRR-A Section 27.2)**

FORM OF BID SECURITY	MINIMUM AMOUNT
a. Cash, certified check, cashier’s check/manager’s check, bank draft; or	1% of ABC
b. Irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the same shall be confirmed or authenticated by a reputable local bank; or	1% of ABC
c. Bank guarantee confirmed by a reputable local bank or in the case of a foreign bidder, bonded by a foreign bank; or	1 ½% of ABC
d. Surety bond callable upon demand issued by a reputable surety or insurance company; or	2 ½% of ABC
e. Any combination of the foregoing forms; or	The total amount shall not be less than 2 ½ % of the ABC
f. Foreign government guarantee as provided in an executive, bilateral or multilateral agreement, as may be required by the Head of the Procuring Entity concerned.	100% of ABC

For purposes of determining the amount of the bid security in biddings with lots or items, whereby a bidder submits a bid for more than one lot or item, the bid security shall be based upon the sum of the ABC for each of the lots or items for which bids are submitted.

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

The Procuring Entity must specify in the bidding documents the preferred forms of bid security and the respective amounts thereof. The bidder must choose which among the preferred forms it shall submit.

The Procuring Entity is encouraged to give preference to those forms of bid securities that are both easier to call and more accessible to suppliers, such as managers’ checks, cashiers’ checks, irrevocable letters of credit or bank guarantees.

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

Bids and bid securities must be valid for a reasonable period of time as determined by the Head of the Procuring Entity. This time period must be indicated in the bidding documents, but in no case should it exceed one hundred twenty (120) calendar days from the date of the opening of bids. **(IRR-A Section 28)** The recommended norm for bid validity is ninety (90) calendar days with the corresponding bid security valid for one hundred twenty (120)

⁵ For FAPs, reference should be made to the appropriate standard bidding documents for the project in order to determine the applicable amount and form of the bid security.

calendar days to provide reasonable time (thirty (30) calendar days) for the Procuring Entity to act if the security is to be called.

Should it become necessary to extend the validity of the bids and the bid securities, the Procuring Entity should request in writing all those who submitted bids for such extension before the expiry date thereof. Bidders shall have the right to refuse to grant such extension without forfeiting their bid securities. The bid security of bidders who refuse to grant the Procuring Entity's request for an extension of the validity of their respective bid securities will have these securities returned to them. **(IRR-A Section 37.2.2)** However, they are deemed to have waived their right to further participate in the bidding.

In what currency shall the Bid Security be denominated?

The bid security must be denominated in Philippine currency **(IRR-A Section 27.3)**, except that foreign bidders which are allowed to submit foreign currency denominated bids may also submit bid securities that are denominated in a freely convertible currency allowed or specified in the bidding documents.

What happens if a bidder does not submit a Bid Security?

Its bid will be rejected.

When should Bid Securities be returned to the bidders?

No bid securities shall be returned to bidders after the opening of bids and before contract signing, except to those that failed to comply with any of the requirements submitted in the technical envelope of the bids. Without prejudice to the provisions of the law allowing forfeiture of bid securities, bid securities shall be returned only after the bidder with the LCRB has signed the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period indicated in the ITB. **(IRR-A Section 27.4)**

What is a Performance Security?

A performance security is a guarantee that the winning bidder will faithfully perform its obligations under the contract prepared in accordance with the bidding documents. **(IRR-A Section 39.1)** It must be posted in favor of the Procuring Entity, and will be forfeited in the latter's favor in the event it is established that the winning bidder is in default in any of its obligations under the contract. **(IRR-A Section 39.2)**

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

Within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity, and in all cases upon the signing of the contract, the successful bidder should furnish the Procuring Entity with the performance security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents. **(IRR-A Section 39.1)** The performance security forms part of the contract. **(IRR-A Section 37.2.3)** *(Please refer to Step 6, Post-Qualify for further discussions on the LCRB.)*

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

The performance security must be in any of the following or a combination of forms with the corresponding required amounts:⁶

FORM OF PERFORMANCE SECURITY	MINIMUM AMOUNT
a. Cash, certified check, cashier's/manager's check, bank draft; or	5% of contract price
b. Irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the same shall be confirmed or authenticated by a reputable local bank; or	5% of contract price
c. Bank guarantee confirmed by a reputable local bank or in the case of a foreign winning bidder, bonded by a foreign bank; or	10% of contract price
d. Surety bond callable upon demand issued by any reputable surety or insurance company; or	30% of contract price
e. Any combination of the foregoing forms; or	The total amount shall not be less than 30 % of the Contract Price
f. A foreign government guarantee as provided in an executive, bilateral or multilateral agreement, as may be required by the Head of the Procuring Entity concerned.	100% of contract price

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

The Procuring Entity must specify in the bidding documents the preferred forms of performance security and the respective amounts thereof. The winning bidder must choose which among the preferred forms it shall submit.

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

Yes. The winning bidder shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order. **(Section 1.4 Annex "D" of IRR-A as amended by Section 1.4 M.O. 176, s. 2005)** The percentages in the schedule above must be applied to increases in the original value of the contract. The winning bidder must also cause the extension of the validity of the performance security to cover approved contract time extensions.

If the contract value is reduced because part of the goods or services under the contract had already been delivered or completed, and accepted by the government, the Procuring Entity shall allow a proportional reduction in the original performance security. However, this proportional reduction in the value of the performance security is allowed only when the contract allows for partial deliveries or performance. Moreover, the reductions must be more than ten percent (10%), and the aggregate of such reductions must not be more than fifty percent (50%) of the original performance security. **(IRR-A Section 39.6)**

When may the Performance Security be released?

Subject to the conditions of the contract, the Procuring Entity may release the performance security to the winning bidder after the issuance of the Certificate of Acceptance of the goods, provided that there are no claims filed against the contract awardee or the surety company.

⁶ For FAPs, reference should be made to the appropriate standard bidding documents for the project in order to determine the applicable amount and form of the performance security.

However, it must ensure that the performance security is replaced by a warranty covering the defects liability period in accordance with IRR-A Section 62.

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

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

Methodology: How is the Performance Security posted?

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

1. The bidder with the LCRB posts a performance security. In so doing, it must comply with the following conditions:
 - a. The performance security must be executed in the form prescribed by the Procuring Entity in the ITB; and
 - b. The performance security must at least be co-terminus with the period of completion of the contract.
2. The procurement unit/office accepts the performance security and indicates such posting and acceptance by attaching the appropriate form to the contract.

Conduct of the Pre-Procurement Conference

What is a Pre-procurement Conference?

The pre-procurement conference is the forum where all officials involved in the procurement meet and discuss all aspects of a specific procurement activity, which includes the technical specifications, the ABC, the applicability and appropriateness of the recommended method of procurement and the related milestones, the bidding documents, and availability of the pertinent budget release for the project.

Why is a Pre-procurement Conference necessary?

For projects involving an ABC amounting to more than Two Million Pesos (₱ 2 Million), a pre-procurement conference is conducted to determine the readiness of the Procuring Entity to procure goods and services in terms of the legal, technical and financial requirements of the project. More specifically, it ensures that the procurement will proceed in accordance with the PPMP and APP, confirms the availability of appropriations and programmed budget for the contract, and reviews all relevant documents in relation to their adherence to the law. **(IRR-A Section 20)**

Even when the ABC amounts to ₱ 2 Million and below, the BAC is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the technical specifications, warrant the holding of such conference before the Procuring Entity proceeds with the procurement.

When do you conduct a Pre-procurement Conference?

The pre-procurement conference must be conducted prior to the advertisement or issuance of the IAEB. **(IRR-A Section 20.1)** At least seven (7) calendar days prior to publication or issuance of the IAEB would be an advisable timeframe for the pre-procurement conference, to give the technical staff sufficient time to incorporate the necessary changes, amendments or revisions thereto.

Who calls for a Pre-procurement Conference?

The BAC calls for a pre-procurement conference.

Who are the participants of a Pre-procurement Conference?

The participants of the pre-procurement conference are:

1. The BAC;
2. The BAC Secretariat/ Procuring Unit;
3. Representatives of the PMO or end-user unit/s;
4. The members of the TWG/s and consultants hired by the Procuring Entity who prepared the technical specifications, TORs, bidding documents and the draft advertisement, as the case may be, for the procurement at hand;

5. Officials who reviewed the above-enumerated documents prior to final approval, if any; and
6. Other officials concerned, as may be required.

What should a Pre-procurement Conference achieve?

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

How's that again?

A "fair" evaluation criteria means such as are applicable to all similar goods offered in the market, and are not tailor-fit or customized for a particular product/service or brand.

1. Ensure that the procurement is in accordance with the PPMP and APP.
2. Determine the availability of the appropriations and programmed budget for the contract;
3. Determine the state of readiness of the pertinent budget release (e.g., ABM or SARO);
4. Review, modify and agree on the criteria for eligibility screening, and ensure that the said criteria are fair, reasonable, and that they are of the "pass/fail" type and are written in such manner; **(IRR-A Section 20.1.3)**

5. Review, modify and agree on the criteria for the evaluation of bids/proposals, and ensure that the said criteria are fair, reasonable and applicable to the procurement at hand;

Let's make doing things easier

If a Procuring Entity has to procure similar goods or services, although through different public bidding activities, it may opt to hold just one pre-procurement conference to simplify or shorten the process.

6. Review, modify and agree on the acceptable minimum specifications and other terms in the bidding documents;
7. Review the PPMP, including the milestones and the method of procurement for the procurement at hand;
8. Reiterate and emphasize the "no contact rule" during the bid evaluation

process, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing. *(Please refer Step 5, Evaluate Bids for a discussion on the "no contact rule".);* and

9. Ensure that the requirements of the goods and services to be procured are in accordance with the ABC.

SECTION 3

The Procurement Service of the
Department of Budget and
Management and the Philippine
Government Electronic
Procurement System

The PS-DBM and the PhilGEPS

What is the mandate of the PS-DBM?

The PS-DBM was created under LOI No. 755 (Relative to the Establishment of an Integrated Procurement System for the National Government and its Instrumentalities) with the following functions, among others:

1. Identify those supplies, materials, and such other items, including equipment and construction materials, which can be economically purchased through central procurement and which it shall cover within its scope of activity;
2. Determine the technical specifications of items that it will procure for agencies of the Government;
3. Identify the sources of supply which are able to offer the best prices, terms and other conditions for the items procured by government; and
4. Purchase, warehouse and distribute items for resale to agencies of government, including GOCCs.

Moreover, it is mandated under the GPRA to administer the Government Electronic Procurement System or the G-EPS.

All procuring entities are directed to purchase common-use supplies from the PS-DBM.

What is the policy of the Government with respect to the use of the PhilGEPS for the procurement of goods?

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 government procurement. The PhilGEPS shall serve as the primary and definitive source of information on government procurement. For this purpose, the Electronic Procurement System established in accordance with Executive Order No. 322, s. 2000 and Executive Order NO. 40, s. 2001 shall be continued to be managed by the PS-DBM under the supervision of the GPPB, as the PhilGEPS in accordance with the IRR-A.

All procuring entities are required to use the PhilGEPS in all its procurement of common-use supplies. For the procurement of non-common use items, procuring entities may hire service providers through competitive bidding to undertake their electronic procurement. (*Refer to the GPPB Circular 01-2005*)

To fully comply with the requirement under Section 8.2.1 (a) of the IRR-A, and to promote transparency and efficiency in government procurement, all notices of awards of contract, and other related information must be posted in the bulletin board of the PhilGEPS website, being the single portal of information on all government procurement activities, in addition to the posting in the website of the Procuring Entity concerned, if available.

What present features of the PhilGEPS and the PS-DBM website are of special relevance to the procurement of goods?

As discussed in Volume 1 Section 6, the existing PhilGEPS has two features that are of special relevance to the procurement of goods, namely: (i) notification feature which includes the posting of IAEBs and other notices, as well as the matching of procurement opportunities with the appropriate supplier; and (ii) the registry of suppliers.

Additionally, the DBM-PS website (***www.procurementservice.org***) contains an electronic catalogue of common-use supplies that can be bought from the PS-DBM. This catalogue includes the descriptions of the items, current prices, stock positions, and other relevant information. Although this information is available online, purchasing is currently still done manually.

Methodology: How does a Procuring Entity procure through the PS-DBM?

The following steps are undertaken in the procurement, by a Procuring Entity, of goods through the PS-DBM:

1. The Procuring Entity transacts with the PS-DBM through its duly authorized personnel, designated in accordance with the following guidelines:

TIPS: Let's make doing things easier

The Procuring Entity should institute the appropriate systems and procedures between the Procurement Officer and the Supply Officer in order that coordination between them with regard to their transaction with the PS-DBM would be optimal. This essentially means that documents and information are passed on from the Procurement Officer to the Supply Officer, who takes over the procurement function upon delivery, inspection, and acceptance of the procured goods.

- a. For purposes of coordinating with the PS-DBM and the PhilGEPS regarding the procurement of common-use supplies, a Procurement Officer who is also a member of the BAC Secretariat shall serve as the liaison officer;
- b. For purposes of coordinating with the PS-DBM regarding the delivery of goods and technical inspection thereof, the Supply Officer shall liaise with the former;

2. The Procurement Officer registers with the PhilGEPS and he/she is issued a Certification, a user-name and a system-generated password. (*Note: Procedures covering the various activities that require coordination with the PhilGEPS are indicated in the appropriate Sections of this Manual. Reference may also be made to Volume 1*)
3. For the procurement of common-use supplies, the procurement unit or office obtains from the PS-DBM its latest Price List of Common-Use Supplies. It then prepares the APR where it will indicate the description, quantity and price of the goods it will procure.
4. The APR is submitted to the appropriate official of the Procuring Entity for approval, and to the Chief Accountant for certification of availability of funds.
5. Upon its approval and the certification of funds for it, the APR is forwarded to the Finance Office for the preparation of the corresponding DV and MDS check payable to PS-DBM. The same shall go through the regular approval process for similar documents.

6. The approved APR, together with the MDS check, is submitted to PS-DBM for appropriate action. *(Note: The internal procedures of the PS-DBM are embodied in their Operations Manual. Reference thereto may be made.)*
7. Once the PS-DBM indicates to the procurement unit or office the schedule of delivery and inspection, the latter immediately informs the appropriate Supply Officer and turn over the necessary documents to him (APR and technical descriptions of the goods procured, if any).
8. The Supply Officer coordinates with the Technical Inspection and Acceptance Committee for the technical inspection of the goods procured and the subsequent acceptance by the said Committee.

Let's make doing things easier

The Procuring Entity may wish to consider authorizing the DBM to withhold a certain amount of its budget for the procurement of common-use supplies from the PS-DBM. In doing so, it is spared of preparing the DV and MDS check. Its Procurement Officer, instead, shall indicate in the APR that appropriate funds have been deposited with the PS-DBM to cover the cost of the supplies being procured.

SECTION 4

Instructions on the Procedural Steps for the Procurement of Goods and Services

PART ONE – COMPETITIVE BIDDING

Competitive Bidding

What is Competitive Bidding?

Competitive or Public Bidding is a method of procurement that is open to any interested and qualified party. All procurement should be done through Public Bidding except as provided in Rule XVI of the IRR-A. **(IRR-A Section 10)**

Competitive Bidding consists of the following processes: advertisement, pre-bid conference, receipt of eligibility documents and bids, eligibility check, opening and examination of bids, evaluation of bids, post-qualification, and award of contract. **(IRR-A Section 5 [h])**A Procuring Entity should, therefore, see to it that its procurement program allows enough time to conduct such Public Bidding.

There are two (2) types of Competitive Bidding procedures: the Single-Stage and Two-Stage. The Single-Stage bidding is the regular procedure used for competitive or public bidding while the two stage bidding is employed when 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.

The steps of the Single-Stage Bidding procedure will first be discussed in this section, to be followed by those of the Two-Stage Bidding procedure.

Single-Stage Competitive Bidding

Step 1 Advertise and Post an Invitation to Apply for Eligibility and to Bid

What is the Invitation to Apply for Eligibility and to Bid (IAEB)?

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

Why do you post an Invitation to Apply for Eligibility and to Bid?

It ensures transparency of the procurement process, widest possible dissemination to increase the number of prospective bidders, and intensify competition for the procurement activity or project. Intensified competition, in turn, will ensure that the government, in general, and the Procuring Entity, in particular, will get the best possible quality and cost for the goods and services sought to be procured.

What does an Invitation to Apply for Eligibility and to Bid contain?

The IAEB must contain the following: **(IRR-A Section 21.1)**

1. The name of the contract to be bid, and a brief description of the goods to be procured;
2. A general statement on the criteria to be used by the Procuring Entity for:
 - a. The eligibility check;
 - b. The examination and evaluation of bids; and
 - c. Post-qualification;
3. The date, time and place of the deadline for:
 - a. The submission and receipt of the eligibility requirements;
 - b. The pre-bid conference if any;
 - c. The submission and receipt of bids; and
 - d. The opening of bids;
4. The ABC;
5. The source of funding;
6. The period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the bidding documents;

7. The contract duration or delivery schedule;
8. The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned Procuring Entity, as well as its designated contact person;
9. The Reservation Clause, which is normally located at the bottom of the notice; and
10. Such other necessary information deemed relevant by the Procuring Entity.

The invitation should provide information that enables potential bidders to decide whether to participate. As such, apart from the above essential items, the IAEB should also indicate any important bid evaluation criteria (for example, the application of a margin of preference in bid evaluation) or qualification requirement (for example, a requirement for a minimum level of experience in manufacturing a similar type of product for which the invitation is issued).

The deadline for the submission of bids indicated in the IAEB should be no later than thirty (30) calendar days from the date of advertisement and/or first day of posting.

When, where, and for how long do you post an Invitation to Apply for Eligibility and to Bid?

The IAEB for procurements or projects with ABCs of more than Two Million Pesos (₱ 2 Million) must be advertised and posted as follows: **(IRR-A Section 21.2.1)**

1. Advertised at least once in one (1) newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement (advisably from the 7th calendar day after the pre-procurement conference, but if during the pre-procurement conference the BAC finds that it is not prepared to undertake the bidding procedure, it should not hesitate to consider moving back the advertisement/posting thereof to allow more time to perfect the same);
2. Continuously on the website of the Procuring Entity concerned, if available, the website of the Procuring Entity's service provider, if any, as provided in IRR-A Section 8, and the PhilGEPS for seven (7) calendar days starting on date of advertisement, if applicable; and
3. At any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned, as certified by the head of the BAC Secretariat of the Procuring Entity concerned, for seven (7) calendar days, if applicable.

For projects with ABCs of ₱ 2 Million and below, the IAEB should be posted: **(IRR-A Section 21.2.3)**

1. Continuously on the website of the Procuring Entity concerned, if available, the website of the Procuring Entity's service provider, if any, as provided in IRR-A Section 8, and the PhilGEPS for seven (7) calendar days starting on date of advertisement, if applicable; and
2. At any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned, as certified by the head of the BAC Secretariat of the Procuring Entity concerned, for seven (7) calendar days, if applicable.

For provincial projects, as described in Section 44 of the IRR-A, or programs funded out of the GAA for implementation within the province, in addition to the above advertisement and posting requirements, the IAEB may be advertised in a local newspaper with the widest circulation for the same prescribed period.

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

The BAC is responsible for ensuring that the IAEB is advertised and posted in accordance with law.

Methodology: How are IAEBs advertised and posted?

The following steps are followed in the advertising and posting of IAEBs:⁷

1. For public bidding of contracts with an ABC costing more than Two Million Pesos (₱ 2 Million)
 - a. The BAC Secretariat prepares the draft IAEB for review/approval of the BAC.
 - b. The BAC approves the contents of the IAEB during the pre-procurement conference.
 - c. The BAC Secretariat posts the IAEB in any conspicuous place reserved for this purpose in the premises of the Procuring Entity for the duration required; and this fact will be certified to by the head of the Secretariat.
 - d. The BAC Secretariat advertises the IAEB in a newspaper for the duration required, as prescribed above. For priority programs and projects funded out of the annual GAA, which are intended for implementation within the province, the IAEB may also be advertised in a local newspaper for the same duration as above.
 - e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IAEB in the following websites: the PhilGEPS, that of the Procuring Entity, and the Procuring Entity's e-procurement service provider, if any, for the duration required.
2. For public bidding of contracts with an ABC costing Two Million Pesos (₱2 Million) and below, and for alternative methods of procurement (*Please refer to Section 4, Part 2, for the discussion on Alternative Methods of Procurement*):
 - a. The BAC Secretariat prepares the draft IAEB for review/approval of the BAC.
 - b. The BAC approves the contents of the IAEB.
 - c. The BAC Secretariat performs steps (c) and (e) in Item No. 1 above.

What is the Reservation Clause?

The Reservation Clause declares that the Procuring Entity reserves the right to reject any and all bids, to declare a failure of bidding, or not to award the contract. **(IRR-A Section 41)**

In the case of *Mata v. San Diego*, G.R. No. L-30447 (March 21, 1975), the Supreme Court of the Philippines declared that a bidder is bound by the reservation clause, and the said clause vests in the authority concerned the discretion to ascertain who among the bidders is the lowest responsive bidder or the lowest and best bidder or most advantageous to the best interest of the Government. As such, a bidder has no right or cause of action to compel the BAC or agency to award the contract to it. The Court further stated that this requires inquiry, investigation, comparison, deliberation and decision – a quasi-judicial function which, when honestly exercised, may not be reviewed by the courts. It should be noted, however, that

⁷ FAPs may have additional publication requirements. For this reason, reference should be made to the appropriate standard bidding documents for the project.

R.A. 9184 Section 41, has placed some limiting qualifiers on the possible contents of the Reservation Clause.

A Procuring Entity should be prudent in the use of the reservation clause, because if the Head of the Procuring Entity abuses his power to reject any and all bids, as provided by therein, with manifest preference to any bidder who is closely related to him in accordance with IRR-A Section 47, or if it is proven that he exerted undue influence or undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take such action, and the same favors or tends to favor a particular bidder, he shall be meted with the penalties provided in IRR-A Section 65. **(IRR-A Section 65.1.5)**

Step 2 Issue the Bidding Documents

When should the bidding documents be made available to prospective bidders?

The bidding documents must be made available to the prospective bidders from the time the IAEB is advertised until immediately before the deadline for submission of bids. **(IRR-A Section 17.5)** The Procuring Entity must ensure that prospective bidders are given ample time to examine the bidding documents and to prepare their respective bids. A maximum period of thirty (30) calendar days from the date of advertisement and/or first day of posting of the IAEB up to opening of bids is provided by Section 21.2.2 of the IRR-A, which means that there is a period of thirty (30) calendar days for which the bidding documents are available for purchase.

The bidding documents are strictly confidential and shall not be divulged or released to any person prior to its official release. It is advisable for a Procuring Entity to post an abstract or a summary of the bidding documents, containing general information about the procurement at hand, in the PhilGEPS website, the website of the Procuring Entity, and the website of its electronic procurement system service provider, if any. This abstract may then be viewed even by non-registered users of the PhilGEPS or of the other websites mentioned.

How much must prospective bidders pay for the Bidding Documents?

The BAC must consider the cost recovery component in determining the price which interested suppliers would have to pay for the bidding documents to ensure that the same would not have an effect of discouraging competition.

The cost recovery component may include the following:

1. Direct costs, which includes:
 - a. Development costs, which are incurred in developing the original content of the documents, designs, plans and specifications. However, the design cost may be excluded if it is to be included in the capitalized cost of the project, or the project cost, which is to be recovered from the use of the completed project facility;
 - b. Reproduction costs, which are labor, supplies and equipment rental costs incurred in the reproduction of the documents; and
 - c. Communication costs, which include mail and fax costs, plus costs of advertising, meetings, internet/web posting, and other costs incurred for the dissemination of information about the bidding.
2. Indirect costs, such as overhead, supervision, and administrative costs, allocated to the bidding activity. This may include the costs of paying honoraria to the officers and personnel of the Procuring Entity who are entitled thereto under the law. Under Budget Circular No. 2004-5A, dated October 7, 2005, the chairs and members of the BAC and the TWG may be paid honoraria for successfully completed procurement projects, subject to the rates provided therein; and, for this reason, agencies are allowed to retain one hundred percent (100%) of their collections from the sale of bidding documents, among others, to be used exclusively for the payment of such honoraria or overtime pay, provided that the same shall not exceed twenty-five percent (25%) of the basic monthly salary of the officer or personnel entitled thereto.

(Note that Budget Circular No. 2004-5A was issued in accordance with Section 15 of R.A. 9184)

In practice, cost recovery entails getting the sum of Direct and Indirect Costs and dividing the total by the expected number of prospective bidders who will purchase the bidding documents. This number is an estimate derived from the initial survey of the industry conducted by the procurement office/unit. The BAC is discouraged from using the cost of bidding documents to limit the number of bidders. If the procurement involves a fairly large acquisition of goods of a particular complexity, and project implementation requires a higher level of size or capacity on the part of the supplier, it would be more advisable for the BAC to allow the project requirements to naturally limit competition among capable suppliers, by summarizing the qualification requirements in the IAEB and detailing these in the bidding documents, rather than for the BAC to unilaterally increase the price of the bidding documents and hope that this price discourages competition. As such, if the BAC wants to encourage the participation of as many bidders as possible to create competition, it should consider charging a lower price for the bidding documents, keeping in mind that this price should be sufficient to recover the above-enumerated costs.

Methodology: How are the Bidding Documents issued?

The BAC Secretariat issues the bidding documents to the prospective bidders that may wish to secure the said documents, or, if it is for sale, to those prospective bidders that may wish to purchase the same. If the bidding documents are sold, only those prospective bidders that have paid the amount required shall be issued bidding documents, and bidders should be informed that the Procuring Entity will only accept bids from bidders that have purchased the bidding documents from the office indicated in the IAEB. Prior to the issuance of the bidding documents, prospective bidders may be required to show the official receipt as proof of payment.

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

What are the responsibilities of a prospective bidder with regard to the Bidding Documents?

A prospective bidder must be responsible for having: **(IRR-A Section 17.7.1)**

1. Taken steps to carefully examine all of the bidding documents;
2. Acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
3. Made an estimate of the facilities available and needed for the contract to be bid, if any; and
4. Complied with his responsibility as provided for under Section 22.5.1, which provides that it shall be the responsibility of all those who have properly secured the bidding documents to inquire and secure supplemental/bid bulletins that may be issued by the BAC.

Failure to observe any of the above responsibilities shall be at the risk of the prospective or eligible bidder concerned. For this purpose, one of the contents of the Technical proposal would have to be a sworn statement executed by the bidder attesting to these responsibilities.

The Procuring Entity shall not be responsible for any erroneous interpretation or conclusions by the prospective or eligible bidders of the data it furnished. **(IRR-A Section 17.7.3)**

Moreover, the bidders are deemed to have become familiar with all existing Philippine laws, decrees, ordinances, acts and regulations that may affect the contract in any way. However, if the contract is affected by new laws, ordinances, regulations or other acts of government promulgated after the date of the bidding, a contract price adjustment shall be made or

appropriate relief shall be applied on a no loss-no gain basis, provided such is not covered by the contract provisions on price adjustment. **(IRR-A Section 17.7.4)**

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

What is a Pre-bid Conference?

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

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

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

When do you hold a Pre-bid Conference?

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

A pre-bid conference must be conducted **at least twelve (12) calendar days before the deadline for the submission and receipt of bids. (IRR-A Section 22.2)** In addition to this, it is suggested that it not be held earlier than seven (7) calendar days after the second newspaper advertisement or the last day of posting the IAEB. If the pre-bid conference is held less than 12 calendar days before the deadline for the submission and receipt of bids, that deadline should be moved to a later date. A supplemental/bid bulletin shall be issued for this reason. Note that these periods are all within the maximum period of thirty (30) calendar days from the date of advertisement and/or first day of posting of the IAEB up to the opening of bids, as provided under IRR-A Section 21.2.2 (i).

Who must attend the Pre-bid Conference?

The following shall attend the Pre-Bid Conference:

1. The BAC;
2. The BAC Secretariat/Procurement Unit;
3. The TWG members and consultants, if any;
4. The procuring unit/end-user unit;
5. The prospective bidders; and

6. The Observers.

The attendance of the prospective bidders shall not be mandatory.

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

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

Methodology: How is the Pre-bid Conference conducted?

The manner by which the pre-bid conference is conducted depends on the discretion of the BAC. However, several events need to take place in the conference, namely:

1. The presentation by the BAC of the eligibility requirements as well as the technical and financial components of the contract to be bid, the evaluation procedure, evaluation criteria, and possible causes of failure of the bidding.
2. The BAC chairperson shall also discuss the requirements in the ITB, the replies to the bidders' queries about the requirements, specifications and other conditions of the project, the bid evaluation of all bidders and post-qualification evaluation of the lowest calculated bidder. Emphasis should also be given to the warranty requirement of the project and the different offenses and penalties provided for in IRR-A of R.A. 9184.
3. The recording by the BAC Secretariat of minutes of the pre-bid conference, and its availability to all participants not later than three (3) calendar days after the pre-bid conference. **(IRR-A Section 22.3)**

TIPS: Let's make doing things easier

The BAC must initiate discussions on contentious issues, most especially if the participating prospective bidders have no ready questions. It is probable that there are issues that may not be apparent in the bidding documents but are known to the representatives of the Procuring Entity. If these issues are brought out and openly discussed, prospective bidders will be able to prepare responsive bids, thus avoiding situations that may give rise to a failure of bidding due to lack of bids received or failure of bids to comply with all the bid requirements. This would also help prevent the birth of contentious issues during the bidding itself.

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

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

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

The BAC should also post the supplemental/bid bulletin on the website of the Procuring Entity concerned, if available, the website of its electronic procurement system provider, if any, and on the PhilGEPS, within the same timetable. It will be the prospective bidders' responsibility to ask for, and secure, these bulletins, however BAC should ensure that all prospective bidders receive the bid bulletins.

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

Bidders who have submitted bids before a supplemental/bid bulletin is issued have to be informed in writing and allowed to modify or withdraw their respective bids. **(IRR-A Section 22.5.2)**

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

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

1. The BAC;
2. The BAC Secretariat / Procurement Unit;
3. The TWG members; and
4. The prospective bidders.

Methodology: How is a Supplemental/Bid Bulletin issued?

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

1. The BAC Secretariat and/or the TWG draft the supplemental/bid bulletin for approval by the BAC.
2. The BAC approves the supplemental/bid bulletin and the BAC chairperson signs it.
3. The BAC Secretariat sends copies of the supplemental/bid bulletin to all prospective bidders who have properly secured or purchased the bidding documents, within the period prescribed above.
4. The BAC Secretariat posts the supplemental/bid bulletin in the PhilGEPS, the website of the Procuring Entity and that of the latter's electronic procurement system provider, if any, within the same period prescribed in number (3) above.

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

1. The prospective bidder submits to the BAC, through the BAC Secretariat, a written request for clarification, within the period prescribed above.

2. The BAC directs the BAC Secretariat and/or TWG to study the request for clarification.
3. The TWG, BAC and BAC Secretariat perform the steps undertaken in the issuance of the supplemental/bid bulletin issued at the initiative of the BAC.

Step 4 Receive and Open the Eligibility and Bid Envelopes

What is an eligibility check?

It is a procedure to determine if a prospective bidder is eligible to participate in the bidding at hand. In determining a prospective bidder's eligibility, the BAC shall use non-discretionary "pass/fail" criteria, as stated in the IAEB and the ITB. Essentially, this means that the absence, incompleteness or insufficiency of a document shall make a prospective bidder ineligible to bid for the particular procurement.⁸ **(IRR-A Section 23.2)**

Who may be eligible to participate in a public bidding for goods?⁹

The following manufacturers, suppliers and/or distributors, service providers shall be eligible to participate in the bidding for the supply of goods: **(IRR-A Section 23.11.1.1)**

1. Duly licensed Filipino citizens/sole proprietorships;
2. Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
3. Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
4. Joint ventures of manufacturers, suppliers and/or distributors, *i.e.*, a group of two (2) or more manufacturers, suppliers and/or distributors that intend to be jointly and severally responsible or liable for a particular contract, provided that:¹⁰
 - a. Filipino ownership or interest of the joint venture concerned must be at least sixty percent (60%); and
 - b. In determining the eligibility of the joint venture, the principle of "collective compliance" will be applied to its members/principals in the sense that each of the entities of the joint venture must submit all of the documents that are required to establish eligibility, although the non-compliance of one member/principal may be compensated by the compliance of another member/principal;
5. Cooperatives duly registered with the CDA.

Why is that?

Why do we require that the bidder's largest single contract be at least 50% of the ABC of the contract to be bid?

We do this because we want to be assured that the prospective bidder has the technical and financial capability to undertake the contract to be bid.

All of these entities must have:

⁸ For FAPs, reference should be made to the appropriate standard bidding documents for the project to determine the rules on eligibility check.

⁹ For FAPs, reference should be made to the appropriate standard bidding documents for the project to determine the appropriate qualification requirements of a bidder.

¹⁰ For FAPs, any firm may bid independently or in joint venture confirming joint and several liability, either with domestic firms and/or with foreign firms, but the IFIs generally do not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

1. The experience of having completed within the period specified in the IAEB concerned, a single contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the wholesale consumer price index, must be at least fifty percent (50%) of the approved budget for the contract to be bid (**IRR-A Section 23.11.1.2**); and

2. Any of the following:

An NFCC that is at least equal to the approved budget for the contract to be bid, calculated as follows:

NFCC = [(Current assets minus current liabilities) (K)] minus the value of all outstanding projects under ongoing contracts, including awarded contracts yet to be started.

Where:

K = 10 for a contract duration of one year or less, 15 for a contract duration of more than one year up to two years, and 20 for a contract duration of more than two years.

or

A commitment from a licensed bank to extend to it a credit line if awarded the contract to be bid – such commitment being specific to the contract to be bid;

or

a hold out on cash deposits issued by a licensed bank, which shall also be specific to the contract to be bid, and which must be in an amount not lower than that set by the Procuring Entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the ABC of the contract to be bid.

What do we mean?

When is a contract "similar" to another?

A contract is similar to the contract to be bid if it involves goods or related services of the same nature and complexity as those which are the subject of the public bidding concerned; for example, if it has the same major categories of goods, such as computers and network equipment.

Are foreign suppliers allowed to bid?

Foreign suppliers, manufacturers, and/or distributors may be invited to participate in the bidding for the procurement of goods, when:

1. The goods are not available from domestic sources at the prescribed minimum specifications of the appropriate government authority and/or ABC of the Procuring Entity, as certified by the Head of the Procuring Entity, confirmed by the DTI. (**IRR-A Section 23.11.1**)

Under GPPB Resolution 18-2005, 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 DTI for electrical products, mechanical/building & construction materials, chemicals, foods and other consumer products, and the BFAD of the 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.

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. 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.

The procurement of unavailable goods must be through competitive or public bidding unless conditions prescribed under R.A. 9184 and its IRR-A warrant resort to alternative methods of procurement.

2. There is a need to prevent situations that defeat competition or restrain trade. **(IRR-A Section 23.11.1)**

Under Section 6.1 of GPPB Resolution 18-2005, 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-A, 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 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.

3. The foreign citizen/entity who/that wishes to participate in the procurement of goods is able to prove that the laws, rules and regulations of his/its country of origin grants reciprocal rights and privileges to Filipino citizens with respect to the procurement of goods by his/its own government. **(R.A. 5183)**

A bidder shall be deemed to have the nationality of a country if the bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country.

This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the contract, including related services.

Under Section 7.2 of GPPB Resolution 18-2005, the Procuring Entity shall confirm from the DFA countries with which the Philippines enjoys reciprocal rights on matters of eligibility of its nationals in public procurement abroad. If the country of the prospective foreign bidder is not in the list, the Procuring Entity shall require from the said bidder the submission of a sworn statement that the country of which he is a citizen or in which the corporation or partnership is organized and registered grants reciprocal rights or privileges to Filipino citizens, corporations or associations, citing its country's relevant laws.

The sworn statements mentioned above shall be validated during post-qualification of bidders.

4. When provided for under any treaty or international or executive agreement.¹¹

¹¹ Under FAPs, to foster competition, IFIs permit firms and individuals from eligible countries to offer goods, works, and services. Any conditions for participation should be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. In connection with any contract to be financed in whole or in part from an IFI loan, the IFI generally does not permit a procuring entity to deny pre- or post-qualification to a firm for reasons unrelated to its

When is a prospective bidder eligible to bid?

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

As procuring entities and the bidders, manufacturers, suppliers or distributors are required to observe the highest standard of ethics during the procurement and execution of contract, bidders should not be under a declaration of ineligibility for corrupt, fraudulent, collusive and coercive practices by the government.

What are the minimum eligibility requirements?

Section 23.6 of the IRR-A requires bidders to submit the following eligibility requirements contained in a separate envelope, to be submitted together with the technical and financial bid envelopes, to wit:

1. Class "A" Documents

a. Legal Documents

- i. DTI business name registration in the case of Single Proprietorships; or SEC registration certificate, in the case of Partnerships or Corporations; or CDA Registration, in the case of cooperatives;
- ii. Valid and current Mayor's permit/municipal license, if applicable;
- iii. BIR Registration Certification, which contains the Taxpayer's Identification Number;
- iv. Statement of the prospective bidder that it is not "blacklisted" or barred from bidding by the government or any of its agencies, offices, corporations or LGUs, and that it is not included in the Consolidated Blacklisting Report issued by the GPPB, once released in accordance with the guidelines to be issued by the GPPB as provided in Section 69.4 of the IRR-A;
- v. Tax Clearance Certificate issued by the BIR Main Office and Income or Business Tax Returns filed through the EFPS (E.O. 398, s. 2005), if applicable;
- vi. Other appropriate licenses as may be required by the Procuring Entity concerned.

b. Technical Documents

A statement of the prospective bidder of all its ongoing and completed government and private contracts within the period specified in the IAEB, including contracts awarded but not yet started, if any. This statement must include the following information for each of the contracts:

- i. Whether the contract is ongoing, completed or awarded but not yet started within the relevant period;
- ii. The name of the contract;

capability and resources to successfully perform the contract; nor does it permit a procuring entity to disqualify any bidder for such reasons. Consequently, procuring entities should carry out due diligence on the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

- iii. The date of the contract;
- iv. The kinds of goods sold;
- v. The amount of contract and value of outstanding contracts;
- vi. The date of delivery;
- vii. The end user's acceptance, for completed contracts;
- viii. A specification whether the prospective bidder is a manufacturer, supplier or distributor, or service provider; and
- ix. Whether the contract is similar or not in nature and complexity with the contract to be bid.

c. Financial Documents

- i. The prospective bidder's audited financial statements, stamped "received" by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, the prospective bidder's total and current assets and liabilities;
- ii. The prospective bidder's computation of its NFCC which shall be computed using the formula prescribed in Sec. 23.11.1.3 of the IRR-A; and,
- iii. If its NFCC is not sufficient to comply with the requirements in Sec. 23.11.1.3 of the IRR-A:
 - A commitment from a licensed bank to extend to it a credit line if awarded the contract to be bid, such commitment being specific to the contract to be bid; or
 - A certificate of hold out on cash deposit, in an amount not lower than that set by the Procuring Entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the ABC.

Let's make things easier

To facilitate eligibility checking, the BAC of a Procuring Entity may maintain a file of the foregoing Class "A" documents submitted by manufacturers, suppliers and distributors. When such file is required by the Procuring Entity, a manufacturer, supplier or distributor who wishes to participate in a public bidding for non-common Goods should maintain this file current and updated at least once a year, or more frequently when needed. A manufacturer, supplier or distributor who maintains a current and updated file of his Class "A" documents will be issued a certification by the BAC to that effect, which certification may be submitted to the Procuring Entity concerned in lieu of the foregoing Class "A" documents. **(IRR-A Section 23.6.1)**

2. Class "B" Documents

- a. Valid JVA, if the prospective bidder is a joint venture, with the agreement containing a statement on who the joint venture has constituted and appointed as the lawful attorney-in-fact to sign the contract, if awarded the project, and on which among the members/principals is the lead representative of the joint venture.

All members of the joint venture should submit all the Class "A" eligibility documents. All members of the joint venture should comply with all the legal eligibility requirements, but compliance by one of the joint venture members with the technical and financial requirements will suffice.

- b. Letter authorizing the Head of the Procuring Entity or his duly authorized representative/s to verify any or all of the documents submitted for the eligibility check.

3. Other Eligibility Documents

A certification, under oath, executed by the prospective bidder or its duly authorized representative, that each of the documents submitted in satisfaction of the eligibility requirements is an authentic and original copy, or a true and faithful reproduction or copy of the original, complete, and that all statements and information provided therein are true and correct. **(IRR-A Section 23.8)**

The BAC may require the bidder's authorized representative to initial every page of the documents it submits as originals. The purpose of this exercise is to ensure that the documents reviewed by the BAC are authentic, and to protect the BAC from any insinuation of tampering with the said documents.

What is the purpose of requiring an NFCC, a credit line or a certificate of a Hold-out on Cash Deposit that is equal to the ABC?

The NFCC, a credit line and a certificate of a hold-out on cash deposit establish the bidder's liquidity, its capacity to absorb the additional obligations in connection with the contract to be bid and to finance its implementation/completion. Compliance with this eligibility requirement may be done on the alternative, such that submission of any of the three is acceptable for purposes of determining a bidder's eligibility.

What are the eligibility requirements of a prospective foreign bidder?

Foreign manufacturers, suppliers and distributors, when allowed to bid under the circumstances mentioned in IRR-A Sec. 23.11.1 and R.A. 5183, must submit the same eligibility requirements as domestic entities. However, the legal documents and the audited financial statements under the Class "A" documents may be substituted by the appropriate equivalent documents issued by the country of the foreign manufacturer, supplier or distributor. **(IRR-A Section 23.7)** These documents must be duly acknowledged and authenticated by the Philippine consulate located in that country.

How and when must the Eligibility Envelope be submitted?

The Eligibility envelope must be submitted **together with the Technical and Financial bid envelopes**, enclosed in an outer sealed envelope or any such appropriate container, to the BAC on or before the deadline specified in the IAEB. Eligibility requirements submitted after the deadline should not be accepted by the BAC. For purposes of synchronizing the time, the BAC may identify an official timepiece that will be referred to for purposes of determining timely submission. The official timepiece must be indicated in the bidding documents and announced during the pre-bid conference, to ensure that all prospective bidders are aware of this information.

A prospective bidder which had submitted Class "A" documents, and was issued a Certificate of Registration by the Procuring Entity may submit the following:

1. A certification from the BAC of the Procuring Entity that it has a complete set of updated Class "A" documents on file with the BAC;
2. Its Class "B" documents; and
3. Its certification under oath that each of the documents submitted in satisfaction of the eligibility requirements is an authentic and original copy or a true and faithful reproduction or copy of the original, complete and that all statements and information provided therein are true and correct.

What happens if a bidder fails to submit its eligibility envelope and bid on the date, time and place indicated in the IAEB?

Any eligibility envelope, technical bid or financial bid submitted after the deadline for submission and receipt of bids prescribed by the Procuring Entity shall be declared "Late" and shall not be accepted by the BAC.

When should the eligibility envelope be opened?

The eligibility envelope should be opened and an eligibility check conducted by the BAC on the day of the bid opening, but prior to the opening of the bid envelopes. After opening the eligibility envelopes of the bidders, the technical bid envelopes of bidders who were declared eligible should then be opened. Thereafter, the financial bid envelopes of bidders who were declared as technically complying should be opened. These activities are held on the day of the bid opening, as stipulated in the bidding documents.

What is a Bid?

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

What are the contents of the Technical Proposal?

The Technical Proposal should contain, at the minimum, the following technical information/documents:

1. The Bid Security as to form, amount and validity period;
2. Authority of the signatory, which must be contained in a Board Resolution if the bidder is a corporation or a cooperative, a Joint Venture Resolution if the same is a Joint Venture, a Partnership Resolution if the bidder is a Partnership, or a Special Power of Attorney (SPA) issued by the General Manager or Proprietor if the bidder is a sole proprietor;
3. Production/delivery schedule;
4. Manpower requirements;

5. After-sales service/parts, if applicable;
6. Technical specifications;
7. Commitment from a licensed bank to extend to the bidder a credit line if awarded the contract to be bid, or a hold out on cash deposit, in an amount not lower than that set by the Procuring Entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the ABC, provided that if the bidder previously submitted this document as an eligibility requirement, the said previously submitted document shall suffice;
8. Certificate from the bidder under oath of its compliance with existing labor laws and standards, in the case of procurement of services;
9. A sworn affidavit of compliance with the Disclosure Provision under Section 47 of R.A. 9184 and its IRR-A in relation to other provisions of R.A. 3019;
10. A sworn statement attesting to the responsibilities mentioned in Section 17.7.1, particularly that the bidder has taken steps to carefully examine all of the bidding documents, has acknowledged all conditions, local or otherwise, affecting the implementation of the contract, has made an estimate of the facilities available and needed for the contract to be bid, and has complied with its responsibility of inquiring and securing all supplemental/bid bulletins issued by the BAC; and
11. Other documents/materials as stated in the Instructions to Bidders.

What are the contents of the Financial Proposal?

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

1. The financial proposal submission sheet, which includes the bid prices and the bill of quantities for procurement of goods, or scope of work for procurement of services, and the applicable price schedules; and
2. The recurring and the maintenance costs, if applicable. *(Please refer to Section 2 on Procurement Planning, for guidelines in the preparation of the Technical Specifications and other requirements.)*

When should Bids be submitted?

Bids should be submitted on or before the specified **time and date of the deadline for submission of bids, as stated in the IAEB, and within thirty (30) calendar days from date of advertisement and/or first day of posting the IAEB. (IRR-A Section 21.2.2 [i])** Bids submitted after the specified deadline shall not be received or accepted by the BAC. **(IRR-A Section 25.2)**

Who are the parties involved in the receipt and opening of eligibility envelopes and bids?

The following parties are involved in this process:

1. The BAC;
2. The TWG;
3. The BAC Secretariat /Procurement Unit;
4. The bidders; and

5. The Observers.

Methodology: How are the eligibility and bid envelopes opened?¹²

1. The BAC shall receive the Eligibility, Technical and Financial envelopes at the time, date and place specified in the bidding documents. Upon receipt of these envelopes, the BAC Secretariat must stamp the face of the outer envelope as "RECEIVED," indicating thereon the date and time of receipt, and have the stamp countersigned by an authorized representative.
2. The BAC shall open in public the Eligibility envelopes on the same day as the bid opening. **(IRR-A Section 23.1)** The BAC shall read in public the contents of the Eligibility envelopes, and shall examine each prospective bidder's eligibility requirements or statements. It shall record the presence or absence of the required eligibility requirements in a Checklist.
3. The BAC shall declare prospective bidders as either "eligible" or "ineligible", based on the findings in number 2 above, and inform them accordingly. The Eligibility envelopes shall likewise be marked as such, and these markings shall be countersigned by the BAC chairperson or his duly designated authority. **(IRR-A Section 23.2)** The BAC may prepare a pro-forma Notice of Eligibility and a Notice of Ineligibility, which will be duly accomplished by the BAC Secretariat and signed by the BAC members present during the Eligibility Check. In case a prospective bidder is declared ineligible, the Notice of Ineligibility shall state the reason for such ineligibility. The Notice will be received officially by the Bidder's authorized representative. Those found ineligible have seven (7) calendar days upon written notice or, if present at the time of opening of eligibility requirements, upon verbal notification, within which to file a request for reconsideration with the BAC.
4. The BAC shall inquire from ineligible bidders who are present during the Eligibility Check whether or not they intend to file a **request for reconsideration**; if they signify their intention to do so, the BAC shall keep the Eligibility envelopes containing the eligibility requirements and re-seal the same in the presence of all the participants. These shall be deposited in the Bid Box or any other secured place or location, together with the Technical and Financial envelopes, ensuring that the latter documents remain sealed and unopened. **(IRR-A Sec. 23.3)** If an ineligible bidder does not signify its intention to file a motion for reconsideration during the Eligibility Check, considering that it may decide to exercise its right to file one during the mandated seven (7) calendar day period therefor, it would be advisable for the BAC to place its own seal over the Technical and Financial Bid envelopes of the said ineligible bidder – which BAC seal shall be over the existing seal of the ineligible bidder – to ensure that no tampering of these documents may be committed while in possession of the ineligible bidder before resubmission. In any case, with or without any indication on the part of the prospective bidder of its intention to file a request for reconsideration, it would be advisable for the BAC to hold on to the Eligibility

TIPS: Let's improve transparency

The BAC may request the prospective bidders to identify an individual who shall act as a third party witness and countercheck the eligibility documents being examined by the BAC. This is especially important if there are no observers present during the Bid Opening.

Alternatively, the BAC may use any device (*i.e.*, document camera, opaque projector, etc.) that will enable all attendees to view the document being examined

¹² The eligibility and bid opening methodology may vary for FAPs. Reference should be made to the appropriate standard bidding documents for the project.

envelopes containing the eligibility requirements, duly re-sealed and deposited, including the technical and financial bid envelopes, until the expiration of the period for filing a request for reconsideration, to ensure the integrity of these documents; unless if the said prospective bidder waives its right to file a request for reconsideration.

5. The BAC shall return the Eligibility, Technical and Financial Bid envelopes of a prospective bidder if it is declared "ineligible" and it does not signify its intention to file a request for reconsideration or expressly waives its right to file a motion for reconsideration. In the case of the latter, such waiver shall be made in writing to be executed by the authorized representative of the ineligible bidder. The BAC must decide on a request for reconsideration within seven (7) calendar days from receipt thereof.
6. The BAC shall proceed with the opening of the Technical envelopes (Technical Proposals) of eligible bidders, and the Preliminary Examination of Bids, to determine each bidder's compliance with the documents that are required to be submitted for the technical component of the bid. The opening shall also be done in public, following the same procedure as the Eligibility Check. The BAC shall check the submitted technical documents of each bidder against a Checklist of required technical documents to ascertain if they are all present in the first bid envelope, using non-discretionary "pass/fail" criteria. **(IRR-A Section 30.1)**
7. In case one or more of the above-required documents in the Technical Bid envelope is missing, incomplete or patently insufficient, the bid shall be declared as "failed" and immediately returned to the bidder concerned, together with the unopened financial envelope. A bidder determined as "failed" has seven (7) calendar days upon written notice or, if present at the time of bid opening, upon verbal notification, within which to file a request for a reconsideration with the BAC. **(IRR-A Section 30.3)** The BAC shall follow the procedures provided for under Nos. 4 and 5 above, with respect to the Technical and Financial Bid envelopes.
8. Immediately after determining compliance with the requirements in the first envelope, the BAC shall open the second bid envelope (Financial Proposals) of each remaining technically complying bidder whose submitted technical requirements were rated "passed." The second envelope of each technically complying bidder shall be opened on the same day. The BAC shall determine whether one or more of the requirements of the Financial Bid is missing, incomplete or patently insufficient, and if the submitted total bid price exceeds the ABC. If the Financial Bid is complete, the BAC shall rate it "passed" and shall proceed with the evaluation of the Bid. Only bids that are determined to contain all the bid requirements for both Technical and Financial components shall be rated "passed" and shall be considered for evaluation and comparison. **(IRR-A Sections 30.2)**

How's that again?

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

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

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

9. All members of the BAC or their duly authorized representatives and the Observers who are present during bid opening, shall initial every page of the original copies of all bids received and opened. **(IRR-A Sections 29)**
10. The BAC Secretariat shall record the proceedings using a tape recorder, or a video recorder or any device that may facilitate the recording. The minutes of the bid opening should be prepared within three (3) calendar days after the bid opening date, so that copies thereof could immediately be sent to the BAC members, Observers, bidders and other interested parties. Copies of the minutes shall also be made available to the public upon written request and payment of a specified fee to recover cost of materials.

What happens if only one bidder submits its eligibility and bid envelopes?

Even if only one bidder submits its eligibility and bid envelopes, the bidding process continues. If the bidder is declared eligible and its bid is found to be responsive to the bidding requirements, its bid will be declared as a SCRB and considered for contract award. **(IRR-A Section 36)**

What can a prospective bidder do if it is found ineligible or declared non-compliant with the technical or financial requirements?

A prospective bidder that was absent during the opening of the bids and was found ineligible or was declared failed has three (3) calendar days from receipt of the Notice of Ineligibility/Failure, within which to file a written request for reconsideration before the BAC.

If the prospective bidder was present during bid opening and was duly notified (a verbal notification will suffice in this case) of its ineligibility/failure, it also has three (3) calendar days upon such notice within which to file a written request for reconsideration. Seven (7) calendar days after it receives a letter requesting for reconsideration, the BAC should resolve such request. In the meantime, it will hold on to the Eligibility, Technical and Financial envelopes of the prospective bidder until the request for reconsideration is resolved. In so doing, it can request the prospective bidder to clarify its eligibility documents, if necessary.

(IRR-A Section 23.3) The BAC may return the Eligibility, Technical and Financial envelopes if the prospective bidder is declared "ineligible" and expressly waives his right to file a request for reconsideration. Such waiver shall be made in writing, to be executed by the authorized representative of the ineligible bidder.

How's that again?

What shall the position paper contain?

The verified position paper shall contain the following information:

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

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned, produces no legal effect, and results to the outright dismissal of the protest. **(IRR-A Section 55.2)**

If its request for reconsideration is denied, the ineligible bidder may protest the decision in writing with the Head of the Procuring Entity within seven (7) calendar days from receipt of

the resolution. A protest may be made by filing a verified position paper with the Head of the Procuring Entity concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be in an amount equivalent to no less than one percent (1%) of the ABC. **(IRR-A section 55.1)**

The protests shall be resolved strictly based on records of the BAC. The Head of the Procuring Entity shall resolve a protest within seven (7) calendar days from receipt thereof. Subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches, constitutional commissions or instrumentalities of the Government to approve contracts, the decisions of the Head of the Procuring Entity 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. **(IRR-A Section 56)**

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

Notwithstanding the eligibility of a prospective bidder, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the preset eligibility criteria, the Procuring Entity shall consider the said prospective bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract. **(IRR-A Section 23.4)** A prospective bidder found guilty of false information faces imprisonment of not less than six (6) years and one (1) day but not more than 15 years. **(IRR-A Section 65.3)**

What happens if only one bidder is declared eligible?

The procurement process also proceeds with the Preliminary Examination of Bids. Again, if the eligible bidder submits a bid that is found to be responsive to the bidding requirements, its bid shall be declared as a SCRB and considered for contract award. **(IRR-A Section 36)**

What is disqualification?

Disqualification is a distinct concept from ineligibility and post-disqualification. When a Bidder is disqualified, it is barred from further participating in the procurement at hand, even if, in some instances, it has initially been declared eligible. Even if a Bidder is Post-qualified, if after such Post-qualification, the Procuring Entity has found grounds for disqualification, the latter may declare such Bidder disqualified, hence, the Procuring Entity shall not award the contract to the former.

Other than a declaration of ineligibility, is there another way by which a manufacturer, supplier or distributor may be disqualified from bidding?

Aside from those who are not eligible to bid for the procurement of goods, a bidder that has a conflict of interest shall be disqualified to participate in the procurement at hand. A Bidder would be considered as having a conflict of interest with another bidder in any of the events described in paragraphs 1 through 3 below and a general conflict of interest in any of the circumstances set out in paragraphs 4 through 6 below:

1. If the bidder is a corporation or a partnership and it has officers, directors, controlling shareholders, partners or members in common with another bidder; or if the bidder is an individual or a sole proprietorship and he is the proprietor of another bidder, or an

- officer, director or a controlling shareholder of another bidder; or if the bidder is a joint venture and it or any of its members has officers, directors, controlling shareholders or members in common with another bidder, or any of its members is a bidder;
2. A bidder receives or has received any direct or indirect subsidy from another bidder;
 3. A bidder has the same legal representative as any other bidder for purposes of the bidding at hand.
 4. A bidder has a relationship directly or through common 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 the bidding process. This will include a firm or an organization that lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;
 5. A bidder submits more than one bid in the bidding process. However, this does not limit the participation of subcontractors in more than one bid; or
 6. 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.

In accordance with Section 47 of the IRR-A, the bidder should not be related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree or any of the Procuring Entity's officers or employees having direct access to information that may substantially affect the result of the bidding, such as, but not limited to, the members of the BAC, the members of the TWG, the BAC Secretariat, the members of the PMO, and the designers of the project. This prohibition shall apply to the following persons:

1. If the bidder is an individual or a sole proprietorship, to the bidder himself;
2. If the bidder is a partnership, to all its officers and members;
3. If the bidder is a corporation, to all its officers, directors and controlling stockholders; and
4. If the bidder is a joint venture, items 1 through 3 above shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

To establish the non-existence of the above relationship, and to bind the Bidders to its representation relating to the foregoing, all bids must be accompanied by a Disclosure Affidavit of the bidder to that effect. **(IRR-A Section 47 and Section 25.3.A.9)**

May a bidder file a Motion for Reconsideration of the BAC's decision declaring another bidder eligible?

Yes. Pursuant to Section 23.3 of the IRR-A.

What happens if no prospective bidder is declared eligible?

If no prospective bidder is found to be eligible, the BAC should declare the bidding a failure. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. The BAC then reviews the terms and conditions stated in the IAEB. If warranted, it changes any of the terms and conditions, including the quantities or specifications, provided that the ABC is left unchanged. It must, thereafter, conduct a re-bidding, in the process formulating a new IAEB and posting and publishing this as required. **(IRR-A Section 35)** All bidders that have initially responded to the IAEB in the first bidding shall be allowed to submit new bids.

If the original estimate is found to be inadequate on reassessment to meet the objectives of the project, it may be necessary to reduce the scope of the project.

Should a second failure of bidding occur and the Procuring Entity finds that there is a need to evaluate the responsiveness of the ABC, and so decides to revise the ABC accordingly, the Procuring Entity should conduct another public bidding with re-advertisement and/or posting. Alternatively, the Procuring Entity may enter into a negotiated procurement with a legally, technically, and financially capable supplier (**IRR-A Sections 35.3 and 53**). However, if the Procuring Entity resorts to negotiated procurement, the terms, conditions, and specifications of the project as well as the ABC must be maintained.

What happens if only one bidder passes the Preliminary Examination of Bids?

The procurement process also proceeds with the subsequent step of Bid Evaluation. Again, if the eligible bidder submits a bid that is found to be responsive to the bidding requirements, its bid shall be declared as a SCRB and considered for contract award. (**IRR-A Section 36**)

What happens if a bidder fails to comply with the Technical and Financial requirements of the Bid?

The bidder that fails to comply with any of the Technical or Financial requirements of the Bid will be disqualified by the BAC. Similar to ineligible bidders, it may file a written request for reconsideration within three (3) calendar days from the receipt of the communication regarding its bid's deficiency. (**IRR-A Section 30.3**)

Can a bidder withdraw its bid?

Yes, a bidder may, through a Letter of Withdrawal, withdraw its bid, before the deadline for the receipt of bids. 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. It should be noted however that the act of habitually withdrawing from bidding or submitting letter of non-participation for at least three (3) times within a year is a ground for the imposition of administrative penalties, except when done for a valid reason.

The bidder that withdraws its bid beyond the deadline for the submission of bids will forfeit its bid security, as well as the imposition of any applicable administrative, civil and/or criminal sanction prescribed in R.A. 9184 and its IRR-A.

Step 5 Evaluate the Bids

What is the purpose of Bid Evaluation?

The purpose of bid evaluation is to determine the Lowest Calculated Bid (LCB). **(IRR-A Section 32.1)** This is done by:

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

When should the bids be evaluated?

The entire evaluation process for the bids for the procurement of goods must be completed in not more than **seven (7) calendar days** from the deadline for receipt of proposals. **(IRR-A Section 32.3)** However, the BAC should exert effort to complete the Bid Evaluation even before the lapse of the 15-day period, as this will expedite the procurement process.

Who are the participants in the Bid Evaluation Process?

The following must participate in the bid evaluation process:

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

Methodology: How are bids evaluated?¹³

1. After the preliminary examination of bids, the BAC, or through the TWG, shall immediately conduct a detailed evaluation of all bids rated "passed," using a non-discretionary pass/fail criteria, as stated in the IAEB and the ITB, which shall include a consideration of the following: **(IRR-A Section 32.4.1)**
 - a. The bid must be complete. Unless the ITB specifically allow partial bids, bids not addressing or providing all of the required items in the bidding documents including, where applicable, those requirements pertaining to the civil works components of Goods procured, 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) for the said item would mean that it is being offered for free to the Government.
 - b. Minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed in the bidding documents, to enable proper comparison of all eligible bids. Any adjustment shall be calculated in monetary terms to

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

determine the calculated prices. **(IRR-A Section 32.4.1 [b])** For evaluation purposes, in allowed instances, the bid must be converted into Philippine currency based on the exchange rate prevailing on the day of the bid opening. **(IRR-A Section 61.1)** The BSP reference rate as of the date of the bid opening shall be used.

- c. In the evaluation of bids, all bids shall be evaluated on an equal footing to ensure fair and competitive bid evaluation. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison. **(IRR-A Sections 32.4.2)** Moreover, applicable custom duties, as well as other costs of acquisition such as freight, insurance, and bank charges, must be incorporated in the bid.

Tip: Let's make doing things easier

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

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

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

- d. In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; (b) total prices and unit prices, the latter shall prevail; (c) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail. **(IRR-A Sections 32.4.3)**

2. Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, to identify the LCB. Total calculated bid prices, as evaluated and

corrected for computational errors, discounts and other modifications, which exceed the ABC shall be disqualified. **(IRR-A Sections 32.4.4)**

3. After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding Bid Securities and the minutes or proceedings of the bidding. **(IRR-A Section 32.5)** The Observers shall also sign the Abstract of Bids if, in their independent observation, the bidding activity conducted by the BAC followed the correct procedure indicated under R.A. 9184 and its IRR-A. The Abstract of Bids shall contain the following:
 - a. Name of the contract and its location, if applicable;
 - b. Time, date and place of bid opening; and
 - c. Names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.

4. The TWG, with the assistance of the BAC Secretariat, when directed by the BAC, should prepare the Evaluation Report, containing the details of the evaluation conducted, preferably within three (3) calendar days from the date the evaluation was concluded.

Are there special privileges for cooperatives in the supply of goods to government entities?

Yes. Under the Cooperative Code of the Philippines, or Republic Act No. 6938, cooperatives have preferential right to supply government institutions and agencies with rice, corn and other grains, fish and other marine products, meats, eggs, milk, vegetables, tobacco and other agricultural commodities produced by their own members.

Moreover, there is a recurring provision in the GAA which mandates the Government to procure at least ten percent (10%) of its total purchases from duly registered cooperatives and another ten per cent (10%) from SMEs.

What may be done if all prospective bidders are unable to comply with the requirement of having a single contract whose value is at least fifty percent (50%) of the ABC of the project to be bid?

If all prospective bidders are unable to comply with the requirement of having a single contract whose value is at least fifty percent (50%) of the ABC of the contract to be bid, the Procuring Entity may have to review the packaging of the project or procurement concerned, taking into account the technical and financial capabilities and experience in the domestic and international market, as well as the most logical and practical approach/scope of work to complete a project. However, the Procuring Entity must ensure that this will not result to a splitting of contracts that is committed for the purpose of evading or circumventing the requirements of law and existing rules and regulations.

In the alternative, the Procuring Entity may instead require prospective bidders to have at least three (3) similar completed contracts the aggregate of which should be equivalent to at least fifty percent (50%) of the ABC of the project to be bid; the largest of these similar contracts must be equivalent to at least twenty-five percent (25%) of the ABC of the project to be bid; and the business/company of the prospective bidder willing to participate in the bidding has been in existence for at least three (3) consecutive years prior to the advertisement and/or posting of the IAEB. Furthermore, when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest single similar contract is impracticable, the prospective bidder will only have to comply with the above-mentioned required period for the existence of a business/company. This scheme may also be applied when requiring a single contract that is at least fifty percent (50%) of the ABC will likely result to a monopoly that will defeat the purpose of public bidding. **(GPPB Resolution 007-2006, dated 20 January 2006)**

The procuring entity can clarify in the bidding documents the similar projects that can be considered in the bidding, which projects or contracts must have been completed within the period specified in the IAEB. All other conditions of the contract must be the same as provided for in the bidding documents.¹⁴

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

The BAC must disqualify the bid and forfeit the bid security of the bidder.

¹⁴ The experience requirement may vary for FAPs. As such, reference should be made to the appropriate standard bidding documents for the project.

What happens if no bid complies with all bid requirements?

If no bid complies with all bid requirements, the BAC should declare the bidding a failure. In such a case the BAC shall issue a Resolution declaring a failure of bidding. The BAC then reviews the terms and conditions stated in the IAEB. If warranted, it changes any of the terms and conditions, including the quantities or specifications, provided that the ABC is left unchanged. It must, thereafter, conduct a re-bidding, in the process formulating a new IAEB and posting and publishing this as required. **(IRR-A Section 35)** All bidders that have initially responded to the IAEB in the first bidding shall be allowed to submit new bids.

If the original estimate is found to be inadequate on reassessment to meet the objectives of the project, it may be necessary to reduce the scope of the project.

Should a second failure of bidding occur and the Procuring Entity finds that there is a need to evaluate the responsiveness of the ABC, and so decides to revise the ABC accordingly, the Procuring Entity should conduct another public bidding with re-advertisement and/or posting. Alternatively, the Procuring Entity may enter into a negotiated procurement with a legally, technically, and financially capable supplier **(IRR-A Sections 35.3 and 53)**. However, if the Procuring Entity resorts to negotiated procurement, the terms, conditions, and specifications of the project as well as the ABC must be maintained.

How shall Domestic Preference be applied during bid evaluation?

A Procuring Entity shall apply domestic preference in the procurement of goods as long as it complies with the provisions of IRR-A and R.A. 5183, and this shall be expressly mentioned in the bidding documents.

In applying domestic preference, the Procuring Entity shall be guided by the provisions of C.A. No. 138, to wit:

1. When the LCB including taxes and customs duties, is a "foreign bid" as defined in C.A. No. 138 (see definition below), the award shall be made to the bidder who submitted the lowest "domestic bid", provided that:
 - a. the domestic bid is not more than **fifteen per centum (15%)** in excess of the LCB. **(Section 3 [e] C.A. No. 138)**; and
 - b. the bidder who submitted the lowest domestic bid must pass the post-qualification.

An illustrative case is as follows: Foreign Bidder A submitted a bid of P15M which was declared as the LCB. Domestic preference was specified in the bidding documents. The lowest Domestic Bidder B submitted a bid of P16.5M, which is 10% in excess of the LCB. If Bidder B is post-qualified, and the items offered pass the necessary quality assurance tests, it shall be awarded the contract. However, if it is post-disqualified, or if the goods it offered do not meet the standard of quality specified in the Bidding Documents, the award shall be made to Bidder A.

An illustrative case is as follows: Foreign Bidder A submitted a bid of P15M which was declared as the LCB. Domestic preference was specified in the bidding documents. The lowest Domestic Bidder B submitted a bid of P17.4M, which is 16% in excess of the LCB. If Bidder A is post-qualified, and the items offered pass the necessary quality assurance tests, it shall be awarded the contract, despite the domestic preference.

A "foreign bid" means any offer of articles, materials or supplies not 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. (Section 2[d], C.A. No. 138) Conversely, a "domestic bid" means any offer of 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. (Section 2[c] C.A. No. 138) In US jurisprudence, the term "substantially" was construed to mean "more than 75%." Thus, even if a product is manufactured in the Philippines, it may not be considered within the ambit of the preference if its raw materials are not substantially sourced from the Philippines.

2. When several bidders participate in a public bidding for the supply of articles, materials and equipment for a Procuring Entity, including public buildings or public works, and the LCB is submitted by one other than a "domestic entity" (see definition below), the award should be made to the domestic entity making the lowest bid, provided that:
 - a. the bid of the domestic entity is not more than 15% in excess of the LCB; and
 - b. the same domestic entity must pass the post-qualification.

A "domestic entity" means any citizen of the Philippines habitually established in business and engaged in the manufacture or sale of the merchandise covered by his bid, or any corporate body or commercial company duly organized and registered under the laws of the Philippines of whose capital 75% is owned by citizens of the Philippines, or both. (Section 2[b] C.A. No. 138) Applying C.A. No. 138, in the case of Asbestos Integrated Manufacturing, Inc. v. Metropolitan Waterworks and Sewerage System (G.R. No. L-45515. October 29, 1987), the term "domestic entity" was interpreted to mean citizens of the Philippines or corporate bodies or commercial companies, duly organized and registered under the laws of the Philippines, 75% of whose capital is owned by citizens of the Philippines, and who are habitually established in business engaged in the manufacture or sale of merchandise covered by their bid.

3. In the case of FAPs or procurement undertaken by virtue of international treaties or agreements, when there is no provision disallowing the application of domestic preference, in compliance with R.A. 9184 Section 43, the preference in item (a) above for domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality may further be allowed in the interest of:
 - a. **Availability**, that is, the domestically-produced goods are more readily available in the market, like off-the-shelf items;
 - b. **Efficiency**; and
 - c. **Timely delivery of goods.**
4. In the case of FAPs undertaken through IFI funding, at the request of the Procuring Entity, and under conditions to be agreed under the loan agreement and set forth in the bidding documents, a margin of preference may be provided in the evaluation of bids for:
 - a. Goods manufactured in the country of the Procuring Entity when comparing bids offering such goods with those offering goods manufactured abroad; and
 - b. Works in member countries below a specified threshold of Gross National Product per capita, when comparing bids from eligible domestic contractors with those from foreign firms.

5. Where preference for domestically manufactured goods or for domestic contractors is allowed, the methods and stages set forth in the loan agreement should be followed.

How is the right to match undertaken in bidding of provincial projects?

1. Provincial Projects

The rules on public bidding and procurement processes prescribed in R.A. 9184, its IRR-A and this Manual, shall apply to priority programs and infrastructure projects funded out of the GAA for implementation within the province. These projects are referred to as "provincial projects". "Provincial projects" are Engineering District infrastructure projects and priority programs fully funded by the Government and identified in consultation with the concerned members of Congress.

2. Matching of Bids by Provincial Bidders

A provincial bidder is a contractor whose principal office is within the province where a provincial priority program or infrastructure project, defined in the immediately preceding paragraph, is being implemented.

In the bidding of such provincial projects, a provincial bidder is given the privilege to match the LCB of a bidder who is not a provincial bidder. In implementing this rule, the following shall be observed:

- a. The subject bidding is done within five (5) years from the effectivity of R.A. 9184, or not later than January 26, 2007.
- b. The provincial bidder who is given the privilege to match the LCB submits the lowest bid among the provincial bidders, although it is higher than the LCB.
- c. The said provincial bidder shall exercise the privilege to match the LCB within forty-eight (48) hours from receipt of the notice from the BAC to match the LCB.
- d. Matching shall be made in writing, through appropriate adjustments in the unit bid prices without changing the Scope of Work and work items prescribed by the Procuring Entity in the bidding documents.
- e. If the provincial bidder is able to match the LCB within the prescribed period and he passes the post-qualification, the contract will be awarded to him. However, if he fails to match the LCB or to pass the post-qualification, the contract will be awarded to the bidder who originally obtained the LCB.
- f. This privilege granted to provincial contractors shall not apply to:
 - i. contracts the coverage of which includes more than one (1) province;
 - ii. procurement of consulting services;
 - iii. projects for implementation within Metro Manila.

3. Publication and Posting of Provincial Projects

The release of funds for provincial projects should be published by the Procuring Entity in accordance with the following requirements:

- a. It shall be published in a local newspaper with the widest circulation in the region during the same period as the advertisement/posting of the IAEB;
- b. It shall be posted at any conspicuous place reserved for the purpose in the premises of the Procuring Entity during the same period as the advertisement/posting of the IAEB; and

“Conspicuous place” shall mean any place in the premises of the Procuring Entity that is accessible to the general public and reserved for the purpose of posting/publishing announcements and/or notices for dissemination to the public.

- c. It shall be posted in the website of the DBM and the PhilGEPS during the same period as the advertisement/posting of the IAEB.

What rules govern the lease of Computers, Communications, Information and Other Equipment?

Contracts for lease of construction and office equipment, including computers, communication and information technology equipment, are subject to the same public bidding and procurement procedures as prescribed in R.A. 9184, its IRR-A and this Volume 2. (Please refer also to Joint Memorandum Circular No. 2002-01 issued by the National Computer Center and the DBM, which provides the policies, rules and regulations on lease of IT equipment. Also, reference may be made to Department Order No. 188 (dated September 28,1999) and Department Order No. 219 (dated August 14, 2003), issued by the Department of Public Works and Highways, governing the lease of construction equipment.)

Step 6 Post-qualify

What is Post-qualification?

Post-qualification is the process of verifying, validating and ascertaining all the statements made and documents submitted by the bidder with the LCB, which includes ascertaining the said bidder's compliance with the legal, financial and technical requirements of the bid.

If its eligibility documents had been validated and verified, and its compliance with the legal, financial, and technical requirements of the bid had been ascertained, the bidder must be declared the bidder with the "**Lowest Calculated Responsive Bid**" (LCRB). (**IRR-A Section 34.1**)

What does Post-qualification entail?

Post-qualification involves the BAC verifying, validating and ascertaining that the bidder satisfies the following criteria: (**IRR-A Section 34.2**)

1. Legal Requirements. The post-qualification process under this criterion involves the verification, validation and ascertaining of the supplier's claim that it is not included in any government "blacklist," as well as all the licenses, permits and other documents it submitted. The legal requirements refer to the Legal Documents submitted by the bidder as part of the eligibility requirements, e.g., SEC registration, DTI business name registration, Mayor's permit, TIN, etc. The bidder's status with regard to "blacklisting" may be verified by checking the Consolidated Blacklisting Report issued by the GPPB, or the "blacklist" of any government agency.
2. Technical Requirements. Post-qualification under this criterion means that the BAC would have to validate, verify, and ascertain the veracity of the documents submitted by a supplier to prove compliance of the goods and services offered with the requirements of the contract and bidding documents. This involves the following processes:
 - a. Verification and validation of the bidder's stated competence and experience;
 - b. Verification and/or inspection and testing of the goods/products, after-sales and/or maintenance capabilities, in applicable cases; or inspection of the plant/factory of a manufacturer, to determine production capacity; and
 - c. Ascertainment of the authenticity and sufficiency of the Bid Security as to type, amount, form and wording, and validity period.
3. Financial Requirements. Under this criterion, the BAC ought to verify, validate and ascertain the bid price proposal of the bidder and, whenever applicable, its computation of the NFCC, the required bank commitment to provide a credit line to the bidder, or the hold out on deposit status of the cash deposit certificate, in the amount specified and over the period stipulated in the ITB. This is to ensure that the bidder can sustain the operating cash flow of the transaction.

How's that again?

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

The post-qualification process, on the other hand, does.

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

The post-qualification process must be conducted and completed **within seven (7) calendar days** from the determination of the LCB. However, in the procurement of goods requiring elaborate testing (such as equipment sourced from abroad) and other exceptional cases, the Head of the Procuring Entity may extend the post-qualification period, but in no case should the aggregate period exceed thirty (30) calendar days. **(IRR-A Section 34.1)**

Who are involved in the conduct of Post-qualification?

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

1. The BAC;
2. The TWG;
3. The BAC Secretariat / Procurement Unit; and
4. The eligible supplier/manufacturer, ranked starting from bidder with the LCB.

Methodology: How is Post-qualification conducted?

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

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

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

2. The BAC/TWG conducts a site inspection of the bidder's place of business and/or plant/factory, where applicable.
3. The BAC/TWG tests samples for compliance with specifications and performance levels, where applicable.
4. The BAC/TWG inquires about the bidder's performance in relation with other contracts/transactions as indicated in its eligibility statement (statement of on-going, completed or awarded contracts).
5. If the TWG conducts the post-qualification, it prepares a Post-qualification Report to be submitted to the BAC. The Report shall contain, among others, the activities undertaken with regard to the post-qualification process, feedback from inquiries conducted, and the results of any tests conducted by the TWG or an accredited government testing center, where applicable.
6. The BAC reviews the Post-qualification Report submitted by the TWG.
7. The BAC determines whether the bidder with the LCB passes all the criteria for post-qualification.
8. If the LCB passes the post-qualification, the BAC declares it as the LCRB.
9. After the BAC has determined the LCRB, the Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the LCRB and the corresponding Notice to the said bidder informing it of its post-qualification.

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

If the bidder with the LCB fails to pass post qualification, the BAC shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it. The post-disqualified bidder shall have three (3) calendar days from receipt of the said notification to request from the BAC, if it so wishes, a reconsideration of its decision. The BAC shall evaluate the request for reconsideration, if any, using the same non-discretionary criteria, and shall issue its final determination of the said request within seven (7) calendar days from receipt thereof. **(IRR-A Section 34.4)** Similar to the cases of bidders deemed to be ineligible and whose bids are rated "failed," the bidder with the LCB who fails to pass post-qualification may likewise file a protest with the payment of the corresponding fee in case the BAC denies its request for reconsideration. *(Please refer to Step 4, Receive and Open Eligibility Envelopes and Bids for further discussions on filing a protest.)*

Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second LCB. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the BAC shall declare the second bidder as the bidder with the LCRB. The Head of the Procuring Entity shall then award the contract to it. **(IRR-A Section 34.5)**

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

What happens if all bidders fail Post-qualification?

If no bidder passes post-qualification, the BAC shall issue a Resolution declaring a failure of bidding. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. The BAC then reviews the terms and conditions stated in the IAEB. If warranted, it changes any of the terms and conditions, including the quantities or specifications, provided that the ABC is left unchanged. It must, thereafter, conduct a re-bidding, in the process formulating a new IAEB and posting and publishing this as required. **(IRR-A Section 35)** All bidders that have initially responded to the IAEB in the first bidding shall be allowed to submit new bids.

If the original estimate is found to be inadequate on reassessment to meet the objectives of the project, it may be necessary to reduce the scope of the project.

Should a second failure of bidding occur and the Procuring Entity finds that there is a need to evaluate the responsiveness of the ABC, and so decides to revise the ABC accordingly, the Procuring Entity should conduct another public bidding with re-advertisement and/or posting. Alternatively, the Procuring Entity may enter into a negotiated procurement with a legally, technically, and financially capable supplier **(IRR-A Sections 35.3 and 53)**. However, if the Procuring Entity resorts to negotiated procurement, the terms, conditions, and specifications of the project as well as the ABC must be maintained.

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

The Procuring Entity may exercise the right to reject any and all bids, to declare a failure of bidding, or not to award the contract in any of the following situations **(IRR-A Section 41.1)**:

1. If there is prima facie evidence of **collusion** between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
2. If the **BAC is found to have failed** in following the prescribed bidding procedures, for which the applicable sanctions shall be applied to the erring officers, as provided in IRR-A Section 65; or
3. For any justifiable and reasonable ground where the award of the contract **will not redound to the benefit of the government** as follows:
 - a. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the Head of the Procuring Entity;
 - b. If the project is no longer necessary as determined by the Head of the Procuring Entity; and
 - c. If the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

How's that again?

What are the instances where the BAC is considered to have failed in following the prescribed procedures?

The following are some instances where the BAC is deemed to have failed to follow prescribed procedures:

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

Step 7 Award the Contract

What is the rule on Contract Award?

The contract shall be awarded to the bidder with the **LOWEST CALCULATED RESPONSIVE BID** at its submitted bid price or its calculated bid price, whichever is lower.¹⁵ **(IRR-A Section 37.1)**

The BAC shall issue a Resolution recommending to the Head of the Procuring Entity award of the contract to the bidder with the LCRB at its submitted bid price or its calculated bid price, whichever is lower.

Prior to the expiration of the period of bid validity, the Procuring Entity should notify the successful bidder in writing that its bid has been accepted, through a Notice of Award received personally or sent by registered mail or electronically. It is important that, in case the Notice of Award is not received personally, its receipt must be confirmed in writing within two (2) days by the successful bidder and submitted personally or sent by registered mail or electronically to the Procuring Entity (this particular instruction must be included in the ITB so that the bidder may be guided accordingly).

What is the Timeline for Contract Award?

The Head of Procuring Entity or his duly authorized representative should approve or disapprove the recommendation of award **within seven (7) calendar days from the date of determination and declaration by the BAC of the LCRB**. In the case of **GOCCs and GFIs**, the governing Board has a period of **fifteen (15) calendar days** to approve or disapprove the said recommendation. **(IRR-A Section 37.2)**

The **Notice of Award** shall be given to the bidder with the LCRB **immediately** after approval of the recommendation. Simultaneously, a copy of the Notice shall be furnished to all losing bidders, and posted in the website of the PhilGEPS, as well as the websites of the Procuring Entity and its electronic procurement service provider, if any.

How's that again?

What is the maximum period of time within which a contract can be awarded?

Contract award must be made within eighty (80) calendar days from the date of bid opening but not to exceed the bid validity period as specified in the bidding documents. **(IRR-A Section 37.2.2)** If award cannot be made within the said period, the bid validity period should be extended. *(Please refer to Step on Preparing the Bidding Documents for the discussion on extension of the bid validity period.)*

Who are involved in the Award of the Contract?

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

1. The Head of the Procuring Entity;
2. The BAC;
3. The Procurement Office;
4. The BAC Secretariat/ Procurement Unit;
5. The bidder who submitted the LCRB/SCRB; and

¹⁵ For FAPs, the award shall be based on the adjusted price after correction of error in computation.

6. The Observers.

Methodology: How is a contract awarded?

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

1. The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand, and attaches the same to the BAC Resolution.
2. The BAC Secretariat drafts the BAC Resolution recommending award.
3. The BAC approves and signs the Resolution Recommending Award, and transmits the same to the Head of the Procuring Entity.
4. The Head of the Procuring Entity, or his/her duly authorized representative, acts on the recommendation for award within seven (7) calendar days from the date of determination and declaration by the BAC of the LCRB/SCRB. In the case of GOCCs and GFIs, the governing Board shall have fifteen (15) calendar days within which to approve the recommendation for award.
5. In case of approval of the recommendation, the Head of the Procuring Entity, through the procurement unit/office, issues the Notice of Award to the bidder with the LCRB/SCRB, while the BAC accordingly notifies the losing bidders. In case of a disapproval of the recommendation of award, the Head of the Procuring Entity shall state the reason(s) for disapproval and instruct the BAC on the subsequent steps to be adopted.
6. The bidder with the LCRB/SCRB accepts the Notice of Award.

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

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

Refusal to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder, if proven, is meted with a penalty of imprisonment of not less than six (6) years and one (1) day by not more than fifteen (15) years. **(IRR-A Section 65.3.4)** Additional penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense shall also be imposed on the bidder. **(IRR-A Section 69.1)**

Step 8 Have the Contract Signed and Approved and Issue the Notice to Proceed

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

The winning bidder and the Procuring Entity must enter into a contract immediately after the former has submitted the performance security and all other documentary requirements within the period specified in the IRR-A. The parties must sign the contract **within ten (10) calendar days** from receipt by the winning bidder of the Notice of Award. **(IRR-A Section 37.3)**

The Chief Accountant or the Chief Budget Officer may sign the contract as an instrumental witness thereto.

The Procuring Entity signatory is encouraged to sign within the same day as the signing of the bidder as there are penalties against delaying, without justifiable cause, the award of the contract. **(IRR-A Section 65.1)** Moreover, it would be best for the winning bidder and the Head of the Procuring Entity, or its appropriate signing authority, to sign/execute the contract together – provided that all contract documents and requirements are complete – so that both may personally appear before a Notary Public.

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

When, after contract signing, further approval of a **higher authority** is required, the approving authority for the contract, or his duly authorized representative, shall be given a **maximum of fifteen (15) calendar days** from receipt thereof, together with all documentary requirements to perfect the said contract, to approve or disapprove it. In the case of GOCCs and GFIs, when further approval of the governing Board is required, the said governing Board or its duly authorized representative has **twenty-five (25) calendar days**. **(IRR-A Section 37.4)**

When should the Procuring Entity issue the NTP?

The NTP must be issued together with a copy or copies of the approved contract to the successful bidder within **three (3) calendar days** from the date of approval of the contract by the appropriate government approving authority. **(IRR-A Section 37.5)**

When is a contract “effective”?

Unless otherwise specified in the contract, a contract is effective upon receipt of the NTP. If an effectivity date is provided in the NTP by the Procuring Entity concerned, all notices called for by the terms of the approved contract shall be effective only from such effectivity date, but such effectivity date should not be later than **seven (7) calendar days** from the issuance of the NTP. **(IRR-A Section 37.5)**

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

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

1. The BAC Secretariat/Procurement Unit/Office;
2. The Head of the Procuring Entity;
3. The winning bidder; and
4. End-user;

What documents form part of the contract?

The contract shall include the following:

1. The Contract Agreement;
2. Conditions of the contract (General and Specific);
3. Technical Specifications of Goods or Scope of Work for services;

TIPS: Let's make doing things easier

In most procuring entities, particularly the bureaus or lower-level offices of national government agencies (NGAs) or centrally managed GOCCs or GFIs, the contract signatory is a different official from the approving authority. For example, a bureau director may only be authorized to approve contracts up to ₱50M. Contracts exceeding the said amount are brought up to the Secretary for approval. Different procuring entities have different levels of delegated authority, but the principle is essentially the same – the higher the contract amount, the higher is the level of the approving authority. In cases like this, the contract is considered approved upon the approval of such higher authority. The existence of this policy is the usual cause of delays in procurement transactions.

Section 38 of R.A. 9184 and Section 38.2 of its IRR-A are designed to remove this cause for delay. These provisions mandate that if further approval of a higher authority within or outside the procuring entity (other than the President of the Philippines) is required, and that authority does not take any action on the contract within the prescribed period, the contract concerned is deemed approved.

Only contracts that are duly signed by the appropriate signatory, but require further approval, are covered by this rule, because an unsigned contract is a mere piece of paper and cannot be the basis of a government liability.

4. IAEB;
5. Bidding documents;
6. Addenda and/or Supplemental/Bid Bulletins, if any;
7. Bid form including all the documents/statements contained in the winning bidder's two bidding envelopes, as annexes;
8. Eligibility requirements, documents and/or statements;
9. Performance Security;
10. Credit Line issued by a licensed bank in accordance with the provisions of the IRR-A, if applicable;
11. Notice of Award of Contract and winning bidder's "Conforme" thereto; and
12. Other contract documents that may be required by existing laws and/or the Procuring Entity concerned.

Methodology:

1. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
2. The procurement unit/ office transmits the contract and its attachments to the budget office (for issuance of the OS) and the Chief Accountant (for issuance of the CAF)
3. The procurement unit/office transmits the contract documents to the Head of the Procuring Entity or appropriate signing authority for signature, together with the following documents:
 - a. Duly approved delivery schedule and cost estimates or the PPMP;
 - b. OS;
 - c. CAF;
 - d. Abstract of Bids;
 - e. Resolution of the BAC recommending award;
 - f. Approval of award by the appropriate approving authority; and
 - g. Other pertinent documents that may be required by existing laws and/or the Procuring Entity concerned.
4. After signing, if the contract needs the approval of a higher authority – such as, for bureaus, the Department Secretary, when required – the procurement unit/office transmits the contract and related documents to the approving authority or his authorized representative for approval.
5. The approving authority or his authorized representative acts on the contract within fifteen (15) calendar days, or twenty-five (25) calendar days for GOCCs and GFIs, from receipt thereof.
6. If further approval is required (e.g. approval of the Office of the President), or a review by another government body is necessary (e.g., NEDA or DOJ review), the Head of the Procuring Entity transmits the contract documents to the appropriate approving authority or reviewing body. The periods indicated above for approval of contracts still apply, except if the approving authority is the Office of the President.
7. The Head of the Procuring Entity or his/her duly authorized representative issues the NTP within three (3) calendar days from the date of the approval of the contract.

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

Executive Order 423, s. 2005, prescribes the rules and regulations on the review and approval of government contracts. Essentially, E.O. 423 provides that, except for government contracts required by law to be acted upon and/or approved by the President, the Head of the Procuring Entity shall have full authority to give final approval and/or enter into all government contracts of his respective government agency, awarded through public bidding, regardless of amount. Provided, that the Head of the Procuring Entity certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations. The Head of a Procuring Entity may also delegate in writing this full authority to give final approval and/or enter into government contracts awarded through public bidding as circumstances may warrant (i.e. to decentralization of procurement in a government agency), subject to such limitations as he may impose. For procurement undertaken through any of

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

Where the Head of the Procuring Entity has made a determination that a Government contract, including Government contracts required by law to be acted upon and/or approved by the President, involving an amount of at least P500 Million falls under any of the exceptions from public bidding allowed by law, the Head of the Procuring Entity shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, obtain the following requirements:

1. An opinion from the GPPB that said Government contract falls within the exceptions from public bidding; and
2. Approval from the Director-General of NEDA to proceed with a specific alternative method of procurement under the exceptional cases provided by law and applicable rules and regulations.

Except for Government contracts required by law to be acted upon and/or approved by the President, the Head of the Procuring Entity, after obtaining the foregoing requirements, shall have full contracts of their his respective agency, entered into through alternative methods of procurement allowed by law. Provided, that the head of the procurement entity certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations.

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

If the bidder with the LCRB or SCRB (*as defined in Step 4, Receive and Open Eligibility Envelopes and Bids*) refuses to, or is unable, through its own fault, to post the performance security and sign the contract within the prescribed period:

1. Its bid security is forfeited;
2. It is disqualified from further participating in the bidding at hand;
3. Upon conviction, the relevant officers or individuals will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years; and
4. Upon determination of administrative liability, it will suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. This is without prejudice to the blacklisting proceedings undertaken in accordance with the Uniform Guidelines for Blacklisting (GPPB Resolution 09-2004).

For its part, the BAC must initiate and complete the post-qualification of the bidder with the second LCB. This procedure must be repeated until the LCRB is determined for award. If no bidder passes post-qualification, the BAC declares the bidding a failure and conducts a re-bidding with re-posting and re-advertisement. Should there be another failure of bidding after the conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement. **(IRR-A Section 40.2)**

If the bidder that fails to post the performance security and sign the contract happens to be one with the SCRB, the BAC must declare the bidding a failure. It then conducts a re-bidding with re-posting and re-advertisement. Should there be another failure of bidding after the

conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement. **(IRR-A Section 40.3)**

The BAC shall initiate the process of blacklisting. The Uniform Guidelines for Blacklisting of manufacturers, suppliers, distributors, and contractors shall be used.

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

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

Two-Stage Competitive Bidding

What is Two-Stage Competitive Bidding?

The Two-Stage Competitive Bidding is one where the bidding process is divided in two (2) stages. The first stage involves the issuance by the Procuring Entity of bidding documents with technical specifications that are not yet well defined and merely in the form of performance criteria, and the submission by the bidders of their respective Letters of Intent, eligibility requirements, if needed, and initial Technical Proposals without price. This allows the Procuring Entity to receive inputs from the eligible bidders whose Technical Proposals meet the minimum performance standards (a meeting/discussion may be held with these bidders), for purposes of drawing up the final revised technical specifications/requirements of the contract. The second stage involves the release of the well-defined technical specifications by the Procuring Entity, followed by the conduct of the regular procedure for public bidding with all the bidders identified during the first stage, who shall then be required to submit their respective revised Technical Proposals including their Financial Proposals. **(IRR-A Section 30.4)**

What are the instances when a Procuring Entity may employ the Two-Stage Competitive Bidding Procedure?

The Two-Stage Competitive Bidding Procedure may be employed for the procurement of goods when:

1. Due to the nature of the project requirements (e.g. complex information and communications technology), the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or it may be undesirable or impractical to prepare complete technical specifications in advance.

Procuring entities may consider it undesirable or impractical to compare complete technical specifications in advance under any of the following circumstances:

- a. In the case of turnkey contracts;
 - b. Contracts for large complex facilities;
 - c. Complex information and communication technology; or
 - d. Works of a special nature.
2. The problem of technically unequal bids is likely to occur.

The purpose of the bidding procedure is to come up with well-defined, standardized technical specifications, with inputs from all stakeholders, including the bidders themselves.

What is the timeline for the conduct of a Two-Stage Competitive Bidding?

The timeline for the conduct of a Two-Stage Competitive Bidding will depend on several variables:

1. The Project Timelines as defined by the PMO or end-user unit;
2. The technical complexity of the Project; and

3. The time required for drawing up the final technical specifications.

These variables, however, affect only the first stage of the bidding, as well as the drawing up of the final technical specifications. Thus, while the timelines for the first stage may not be definite, the second stage shall follow the timelines prescribed for the regular competitive bidding procedure. In setting the timelines, the Procuring Entity should ensure that the time periods involved are reasonable and that there is no undue delay of the entire procurement procedure and project implementation.

Who are involved in the Two-Stage Competitive Bidding process?

The following are involved in the Two-Stage Competitive Bidding process:

1. The PMO or end-user unit;
2. The TWG;
3. The BAC;
4. The BAC Secretariat; and
5. The Observers.

Methodology: How is the Two-Stage Competitive Bidding process conducted?

The general process for a two-stage bidding is as follows:

1. In the first stage, bidders are first invited to submit technical offers (plus other bid requirements) without prices, on the basis of a conceptual design or performance specifications which lay down the minimum operating and performance requirements.
2. Each of the unpriced technical bids shall then be discussed between the bidder concerned and the Procuring Entity and its consultants, if any, for the purpose of providing for technical and commercial clarifications and adjustments, and in order to agree on an acceptable technical standard for all bids.
3. At the second stage, the bidding documents will then be amended, but in revising the said bidding documents, the Procuring Entity would have to respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights. After the discussions, the bidders shall be given an opportunity to revise or adjust their proposals to conform to the standards agreed upon. The bidders shall also be invited to submit price proposals and these shall be evaluated.

The following specific steps are followed in the conduct of the Two-Stage Bidding process:

1. The TWG, with the assistance of the PMO or end-user unit, prepares the bidding documents in accordance with the usual procedures. However, the technical specifications shall only be in the form of performance criteria, *i.e.* the technical specifications shall contain functional descriptions of the goods, or expected output for services, without specifying the details thereof.
2. If necessary, the BAC calls a Pre-Procurement Conference, following the procedures set forth in Step 1 of competitive Bidding.
3. The BAC issues the Bidding Documents which contain, in addition to the items prescribed for competitive bidding, a request for the prospective bidders to submit the following:

- a. Letter of Intent;
 - b. Eligibility requirements, if needed; and
 - c. Initial Technical Proposals only (no price tenders).
4. The BAC, with the assistance of the TWG, conducts the Eligibility Check, as conducted in a Single-Stage Competitive Bidding procedure, and proceeds with the determination of the eligible and ineligible bidders.

Tip: Let's make doing things easier

On the drawing up of the final technical specifications under the Two-Stage Competitive Bidding procedure

In drawing up the final technical specifications, the TWG and BAC should ensure that the PMO/end-user unit is properly consulted, and has agreed to the said specifications.
 5. The TWG evaluates the technical merits of the proposals received from eligible bidders vis-à-vis the required performance standards, and determines the proposals that meet the minimum standards.
 6. The TWG and BAC meet/discuss with the eligible bidders whose Technical Proposals meet the minimum required standards stipulated in the bidding documents. The purpose of this meeting is to draw up the final revised technical specifications/requirements of the contract.
 7. Once the final revised technical specifications are completed and duly approved by the BAC, copies of the same shall be provided to all eligible bidders that met the minimum technical standards. The latter are then required to submit their revised Technical Proposals, including their Financial Proposals in two (2) separate sealed envelopes, at a specified deadline, after which time no more bids shall be received.
 8. The BAC proceeds with the bid evaluation, post-qualification, award of contract and contract signing in accordance with the procedure and timelines prescribed for competitive bidding.

What happens if no prospective bidder submits a Letter of Intent?

If no prospective bidder submits a Letter of Intent, the BAC shall issue a Resolution declaring the bidding a failure. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. The BAC then reviews the terms and conditions stated in the IAEB. If warranted, it changes any of the terms and conditions, including the quantities or specifications, provided that the ABC is left unchanged. It must, thereafter, conduct a re-bidding, in the process formulating a new IAEB and posting and publishing this as required.

(IRR-A Section 35) All bidders that have initially responded to the IAEB in the first bidding shall be allowed to submit new bids.

How's that again?

How does the ABC affect a bidder under a Two-Stage Competitive Bidding procedure?

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

If the original estimate is found to be inadequate on reassessment to meet the objectives of the project, it may be necessary to reduce the scope of the project (or adjust the ABC should there be a second failure of bidding).

Should a second failure of bidding occur and the Procuring Entity finds that there is a need to evaluate the responsiveness of the ABC, and so decides to revise the ABC accordingly, the Procuring Entity should conduct another public bidding with re-advertisement and/or posting. Alternatively, the Procuring Entity may enter into a negotiated procurement with a legally, technically, and financially capable supplier. **(IRR-A Sections 35.3 and 53)** However, if the Procuring Entity resorts to negotiated procurement, the terms, conditions, and specifications of the project as well as the ABC must be maintained.

SECTION 4

Instructions on the Procedural Steps for the Procurement of Goods and Services

PART TWO – ALTERNATIVE METHODS OF
PROCUREMENT

The Alternative Methods for the Procurement of Goods and Services

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

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

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

In resorting to any of the alternative methods of procurement, the Procuring Entity must ensure that the method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.¹⁶

For the procurement of goods, the following alternative methods of procurement may be resorted to:

1. Limited Source Bidding
2. Direct Contracting
3. Repeat Order
4. Shopping
5. Negotiated Procurement

¹⁶ For FAPs, different rules of procedures apply for procurement of commodities, because the market prices of commodities – such as grain, animal feed, cooking oil, fuel, fertilizer and metals – fluctuate depending upon the demand and supply at any particular time. Many are quoted in established commodity markets.

Limited Source Bidding

What is Limited Source Bidding?

LIMITED SOURCE BIDDING, otherwise known as **SELECTIVE BIDDING**, is a method of procurement of goods and consulting services that involves the issuance of a direct invitation to bid by the concerned Procuring Entity to a set of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract. **(IRR-A Section 49)**

When shall Limited Source Bidding be allowed?

Limited Source Bidding may be employed by a Procuring Entity under any of the following conditions:

1. If only a few suppliers of the goods to be procured are known to be available, such that resorting to public bidding method will not likely result in any additional suppliers participating in the bidding. An example is the procurement of highly specialized types of Goods like sophisticated defense equipment (e.g., fighter planes, Battleships, complex air navigation systems, or coal); or
2. In the 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.

Who will be invited to bid?

In choosing the Bidders, the Procuring Entity shall consider only those suppliers appearing in a list maintained by the relevant government authority that has expertise in the type of procurement concerned. This list should have been submitted to, maintained and updated with the GPPB and posted in the PhilGEPS. **(IRR-A Section 49)** In the absence of a relevant government authority, the Procuring Entity has to resort to open competitive bidding in its selection of a supplier. Examples of relevant government authorities are the NTC for telecommunications equipment, the FED of the PNP for firearms and ammunition, and the Bureau of Food and Drug for drugs.

Who are involved in conducting the Limited Source Bidding?

The following are involved in the conduct of limited source bidding for the procurement of goods:

1. The Head of the Procuring Entity;
2. The BAC;
3. The TWG;
4. The BAC Secretariat/ Procurement Unit;
5. The invited suppliers; and
6. The Observers.

Methodology: How is procurement through the Limited Source Bidding method conducted?

The following steps are followed in conducting a limited source bidding:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution, shall justify and recommend the change in the mode of procurement to be approved by the Head of the Procuring Entity.
2. The BAC, through the TWG and the BAC Secretariat, prepares the bidding documents, including the IAEB (indicating therein the method of procurement to be used) and the technical specifications, in accordance with the procedures laid down in the IRR-A, this Manual and the PBDs.
3. The BAC, through the Secretariat, gets the list of pre-selected suppliers from the government authority that has expertise in the type of procurement at hand. It may also access the PhilGEPS website as a secondary source of information.
4. If a pre-procurement conference is required or deemed necessary as previously discussed in this Manual, the BAC holds the said conference. If a pre-procurement conference is held, the participants should confirm the existence of the conditions required by law for procurement through Limited Source Bidding.
5. The BAC, through the Secretariat, posts for information purposes the IAEB in:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
 - c. Any conspicuous place in the premises of the Procuring Entity;for a period of seven (7) calendar days prior to the opening of the bids.
6. The BAC Secretariat sends the IAEB to the pre-selected suppliers. The IAEB is sent to ALL suppliers in the list.
7. The BAC proceeds with the pre-bid conference (if deemed warranted under the circumstances), eligibility check, bid evaluation, post-qualification and succeeding activities up to contract award, signing and approval, following the procedures for Competitive Bidding.

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

Yes, these are required and should be posted in accordance with procedures for competitive bidding.

Direct Contracting

What is 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. (**IRR-A Section 50**)

When shall Direct Contracting be allowed?

Direct Contracting may be resorted to by a Procuring Entity under any of the following conditions:

1. Procurement of items 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.

This is applicable when the goods or services being procured are covered by a patent, trade secret or copyright duly acquired under the law. Under the Intellectual Property Code of the Philippines (R.A. No. 8293), the registered owner of a patent, a copyright or any other form of intellectual property has exclusive rights over the product, design or process covered by such patent, copyright or registration. Such exclusive right includes the right to use, manufacture, sell, or otherwise to derive economic benefit from the item, design or process.

2. When the procurement of critical plant components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance in accordance with the provisions of its contract.

This is applicable when there is a contract for an infrastructure project consisting of the construction/repair/renovation of a plant, and critical components of such plant are prescribed by the contractor for it to guarantee its contract performance. For example, in the construction of a power generation plant, the contractor may require the use of certain components manufactured by a specific manufacturer, whose products have been found to meet certain standards and are compatible with the technology used by the contractor. In this instance, Direct Contracting may be resorted to in the procurement of such critical plant components. However, the BAC must require technical proof that such critical plant components are the ONLY products compatible with the plant.

3. Those sold by an exclusive dealer or manufacturer that 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. Exclusive dealership does not per se give rise to the use of direct contracting as an alternative mode. The supplier/contractor/manufacturer must prove through proper documentation that it is the sole source of the said the goods, equipment, or services required.

This condition anticipates a situation where the goods are sold by an exclusive dealer or distributor, or directly sold by the manufacturer. In this instance, it is highly unlikely that sub-dealers can sell the same at lower prices. Further, the Procuring Entity has not identified a suitable substitute for the product that can be procured at terms more advantageous to the government.

How can Direct Contracting be justified?

To justify the need to procure through the Direct Contracting method, the BAC should conduct a survey of the industry and determine the supply source. This survey should confirm the exclusivity of the source of goods or services to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. Moreover, the Procuring Entity 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.

Who are involved in procurement through Direct Contracting?

The following are involved in the conduct of direct contracting:

1. The Head of the Procuring Entity;
2. The BAC;
3. The TWG;
4. The BAC Secretariat/ Procurement Unit; and
5. The supplier/manufacturer.

Methodology: How is Direct Contracting conducted?

The following steps are undertaken in conducting Direct Contracting:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the Head of the Procuring Entity.
2. For information purposes, the BAC, through the BAC Secretariat shall post the notice direct contracting in the following:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
 - c. Any conspicuous place in the premises of the Procuring Entity.
3. The BAC, through the TWG and the BAC Secretariat, prepares the Request for Quotation, technical specifications and draft contract in accordance with the procedures laid down in this Manual, in the IRR-A and in the PBDs.
4. The BAC, through the Secretariat, identifies the supplier from whom the goods will be procured.
5. If a pre-procurement conference is required or deemed necessary, as previously discussed in this Manual, the BAC holds such a conference. If a pre-procurement conference is held, the participants should confirm the existence of the conditions required by law for procurement through Direct Contracting.

6. The BAC, through the Secretariat, posts for information purposes the Request for Quotation for a period of seven (7) calendar days prior to sending the Request for Quotation, in:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
 - c. Any conspicuous place in the premises of the Procuring Entity.
7. The BAC sends the Request for Quotation to the selected supplier. If necessary, negotiations are conducted to ensure that the Government is able to procure the goods at the most advantageous terms.
8. The BAC proceeds with contract signing and approval.

Should a Procuring Entity require a performance security under this method of procurement?

Yes, performance security must be posted.

Repeat Order

What is Repeat Order?

REPEAT ORDER, 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. The procurement should be covered by the contingency provided for in the APP. **(IRR-A Section 51)**

Repeat Orders from the previous winning bidder may be resorted to by the Procuring Entity only in cases where the procured item is clearly superior to the other bids. This superiority must exist, not only in the price quoted but also in equipment reliability, availability of spare parts, after-sales service and delivery period, among others. The bid should not have been so closely contested, such that if a bidding would be conducted again, the previous winning bidder would still have a high probability of winning.

When is Repeat Order Allowed?

Repeat Order may be resorted to by a Procuring Entity if the following conditions are satisfied:

1. The original contract must have been procured through competitive bidding.
2. Contract 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 government after price verification;
3. The repeat order will not result in splitting of contracts, requisitions or purchase orders, as provided for in Section 54.1 of the IRR-A;
4. Except in cases duly approved by the GPPB, the repeat order shall be availed of only within six (6) months

Tips: Let's make things easier

Especially if the procuring entity anticipates that it would have to procure through Repeat Order, it would be helpful for the BAC Secretariat or the procurement unit to maintain a price monitor of goods and services procured.

How's that again?

What is "splitting of contract"?

Splitting of contracts is the act of dividing or breaking up government contracts into smaller quantities and amounts. It also is the act of dividing contract implementation into artificial phases or sub-contracts. Both actions are for the purpose of **evading or circumventing the requirements of law** and the IRR-A of R.A. 9184, especially the necessity of public bidding and the requirements for the alternative methods of procurement. **(IRR-A Section 54.1)**

If the procuring entity is found to have resorted to this mechanism to subvert the law, those responsible for this act shall suffer the **penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years**. This penalty is without prejudice to the imposition of other sanctions provided for in RA 3019 and other penal laws. **(IRR-A Section 65.1.4)**

from the date of the NTP arising from the original contract; and

5. The repeat order should not exceed twenty-five percent (25%) of the quantity of each item in the original contract, and must be part of the contingency provided for in the APP.

Who are involved in procurement through Repeat Order?

The following are involved in procuring through the Repeat Order method:

1. The Head of the Procuring Entity;
2. The BAC;
3. The TWG;
4. The BAC Secretariat;
5. The end-user unit or PMO; and
6. The supplier who won in the previous public bidding.

Methodology: How is procurement through Repeat Order done?

In order to procure through the Repeat order method, the following steps ought to be followed:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the Head of the Procuring Entity.
2. For information purposes, the BAC, through the BAC Secretariat shall post the notice requesting for repeat order of additional units of goods previously procured in the following:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
 - c. Any conspicuous place in the premises of the Procuring Entity.
3. The PMO or end-user unit requests for the procurement of additional units of goods previously procured. If the requirement is twenty-five percent (25%) or less than the original quantity, it indicates/recommends the use of Repeat Order as a mode of procurement.
4. The BAC, through the BAC Secretariat, conducts a canvass of the prevailing market price of the goods to be procured and compares this with the price of the goods in the original contract.
5. The BAC confirms the price with the supplier that won the previous public bidding.
6. If a pre-procurement conference is required or deemed necessary as previously discussed in this Manual and in the IRR-A, the BAC holds the said conference. If such pre-procurement conference is held, the following must be done:
 - a. The TWG reviews the specifications;

- b. The end-user unit or PMO confirms the additional requirement as to necessity and corresponding quantity;
 - c. The participants confirm if the price and terms in the original contract is most advantageous to the government; and
 - d. The BAC determines the existence of the conditions required for procurement through Repeat Order.
7. The BAC recommends the conduct of a Repeat Order through a Resolution to be approved by the Head of the Procuring Entity.
8. The BAC Secretariat amends the APP to include the recommendation to the Head of the Procuring Entity on the use of Repeat Order as a method of procurement.
9. The Head of the Procuring Entity approves the recommendation and the amended APP.
10. The BAC, through the Secretariat, confirms the Repeat Order with the previous supplier, and proceeds with the preparation of the Supplemental Contract or Purchase Order, using the Technical Specifications in the Bidding Documents used in the previous Bidding.
11. The BAC proceeds with contract signing, and contract implementation.
12. The BAC, through the Secretariat, posts for information purposes the award in:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
 - c. Any conspicuous place in the premises of the Procuring Entity.

Should a Procuring Entity require a performance security under this procurement method?

Yes. Performance security shall be posted.

Shopping

What is Shopping?

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. **(IRR-A Section 52)**

Inherent in this definition are the following requisites:

1. The goods to be procured are readily available off-the-shelf items or ordinary/regular equipment; and
2. The suppliers from whom the goods are procured are of "known qualifications."

With respect to the procurement of ordinary/regular supplies/equipment not available in the PS-DBM, the **suppliers** from whom goods are procured **should be in good standing**, and have not committed any breach of contract (*e.g.*, short deliveries, unreasonable delays in delivery of goods, delivery of defective goods, or similar acts) in previous transactions with the Procuring Entity or other government entity. It is the responsibility of the Procuring Entity, through the procurement office, to monitor contract implementation as well as constantly coordinate with the GPPB-TSO for updates on blacklisted suppliers.

The term "ordinary or regular office supplies" should be understood to include those supplies, commodities or materials which, depending on the procuring entity's mandate and nature of operations, are necessary in the transaction of its official businesses; and consumed in the day-to-day operations of said procuring entity. 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.

When is Shopping allowed?

Shopping shall be employed only in any of the following cases:

1. When there is an unforeseen contingency requiring the immediate purchase of goods. However, the amount must not exceed Fifty Thousand Pesos (Php50,000.00) per transaction, and the aggregate amount of such purchases must not exceed the maximum allowed by the GAA.
2. When ordinary or regular office supplies and equipment not available in the PS-DBM needs to be procured, the price of such purchase not exceeding Two Hundred Fifty Thousand Pesos (Php250,000.00). However, it must be ensured that the procurement does not result in splitting of contracts, as provided in Section 54.1 of the IRR-A. At least three (3) price quotations from bona fide suppliers must likewise be obtained. **(IRR-A Section 52 [b])**

The contract ceiling for procurement through Shopping is subject to periodic review by the GPPB, and may be increased or decreased to reflect changes in economic conditions or for other justifiable reasons. **(IRR-A Section 52)**

Who are involved in the conduct of procurement through Shopping?

The following are involved in the conduct of procurement through the Shopping method:

1. The Head of the Procuring Entity;
2. The BAC;
3. The BAC Secretariat/ Procurement Unit;
4. The end-user; and
5. The supplier(s).

Tips: Let's make doing things easier

On planning properly for contingency purchases

Section 7.1 of the IRR-A requires all procurement to be in accordance with the APP, and all procuring entities are not allowed to procure anything unless it is included in the APP. The requirement extends to those immediate purchases of readily available off-the-shelf goods and to contingencies. These purchases include those charged against cash advances, or the so-called "over-the-counter" purchases. Procuring entities are not allowed to procure anything unless it is included in the APP.

Contingencies must therefore be provided for in the APP based on historical data. (IRR-A Section 7.3) This can be done by allocating for such purchases a percentage of the total procurement budget as reflected in the procuring entity's APP. However, it would be advisable for this allocation not to be more than four percent (4%) of the total appropriations for Maintenance and Other Operating Expenses (MOOE) as provided for in the GAA.

To enable it to plan its purchases more efficiently, and consequently approximate realistic levels for the amount that it would need for its contingency purchases or its small purchases of ordinary/regular office supplies/equipment, the procuring entity must conduct a regular study of its "Over-the-Counter Purchases". Based on this study, the procuring entity would be able to identify recurring expenses that could more reasonably be included in the APP, and thus determine a more realistic allocation for contingencies.

Methodology: How is procurement through the Shopping method done?

The following steps need to be followed in procuring through the Shopping method:

1. The method of procurement to be used must always be as indicated in the approved APP. In other words, there has to be an allocation for items or contingencies wherein procurement through Shopping has been identified. Otherwise, the APP would have to be amended or updated in accordance with Section 7 of the IRR-A. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the Head of the Procuring Entity.
2. For information purposes, the BAC, through the BAC Secretariat shall post the notice of procurement through shopping in the following:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and

- c. Any conspicuous place in the premises of the Procuring Entity.
3. The end-user unit or PMO submits a RIS to the procurement unit indicating therein the urgency of the requirement. In case an immediate purchase is needed, brought about by an unforeseen contingency, the same may be undertaken directly with a supplier and charged against cash advances.
4. The BAC, through the Secretariat, posts for information purposes the procurement opportunity, for a period of seven (7) calendar days, in:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
 - c. Any conspicuous place in the premises of the Procuring Entity.

If the procurement is due to an unforeseen contingency, the period for posting may be waived, so that the procurement activity may be posted by the BAC Secretariat after the same has been conducted for information purposes only. **(IRR-A Section 54.2 [h])** Otherwise, the need for an immediate purchase brought about by an unforeseen contingency may be negated.

5. The BAC, through the BAC Secretariat, issues Requests for Quotation to at least three (3) suppliers in good standing. (*Note: this may not apply in the case of unforeseen contingencies*)
6. The suppliers submit the Price Quotations (please refer to attached Standard Forms). (*Note: this may not apply in the case of unforeseen contingencies*)
7. For shopping under Section 52(b) of the IRR-A, award shall be made by the BAC to the supplier with the lowest price quotation. For shopping under Section 52(a) of the IRR-A, award shall be made to the supplier with the lowest price quotation by the appropriate authority duly designated by the Head of the Procuring Entity.

Tips: Let's make doing things easier

On approving authorities for purchases through the Shopping method

Considering the small value of procurement through Shopping, the Head of the Procuring Entity is encouraged to delegate the function of approving such requests to lower level officials, provided the aggregate amount of such procurement transactions still falls within the amount allowed for contingencies in the APP. If the aggregate amount of these transactions exceed the amount provided for in the APP, it could indicate either of two things:

1. the APP does not reflect a realistic percentage of contingent procurements, requiring a more thorough study of past procurement data; or
2. there is a tendency to purchase indiscriminately, possibly to avoid competitive bidding.

In either case, the Head of the Procuring Entity should step in and ensure that proper measures are carried out to correct the situation.

Another alternative would be for the BAC to include in the APP a general recommendation for Shopping as an alternative method to be employed in case of an occurrence of a contingency, so that the approval of the APP by the Head of the Procuring Entity would necessarily cover an approval of such recommendation; provided, of course, that the limits indicated for contingencies are not exceeded.

Are performance securities still required for procurements through the Shopping method?

In cases when shopping is employed in case of an unforeseen contingency where the compliance of the supplier's obligation to deliver or perform is immediate such that there is no more delivery or performance to be guaranteed, suppliers may be exempted from posting a performance security provided that the goods procured are delivered upon purchase. However, for purchases of ordinary or regular office supplies or equipment not available in the PS-DBM, the Procuring Entity should require the posting of performance securities.

Negotiated Procurement

What is Negotiated Procurement?

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

The latter portion of the above definition indicates the advisability for the existence of a registry of suppliers maintained and updated by the Procuring Entity. Moreover, particularly in the cases of emergency procurement, the **suppliers** from whom goods are procured **should be in good standing**, and have not committed any breach of contract (e.g., short deliveries, unreasonable delays in delivery of goods, delivery of defective goods, or similar acts) in previous transactions with the Procuring Entity or other government entity. It is the responsibility of the Procuring Entity, through the procurement office, to monitor contract implementation as well as constantly coordinate with the GPPB-TSO for updates on blacklisted suppliers.

When is Negotiated Procurement allowed for the procurement of goods?

For the procurement of goods, negotiated procurement is employed only in any of the following cases:

1. Where there has been failure of public bidding for the second time provided in Section 35 of R.A. 9184;
2. In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from actual 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;
3. If the Procuring Entity is purchasing goods from another agency of the government, such as the PS-DBM; or if it lacks the proficiency or capability to undertake a particular procurement, as determined by the Head of the Procuring Entity, and requests another government agency to undertake such procurement activity or hires consultants or procuring agents to assist it directly and/or train its staff in the management of the procurement function;
4. Upon prior approval by the President of the Philippines, when the procurement involved major defense equipment for use by the AFP 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. It should be noted that the negotiation should be with a public agency or instrumentality of a foreign country, not directly with any foreign supplier or manufacturer. As such, for this type of procurement, it is necessary for the contract to be covered by a foreign government guarantee equivalent to 100% of the contract price; or
5. Where the procurement does not fall under Shopping in Section 52(a) of the IRR-A and amounts to Fifty Thousand Pesos (P50,000.00) and below, provided that the procurement does not result in splitting of contracts.

Who are the parties involved in Negotiated Procurement?

The following are involved in purchasing goods through negotiated procurement:

1. The Head of the Procuring Entity;
2. The BAC;
3. The TWG;
4. The BAC Secretariat;
5. The end-user unit or PMO; and
6. The accredited or registered suppliers.

Methodology: How is Negotiated Procurement undertaken?

The following steps are undertaken in purchasing goods through the negotiated procurement method:

1. The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, the BAC, through a resolution shall justify and recommend the change in the mode of procurement to be approved by the Head of the Procuring Entity.
2. The BAC convenes the appropriate officials for the pre-procurement conference, if deemed necessary.
3. The BAC, through the Secretariat, posts for information purposes the procurement opportunity, for a period of seven (7) calendar days, in:
 - a. The PhilGEPS;
 - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
 - c. Any conspicuous place in the premises of the Procuring Entity.

For negotiated procurements in cases of imminent danger to life and property, the Procuring Entity may waive the period for posting. However, the award will be posted in the aforementioned sites. **(IRR-A Section 54.2 [d])**

4. If the procurement is being negotiated because of two previous failures of bidding or in case of imminent danger to life or property, the BAC, through the BAC Secretariat, issues invitations to at least three (3) suppliers of good standing for the latter to negotiate a contract. The Procuring Entity may draw these suppliers from its list of registered suppliers. The procedures for the conduct of public bidding should be observed. However, the minimum period for each bidding procedure may be reduced.
5. The suppliers submit their proposals in a sealed envelope duly marked.
6. The BAC, with the assistance of the TWG, evaluates the price tenders of the bidders. The BAC shall issue a resolution recommending to the Head of the Procuring Entity of the award of the contract to the lowest calculated and responsive bidder for approval.
7. The BAC Secretariat / Procurement Unit prepares the contract, Purchase Order or Job Order for approval of the appropriate authorities, and serves the same to the winning bidder.

Are bid and performance securities required for purchases made through Negotiated Procurement?

Yes, both securities are required.

SECTION 5

**Guidelines on Contract
Implementation for the
Procurement of Goods and
Services**

Contract Implementation for the Procurement of Goods and Services

Legal Reference

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

What is covered by Contract Implementation?

Contract implementation covers the following milestones:

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

TIP: Let's make things easier

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

When shall a contract be deemed effective?

A contract becomes effective either on the date of the receipt by the winning bidder of the NTP or, if an effectivity date is provided in the NTP, then on such date, but in no case later than **seven (7) calendar days** from its issuance. All notices called for by the terms of the contract shall be effective only from either of these effectivity dates. These provisions must be stated clearly in the contract itself. **(IRR-A Section 37.5)**

TIP: Let's make things easier

The PMO or end-user unit must ensure that the Chief Accountant of the procuring entity issues a CAF for the project. Only with a CAF can the contract be valid.

The Chief Accountant must also sign the contract as a witness.

Warranty

Legal Reference

IRR-A Section 62.1.

What is the purpose of a Warranty?

A Warranty is required in the procurement of goods to ensure that the supplier, manufacturer or distributor, as the case may be, will correct any manufacturing defect.

What is the Warranty requirement for Goods?

For the procurement of goods, a warranty shall be required from the contract awardee for a minimum period of three (3) months, in the case of supplies, and one (1) year, in the case of equipment, after the acceptance by the Procuring Entity of the goods and/or equipment.

The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee equivalent to at least ten percent (10%) of the total contract price. The special bank guarantee must be contract specific, that is, it shall be executed for the special purpose of covering the warranty for the subject procurement contract. If the warranty period is longer than the minimum period of three (3) months for supplies and one (1) year for equipment, the period beyond the minimum period need not be covered by retention money or special bank guarantee. After the lapse of the minimum period, the Procuring Entity must release the retention money or special bank guarantee.

The warranty shall only be released after the lapse of the warranty period, provided that the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met.

When shall Goods be considered defective?

Goods are considered defective when they are "unfit for the use for which it is intended," or "its fitness for such use is diminished to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it..." (**Civil Code of the Philippines Article 1561**). A defect can either be:

1. A patent defect, which is one that is apparent to the buyer on normal observation. It is an apparent or obvious defect. For example, a ballpen that does not write is patently defective.
2. A latent defect, which is one that is not apparent to the buyer by reasonable observation. A latent defect is "hidden" or one that is not immediately determinable. For example, a ballpen that writes .75 kilometers instead of the expected 1.5 kilometers, has a latent defect.

Both latent and patent defects are covered by the warranty expressly required in R.A. 9184 and its IRR-A. This means that the Procuring Entity may proceed against the warranty whenever any of these defects are determined to be present in the goods procured, and the same are determined within the period covered by the warranty. However, wear and tear due to normal usage of the goods is excluded from the coverage of the warranty.

The Procuring Entity should promptly notify the supplier in writing of any claims arising under the warranty. Upon receipt of such notice, the supplier should, within the period specified in the contract and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the Procuring Entity. If the supplier, having been notified, fails to remedy the defects within the period specified in the contract, the Procuring Entity may then proceed to call upon the warranty security, without prejudice to any other rights which it may have against the supplier under the contract and under the applicable law.

Are there instances where partial release or reduction of the required warranty may be done by the Procuring Entity?

Yes, a partial release or reduction of the warranty may be allowed in the case of partial deliveries. In this case, the warranty periods will vary among the various lots. The warranty for goods delivered ahead will lapse earlier than the succeeding deliveries. The retention money or a portion of the special bank guarantee covering the warranty for goods received or delivered ahead may thus be released. The effect is that there will be partial releases of the retention money or special bank guarantee to coincide with the lapse of the warranty period for each delivered lot.

However, the warranty must be in the form of retention fee equivalent to ten percent (10%) of every progress payment. For example, in the case of a procurement transaction allowing partial deliveries and progress payment for each delivery, the amount of the warranty for the first partial delivery may be released after the lapse of the warranty period for such first delivery. The remaining goods that are still under warranty will be covered by a warranty fee equivalent to ten percent (10%) of each progress payment.

Amendment to Order

What is an Amendment to Order?

An Amendment to Order refers to any necessary adjustment within the general scope of the contract in any one or more of the following aspects in order to fully meet the requirements of the project:

1. Drawings, design or specifications of the goods, provided that:
 - a. The goods to be furnished are to be specifically manufactured for the government in accordance therewith;
 - b. The change is an improvement of the goods and advantageous to the government;
 - c. It is done at no extra cost; and
 - d. It is not prejudicial to the losing Bidders in the sense that such change/s could not have been foreseen during the conduct of the bidding and would have significantly affected the other bidders' bids;
2. The method of shipment or packing;
3. The place of delivery;
4. The place of performance of the services;
5. Additional items needed and necessary for the protection of the goods procured, which were not included in the original contract; or
6. Any other change affecting the specifications or scope of work of the goods and/or services to be procured.

Such amendment may or may not result to an increase or a decrease of the contract price, and/or an extension or reduction of the delivery period. However, the amendment should not have the result of changing the subject matter of the contract or the specifications of the goods or services, in any material aspect and to such an extent that, if introduced during the bidding stage, may have had a significant effect on other bidders' bids, because this situation would actually require another bidding activity, except if the original procurement was done through an alternative method that did not involve a bidding.

When can the Procuring Entity issue an Amendment to Order?

Amendments to Order may be issued by the Procuring Entity at any time during contract implementation, provided that such adjustment is required to fully meet the requirements of the project. Any of the following circumstances may serve as basis for such amendment/s:

1. Emergency cases, fortuitous events or unforeseen contingencies arising during project/contract implementation, and such contingencies have an impact on the procurement at hand, such as:

- a. Changes in the conditions affecting the project, *e.g.*, a change in the place of delivery;
 - b. Time is of the essence in the implementation of the project, and any changes require immediate implementation; and
 - c. Additional requirements have been identified as necessary for the protection of the goods procured, such as changes in the packaging of the goods, or additional items have become necessary to ensure that the goods are sufficiently protected from the elements;
2. When the contract does not reflect the real intention of the parties due to mistake or accident, and the amendment is necessary to reflect the parties' intention; and
 3. Other analogous circumstances that could affect the conditions of the procurement at hand.

Are corresponding adjustments in contract price and/or delivery schedules allowed?

Yes. If an amendment to 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 should be mutually agreed upon between the parties concerned, and the contract should be modified in writing. It is required, however, that any increase in contract price must not exceed ten percent (10%) of the original contract price. Otherwise, the procurement should be subject to another bidding, unless the original procurement was done using any of the alternative methods that did not involve bidding.

Moreover, in the adjustment of the price, the supplier and the Procuring Entity must ensure that the principle of "no loss, no gain" is applied, such that neither party gains or loses anything from the resulting price adjustment.

What rules shall govern price adjustments due to Amendment to Order?

If the amendment to order consists of additional items, the price adjustment 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 be mutually agreed upon between the parties, based on prevailing market prices.

Any request for payment by the supplier for additional items must be accompanied by a statement with the approved supporting forms, giving a detailed accounting and record of the amount for which it claims payment.

If the amendment to order consists of a change in drawings, design or specifications of the goods, method of shipment or packing, or place of delivery, the price adjustment shall be equivalent to the corresponding value of the change, based on prevailing market prices.

Who are involved in the issuance of an Amendment to Order?

The following parties are involved in the issuance of an Amendment to Order:

1. The PMO or end-user unit;

2. The supplier/manufacturer/distributor;
3. The procurement Unit/office; and
4. The Head of the Procuring Entity or his duly authorized representative.

Methodology: How is an Amendment to Order issued?

The following steps are undertaken in the issuance of an Amendment to Order:

1. The PMO or end-user unit determines the existence of condition/s that require an amendment to order.
2. The PMO or end-user unit discusses with the supplier/manufacturer/distributor regarding the adjustments in contract price and/or delivery schedule, if necessary.
3. The PMO or end-user unit drafts the contract amendment containing the agreements reached with the supplier/manufacturer/distributor.
4. The PMO or end-user unit secures a CAF for the procurement, to be attached to the contract amendment when this is submitted to the Head of the Procuring Entity for approval.
5. The contract amendment is submitted to the Head of the Procuring Entity or his duly authorized representative, for approval, with the approval process following the same timelines prescribed by the IRR-A and this Manual for contract approval.
6. Upon approval by the Head of the Procuring Entity or his duly authorized representative, the PMO or end-user unit notifies the supplier/manufacturer/distributor to proceed with the work/delivery of items in accordance with the amendment. It shall also notify the procurement unit/office of such approval, and furnish the latter with a copy of the amended contract.
7. The procurement unit/office posts the Amendment to Order in the PhilGEPS, the website of the Procuring Entity, and the latter's electronic procurement service provider, if any.
8. The supplier/manufacturer/distributor proceeds with the work/delivery of items in accordance with the amended contract.

Can a supplier proceed with the work under an Amendment to Order even if such Amendment to Order has not yet been approved?

Under no circumstance 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. His authorization, however, is valid only up to the point where the cumulative increase in the contract cost which has not yet been fully approved by the Head of the Procuring Entity or his duly authorized representative does not exceed five percent (5%) of the original contract cost. Moreover, the corresponding Amendment to Order must immediately be prepared and submitted for approval to the Head of the Procuring Entity 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 the Procuring Entity concerned or his duly authorized representative. However, the said cumulative amount should not exceed ten percent (10%) of the original contract price. **(IRR-A Annex "D")**

Payment for any work or delivery done in accordance with an Amendment to Order shall not be made unless the approval of the Head of the Procuring Entity or his duly authorized representative has been secured.

Suspension of Delivery

Legal Reference

IRR-A Annex "D."

What are the grounds for suspension of delivery or contract implementation?

The Procuring Entity may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period of time, as it deems necessary due to **force majeure or any fortuitous event** as defined in the contract.

Are corresponding adjustments in contract price and/or delivery schedule allowed?

Yes, appropriate adjustments shall be made in the delivery or contract schedule, or contract price, or both, and the contract shall be modified accordingly. **(IRR-A Annex "D")**

When warranted, price adjustments may be made in accordance with the guidelines previously discussed in the immediately preceding section on "Amendment to Order."

When shall the Supplier/Manufacturer/Distributor resume delivery and/or contract implementation?

Work must be resumed or delivery made either upon the lifting or the expiration of the suspension order. However, if the Procuring Entity terminates the contract covered by such order, resumption of work cannot be done.

Tip: Let's make doing things easier

On the resumption of suspended contracts

The procuring entity must either lift the suspension order or terminate the contract before the expiration of the suspension period. If the period of the order is allowed to expire, the supplier/manufacturer/ distributor shall automatically have the right to resume work, which may not be the intention of the PMO at that time.

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

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

1. The PMO or end-user unit;
2. The supplier/manufacturer/distributor; and
3. The Head of the Procuring Entity or his duly authorized representative.

Methodology: How is a Suspension Order issued?

The following steps are necessary for the issuance of a suspension order:

1. The PMO or end-user unit determines the existence of a force majeure or fortuitous event that will be the basis for the issuance of a suspension order.
2. Based upon the findings and recommendation of the PMO or end-user, the Head of the Procuring Entity issues a written order suspending the order or work, wholly or partly, for a certain period of time.
3. The supplier/manufacturer/distributor shall take all reasonable steps to minimize the costs allocable to the order or work covered by the order during the suspension.
4. The PMO or end-user unit discusses with the supplier/manufacturer/distributor any need for adjustments in the delivery or contract schedule and/or contract price, including any need to modify contract.
5. The PMO or end-user unit drafts the contract amendment containing the agreements reached with the supplier/manufacturer/distributor.
6. The contract amendment is submitted to the Head of the Procuring Entity or his duly authorized representative, for approval.
7. Prior to the expiration of the suspension order, the PMO or end-user unit determines whether or not the grounds for suspension are still existent. If such grounds continue to exist, or if it is no longer practicable to complete the delivery or continue with the work, it shall cancel the delivery of the items subject of the suspension order, or terminate the work subject of the order, by written notice. If, however, the grounds for suspension no longer exist, and completion of delivery or continuation of the work may already be done, the PMO, with the approval of the Head of the Procuring Entity or his duly authorized representative, shall lift the suspension order by written notice, thereby instructing the supplier/manufacturer/distributor to proceed with the delivery or work in accordance with the amended contract.

Delays in Delivery and Liquidated Damages

Legal Reference

IRR-A Section 68, Annex "D," and the Civil Code of the Philippines Art. 2226.

What is the rule on the applicable period for the delivery of goods or performance of services?

The supplier/manufacturer/distributor must deliver the goods or perform the services procured within the period prescribed by the Procuring Entity, as specified in the Contract.

If delays are likely to be incurred, the supplier/manufacturer/distributor must notify the Procuring Entity in writing. It must state therein the cause/s and duration of the expected delay. The Procuring Entity may grant time extensions, at its discretion, if based on meritorious grounds, with or without liquidated damages.

In all cases, the request for extension should be submitted before the lapse of the original delivery date. The maximum allowable extension shall not be longer than the initial delivery period as stated in the original contract.

What are Liquidated Damages?

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

What are the grounds for the imposition of Liquidated Damages?

When the supplier fails to satisfactorily deliver the goods or services under the contract within the specified delivery schedule or project implementation 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, for every day of delay until such goods or services are finally delivered or performed and accepted by the Procuring Entity concerned. The Procuring Entity need not prove that it has incurred actual damages to be entitled to liquidated damages.

What is the amount of Liquidated Damages that may be imposed upon the supplier?

The supplier must 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 or services scheduled for delivery or performance for every day of delay. The liquidated damages will be imposed until such goods or services are finally delivered or performed and accepted by the Procuring Entity concerned.

In no case shall the sum of liquidated damages reach ten percent (10%) of the contract amount. If it does, the contract shall automatically be rescinded by the Procuring Entity, without prejudice to other courses of action and remedies open to it. The Procuring Entity may also take over the contract or award the same to a qualified supplier through negotiation.

In addition to the liquidated damages, the erring supplier's performance security shall also be forfeited.

Methodology: How are Liquidated Damages imposed?

The following steps need to be followed in the imposition of liquidated damages:

1. The supplier/manufacturer/distributor submits a written request to the PMO or end-user unit for an extension of the delivery or performance period, citing the reason/s for such delay.
2. The PMO or end-user unit either approves or disapproves the request for extension.
3. If the extension is granted, the liquidated damages may or may not be imposed and the supplier/manufacturer/distributor is informed of this in writing. The supplier/manufacturer/distributor is then asked to extend the validity of the performance bond, to conform to the extended period.
4. If, however, the request for extension is denied, the PMO or end-user unit informs in writing the supplier/manufacturer/distributor of such denial, and ensures that the said notice or communication is received by the latter within a reasonable time from receipt of the request for extension. In this case, the Procuring Entity imposes the liquidated damages in accordance with the provisions of the contract and the procedures outlined below.
5. If the supplier/manufacturer/distributor incurs delay and it does not request for an extension
 - a. The PMO or end-user unit informs, within a reasonable time from the first day of delay, the supplier/manufacturer/distributor that the Procuring Entity shall impose the liquidated damages agreed upon by the parties.
 - b. Upon delivery, the PMO or end-user unit and the Technical Inspection and Acceptance Committee records the delay in the inspection documents, noting therein the amount of the liquidated damages imposable on the supplier.
 - c. Upon payment, the amount of liquidated damages due is deducted from the total amount payable to the supplier, and the same shall be reflected in the DVs. Or, if the contract provides that the liquidated damages is to be collected from securities or warranties posted by the supplier, the PMO or end-user unit informs the official authorized to call on the securities or warranties about the delay and the corresponding liquidated damages imposable.

Other Rules and Guidelines

Legal Reference

IRR-A Section 42.1 and Annex "D", IRR-A.

Incidental Services

What are Incidental Services?

Incidental Services are those services ancillary to the supply of the goods, such as transportation and insurance, installation, commissioning, provision of technical assistance, training, and other such obligations of the supplier specified in the Contract and the bidding documents. In particular, these services may refer to any of the following:

1. Performance or supervision of on-site assembly and/or start-up of the supplied goods;
2. Furnishing of tools required for assembly and/or maintenance of the supplied goods;
3. Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
4. Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under the Contract;
5. Training of the Procuring Entity's personnel, at the supplier's plant and/or on-site, on assembly, start-up, operation, maintenance, and/or repair of the supplied goods; and
6. Any other related services necessary for completion of the project and indicated in the contract.

Tips: Let's make doing things easier

On incidental services being in the contract

The Incidental Services must be clearly specified in the contract, and identified as separate components from the goods to be supplied or services to be rendered, so that prices indicated on the price schedule shall be entered separately, in accordance with the ITB. The cost thereof should also be indicated in the contract.

Spare Parts

What are Spare Parts?

Spare parts refer to extra components, equipment, tools, instruments or parts of machinery or apparatus that replace the ones that are damaged or worn out.

Tips: Let's make doing things easier

On spare parts

The procuring entity may include the delivery of a limited supply of fast-moving and/or hard-to-find spare parts in the technical specifications when procuring heavy equipment or machinery. This is to ensure the continued use or operation of the equipment.

What information is required from the Supplier with regard to spare parts of goods?

The supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

1. Such spare parts as the Procuring Entity may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract;
2. Such spare parts that the Procuring Entity may be able to purchase from other suppliers/manufacturers but are compatible with the goods procured; and
3. In the event of termination of production of the spare parts:
 - a. Advance notification to the Procuring Entity of the pending termination, in sufficient time to permit the Procuring Entity to procure needed requirements; and
 - b. Following such termination, furnishing at no cost to the Procuring Entity the blueprints, drawings, and specifications of the spare parts, if requested.

The supplier may likewise be required to issue a Certification that spare parts, particularly those that are product-specific, shall continue to be manufactured by them within a period of time, *e.g.*, five (5) years, after the bidding date.

The above information shall be included in the Technical Bid.

Purchaser's Responsibilities

What are the Procuring Entity's responsibilities to the supplier/manufacturer/distributor if the latter requires coordination with other government entities for it to be able to perform its contractual obligations?

Whenever the supply of goods and related services requires that the supplier/manufacturer/distributor obtain permits, approvals, and import and other licenses from local public authorities, the Procuring Entity may, upon request by the supplier/manufacturer/distributor, assist the latter in complying with such requirements in a timely and expeditious manner. However, the supplier/manufacturer/distributor shall bear the costs of such permits and/or licenses. On the other hand, the Procuring Entity shall pay all costs involved in the performance of its responsibilities, in accordance with the contract.

Prices

How much should the contract price be?

The contract price must not vary from the price quoted by the supplier in its bid. This is based on the rule that the contract, as awarded, should not differ in any material aspect from the terms stipulated in the bidding documents, considering that these terms were the basis for the comparison of bids. Otherwise, the purpose bidding process would have been defeated.

In what denomination shall the contract price be stated?

For goods and services that will be supplied from within the Philippines, the price in the contract shall be denominated and payable in Philippine currency, and this shall be stated in the bidding documents.

For goods and services that will be supplied from outside the Philippines, such as in the case of goods with a high import content, *i.e.* more than fifty percent (50%) of the contract cost, the Procuring Entity may disaggregate the cost components into foreign and local costs, and may denominate and pay contract prices in foreign and Philippine currencies, as stipulated in the bidding documents. For this purpose, the ITB may provide that the prices for goods and services supplied from outside the Philippines may be quoted either in Philippine Pesos or United States Dollars, at the discretion of the bidder.

Unless otherwise provided, payment of the contract price shall be made in Philippine Pesos. In instances where the Procuring Entity is allowed to receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate officially prescribed for similar transactions as established by the BSP on the date of the bid opening. However, this conversion rate shall only be for purposes of bid evaluation. The contract must state the foreign currency denominated amount and the peso equivalent on the date of bid opening.

Are contract prices fixed?

Price escalation is generally not allowed.¹⁷ For the given scope of work in the contract as awarded, the price must be considered as a fixed price, except under extraordinary circumstances as determined by the NEDA in accordance with the Civil Code of the Philippines, upon recommendation of the Procuring Entity concerned, and upon prior approval of the GPPB. Any request for price escalation under extraordinary circumstances should be submitted by the concerned entity to the NEDA with the endorsement of the Procuring Entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

"Extraordinary circumstances" shall refer to events defined in the Civil Code of the Philippines, consistent with the guidelines issued by the GPPB. In particular, the Guidelines for Contract Price Escalation approved by the GPPB in Resolution No. 07-2004, dated July 22, 2004, provides that the term "extraordinary circumstances" shall refer to the following Articles of the Civil Code of the Philippines:

1. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which 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 are present:
 - a. The cause of the extraordinary circumstances must be independent of the will of the parties;
 - b. The event must be either unforeseeable or unavoidable;

¹⁷ For FAPs, the bidding documents would have to state whether the bid prices will be fixed or whether price adjustments would be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving completion of works generally within twelve (12) months in the case of JBIC, or eighteen (18) months in the case of World Bank-funded projects, but should be included in contracts which extend beyond eighteen (18) months. Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable), and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

- c. The event must be such as to render it difficult but not impossible for the supplier to fulfill his obligation in a normal manner or within the contemplation of the parties;
 - d. The supplier must be free from any participation in or aggravation of the injury to the Procuring Entity; and
 - e. The allowance for price escalation, should an ordinary fortuitous event occur, is stipulated by the parties or the nature of the obligation requires the assumption of risk.
2. Article 1250, as it pertains to Extraordinary Inflation or Deflation, which may refer to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed in accordance with the Guidelines for Contract Price Escalation, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.
 3. Article 1680, as it enumerated Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following: (a) fire; (b) war; (c) pestilence; (d) unusual flood; (e) locusts; and (f) earthquake; provided that the circumstances before, during and after the event shall be taken into consideration.

What is the procedure to be followed when requesting for approval of price escalation?

In the review and approval of a request for price escalation, the Procuring Entity should comply with the following conditions detailed in the Guidelines for Contract Price Escalation, before the same can be acted upon:

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 several documentary requirements.
2. Two-Stage Review Process. The review process shall commence only after the NEDA has acknowledged the completeness of the request. A request for price escalation shall only be granted if it satisfies both the First Stage (Legal Parameters) and Second Stage (Technical Parameters) reviews of the NEDA.
3. Amount of Price Escalation to be Granted. 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 the Second Stage review process.
4. Period and Frequency of Requests for Price Escalation. Requests for price escalation shall only be made for cost items already incurred by the supplier. 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 shorter than six (6) months reckoned from the start of the contract implementation, and not shorter than six (6)-month period thereafter. For contracts wherein the duration is shorter than six (6) months, the request for contract price escalation shall be made after the completion of the contract.
5. Misrepresentation. Any misrepresentation made by the Procuring Entity or the supplier in any stage of the processing of a particular request for price escalation shall cause the automatic denial/disapproval of said claim.
6. Recommendation/Approval. The NEDA shall, upon completion of its review pursuant to the Guidelines for Contract Price Escalation, submit its recommendation 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.

Payment

What is the method of payment for contracts for the procurement of Goods?

The method and conditions of payment must be specified in the contract. However, the following guidelines may be considered by the Procuring Entity in preparing the contract provisions regarding payment:

1. As a general rule, no advance payment, or any payment made prior to the delivery and acceptance of goods, shall be made to any supplier/manufacturer/distributor, subject to the following exceptions:
 - a. When there is prior approval by the President; or
 - b. When the procurement is made from another government agency.

How's that again?

On payments upon termination of a contract

Payment on a *quantum meruit* basis may be made in favor of the supplier/manufacturer/distributor in case of contract termination for any cause other than engaging in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the contract.

"Quantum meruit" means "as much as he deserves." It is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under these circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished. **(Black's Law Dictionary, Fifth Edition)**

2. Partial payment of the contract price will only be allowed if the contract provides/allows for partial or staggered delivery of goods procured, and such partial payment must correspond to the value of the goods delivered and accepted;
3. Payment must only be made after the appropriate inspection and acceptance procedures, as mandated by existing government rules and regulations, have been complied with by the Procuring Entity; and
4. Payment must be made in accordance with prevailing accounting and auditing rules and regulations.

When may an advance payment be made to a private supplier/manufacturer/distributor?

In accordance with P.D. No. 1445, advance payment may be made only after prior approval of the President, and it should not exceed fifteen percent (15%) of the contract amount, unless otherwise directed by the President. Prior approval by the President is not necessary in the following cases:

- a. In contracts entered into by the Procuring Entity for the following services where requirement of down payment is a standard industry practice: (i) hotel and restaurant services; (ii) use of conference/seminar and exhibit areas; and (iii) lease of office space; and
- b. 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.

In the case of item (a) above, a single advance payment not exceeding fifty percent (50%) of the contract amount is allowed. In the case of item (b) above, an advance payment not exceeding fifteen percent (15%) of the contract amount is allowed, unless otherwise directed by the President.

All progress payments should first be charged against the advance payment until the latter has been fully exhausted, unless otherwise approved by the President. **(Memorandum Order No. 172, dated 19 May 2005)**

When must payment be made?

Payments must be made promptly by the Procuring Entity, but in no case later than **forty-five (45) days** after the supplier's request/s for payment shall be made in writing, accompanied by an invoice describing, as appropriate, the goods delivered and/or services performed, by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract, as well as upon inspection and acceptance of the goods by the appropriate Technical and Inspection Committee. In addition, the Procuring Entity shall ensure that all accounting and auditing requirements are met prior to payment.

In what currency must payment be made?

As a general rule, payment must be made in Philippine currency.¹⁸

For goods and services that will be supplied from within the Philippines, the price in the contract shall be denominated and payable in Philippine currency, and this shall be stated in the bidding documents.

For goods and services that will be supplied from outside the Philippines, such as in the case of goods with a high import content, *i.e.* more than fifty percent (50%) of the contract cost, the Procuring Entity may disaggregate the cost components into foreign and local costs, and may denominate and pay contract prices in foreign and Philippine currencies, as stipulated in the bidding documents.

If a foreign currency denominated contract is payable in Philippine currency, the contract may contain a provision allowing the BSP reference rate at the time of payment or on the date of opening of the Letter of Credit to be used to convert the foreign currency denominated amount to Philippine Pesos, but the same should in no case exceed the ABC. This will be the basis for the payment in pesos. Furthermore, if the amount payable in Philippine currency is greater than the Peso value of the contract price, such increase must not be more than the allowable variance mandated by GPPB guidelines, reckoned as a percentage of the peso amount as of bid opening date. Projected exchange rate fluctuations based on BSP forecasts must be factored in by the Procuring Entity in determining the ABC, to ensure that the project cost reflects currency values at the time of project implementation.

Are incentive bonuses allowed?

No. No incentive bonus, in whatever form or for whatever purpose, must be allowed.¹⁹ **(IRR-A Section 42.4)**

¹⁸ For FAPs, Payment of the contract price should be made in the currency or currencies in which the bid price is expressed in the bid of the successful bidder. When the bid price is required to be stated in local currency but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments should be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain. At any rate, where the price is to be paid, wholly or partly, in a currency or currencies other than the currency of the bid, the exchange risk should not be borne by the supplier or contractor and, to this end, the contract should provide that amounts payable in a currency or currencies other than that of the bid should be calculated at the rates of exchange between these currencies specified for the purpose in the bidding documents.

¹⁹ For FAPs, provision may be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the procuring entity. The option to grant incentive bonus is given by the IFIs to the procuring entity.

Taxes and Duties

Who shall be responsible for the payment of taxes and other duties?

A foreign supplier must be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed up to the delivery of the goods to the Project Site as specified in the contract.

A local supplier must also be entirely responsible for all taxes, duties, license fees, and other related expenses, incurred until delivery of the contracted goods to the Procuring Entity.

Subcontracts

Is subcontracting allowed for the procurement of goods and services?

Generally, a supplier may be allowed to subcontract a portion of the contract or project. However, the supplier should not be allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed twenty percent (20%) of the total project cost. The bidding documents must specify what are considered as significant/material component(s) of the project.

All subcontracting arrangements must be disclosed at the time of bidding, and subcontractors must be identified in the bid submitted by the supplier.

Any subcontracting arrangements made during project implementation and not disclosed at the time of the bidding shall not be allowed. The subcontracting arrangement shall not relieve the supplier of any liability or obligation under the contract. Moreover, subcontractors are obliged to comply with the provisions of the contract and shall be jointly and severally liable with the principal supplier, in case of breach thereof, in so far as the portion of the contract subcontracted to it is concerned.

Subcontractors are also bound by the same nationality requirement that applies to the principal suppliers.

Standards

What standards shall be applied in determining the quality of the goods supplied?

The goods supplied under the contract must conform to the standards mentioned in the technical specifications, which must preferably be Philippine standards, or standards specified by the Bureau of Product Standards of the DTI. If there is no Philippine standard applicable, the goods must conform to the authoritative standards appropriate to the goods' country of origin. Such standards must be the latest issued by the concerned institution.

Packaging

What manner of packaging shall be followed by the supplier?

The supplier must provide such packaging of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract and in accordance with existing industry standards. The packaging must be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packaging case size and weights must take into consideration, where appropriate, the distance and remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

The packaging, marking, and documentation within and outside the packages must comply strictly with such special requirements as must be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the Procuring Entity. Moreover, the outer packaging must contain a "Packing List" which must reflect the actual contents of the package.

Insurance

What is the extent of insurance coverage for Goods?

The goods procured must be fully insured by the supplier in a freely convertible currency against loss or damage incidental to their manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Contract.

Transportation

Who shall be responsible for the transportation, insurance and duties of Goods procured?

The contract must contain provisions on who will bear the cost of transportation and insurance (as well as customs duties in case of importation). For this purpose, the specific Incoterm must be used and identified in the contract. The Incoterm also defines the point at which the risk of loss or damage to the goods passes from the seller to the buyer. The Procuring Entity shall identify which terms are most responsive to the requirements of the project.

If the Supplier is required under the Contract to deliver the goods CIF, CIP or DDP, it shall arrange and pay for the transport of the goods to the port of destination or such other named place of destination in the Philippines, as shall be specified in the contract. It will also have to pay for the cost that will be incurred in the transport of these goods, the cost to be included in the contract price.

If the supplier is required under the contract to transport the Goods to a specified place of destination within the Philippines, defined as the Project Site, it will arrange and pay for the transport of the goods to such place of destination. It must also pay for insurance and storage, and related costs. These costs must be included in the Contract Price.

The Procuring Entity is encouraged to enlist the assistance of an accredited customs broker or forwarder in all importation.

What is the rule on transportation and insurance in Foreign Assisted Projects?

Bidding documents should permit suppliers to arrange transportation and insurance from any eligible source. Bidding documents should state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance should be at least one hundred ten percent (110%) of the contract amount in the currency of the contract or in a freely convertible currency to enable prompt replacement of lost or damaged goods.

If a Procuring Entity wishes to reserve transportation and insurance for the import of goods to national companies or other designated sources, bidders should be asked to quote FCA (named place) or CPT (named place of destination) prices in addition to the CIP (place of destination) price. Selection of the lowest evaluated bid should be on the basis of the CIP (place of destination) price, but the Procuring Entity may sign the contract on FCA or CPT terms and make its own arrangement for transportation and/or insurance. Under such circumstances, the contract should be limited to the FCA or CPT cost. If the Procuring Entity does not wish to obtain insurance coverage in the market, evidence should be provided to the IFI that resources are readily available for prompt payment in a freely convertible currency of the indemnities required to replace lost or damaged goods.

Inspection and Tests

What is the scope of the Procuring Entity's right to inspect and test the Goods procured?

The Procuring Entity or its representative has the right to inspect and/or to test the goods to confirm their conformity to the contract specifications at no extra cost to it. The bidding documents and the contract must specify what inspections and tests are required by the Procuring Entity, and where these are to be conducted. The Procuring Entity must notify the supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

The inspections and tests may be conducted on the premises of the supplier or its subcontractor(s), at point of delivery, and/or at the goods' final destination. If conducted on the premises of the supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, must be provided by the supplier to the inspectors at no charge to the Procuring Entity.

The Procuring Entity must bear its own costs and expenses incurred in connection with its attendance at inspections, including, but not limited to, all traveling and board and lodging expenses.

The Procuring Entity may require the supplier to carry out any test and/or inspection not required by the contract but deemed necessary to verify that the characteristics and performance of the goods comply with the technical specifications, codes and standards under the contract. However, the reasonable costs and expenses incurred by the supplier in the carrying out of such test and/or inspection will be added to the contract price. Furthermore, if such test and/or inspection impedes the progress of manufacturing and/or the supplier's performance of its other obligations under the contract, due allowance will be made in respect of the delivery dates and completion dates and the other obligations so affected. These tests shall be conducted by a government testing laboratory, or, where there is none for the particular item being procured, in any testing laboratory accredited by the DTI. The supplier must provide the Procuring Entity with a report of the results of any such test and/or inspection. These results will be conclusive of the quality of the items and not subject to further dispute between the parties.

The Procuring Entity may reject any goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The supplier should either rectify or replace such rejected goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to the contract.

The supplier should agree in the contract that neither the execution of a test and/or inspection of the goods or any part thereof, nor the attendance by the Procuring Entity or its representative, shall release the supplier from any warranties or other obligations under the contract.

Tips: Let's make doing things easier

On the inspection of delivered goods

The appropriate Technical Inspection and Acceptance Committee of the procuring entity must commence the inspection and acceptance process within twenty-four (24) hours from delivery of the goods, and shall complete the same as soon as practicable.

Pertinent COA regulations on technical inspection and acceptance procedures shall be considered in the conduct of such inspection and acceptance by the procuring entity's authorized inspectors.

Intellectual Property Rights

Shall the Procuring Entity be liable for infringement of intellectual property rights arising from the use of the goods procured?

The Procuring Entity should not be liable for any infringement of intellectual property rights arising from the use of the goods procured. In case there are third-party claims of such infringement of patent, trademark, or industrial design rights, the supplier must hold the Procuring Entity free and harmless against such claims. These terms should be expressed in the contract.

Limitations of Liability

What is the extent of the supplier's liability for damages?

Except in cases of criminal negligence or willful misconduct, and in the case of infringement of intellectual property rights, and unless otherwise specified in the contract, the supplier is generally not liable to the Procuring Entity, whether in contract, tort or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion does not apply to any obligation of the supplier to pay liquidated damages to the Procuring Entity. This is without prejudice to any other liability, penalty or appropriate sanction that may be imposed upon the supplier under R.A. 9184 and other applicable laws.

Termination for Default

What are the grounds for termination for default?

Any of the following conditions shall constitute as a ground for termination of the contract for default:

1. There being no force majeure, the supplier fails to deliver 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;
2. As a result of force majeure, the supplier is unable to deliver or perform any or all of the goods or services, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after the receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased;
3. The supplier fails to perform any other obligation(s) under the contract; or
4. The supplier, in the judgment of the Procuring Entity, has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the contract.

How's that again?

On contract termination and damages

Termination of a contract for default is without prejudice to other remedies available to the procuring entity for breach of contract, such as payment of liquidated and other damages, if there are grounds for the latter.

If the contract is not wholly terminated, the supplier shall continue to deliver the remaining goods or to perform the remaining services contracted.

How does the Procuring Entity proceed with the procurement in case of a contract termination due to default?

If the Procuring Entity terminates the contract in whole or in part, due to default, it may procure from third parties, through the appropriate alternative method of procurement, goods or services similar to those undelivered. The supplier that defaulted will be liable to the Procuring Entity for any excess costs for such similar goods or services.

Termination for Insolvency

What remedy does the Procuring Entity have when a supplier is unable to perform his obligations due to bankruptcy or insolvency?

The Procuring Entity may at any time terminate the contract by giving written notice to the supplier, if the supplier 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, 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.

Termination for Convenience

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

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

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

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

1. If physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible, as determined by the Head of the Procuring Entity;
2. The Head of the Procuring Entity has determined the existence of conditions that make project implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies;
3. Funding for the project has been withheld or reduced by higher authorities through no fault of the Procuring Entity; or
4. Any circumstance analogous to the foregoing.

Also see the Guidelines on Termination of Contracts approved by the GPPB in Resolution No. 018-2004, dated December 22, 2004.

What effect shall termination for convenience have on pending deliveries?

The goods that are complete and ready for shipment within thirty (30) days after the supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the contract terms and prices. For the remaining goods, the Procuring Entity may elect:

How's that again?

On the assignment of contractual obligations and the entry of non-bidders into the procurement process

Assignment of contractual obligations or the contract itself may generally not be done because this will enable a non-bidder to become a party to the contract. This arrangement will make a mockery of the public bidding process, so that one who was not declared eligible to bid and did not participate in the bidding process will end up as the contract awardee, although indirectly.

Moreover, assignors will only add to the number of parties that the procuring entity has to deal with, thereby complicating contract implementation. This could also be a problem if litigation becomes necessary to enforce the contract.

1. To have any portion completed and delivered at the contract terms and prices; and/or
2. To cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services 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 the open market, it shall be allowed to recover partially from the contract, on a quantum meruit basis. The fact of loss must be established before recovery may be made.

Assignment

May the Supplier assign a contract, or any of its rights or obligations arising from the contract, to a third party?

As a general rule, the supplier may not assign the contract, or any of its rights or obligations arising from the contract, to a third party, except with the Procuring Entity's prior written consent.

Blacklisting

The blacklisting of suppliers must conform to the GPPB Guidelines issued for this purpose. As such, reference should be made to the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants, approved by the GPPB in Resolution 09-2004, dated August 20, 2004.

General Procurement Activities and Timelines

General Procurement Activities and Timeline for Goods

Below is the timeline for the public bidding of goods under R.A. 9184 and its IRR-A.²⁰

1a. Publishes the IAEB in the Newspaper. IRR-A Sec. 5 (h) states that: "**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." Based on the order in which the processes are introduced, we can glean that procurement through Competitive Bidding starts with advertisement. Hence, this activity shall be **Day 1** of the timeline for the procurement process. When a pre-procurement conference is necessary, it is advisable not to hold it too far from the initial planned date of the advertisement of the IAEB. Take note that advertisement of the IAEB in the newspaper is not required for contracts to be bid with an ABC \leq ₱2,000,000.00 (IRR-A Sec. 21.2.3) and for alternative methods as provided for in Rule XVI of the IRR-A of R.A. 9184. (IRR-A Sec. 21.2.4)

1b. Posts the IAEB in the Website of the Procuring Entity, its E-Procurement Service Provider, if any, PhilGEPS, & at a Conspicuous Place Reserved for this Purpose. IRR-A Sec. 21.2.1 provides that the IAEB shall be posted continuously in the website of the Procuring Entity concerned, if available, the website of the Procuring Entity's service provider, if any, as provided in IRR-A Sec. 8, the G-EPS, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned for seven (7) calendar days starting on date of advertisement. This means that the IAEB shall be continuously posted from Day 1 to Day 7.

2a. Issue Bidding Documents. IRR-A Sec. 17.5 states that: "*Prospective bidders shall be given ample time to examine the bidding documents and to prepare their respective bids. To provide ample time, the concerned BAC shall promptly issue the bidding documents for the contract to be bid at the time the Invitation to Apply for Eligibility and to Bid is first advertised.*" This means that the earliest possible issuance of Bidding Documents is **Day 1**.

With regard to the latest possible issuance, IRR-A Sec. 21.2.2 (i) states that: "*For goods, a maximum period of thirty (30) calendar days from date of advertisement and/or 1st day of posting of the Invitation to Apply for Eligibility and to Bid up to opening of bids.*" Since the earliest possible issuance of Bidding Documents is Day 1, its latest possible issuance shall then be **Day 31**.

2b. Secure Bidding Documents. For purposes of participating in the bidding, the Bidding Documents can be acquired as early as the first day of advertising and/or posting of IAEB and as late as before the submission of bids. However, time is against the bidder if he/she opts to get the Bidding Documents at the last minute.

3a. Calls a Pre-bid Conference. IRR-A Sec. 22.2 states that: "*The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids.*" Since the latest possible deadline for the submission and receipt of bids is Day 31, (see **4a. Submits Eligibility, Technical and Financial Envelopes**) the latest possible time shall then be **Day 19**. It should be noted that the deadline for the submission and receipt of bids is the same as the date of bid opening.

The earliest possible time to call a pre-bid conference is suggested to be seven (7) calendar days after the date of advertisement and/or posting of the IAEB. Since the earliest possible time to publish the IAEB is Day 1, this pegs the earliest date for the Pre-bid Conference to **Day 8**. Take note that the suggestion for the earliest possible time is not stated in the law or in the IRR-A, but is provided for in this manual to give the bidders ample time to study the bidding documents prior to the pre-bid conference, which also reflects the legislative intent behind IRR-A Sec. 22.2.

²⁰ The timeline for the procurement of goods under IFI financing, with respect to ICB or NCB procedures, should be in accordance with the guidelines or procedures of the IFI concerned.

3b. Makes Available Copies of Minutes of the Pre-bid Conference. IRR-A Sec. 22.3 states that: "*The minutes of the pre-bid conference shall be recorded and made available to all participants not later than three (3) calendar days after the pre-bid conference.*" Thus, the earliest and latest possible availability of the copies of the minutes is **Day 11** and **Day 22** respectively.

3c. Issues Supplemental/Bid Bulletin. IRR-A Sec. 22.5.1 states that: "*The BAC shall respond to the said request by issuing a Supplemental/Bid Bulletin, duly signed by the BAC chairman, to be made available to all those who have properly secured the bidding documents from the Procuring Entity, at least seven (7) calendar days before the deadline for the submission and receipt of bids.*" Similarly, IRR-A Sec. 22.5.2 states that: "*Supplemental/Bid Bulletins may be issued upon the Procuring Entity's initiative for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids.*" Since the latest possible deadline for the submission and receipt of bids is Day 31, (see **4a. Submits Eligibility, Technical and Financial Envelopes**) the latest possible issuance shall then be **Day 24**.

For the earliest possible time, it is possible for the BAC to issue Supplemental/Bid Bulletins at its own initiative immediately after the Bidding Documents are issued, even within the same day. Thus, the earliest possible day for the issuance of the Bidding Documents may actually be the earliest possible issuance of the Supplemental/Bid Bulletin as well, already taking into consideration the preparation of the Supplemental/Bid Bulletin and approval by the BAC Chairman. This pegs the earliest possible issuance of the Supplemental/Bid Bulletin to **Day 1**.

4a. Submits Eligibility, Technical and Financial Envelopes. IRR-A Sec. 21.2.2 (i) states that: "*For goods, a maximum period of thirty (30) calendar days from date of advertisement and/or 1st day of posting of the Invitation to Apply for Eligibility and to Bid up to opening of bids.*" Since the *date of advertisement and/or 1st day of posting* of the IAEB is Day 1 and the maximum period is thirty (30) calendar days, the latest possible submission date shall then be **Day 31**.

With regard to the earliest possible time, nothing in the law or IRR-A of R.A. 9184 prohibits the bidders from submitting their Eligibility Envelopes to the BAC immediately after the IAEB is first advertised. Thus, the earliest possible time for this activity is **Day 1**. IRR-A, Section 23.6, allows the BAC to maintain a file of the Class "A" Eligibility Documents. When such file is required, a manufacturer, supplier or distributor may simply maintain a current file of these documents at least once a year or more frequently when needed. This means that, with respect to Class "A" Eligibility Documents," these may be submitted to the Procuring Entity even before any bidding activity – thus even before **Day 1**.

4b. Receives and Opens Eligibility, Technical and Financial Envelopes. IRR-A Sec. 22.2 states that: "*The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids.*" This implies that if the Procuring Entity holds its pre-bid conference as suggested, *i.e.* Day 8, (See **3a. Calls a Pre-Bid Conference**) the earliest possible receipt [and opening] of the bids is twelve (12) calendar days after that, which is **Day 20**.

IRR-A Sec. 21.2.2 (i) states that: "*For goods, a maximum period of thirty (30) calendar days from date of advertisement and/or 1st day of posting of the Invitation to Apply for Eligibility and to Bid up to opening of bids.*" Since the *date of advertisement and/or 1st day of posting* of the IAEB is Day 1 and the maximum period is thirty (30) calendar days, the latest possible submission date shall then be **Day 31**.

5. Evaluates Bids and Determines LCB. IRR-A Sec. 32.3 states that: "*The entire evaluation process shall be completed in not more than seven (7) calendar days for the procurement of goods and infrastructure projects from the deadline for receipt of proposals.*" Since the latest possible deadline for receipt of proposals is Day 31 (See **4a. Submits Eligibility, Technical & Financial Envelopes**) the latest possible time for this activity is pegged at **Day 38**.

The earliest possible time is the day after the earliest possible date of opening of bids. Since the earliest possible time for the opening of bids is Day 20, this pegs the earliest possible time to **Day 21**.

6. Conducts Post-Qualification and Determines LCRB. IRR-A Sec. 34.1 states that: *"Within seven (7) calendar days from the determination of the Lowest Calculated Bid, the BAC shall conduct and accomplish a post-qualification of the bidder with the Lowest Calculated Bid"*. Since the latest possible time for the determination of the LCB is Day 38, the latest possible time to conduct post-qualification and determine LCRB is **Day 45**. However, it should be noted that in IRR-A Section 34.1 further states that: *"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."* This means that the latest possible time to conduct post-qualification in exceptional cases is **Day 68**.

One (1) calendar day after the earliest possible time for the determination of the LCB is assumed for the earliest possible time of these activities, which pegs it to **Day 22**.

7a. Drafts the BAC Resolution Recommending Award. The earliest and latest possible dates for this activity are the same as the earliest and latest possible dates for post-qualification and determination of LCRB, which are **Day 22** and **Day 45** respectively.

7b. Approves Recommendation and Issues Notice of Award. IRR-A Sec. 37.2.1 states that: *"Within a period not exceeding seven (7) calendar days from the determination and declaration by the BAC of the Lowest Calculated and Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. x x x In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated and Responsive Bid."* Since the latest possible time to determine LCRB is Day 45, the latest possible time for this activity shall then be pegged at **Day 52**. However, *"In the case of GOCCs and GFIs, the period provided herein shall be fifteen (15) calendar days."* In which case, the latest possible time shall be pegged at **Day 60**.

One (1) calendar day after the earliest possible time for the BAC Secretariat to draft the BAC resolution recommending award is assumed for the earliest possible time of these activities, which pegs it to **Day 23**.

8a. BAC Finalizes the Contract with the Assistance of the TWG. The earliest possible date for finalizing the contract is the same as the earliest possible time for issuance of notice of award, which is **Day 23**. The latest possible date for this activity is the same as the latest possible date for signing of the contract, which is **Day 62** or, in the case of GOCCs and GFIs, **Day 70**.

8b. Bidder with LCRB Posts Performance Security and Signs Contract. IRR-A Sec. 37.3 states that: *"The winning bidder or its duly authorized representative shall comply with all the remaining documentary requirements, if any, prior to formally entering into contract with the procuring entity concerned within ten (10) calendar days from receipt by the winning bidder of the Notice of Award."* If it were to be assumed that the winning bidder received the notice of award on the same date that it was issued, then the latest possible time for contract signing is **Day 62** or, in the case of GOCCs and GFIs, **Day 70**.

One (1) calendar day after the earliest possible time for the contract to be finalized is assumed for the earliest possible time of this activity, which is pegged at **Day 24**.

8c. Head of the Procuring Entity or Contract Signatory Signs the Contract and Receives the Performance Security. The earliest possible date for the Head of the Procuring Entity to sign the contract is the same as the earliest possible time for the bidder with LCRB to sign the same, which is **Day 24**.

The latest possible date for this activity is the same as the latest possible date for the bidder with LCRB to sign the contract, which is **Day 62** or **Day 70**, as the case may be.

8d. Perfects and Approves Contract. IRR-A Sec. 37.4 states that: *"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 fifteen (15) calendar days from receipt thereof, together with all documentary requirements to perfect the said contract, to approve or disapprove it."* Since the latest possible time for contract signing is pegged at Day 62, the latest possible time for this activity is pegged at **Day 77**. However, *"In the case of GOCCs, the concerned board, or its duly authorized representative, shall act on the approval of the contract within twenty-five (25) calendar days from receipt thereof together with all documentary requirements to perfect the said contract."* Since the latest possible time for contract signing, in the case of GOCCs, is Day 70, this pegs the latest possible time to perfect and approve the contract by the higher authority at **Day 95**.

One (1) calendar day after the earliest possible time for the contract to be signed by both parties is assumed for the earliest possible time of this activity, which pegs it at **Day 25**. Take note that this becomes step "8d" only when approval of higher authority is required.

8e. Issues NTP. IRR-A Sec. 37.5 states that: *"The concerned procuring entity shall then issue the Notice to Proceed together with a copy or copies of the approved contract to the successful bidder within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority."* Since the latest possible times for the approval of the contract is Day 62 if further approval is not required, for NGAs; Day 70 if further approval is not required, for GOCCs; Day 77 if further approval is required, for NGAs; or Day 95 if further approval is required, for GOCCs; the latest issuance of the NTP is pegged at **Day 65, Day 73, Day 80** or **Day 98**, as the case may be.

One (1) calendar day after the earliest possible time for the contract to be signed by both parties is assumed for the earliest possible time of this activity, which pegs it to **Day 25** if further approval is not required, or **Day 26** if further approval is required. Take note that this becomes step "8d" when approval of higher authority is not required.