



# “Procurement made easy”

A Guidebook for LCEs



## Technical Working Group

Genedine A. Evangelista  
*Chairperson*

Marciana C. Obispo  
*Asst. Chairperson*

Aldrin M. Aquino  
*Project Coordinator/ Team Leader*

Iris A. Igrabay  
*Lay-out Artist*

Christopher Llarenas  
*Member*

Glenda N. Ibanez  
*Member*

### *Resource Persons*

Jaime Paulo Mora

Fidel Esteban

Bryan Bigalbal

Andy Matula

Hyacinth Fontillas



## ABOUT THE COVER

The cover depicts the Government Procurement system in the Philippines revolves around three categories of needs, i.e., Goods and supplies for Office works, Infrastructure or civil works, and Consulting. It also tries to show the importance of transparency in government transactions, and that it should start where corruption start to thrive.

Designed and illustrated by Iris Igrabay of the Local Government Academy.

---

*Byaheng Pinoy.* In preparation for the 20 years of Philippine Local Autonomy, the DILG, together with other government agencies and partners, came up with a year-long series of activities at the local and national level to deepen the consciousness of national and local officials on the value of local autonomy towards national development, and to heighten the awareness and encourage the participation of the general public on local governance issues through conducting different activities involving various stakeholders.

The Byaheng Pinoy logo depicts the mythical “balangay”, which paved the way for the establishment of the earliest Filipino communities, and is rekindled this time as the vessel for Byaheng Pinoy. Its hull is intentionally made see-through to ensure transparency and clarity of purpose during our voyage. Using its sturdy oars, collective strength and various tools and techniques, we, the crew, tackles the waves of adversities, combat the pirates of good governance and explore the endless possibilities in the vast opportunities and hope.

# “Procurement made easy”

A Guidebook for LCEs



## **“Procurement made Easy” A guidebook for LCEs**

Copyright © 2011

All rights reserved. No part of this material may be reproduced or utilized in any form or any means, electronic or mechanical, including photocopying, recording, or by any information and retrieval system, without consent from the publisher.

The opinions expressed herein are those of the writer and resource persons and do not necessarily reflect the views of the League of Cities of the Philippines, United Nations Development Programme, Procurement Watch Inc., Department of Interior and Local Government – Local Government Academy and Government Procurement Policy Board – Technical Support Office.

This publication was made possible through the PROTECT-MDGs Project implemented by the League of Cities of the Philippines with funding from the United Nations Development Programme.

ISBN No.: 978-971-0576-31-9

Printed and bound in Manila, Philippines

Published by:

Local Government Academy,  
Department of the Interior and Local Government,  
8/F Agustin I Building, F. Ortigas Jr. Road Ortigas Center, Pasig City,  
1605 Philippines  
Tel. No. (632) 634-8430 / 634-8436  
[www.lga.gov.ph](http://www.lga.gov.ph)

and

League of Cities of the Philippines  
Units J & K 7/F Cyber One Building,  
No. 11 Eastwood Avenue, Eastwood City  
Bagumbayan, Quezon City

# Message



2011 marks the twentieth anniversary of the adoption of the 1991 Local Government Code. While it provides the policy environment for good governance at the local level, availability and quality of local public service delivery vary greatly between Local Government Units (LGU) based on local capacities and resources. Indeed, local governments are confronted with many diverse challenges to respond to the expectations of both the Code and that of their citizens, especially when it comes to the delivery of services that contribute to the achievement of the Millennium Development Goals (MDGs).

The MDGs represent the most important collective promise ever made to the world's most vulnerable people. Countries across the world, Philippines included, have committed to eradicate extreme poverty and hunger, achieve universal primary education, promote gender equality, reduce child mortality, improve maternal health, combat HIV/AIDS, malaria and other diseases, ensure environmental sustainability, and promote global partnership for development by 2015.

Eleven years after their adoption, and based on experiences collected from around the world, it has become clear that the achievement of the MDGs will greatly depend on delivery of services at local level, therefore on local capacities. Local governments are the main catalysts to effect national MDG policies and translate them into action plans and programs to achieve human development. With barely 5 years to go, the need to hasten the achievement of the MDGs has become more urgent and critical.

In addition to capacities and resources, achieving the MDGs also requires the active participation of all citizens. But in order to encourage them to take their part, their trust in local governments and that citizens' interest is what drives local officials must be ensured. For this to happen, perception and/or reality of corruption in local governance must be addressed.

This Procurement Manual contributes to these efforts by highlighting good practices of citizens' participation in processes to ensure that public procurement is free of corruption. The manual offers practical recommendations and policy alternative on how to ensure greater transparency and accountability in procurement transactions. This tool, by establishing and strengthening a participatory procurement system at the local level, not only addresses a critical aspect of corruption but also attempts to make local procurement work for the achievement of the MDGs.

The manual especially underlines the importance of civil society organizations as movers and watchdogs not only to monitor corrupt practices but also to ensure accountable governance. We hope that citizens will find this manual a useful tool and be able to use it as a way of holding government true to their commitment to deliver critical social services to improve the lives of their constituents.

In closing, I wish to acknowledge and thank the League of Cities for its efforts to strengthen citizen's participation in local procurement systems and in taking concrete steps in addressing the growing concerns of its constituency in the pursuit of the MDGs.



**RENAUD MEYER**

Country Director, United Nations Development Programme

# Message



The Local Chief Executives (LCEs), as front-runners of governance, have significant roles in the development of our country. Tasked with the responsibility of delivering basic goods and services to their respective constituents, this guidebook is a useful tool for the LCEs to help them in the conduct of a transparent and efficient procurement process.

By providing our LCEs with basic knowledge on the procurement process; information on some redflags of the procurement system; and good practices of selected LGUs, I believe that this guidebook will serve as a learning tool for the newly-elected as well as a refresher for the well-experienced LCEs.

May this guidebook serve as a great companion as our LCEs strive to deliver an effective and efficient service to the citizenry.  
More power and mabuhay!

**HON. JESSE ROBREDO**

Secretary, Department of the Interior and Local Government

# Message



The Aquino Administration has entered into a social contract with the Filipino people to lift the nation from poverty through honest and effective leadership. For us to succeed, this vision should also permeate in the local governance arena.

The publication of this guidebook is timely and relevant. It will help local chief executives in navigating the government procurement system, in maximizing their finite resources and in effectively delivering services to their constituents.

The guidebook, I believe, is not only about procurement processes but ultimately about proactively linking arms with local leaders in pursuit of “Kung walang corrupt, walang mahirap.”

A handwritten signature in black ink, appearing to read 'Florencio B. Abad'.

**FLORENCIO B. ABAD**

Secretary, Department of Budget and Management

# Message



An unknown thinker once said “Corruption is authority plus monopoly minus transparency.”

The Philippines, in its quest for efficient, transparent, responsive and accountable government, has been gaining collective action and increasing institutional effort both from civil society organization and national government in promoting a corrupt free government.

The Local Government Academy, as mandated institution to provide capacity to the Local Government Officials, is in sync with all other concerned entities in fighting corruption in our country. It aims to uplift the morale of the government amidst public distrust as well as to improve the quality of life of the citizenry.

The Academy and its dedicated staff believe that good governance is one of the essentials of development. With the production of this guidebook aiming for transparency in the procurement process, the Academy underlines its resolve to establish a transparent and corrupt- free government.

More power and mabuhay!

A handwritten signature in black ink that reads "Marivel C. Sacendoncillo".

**MARIVEL C. SACENDONCILLO, CESO III**  
Executive Director, Local Government Academy

# Message



I congratulate the Local Government Academy for its publication, *Procurement Made Easy: A Guidebook for the Local Chief Executives*.

This guidebook has been a collaborative, innovative undertaking with the League of Cities of the Philippines (LCP) and the Government Procurement Policy Board-Technical Support Office (GPPB-TSO) for the Promoting Procurement Transparency and Efficiency to

Achieve the Millennium Development Goals (PROTECT-MDGs) Project. We thank fully the United Nations Development Program (UNDP) for the support.

More importantly, this guidebook has arrived in its most appropriate time. This guidebook has everything the local chief executive (LCE) needs to know about public procurement, given its rules and regulations. It locates the functions and limitations of the LCE in the public procurement cycle. It also comes with innovative success stories, to which the LCE and the LGU can adopt, and identification of red flags, to which the LCE and his/her procurement personnel must avoid.

In essence, public procurement should be anchored on the principles of transparency and accountability to get 'the best value for the people's peso.' But procurement, as a major government activity, has remained to be a dynamic area for reform with 20-30% of the estimated contract goes to leakages, according to the 2008 Country Procurement Assessment Report.

With the new administration ushering genuine change by fighting corruption in the government, we share the vision and remain committed in implementing procurement reform.

# Message

As procurement reform champions at the local level, we lead in ensuring that procurement rules are laid down while getting the best deal for the government. Procurement stakeholders which include the civil society observers and the private sector must also be given fair chance to participate and to articulate their issues and concerns on how local public procurement can improve. Ultimately, an efficient procurement system expedites the delivery of basic social services which will benefit particularly our marginalized sectors. This publication will help us achieve all of these objectives.

On behalf of the League of Cities of the Philippines, rest assured that this guidebook be an important learning resource in the performance of our functions as local leaders as we continue to improve public procurement in the country.



**MAYOR OSCAR S. RODRIGUEZ**

President, League of Cities of the Philippines



# Foreword

Corruption since time immemorial has been marring the reputation of governments. It can be likened to a black dot in a white sheet of paper where the greediness of the few overwhelms the good deeds of the most. These “actions of the few” aggravate the poverty situations in the country. But what is more disheartening is the indifference of the “most” which hinders the development of an impoverished society.

It is in this light that the Local Government Academy, true to its mandate, and in partnership with League of Cities of the Philippines, Government Procurement Policy Board, and the Procurement Watch Inc., through the United Nations Development Program-supported Procurement Efficiency and Transparency to Achieve the Millennium Development Goals (PROTECT-MDGs) Project, has come up with the guidebook to help the Local Chief Executives (LCEs) understand and appreciate public procurement. This aims to guide the LCEs, being at the front-liners of government, in choosing which method of procurement will promote economy and efficiency while practicing transparency.

This guidebook is heavily anchored on the fundamentals of the Republic Act No. 9184 or the Government Procurement Reform Act and its Implementing Rules and Regulations and other government-related issuances, and is accompanied with practical tips on procurement.

This guidebook highlights the aim of the partnership to showcase the country’s true wealth and strength by supporting the Filipino people’s quest for freedom from corruption, and obtain a clean, honest and transparent government of the people, by the people, for the people.

After all, “Kung Walang Corrupt, Walang Mahirap”.

# Acknowledgement

The Procurement Made Easy: A Guidebook For Local Chief Executives expresses its gratitude to the following entities who made this craft possible:

The God Almighty for good health and intellect;

The UNDP's PROTECT MBO (Procurement and Contract Management) for their support and guidance.

# About the Guidebook

As the Head of the Procurement Entity (HOPE) of the local government unit, the Local Chief Executive (LCE) leads in the assurance of effective and efficient delivery of basic social services to the citizenry. The LCE must be adept with the public procurement systems in order to manage the already scarce resources of the local government unit. This can be done through ensuring proper procurement of goods and services, infrastructure projects or civil works and in contracting consulting services.

This guidebook introduces the procurement system of the Philippines to the LCEs, the procurement reform champion in the local communities.

This guidebook digests salient provisions of the RA 9184 or the Government Procurement Reform Act and other government-related issuances, highlighting those which the LCE must, good, and nice to know. It also provides an overview of the procurement processes – from start to finish, and red flags which the LCE must avoid.

*This guide is divided into four chapters:*

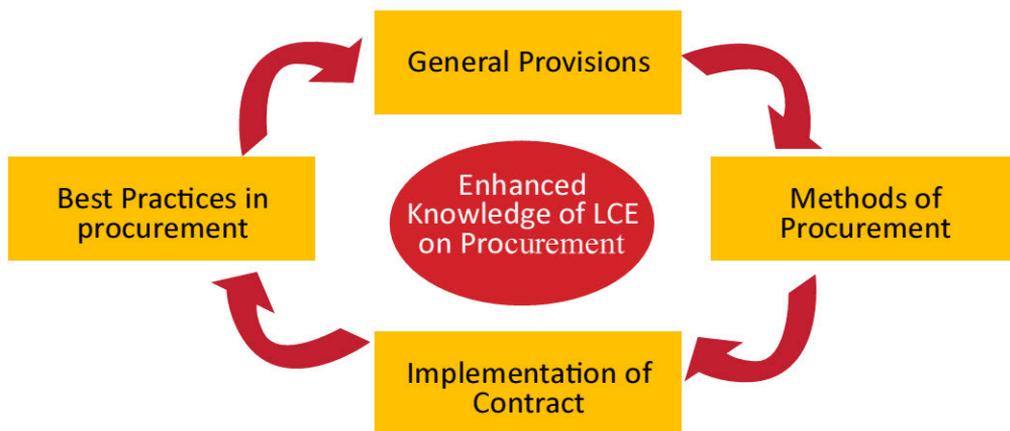
**Chapter 1** speaks of the **General Provisions** of public procurement. It discusses the governing principles of RA 9184 and its IRR; the classifications of procurement; the basic procurement organization and its functions; the responsibilities and accountabilities of the LCE as HOPE; and the procurement planning cycle.

**Chapter 2** deals with the **Methods of Procurement**. It details the steps in the competitive bidding, alternative methods of procurement and other related schemes and procedures. It also differentiates among the classifications of procurement of goods, infrastructure and consulting services.

**Chapter 3** explains the **Implementation of Contracts**. It highlights the importance of contractor's performance, the LGU's performance of its contractual obligations, final acceptance or project sign off, and other related activities in procurement.

**Chapter 4** showcases **Practical Tips on Procurement Practices**. It outlines common red flags that the LCE must be avoid to enable procurement proficiency in the local bureaucracy. It also features select LGU experiences in improving public procurement system.

Diagram 1: Procurement Guidebook Framework



Enhancing Knowledge of LCE on procurement entails understanding of the General Provisions of the procurement law. There is a need to have a thorough analysis of the different methods of procurement, and the salient features of the implementation of contracts, whereby the Local Chief Executive play a vital role. There is also a need to see some innovations and good practices of LGUs in procurement. This framework would be used in the overview presentation of the Procurement law and its procedures and process for the LCEs to which this guidebook is intended for.

# Scope and Delimitation of the guidebook

Everything that is written in this guidebook is heavily lifted from the RA 9184 and its IRR and other latest issuances of the Government Procurement Policy Board, such as the Procurement Manual for Local Government Units, Resolutions and Circulars.

Discussions and presentation of this guidebook are limited for the use of the provincial, city and municipal LCE. However, this guidebook welcomes other readers who may take interest to know the major roles and responsibilities of the LCE in the whole public procurement process.

The scope of this guidebook is limited to locally funded projects or those which utilizes regular funds of the Government of the Philippines. Discussion for procurement by LGUs for projects which are foreign assisted will be discussed on other guidebooks or manuals.

# List of Abbreviations and Acronyms

ABC	-	Approved Budget for the Contract
AIP	-	Annual Investment Program
APP	-	Annual Procurement Plan
BAC	-	Bid and Award Committee
BPS	-	Bureau of Product Standards (under Department of Trade and Industry)
CCAGG-		Concerned Citizen of Abra for Good Governance
CIF	-	Cost, Insurance and Freight
CIP	-	Carriage and Insurance Paid to
COA	-	Commission on Audit
CPAR	-	Country Procurement Assessment Report
CPES	-	Constructor's Performance Evaluation System
CSC	-	Civil Service Commission
DDP	-	Delivered Duty Paid to
GPPB	-	Government Procurement Policy Board
GPRA	-	Government Procurement Reform Act
GOCCs-		Government-Owned and –Controlled Corporations
GOP	-	Government of the Philippines
GSO	-	General Services Office
HOPE	-	Head of the Procuring Entity
HRB	-	Highest Rated Bid
HRRB	-	Highest Rated Responsive Bid
ITB	-	Invitation to Bid
IRR	-	Implementing Rules and Regulation
JVA	-	Joint Venture Agreement

LCB	-	Lowest Calculated Bid
LCE	-	Local Chief Executive
LCRB	-	Lowest Calculated Responsive Bid
LGPM	-	Local Government Procurement Manual
LGU	-	Local Government Unit
NEDA	-	National Economic Development Authority
NGO	-	Non-Government Organization
NOA	-	Notice of Award
NTP	-	Notice to Proceed
ODA	-	Official Development Assistance
PBDs	-	Philippine Bidding Documents
PhilGEPs-		Philippine Electronic Procurement System
PPMP	-	Project Procurement Management Plan
PERT/ CPM-		Project Evaluation Review Technique/ Critical Path Method
PMO	-	Project Management Office
PMR	-	Procurement Monitoring Report
PPMP	-	Project Procurement Management Plan
QBE	-	Quality Based Evaluation
QCBE	-	Quality Cost Based Evaluation
REI	-	Request for Expression of Interest
ROW	-	Right of Way
SEC	-	Securities and Exchange Commission
SWA	-	Statement of Work Accomplishment
TOR	-	Terms of Reference
TWG	-	Technical Working Group

# Table of Contents

## **General Provisions / 1**

### ***Introduction to RA 9184 and its IRR***

- I. Background / **3**
- II. Scope and Application / **4**
- III. Governing Principles / **6**
- IV. Classification of Procurement / **7**
- V. Procurement Organization / **9-17**
  - A. Head of the Procuring Entity (HOPE)
  - B. BAC
  - C. BAC Secretariat
  - D. Technical Working Group
- VI. Observers / **18**
- VII. Procurement Planning & Procurement Monitoring / **20-24**
  - A. Project Procurement Management Plan
  - B. The Annual Procurement Plan
  - C. Approved Budget of the Contract
  - D. The Procurement Monitoring Report
- VIII PhilGEPs / **25**

## **Methods of Procurement / 27**

### **I. Competitive/Public Bidding / 29**

- A. For Goods and Infra / **30-43**
  - 1. Preparation of Bidding Documents
  - 2. Conduct of Pre-procurement Conference
  - 3. Advertisement and Posting
  - 4. Pre-Bid Conference
  - 5. Submission and Receipt of Bids
  - 6. Bids Evaluation
  - 7. Post Qualification
  - 8. Award of Contracts

- B. For Consulting / **45-55**
  - 1. Preparation of Bidding Documents
  - 2. Conduct of Pre-procurement Conference
  - 3. Advertisement and Posting
  - 4. Submission of Eligibility Requirements
  - 5. Eligibility and Short Listing
  - 6. Pre-Bid Conference
  - 7. Receipt and Opening of Bids
  - 8. Bids Evaluation
  - 9. Negotiation
  - 10. Post-qualification
  - 11. Award of Contracts

## **II. Alternative Methods of Procurement / 57**

- A. Limited Source Bidding / **58**
- B. Direct Contracting / **59**
- C. Repeat Order / **60**
- D. Shopping / **60**
- E. Negotiated Procurement / **62**

## **III. Procurement related Schemes & Procedures/ 66**

- A. Design and Build / **66**
- B. Implementation by Administration / **67**

<b>Implementation of Contract</b>	<b>71</b>
I. Warranty	73
II. Amendment to Order / Variation Order	75
III. Suspension/Contract Time Extension	79-82
IV. Delays and Liquidated Damages	84
V. Prices	85
VI. Price Escalation	86
VII. Payment	89
VIII. Taxes	95
IX. Subcontracts	95
X. Standards	96
XI. Insurance	96
XII. Inspection and Tests	98
XIII. Intellectual Property Rights	101
XIV. Termination of Contract	102
XV. Assignment of Contract	108
XVI. Blacklisting	108
<b>Practical Tips on Procurement</b>	<b>113</b>
I. Red Flags in Procurement	115
II. Good Practices of Select LGUs	126



Chapter 1

# General Provisions





# INTRODUCTION TO RA 9184 AND ITS IMPLEMENTING RULES AND REGULATIONS

## I. Background

The 12th Congress enacted the consolidated House Bill 4809 and Senate Bill 2248 and was finally passed on December 18, 2002 with the following goals:

- a) promote the ideals of good governance in all the government branches, departments, agencies, subdivisions, and instrumentalities, including government-owned and/or controlled corporations and local government units;
- b) streamline the Philippine procurement system;
- c) reduce opportunities for graft and corruption;
- d) harmonize the system with international standards and practices; and
- e) promote transparency, competitiveness and accountability.

On January 10, 2003, RA 9184 was signed by former President Gloria Macapagal-Arroyo and became effective on 26 January 2003.

Pursuant to Sec. 75 of RA9184, the Government Procurement Policy Board (GPPB), with the members of the Joint Oversight Committee promulgated the necessary rules and regulations for the proper implementation of the Procurement Law. On 21 September 2003, the GPPB issued the Implementing Rules and Regulations (IRR) Part A, which would cover locally-funded procurement activities. It became effective on 08 October January 2003. The procurement rules and procedures for foreign-funded projects would be covered by the IRR B.

In 2008, the government's initiatives to issue the procurement rules that would cover foreign-funded projects became stronger. A series of consultative workshops and discussions with the various stakeholders were held by the GPPB, with the development partners. During their discussions, the GPPB realized that there are still a number of clarifications and concerns that need to be addressed in the implementation of the

IRR-A of R.A. 9184. Hence, the GPPB decided that instead of issuing an IRR-B, it issued one IRR. The revised IRR was approved by the GPPB on 22 July 2009 and became effective on 02 September 2009.

The provisions of the IRR are in line with the commitment of the Government to promote good governance and its effort to adhere to the principles of transparency, accountability, equity, efficiency, and economy in its procurement process.

## II. Scope and Application

R.A. 9184 and its IRR shall apply to the procurement of goods, infrastructure projects, and consulting services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices, and agencies, including government-owned and/or controlled corporations and local government units subject to the provisions of Commonwealth Act No. 138, otherwise known as the “Flag Law.”

The IRR shall apply to foreign-funded procurement of goods, infrastructure projects, and consulting services by the government unless the Treaty or International or Executive Agreement expressly provides the use of foreign government or international financing institution procurement procedures and guidelines.

Any treaty or international or executive agreement to which the government is a signatory pertaining to procurement shall be observed. In case of conflict between the terms of the Treaty or International or Executive Agreement and RA 9184 and its IRR, the former shall prevail.

The IRR, however, shall not apply to the following activities:

- a. Procurement of goods, infrastructure projects, and consulting services funded from Foreign Grants covered by R.A. 8182, as amended by R.A. 8555, titled “An Act Excluding Official Development Assistance (ODA) from the Foreign Debt Limit in order to Facilitate the Absorption and

Optimize the Utilization of ODA Resources, Amending for the Purpose Paragraph 1, Section 2 of Republic Act No. 4860, As Amended”, unless the GOP and the foreign grantor/foreign or international financing institution agree otherwise;

- b. Acquisition of real property which shall be governed by R.A. 8974, titled “An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes,” and other applicable laws; and
- c. Public-private sector infrastructure or development projects and other procurement covered by R.A. 6957, as amended by R.A. 7718, titled “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes,” as amended, provided, however, that for the portions financed by the GOP, regardless of source of funds, whether local or foreign, the provisions of the IRR shall apply.



### III. Governing Principles

The procurement of the Philippine Government shall be governed by the following principles:

- a) Transparency in the procurement process and in the implementation of procurement contracts through wide dissemination of bid opportunities and participation of pertinent non-government organizations;
- b) Competitiveness by extending equal opportunity to enable eligible and qualified private contracting parties to participate in public bidding.
- c) Streamlined procurement process that will uniformly apply to all government procurement, which shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method.
- d) System of Accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.
- e) Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the Act and its IRR, and that all these contracts are performed strictly according to specifications.

## IV. Procurement and its Classification

Procurement is the acquisition of goods, consulting services, and the contracting for infrastructure projects by the procuring entity using government funds.

There are three (3) classifications of procurement namely:

### 1. Goods

- Refers to items, supplies, materials and general services, except consulting services or infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity.
- Includes, but not limited to the following, procurement of the following:
  - a) equipment;
  - b) furniture,
  - c) stationery;
  - d) materials for construction;
  - e) personal property of any kind; and,
  - f) non-personal or contractual services
    - i. repair and maintenance of equipment and furniture;
    - ii. trucking, hauling, and courier; and,
    - iii. janitorial, security, and other manpower services.
- The term related or analogous services shall include but not limited to,
  - a) lease or purchase of office space;
  - b) media advertisement;
  - c) health maintenance services; and
  - d) other services that are essential to the operation of the local government units.
    - i. repair and maintenance of equipment and furniture,
    - ii. trucking, hauling, and courier
    - iii. janitorial, security, and other manpower services.

## 2. Infrastructure Projects

- Includes the construction, improvement, rehabilitation, demolition, repair, restoration, or maintenance of the following:
  - a) roads and bridges;
  - b) railways, airports, seaports;
  - c) communication facilities;
  - d) civil works components of information technology projects;
  - e) irrigation;
  - f) flood control and drainage;
  - g) water supply, sanitation, sewerage and solid waste management systems, shore protection;
  - h) energy/power and electrification facilities;
  - i) national buildings, school buildings, hospital buildings; and,
  - j) other related construction projects of the government.
  
- Infrastructure projects has the same meaning as and is used interchangeably with the term civil works.

## 3. Consulting Services

- Services for infrastructure projects and other types of projects or activities of the government requiring adequate external technical and professional expertise that is beyond the capability and/ or capacity of the Government to undertake. The services that can be provided by consultants can be divided into six (6) broad categories, namely:
  - a) Advisory and review services;
  - b) Pre-investment and feasibility studies;
  - c) Design;
  - d) Construction supervision;
  - e) Management and related services;
  - f) Other technical services or special studies

### **Mixed Procurement**

In case of mixed procurement, the procuring entity shall determine its nature, i.e., whether it is goods, infrastructure projects, or consulting services, based on the primary purpose of the contract. (see Sec 5 IRR of RA9184)

## **V. Procurement Organization**

### **A. Head of the Procuring Entity**

The LCE as Head of the Procuring Entity (HOPE) has the following responsibilities;

1. Ensure that the Annual Procurement Plan (APP) is regularly prepared, reviewed and updated and that all the LGU's procurement undertakings are in line with the same;
2. Establish the Bids and Awards Committee (BAC) and the BAC Secretariat, and ensure that their members give utmost priority to their assignments over all other duties and responsibilities until the requirements for the said assignments at hand are completed;
3. Promptly act on the BAC recommendations. On the other hand, s/he must not interfere in the performance of the BAC's functions during the procurement proceedings until the requirements for the said assignments at hand are completed;
4. Ensure that the staff of the Procurement Unit/Office and the members of the BAC, BAC Secretariat and Technical Working Group (TWG) are given ample training on procurement-related matters, with the end in view of professionalizing the procurement organization of the LGU;

5. Impose the necessary administrative sanctions on errant members of the BAC /BAC Secretariat /TWG, in accordance with Section 70 of the IRR;
6. Ensure that the members of the BAC, the TWG and the Secretariat, if applicable, shall receive their incentives;
7. In case of procurement for consulting services, approve/disapprove the following BAC recommendations:
  - a. Evaluation procedures to be adopted, whether quality-cost based or quality-based evaluation;
  - b. Short-listed bidders; and
  - c. The bidder with the Highest Rated Bid, after bid evaluation.
    - i. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the Head of the Procuring Entity;
    - ii. If the project is no longer necessary as determined by the Head of the Procuring Entity;
    - iii. If the source of funds for the project has been withheld or reduced through no fault of the procuring entity.
8. Resolve Protest;

The LCE shall resolve protest within seven (7) calendar days from receipt by the losing bidder of the BAC notice denying the request for reconsideration. The protest shall be resolved strictly on the basis of BAC records.

9. Approve/disapprove amendment to order, variation order, extension of contracts, and subcontracting arrangements;

## 10. Invoke Reservation Clause;

- The reservation clause declares that the LCE reserves the right to reject any and all bids, to declare a failure of bidding, or not to award the contract (See Section 41 of the IRR);
- The LCE must exercise the Reservation Clause with caution. The LGU should be prudent in the use of the reservation clause and should be strictly limited to three (3) grounds:
  - a. prima facie evidence of collusion,
  - b. failure to follow the prescribed bidding procedure, and
  - c. any justifiable and reasonable ground where the award of contract will not redound to the benefit of the GOP
- If the LCE abuses his/her 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 Section 47(Disclosure of Relations), or if it is proven that he exerted undue influence or undue pressure on any BAC member or any LGU officer or employee to take such action, and the same favors or tends to favor a particular bidder, the LCE shall be meted with the penalties provided under Section 65(Offenses and Penalties) of the IRR.  
(See Section 41 IRR of RA 9184)

## 11. Approve/disapprove Termination of Contracts;

## 12. Issue Blacklisting order ; and

## 13. Endorse request for Price Escalation

## Package of Benefits

The LGU is authorized to grant honoraria to the members of the BAC, TWG and the BAC Secretariat, provided that the:

- a) Average amount of honoraria per month over one year shall not exceed twenty-five percent (25%) of their respective basic monthly salary, subject to the availability of funds (See Sec. 15 of the IRR of R.A. 9184);
- b) Paid only upon the successful completion of each procurement activity involving public bidding procedures; and,
- c) Conforms to the Guidelines on the Grant of Honoraria to Government Personnel Involved in Government Procurement [See Department of Budget and Management Budget Circular (B.C.) No. 2004-5A1, dated 7 October 2005, as amended by BC 2007-3 dated 29 Nov 2007].

Aside from the remuneration of services, the members of the BAC, Secretariat, and TWG are also entitled to an equitable indemnification package which may be in the form of the following:

1. Free legal assistance,
2. Liability insurance, and
3. Medical assistance (See Sec. 72 and 73 of the IRR)

In order to properly avail of the free legal assistance and indemnification for members of the BAC, Secretariat, and TWG, the BAC and its Support Staff shall comply with the conditions and procedures provided under the Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff (See GPPB Resolution No. 21-2005, dated 7 October 2005).

## **B. The Bids and Awards Committee**

Each LGU should establish a single BAC. However, to expedite the procurement process for practical intents and purposes, the LCE may create separate BACs where the number and complexity of the items to be procured shall so warrant (See Secs. 11.1.1 and 11.1.2 of the IRR of R.A. 9184)

The LCE shall designate the BAC composed of at least five (5) but not more than seven (7) members occupying plantilla positions and possessing unquestionable integrity and procurement proficiency. They shall be composed of:

- 1) One representative each from the regular offices under the Office of the LCE, such as, but not limited to, the following:
  - a. Office of the Administrator;
  - b. Budget Office;
  - c. Legal Office;
  - d. Engineering Office;
  - e. General Services Office; and,
- 2) A representative from the end user unit

The BAC shall elect from among themselves the Chairperson and Vice- Chairperson; provided that the Chairperson shall be at least a third (3rd) ranking permanent official.

They shall be designated for a term of one (1) year only. However, the LCE may renew such designation at his/her discretion.

The LCE may designate alternate BAC members, who shall have the same qualifications as their principals as set in RA 9184 and its IRR. The alternate members shall attend BAC meetings and receive the corresponding honoraria, whenever their principals are absent. These

alternate members shall have the same term as their principals. The accountability of the principal and the alternate member shall be limited to their respective acts and decisions.

The following officials are disqualified from membership in the BAC:

- 1) LCE;
- 2) Official who approves procurement contracts; and
- 3) Chief Accountant or Head of Accounting Office and his or her staff unless the accounting unit is the end-user unit, in which case the Chief Accountant or his/her staff may be designated as end-user representative.

In case of vacancy in the BAC, brought about by resignation, retirement, separation, transfer, re-assignment, death, or removal from BAC membership, the LCE may designate a replacement who shall serve only for the unexpired term.

The BAC responsibilities are as follows:

- 1) Recommend to the LCE the following:
  - a) Methods of procurement
  - b) Award of contract
  - c) Sanctions to Erring Bidders
  - d) Shortlist of Consultants
  - e) Choice of Evaluation Procedure in the selection of consultant;
  - f) Bidder possessing the Highest Rated Bid (HRB), in case of consulting services
- 2) Creation of the TWG, if necessary;
- 3) Undertake the procurement process from advertisement and/or posting of the bid notice until recommendation for award of the contract;
- 4) Resolve any Requests for Reconsiderations filed;

- 5) Prepare a procurement monitoring report that shall be approved and submitted by the LCE to the GPPB on a semestral basis;
- 6) Invite Observers to be present during all stages of the procurement process;
- 7) Conduct due diligence review or verification of the qualifications of Observers;
- 8) Furnish Observers, upon the latter's request, with the following documents upon signing thereof of a confidentiality agreement:
  - a) Minutes of the proceedings of BAC meetings;
  - b) Abstract of bids;
  - c) Post-qualification summary report;
  - d) Annual Procurement Plan (APP) and related Project Procurement Management Plan (PPMP); and
  - e) Copies of "opened" proposals.

### **What is Jury Duty?**

Giving utmost priority to BAC assignments over all other duties and responsibilities, until the requirements of the procurement at hand are completed.

### **What is Quorum?**

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

## C. The BAC Secretariat

The LCE shall create a Secretariat. An existing organic office within the LGU may also be designated to serve as Secretariat. However, the LCE may create procurement units that may serve concurrently as BAC Secretariat.

The BAC Secretariat is the main administrative support of the BAC and it shall have the following responsibilities:

- 1) Organize and make necessary arrangements for the BAC and TWG meetings, i.e., pre-procurement conferences, pre-bid conferences, and bid openings;
- 2) Attend BAC meetings and procurement-related conferences as the Secretary;
- 3) Assist the BAC in the drafting of resolutions;
- 4) Prepare Minutes of the BAC meetings and ensure that all procurement undertaken are properly documented;
- 5) Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;
- 6) Monitor procurement activities and milestones for proper reporting to relevant agencies and/or end-users when required;
- 7) Be the central channel of communications for the BAC and the central depository of all procurement related information and continually update itself with the most current GPPB issuances and downstream the same to all relevant officers, employees, and parties requiring information;
- 8) Prepare the APP from the consolidated PPMP submitted by the various end-user units of the local government, to make them available for review;

- 9) Based on inputs from the BAC and the TWG, the BAC Secretariat must prepare the procurement documents, i.e., contracts and their attachments for processing and routing to the signing and approving authorities. It must monitor the status of the procurements routed for approval, and cause the correction of any formal deficiencies in the said procurement documents to facilitate action on the part of the approving authorities;
- 10) Create, maintain and update the registry of suppliers, contractors, and consultants;
- 11) Create, maintain and update a price-monitoring list, if one is maintained by the LGU;
- 12) Manage and undertake procurement activities using the following alternative methods - Shopping and Negotiated Procurement (Small Value) - upon prior BAC Resolution and LCE approval.

## **D. Technical Working Group**

The BAC, with the LCE's prior approval, may create a TWG from a pool of experts (based on the nature of the procurement) and representatives of the end-user unit. In some cases, the LGU may also engage the services of consultants in accordance with the IRR who shall only serve in an advisory capacity, and may not vote during deliberations.

The TWG shall provide assistance to the BAC in terms of the technical, legal and other aspects of the procurement at hand. It shall:

- 1) Assist the BAC in the preparation of the bidding documents, ensuring that these properly reflect the LGU requirements and that these conform to the standards set forth by R.A. 9184, its IRR, and the Philippine Bidding Documents;

- 2) Assist the BAC in the conduct of eligibility screening of prospective bidders, and in the short-listing of prospective bidders in case of biddings for consulting services;
- 3) Assist the BAC in the evaluation of bids and prepare the accompanying reports for BAC's consideration and approval;
- 4) Assist the BAC in the conduct of post-qualification activities and prepare the post-qualification summary report for the BAC's approval;
- 5) Assist the BAC and BAC Secretariat in the preparation of the resolution recommending award, with regard to the technical aspect, if necessary; and

The TWG shall provide utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand is completed (Jury Duty).

## VI. The Observers

To enhance transparency in the process, the BAC is required to invite in writing, at least three (3) observers who may attend and observe all stages of the procurement. They are as follows:

- a. a COA representative
- b. at least one (1) observer from a duly recognized private group in a sector or discipline relevant to the procurement at hand; and
- c. at least one (1) observer from a non-government organization.

The mere non-attendance of observers does not invalidate the proceedings as long as the observers were properly invited three (3) calendar days before the scheduled activity.

## **VII. Procurement Planning & Procurement Monitoring**

### ***A. Project Procurement Management Plan (PPMP)***

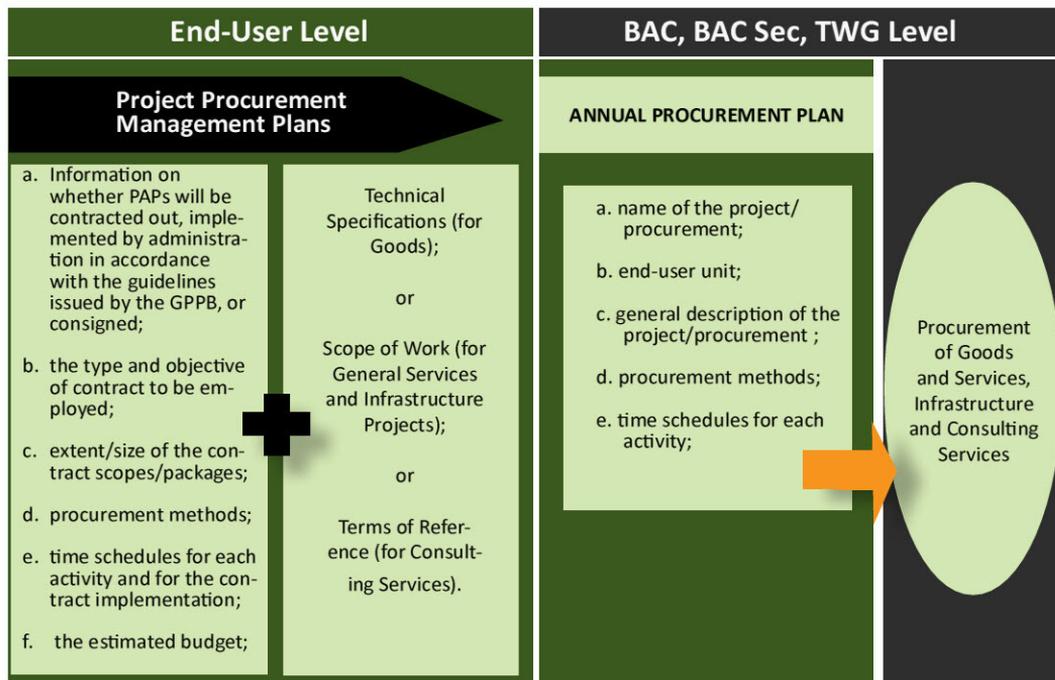
Procurement planning ensures that the overall goal of the particular project will be achieved effectively and efficiently. It enables the LGU to manage and track procurement all the way to contract performance.

Proper planning also ensures that only goods, infrastructure projects, and consulting services which have been included in the approved APP shall be procured thereby precluding occasions for unnecessary government purchases and circumventions of the prescribed procurement procedures such as advance deliveries, “suki system”, or unwarranted resort to alternative methods of procurement, among others.

Procurement planning should be done within the budgetary context reflecting the LGU’s priorities and objectives for the budget period. It involves two levels: the LGU’s over-all strategic plan and the project and/or operational plans that contain the details of the manner in which the strategic plan will be carried out.

## Procurement planning

Diagram 2 : Stages of Procurement Planning



### *i. Project Procurement Management Plan*

The PPMP serves as a guide document in the procurement and in the contract implementation process. It is vital reference in procurement monitoring. It is prepared by the end-user unit or the Project Management Office (PMO) during the budget preparation to support the cost estimates in the budget proposal of each end-user unit.

The Technical Specifications (for Procurement of Goods), Scope of Work (for General Services and Infrastructure Projects) or Terms of Reference (for Consulting Services) is the document that provides the detailed description of the deliverables of the Supplier, Contractor or Consultant.

## ***B. Annual Procurement Plan***

The APP is the document which consolidates the various PPMPs of the end-user units, or the PMOs within the LGU. This is prepared by the BAC, through its Secretariat. In the consolidation of PPMPs, the BAC may adopt a strategy through which similar items of procurement are packaged into one procurement undertaking and under a single PPMP, in which the original PPMPs shall be consolidated and revised. The BAC Secretariat ensures that the PPMPs within the APP is consistent with the government fiscal discipline measures and that only those considered crucial to the efficient discharge of governmental functions shall be included in the APP.

The APP is approve by the LCE and should be maintained and updated regularly.

In preparing the APP, the BAC shall consider the following factors:

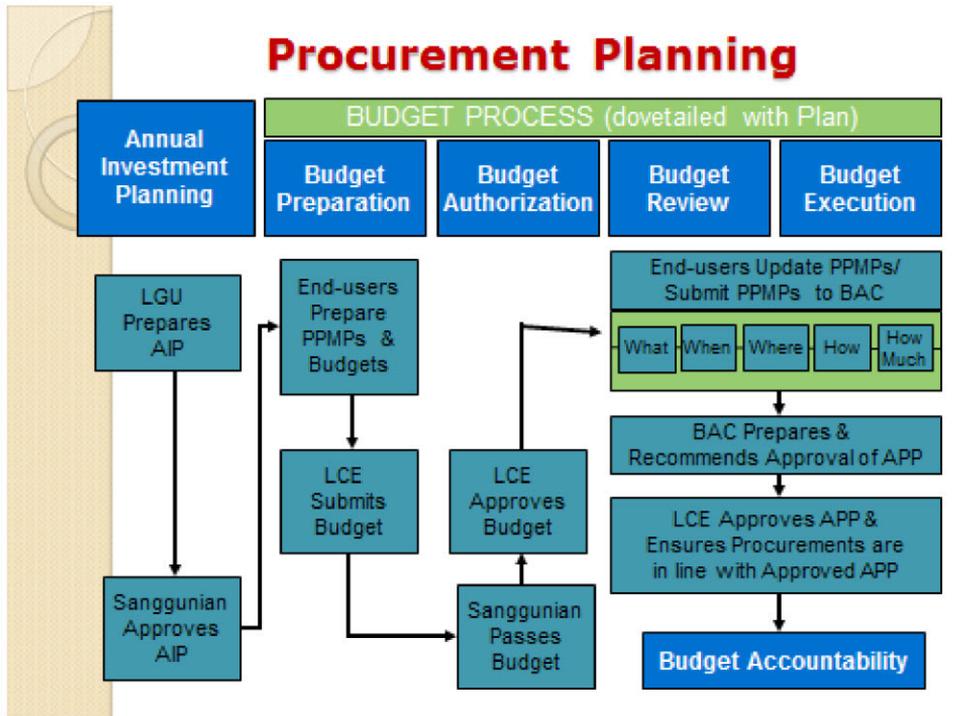
- 1) The APP should include all procurement activities planned for the year;
- 2) It shall include provisions for a lump sum to cover foreseeable emergencies or contingencies usually indicated by historical records; and,
- 3) Scheduling of procurement activities in the APP should be done in such a manner that the BAC and the other offices/units in the LGU are able to efficiently manage the conduct of procurement transactions;

A review and updating of the individual PPMPs and the consolidated APP for LGU shall be undertaken every six (6) months or as often as may be required by the LCE.

Moreover, no procurement shall be undertaken unless it is in accordance with the approved APP of the procuring entity.

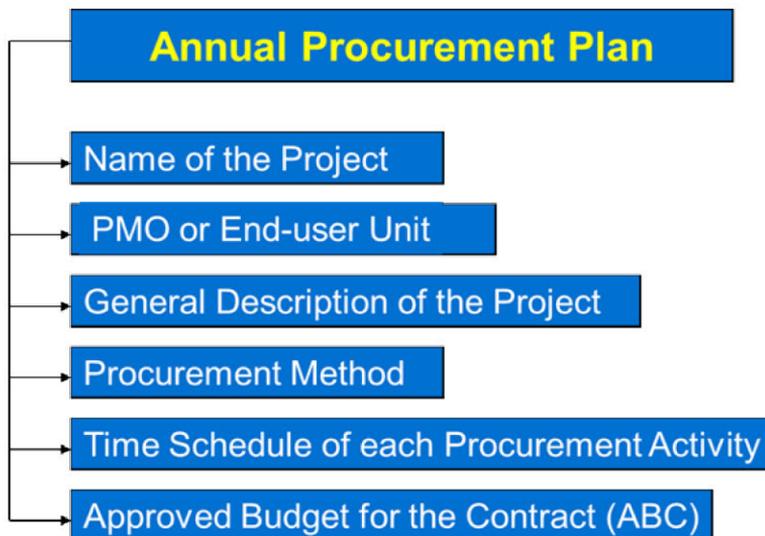
The process of preparing the PPMPs and the consolidated APP is shown in the flowchart below:

Diagram 3: Detailed Process of PPMP and APP Preparation



The APP prepared should follow the GPPB-prescribed format and should contain the following minimum contents:

Diagram 4: GPPB-Prescribed APP Content



## B.1. Approved Budget for the Contract

The ABC refers to the budget approved by the LCE based on the appropriation approved by the Sanggunian (local council) for the particular procurement planned to be undertaken.

To determine the ABC, the end-user unit or PMO has to consider several factors:

- 1) Appropriation for the project or procurement;
- 2) Cost or market price of the product or service itself;
- 3) Freight, insurance, taxes, and other incidental expenses such as installation costs, training costs, if necessary, and cost of inspection;

- 4) Cost of money, to account for government agencies usually buying on credit terms;
- 5) Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date;
- 6) Quantities, considering that buying in bulk usually means lower unit prices; and
- 7) Supply of spare parts and/or maintenance services, if these are part of the contract package.
- 8) Cost for securing all types and forms of securities other than cash. (e.g. premiums for surety bond, bank fees and other charges to be incurred by the bidder in obtaining bid, performance and warranty securities)

## **C. Procurement Monitoring Report**

The PMR is the document which covers all the procurement activities specified in the APP, whether ongoing and completed, from the holding of the pre-procurement conference to the issuance of notice of award and the approval of the contract, including the standard and actual time for each major procurement activity. The BAC shall prepare the PMR in the form prescribed by the GPPB.

The PMR shall be approved and submitted by the LCE to the GPPB in printed and electronic format within fourteen (14) calendar days after the end of each semester.

## VIII. The Philippine Government Electronic Procurement System (PhilGEPS) ([www.philgeps.net](http://www.philgeps.net))

Consistent with the policies of transparency and streamlining of the procurement process, and to achieve efficiency, information technology shall be utilized in the conduct of procurement in the government. A two-pronged approach has been adopted to achieve this:

- a. Institutionalization of the PhilGEPS, which will be used for procurement of common use items and as repository of all government procurement information; and
- b. Use or engagement of electronic procurement service providers by the individual procuring entities for procurement of non-common use items.

All procuring entities, including LGUs are mandated to utilize the PhilGEPS for the procurement of common-use supplies, through its Electronic Catalogue Facility, and for the posting of procurement-related notices, through the Electronic Bulletin Board.

The PhilGEPS serves as the single portal and primary source of information on all government procurement activities. It has the following features:

- a. *Electronic Bulletin Board*  
Posting of procurement opportunities, notices of awards, electronic distribution of bid documents and automatic notification of amendments;
- b. *Electronic Registry*  
Registry of all manufacturers, suppliers, distributors, contractors and consultants including government agencies; and,

c. *Electronic Catalogue*

A centralized price list of common use goods, supplies, materials and equipment.

**The PhilGEPS will also feature the following:**

a. *Virtual Store*

It will enable the ordering of common-use and non-common-use items online. This virtual store is open only to registered procuring entities and may not be accessed by suppliers;

b. *Electronic Payment*

This function will allow the system to manage the generation of purchase orders and the payment of bids processed through the system; and

c. *Electronic Bid Submission*

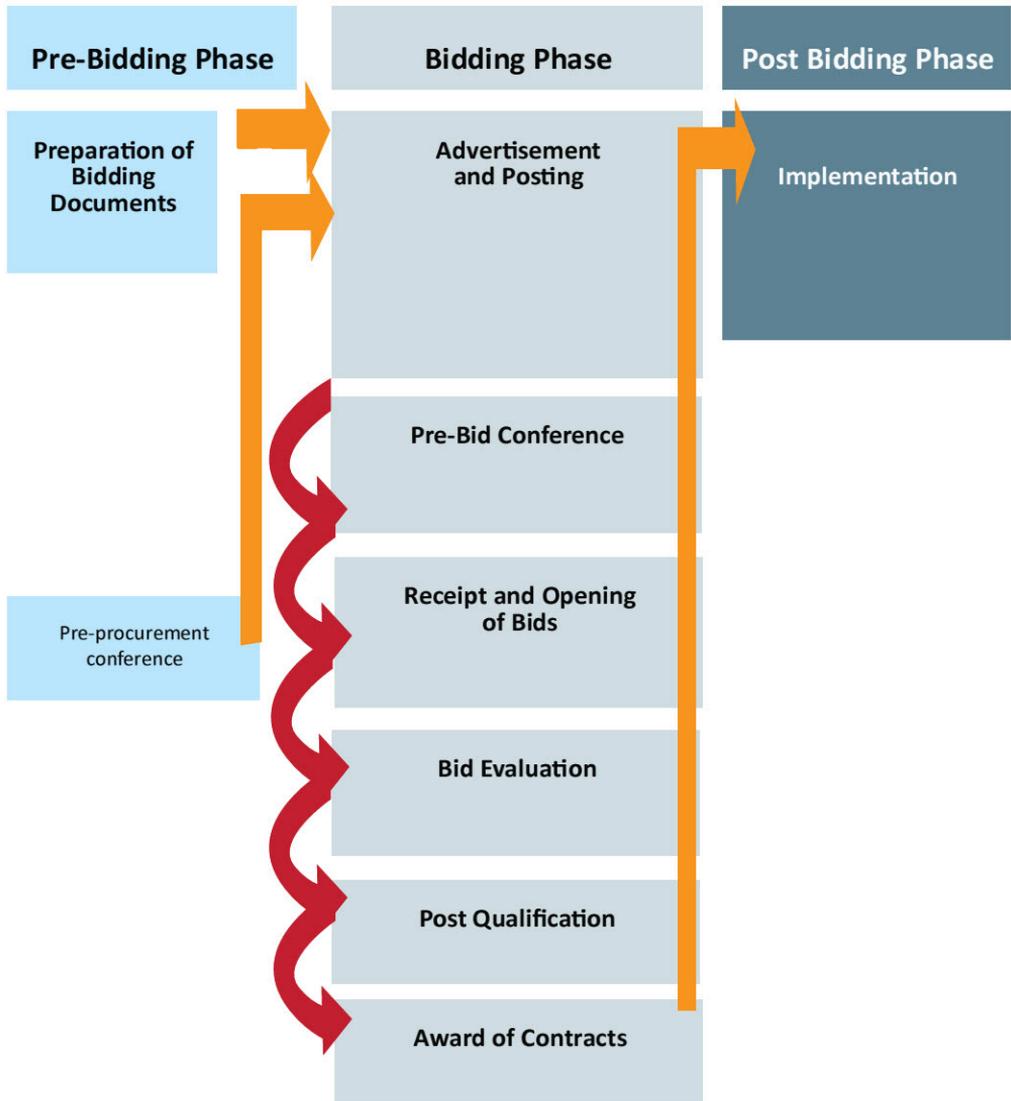
This will support the implementation of e-Bid submission processes, which includes creation of electronic bid forms, creation of bid box, delivery of bid submissions, notification to supplier of receipt of bids, bid receiving, and electronic bid evaluation.

Chapter 2

# Methods of Procurement



Diagram 5: Procurement Process Flowchart



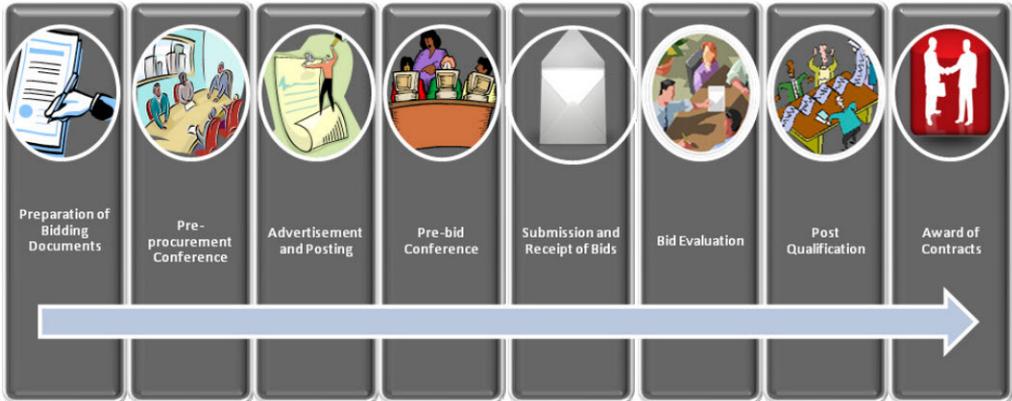
# I. COMPETITIVE PUBLIC BIDDING

Diagram 6: Comparative process flow of procurement under Competitive Bidding

Goods and Infra	Timeframe In Calendar Days		Consulting	Not more than 75 calendar days
1. Procurement Planning			1. Procurement Planning	
2. Pre-procurement Conference			2. Pre-procurement Conference	
3. Advertisement and/or Posting	7 CD	7 CD	3. Advertisement and/or Posting	
			4. Submission of Eligibility Requirements	
		Not more than 20 CD	5. Eligibility Check	
			6. Short Listing	
4. Pre-bid Conference	12 CD before bid submission/ may be extended to 30 CD	To be done 1 day w/ in 12-30 CD	7. Pre-Bid Conference for the short-listed	
5. Submission and Receipt of Bids	{ Goods- 45 CD Infra (50M below) - 50CD	w/in 12-30 CD	8. Submission of Proposals	
6. Opening and Evaluation of First -Second Envelope	Infra (above 50M)- 65 CD; from last day of posting	Not more than 20 CD	9. Opening and Evaluation of Proposals	
7. Detailed Evaluation of Bids	7 CD or if Infra (50M below) - 5 CD			
8. Post-qualification	7 CD, may be extended to 30 CD	Not more than 21 CD	10. Negotiation & Post-qualification	
9. Award of Contract	10 CD	10 (JVA) and 7 (individual) days within the bid validity period (not exceeding 120 CD from opening of bids)	11. Contract Award	
10. Notice to Proceed	3 CD or if Infra(50M below) – 2 CD			
11. Contract Implementation	Within 10 CD			

# A. For Goods and Infrastructure

Diagram 7: Procurement Process for Goods and Infrastructure Projects



## 1. Preparation of Bidding Documents

The Bidding Documents shall be prepared by the procuring entity following the standard forms and manuals prescribed by the GPPB.

The Bidding Documents shall include the following:

- a. ABC;
- b. Invitation to Bid;
- c. Eligibility Requirements;
- d. Instructions to Bidders,
- e. Scope of work, where applicable;
- f. Plans/Drawings and Technical Specifications;
- g. Form of Bid, Price Form, and List of Goods or Bill of Quantities;
- h. Delivery Time or Completion Schedule;
- i. Form, Amount, and Validity Period of Bid, Performance and Warranty Security;
- j. Form of Contract and General and Special Conditions of Contract.

Bidding documents are documents issued by the LGU containing all the necessary information that the prospective bidders need in preparing their bids.

Bidding Documents may be sold for a fee at a reasonable price as determined by the BAC to recover the cost of its preparation and development. However, the price of bidding documents should not discourage competition.

## 2. Conduct of Pre-procurement Conference

It is a forum called by the BAC where all officials involved in the procurement meet and discuss all aspects of a specific procurement activity, which includes, among others the:

- a) Technical specifications/Scope of work;
- b) ABC;
- c) Applicability and appropriateness of the recommended method of procurement and the related milestones;
- d) Bidding documents, and;
- e) Availability of the pertinent budget release for the project.

The objectives of the pre-procurement:

- i. To confirm the description and scope of the contract, the ABC, and contract duration;
- ii. To ensure that the procurement is in line with the project and annual procurement plan;
- iii. To determine the readiness of the procurement at hand;
  - Availability of appropriations and programmed budget for the contract;
  - Completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;

- Completion of the detailed engineering according to the prescribed standards in the case of infrastructure projects; and
  - Confirmation of the availability of Right of Way and the ownership of affected properties.
- iv. To review, modify, and agree on the criteria for eligibility screening, evaluation, and post-qualification;
  - v. To review and adopt the procurement schedule, including deadlines and timeframes, for the different activities; and
  - vi. To reiterate and emphasize the importance of confidentiality, in accordance with Sec.19 of the IRR, and the applicable sanctions and penalties and to agree on measures for compliance with the foregoing.

Participants in a Pre-procurement conference:

- a) BAC;
- b) BAC Secretariat;
- c) TWG members;
- d) End-user unit/PMO;
- e) Consultants, if any; and
- f) Other concerned officials, if required

The Pre-procurement conference is conducted prior to the advertisement or issuance of the Invitation to Bid. Preferably, the pre-procurement conference should be conducted at least seven (7) calendar days to give the technical staff sufficient time to incorporate the necessary changes, amendments, or revisions with the following thresholds:

Table 1: Threshold for the conduct of a pre-procurement conference.

Procurement Category	ABC	
	Discretionary	Mandatory
Goods	≤ 2 Million pesos	> 5 Million pesos
Infrastructure	≤ 5 Million pesos	> 5 Million pesos

### 3. Advertisement & Posting of the Invitation to Bid

#### *Invitation to Bid*

The Invitation to Bid is the notice to the public and all interested parties of the procurement and bidding opportunities of the local government. The Invitation to Bid replaced the “Call for Bids” required by Sec. 362 of the Local Government Code for the procurement of local government supplies.

The Invitation to Bid could be done through widest possible dissemination to increase the number of prospective bidders and to intensify competition for each procurement activity. The posting requirements shall be as follows:

Table 2: Conditions for advertisement/posting of the Invitation to Bid

Medium	≤ 2 M (Goods)	> 2 M (Goods)	Frequency
	≤ 5 M (Infra)	> 5 M (Infra)	
Newspaper of general nationwide circulation		✓	Once in 1 newspaper
PhilGEPS	✓	✓	Continuously posted until Bid Submission
Website of the LGU	✓	✓	Continuously posted until Bid Submission
Conspicuous place within the premises of the LGU	✓	✓	Continuously posted until Bid Submission

In case the LGU lacks internet connection, it may post its Invitation to Bid through the public access terminals or at internet café in its locality. It may also arrange to use the facility of other local governments or national government offices, such as the DBM Regional Office.

#### 4. Pre-Bid Conference

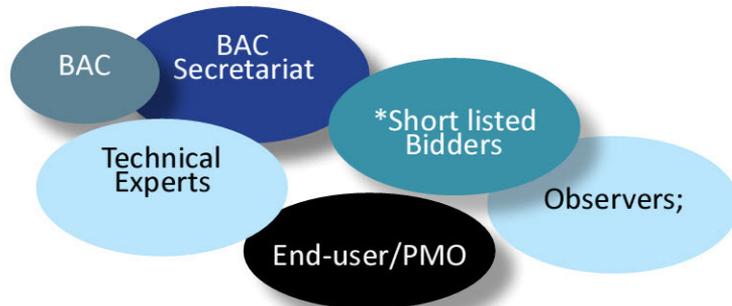
The pre-bid conference is the forum where the procuring entity's representatives and the prospective bidders discuss the different aspects of the procurement at hand. (See Section 22 IRR of RA9184)

##### The following are discussed during the Pre-bid Conference:



1. Eligibility requirements
2. Technical and financial components of the contract to be bid

Diagram 8: Participants in the Pre-Bid Conference



\*Attendance of the bidders shall not be mandatory provided that they have been duly notified of the date, time and place of the conduct of the pre-bid conference.

The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. If the procuring entity determines that, by reason of the method, nature, or complexity of the contract to be bid or when international participation will be more advantageous to the local government, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.

### ***Conduct of Pre-bid Conference***

For contracts to be bid with an approved budget of One Million Pesos (P1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the bidding documents. For contracts with less than One Million Pesos (P1,000,000.00), pre-bid conferences may be conducted at the discretion of the BAC. A pre-bid conference may also be conducted upon written request of any prospective bidder, subject to BAC approval.

## **5. Submission, Receipt, Opening and Examination of Bids**

Bidders shall submit their bids through their duly authorized representative using forms specified in the bidding documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously.

The first envelope shall contain the technical component of the bid, including the eligibility requirements while the second envelope shall contain the financial component of the bid.

Bids shall be received on the date, time, and place specified in the Invitation to Bid. Bids, including eligibility requirements, submitted after the deadline shall not be accepted by the BAC (Sec. 25.5 of the IRR of RA 9184).

The bids shall immediately be opened after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the bidding documents and the Invitation to Bid (Sec. 29 of the IRR of RA 9184).

The BAC shall adopt a procedure for ensuring the integrity, security, and confidentiality of all submitted bids. The minutes of the bid opening shall be made available to the public upon written request and payment of specified fee to recover cost of materials.

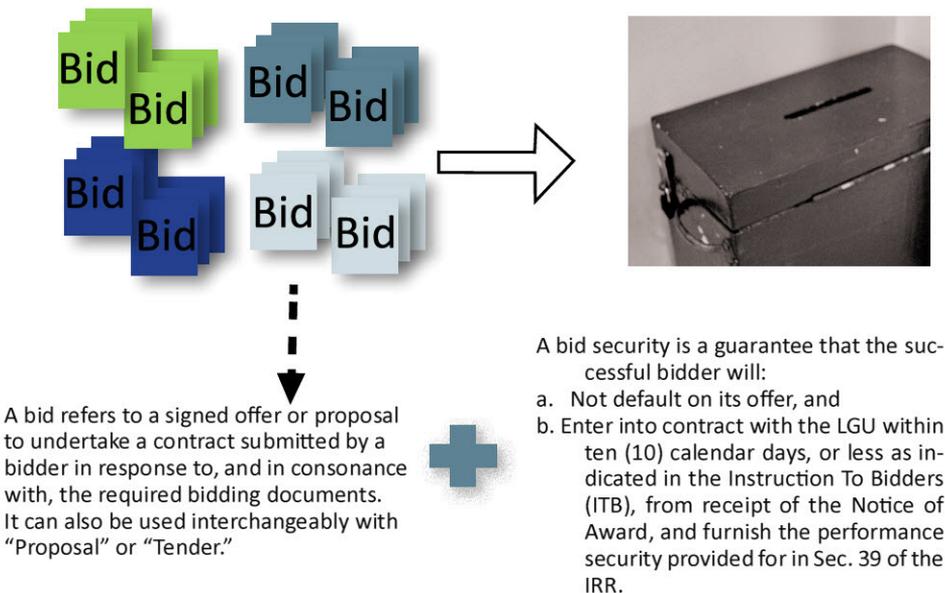
Table 3: Contents of First and Second Envelope

<b>First Envelope</b> (Technical information/ documents)	
<b>Goods and Services</b>	<b>Infrastructure</b>
1. Eligibility Requirements	1. Eligibility Requirements
2. Bid Security	2. Bid Security
3. Technical Specifications	3. Project Requirements <ul style="list-style-type: none"> <li>• Organizational chart</li> <li>• List of contractor's personnel</li> <li>• List of contractor's equipments</li> </ul>
4. Omnibus Sworn statement <ul style="list-style-type: none"> <li>• not blacklisted</li> <li>• documents submitted are authentic</li> <li>• authorizing the LCE to verify documents</li> <li>• signatory is the authorized representative of the prospective bidder</li> <li>• complies with the disclosure provision</li> <li>• complies with responsibilities of prospective or eligible bidder</li> <li>• complies with existing labor laws and standards</li> </ul>	4. Omnibus Sworn statement

**Second Envelope**  
(Financial information/documents)

Goods and Services	Infrastructure
<ul style="list-style-type: none"> <li>All Financial Information / documents specified in the PBDs.</li> </ul>	

Diagram 9: Bid Opening



**Validity of Bid Documents and Bid Security**

The LCE determines the validity of the bids and bid securities for a reasonable period of time but in no case should it exceed 120 calendar days from the date of the bid opening. The time period must be indicated in the bidding documents.

Should it become necessary to extend the validity of the bids and bid securities beyond 120 calendar days, the procuring entity shall request in writing all those who submitted bids for such extension before the expiration date. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security (Sec. 28.2 RA 9184 and its IRR)



The minimum eligibility requirements and criteria that must be submitted for Goods and Infrastructure Projects:

*Table 4: Classification of Bid Documents for Goods and Infrastructure Projects*

GOODS	INFRASTRUCTURE
<i>Class A Documents</i>	
1. DTI/SEC/CDA Registration	1. DTI/SEC/CDA Registration
2. Mayor's permit	2. Mayor's permit
3. Statement of ongoing & completed contracts	3. Statement of ongoing & completed contracts
4. Audited financial statement	4. PCAB license and registration
5. NFCC or CLC	5. Audited financial statement
	6. NFCC or CLC
<i>Class B Document</i>	
JVA or notarized statement from the partners that they will enter into joint venture if awarded the contract	

Table 5: Eligibility Criteria for Goods and Infrastructure

<b>General</b>		
<b>Juridical entity</b>	<b>Goods</b>	<b>Infrastructure</b>
Sole proprietorship	Filipino	Filipino
Partnership	At least 60% owned by citizens of the Philippines	At least 75% owned by citizens of the Philippines
Corporations	At least 60% owned by citizens of the Philippines	At least 75% owned by citizens of the Philippines
Cooperatives	Organized under Philippines with 60% shares owned by citizens of the Philippines	Organized under Philippines with 75% shares owned by citizens of the Philippines
Joint venture	60% owned by citizens of the Philippines	75% owned by citizens of the Philippines
<b>Exemption</b>		
Foreign bidders	<p>a) When provided for under any Treaty or International or Executive Agreement</p> <p>b) When the country of origin of the foreign supplier grants reciprocal rights or privileges to Filipinos;</p> <p>c) When the goods are not available from local suppliers; or</p> <p>d) When there is a need to prevent situations that defeat competition or restrain trade.</p>	When provided for under any Treaty or International or Executive Agreement

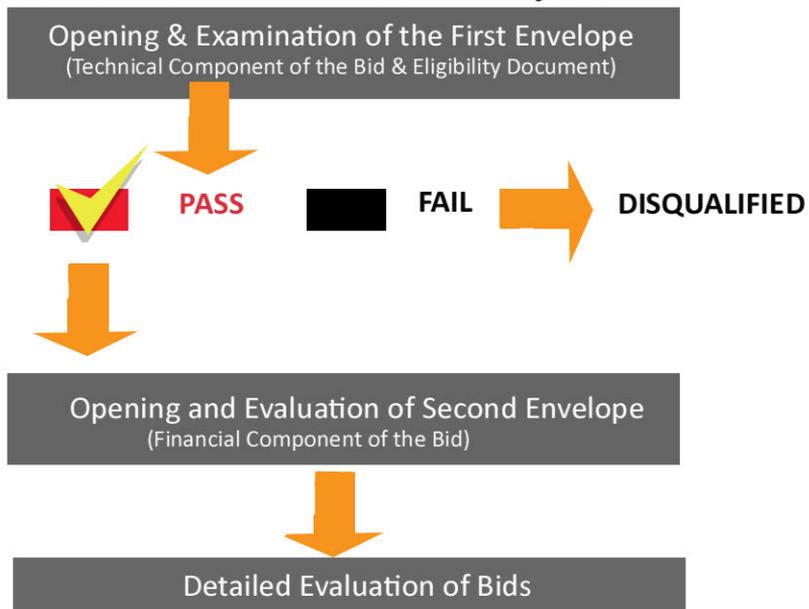
The BAC shall open the first bid envelopes of the prospective bidders in public to check if the bidders comply with the documents required to be submitted for eligibility and technical requirements using a non-discretionary “pass/fail” criterion.

The BAC shall open only the second envelopes of bidders whose first envelopes are rated “passed”.

In case one or more of the requirements in the second envelope of a particular bid is missing or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid “failed.” Meanwhile, bids that are rated “passed” shall be considered for evaluation and comparison.

Diagram 10 :Opening and Examination of the Bid Envelopes

*Goods and Services/ Infrastructure Projects:*



## 6. Bid Evaluation

After the BAC has determined the qualified bidders, it will immediately conduct a detailed bid evaluation to identify the bidder having the Lowest Calculated Bid (LCB). This is done by establishing the correct calculated prices of bids and ranking the total calculated bid prices in ascending order, as evaluated and corrected for computational errors and other bid modifications.

A non-discretionary criteria shall be used by considering the completeness of the bid and arithmetical corrections.

The entire evaluation process for the procurement of goods and infrastructure projects shall be completed within seven (7) calendar days from the deadline for receipt of proposals. However, for infrastructure projects costing Fifty Million Pesos (P50,000,000) and below, the entire evaluation process shall be completed in not more than five (5) calendar days from the deadline for receipt of proposals.

## 7. Post Qualification

Post-qualification is where the procuring entity determines whether the bidder with the LCB complies with and is responsive to all the requirements and conditions as specified in the bidding documents.

Within three (3) calendar days from receipt by the bidder of the BAC notice that the bidder has the LCB, the bidder shall submit the following documentary requirements:

- a) Tax Clearance;
- b) Latest Income/ Business Tax Returns;
- c) PhilGEPs Registration Certificate; and
- d) Other appropriate licenses and permits required by law and stated in the bidding documents.

Failure to submit the documents on time or a finding against the veracity of documents, shall be ground for the forfeiture of the bid security and disqualify the bidder for award (Sec 34.2, IRR of RA 9184).

The post-qualification shall verify, validate and ascertain all statements made and documents submitted by the bidder with the LCB, using a non-discretionary criteria, as stated in the bidding documents. These criteria shall consider, but shall not be limited to, the legal, technical and financial requirements.

If the BAC determines that the bidder with the LCB passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid (LCRB).

In case the LCB fails the criteria for post-qualification, the BAC shall initiate and complete the same process on the next LCB, and so on until the next LCRB is determined for award.

The post-qualification process shall be completed in not more than seven (7) calendar days from the determination of the LCB. In exceptional cases, the LCE may extend the conduct of post qualification, but in no case shall the aggregate period exceed thirty (30) calendar days (Sec 34.8, IRR of RA 9184).



## 8. Award of Contracts

### 8.1. Notice of Award

The BAC shall issue a resolution recommending to the LCE award of the contract to the bidder with the LCRB at its submitted bid price or its total calculated bid price, whichever is lower (Sec 34.4, IRR of RA 9184). Should the LCE concur with the BAC recommendation for award, the LCE shall approve the same and cause the issuance of the Notice of Award (NOA).

The LCE 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. However, for infrastructure projects with an ABC of Fifty Million Pesos (Php. 50,000,000) and below, the LCE shall approve or disapprove the said recommendation within four (4) calendar days (Sec 37.1.2, IRR of RA 9184).

The LCE shall also look into the following supporting documents to decide whether to approve or disapprove the award of the contract:

- a) BAC resolution recommending award;
- b) Abstract of Bids;
- c) Duly approved program of work or delivery schedule and Cost Estimates;
- d) Document issued by appropriate entity authorizing the procuring entity to incur obligations for a specified amount; and
- e) Other pertinent documents required by existing laws, rules, and/or the LGU.

In case of approval, the LCE shall immediately issue the NOA to the bidder with the LCRB. In the event the LCE shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to *be expressed in writing, copy furnished the BAC* (Sec 37.1.3, IRR of RA 9184).

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

- a) Submission of the following documents within the prescribed period:
  - i) Valid JVA, if applicable, within ten (10) calendar days from receipt by the bidder of the BAC notice that the bidder has the LCRB;
  - ii) In the case of infrastructure projects, valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders, within thirty (30) calendar days from receipt by the bidder of the BAC notice that the bidder has the LCRB, when the Treaty or International or Executive Agreement expressly allows submission of the PCAB license and registration for the type and cost of the contract to be as a pre-condition to the NOA;
- b) Posting of performance security; and,
- c) Signing of the contract

## **8.2. Contract Signing**

The LCE shall formally enter into contract with the winning bidder within ten (10) calendar days from receipt by the latter of the NOA, provided that the winning bidder has submitted the performance security and all other necessary documentary requirements are complied with (Sec 37.2.2 IRR of RA 9184)

### **Performance security**

It is a guarantee that the winning bidder will faithfully perform its obligations under the contract prepared in accordance with the bidding documents. (Sec. 39.1 IRR of RA 9184). The performance security shall be denominated in Philippine Pesos and posted in favor of the procuring entity, which shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract. (Sec. 39.3 IRR of RA 9184). The performance security shall remain valid until issuance by the procuring entity of the final Certificate of Acceptance. (Sec. 39.4 IRR of RA 9184).

### 8.3 Notice to Proceed

The LCE shall issue the Notice to Proceed together with a copy of the approved contract to the successful bidder within three (3) calendar days from the date of contract approval. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000, 000) and below, the maximum period is two (2) calendar days. The contract effectivity date shall be provided in the Notice to Proceed by the procuring entity, which date shall not be later than seven (7) calendar days from its issuance (Sec 37.4 IRR of RA 9184).

If no action on the contract is taken by the HOPE or the appropriate approving authority within the periods specified in the IRR, the contract concerned shall be deemed approved (Sec 38.3 IRR of RA 9184).

## B. For Consulting

Diagram 11: Procurement Process for Consulting Services



## 1. Preparation of Bidding Documents

The bidding documents shall be prepared by the procuring entity following the standard forms and manuals prescribed by the GPPB. The bidding documents shall include the following:

- a) ABC;
- b) Request for Expression of Interest;
- c) Eligibility Requirements;
- d) Instructions to Bidders,
- e) Terms of Reference (TOR);
- f) Form of Bid;
- g) Completion Schedule;
- h) Form, Amount, and Validity Period of Bid and Performance Security;
- i) Form of Contract and General and Special Conditions of Contract.

## 2. Pre-procurement Conference

It is conducted prior to the advertisement or issuance of the Request for Expression of Interest (REI), preferably at least seven (7) days.

The following should be discussed during the Pre-procurement Conference:

- a) TOR;
- b) ABC;
- c) Applicability and appropriateness of the recommended method of procurement and the related milestones;
- d) Bidding documents, and;
- e) Availability of the pertinent budget release for the project.

For the procurement of consulting services costing more than One Million Pesos (1,000,000.00) the conduct of Pre-procurement Conference is mandatory.

### 3. Advertisement and Posting

Advertisement and posting of the REI can be carried out through widest possible dissemination to increase the number of prospective bidder and intensify competition for the procurement activity. The posting requirements of the REI shall be as follows:

Table 6: Threshold and Requirement for Advertisement and Posting for Consulting Services

Medium	≤ More than 1 Million	> 1 M or 4 mos.	Frequency
Newspaper of general nationwide circulation	x	✓	Once in 1 newspaper
PhilGEPS	✓	✓	Continuously posted until Bid Submission
Website of the LGU	✓	✓	Continuously posted until Bid Submission
Conspicuous place within the premises of the LGU	✓	✓	Continuously posted until Bid Submission

### 4. Submission of Eligibility Requirements

The eligibility envelopes of prospective bidders for procurement of consulting services shall be submitted on or before the deadline specified in the REI, and shall be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders, who shall then be allowed to acquire or purchase the relevant bidding documents.

The minimum eligibility requirements that must be submitted prior to pre-bid conference are as follows:

Table 7: Classification of Bid Documents for Consulting Services

<i>Class A Documents</i>
1. DTI/SEC/CDA Registration
2. Mayor's permit
3. Statement of ongoing & completed contracts
4. Statement of the consultant's nationality and confirmation that its key personnel are registered professionals.
5. Audited financial statement
<i>Class B Document</i>
JVA or notarized statement from the partners that they will enter into joint venture if awarded the contract

## 5. Eligibility Check and Short listing

It determines if a prospective bidder is eligible to participate in the bidding at hand. In determining a prospective bidder's eligibility, the BAC shall use non-discretionary "pass/fail" criteria, as stated in the REI. In the absence, incompleteness or insufficiency of a particular document, it shall make a prospective bidder ineligible to bid for the particular procurement.



**PASS**



**FAIL**

*Table 8: Eligibility Criteria for Consulting Services*

<b>Juridical entity</b>	<b>Consulting</b>
Sole proprietorship	Filipino
Partnership	At least 60% owned by citizens of the Philippines
Corporations	At least 60% owned by citizens of the Philippines
Cooperatives	Organized under Philippines with 60% shares owned by citizens of the Philippines
Joint venture	60% owned by citizens of the Philippines

### *Hiring of Foreign Consultants*

In the event Filipino consultants do not have the sufficient expertise and capability to render the services required under a project, foreign consultants may be hired as determined by the LCE, subject to the following qualifications:

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

### **5.1. Short listing**

It determines the most qualified consultants from those who have been determined as eligible to undertake the project. The procuring entity shall only consider those consultants whose contracts, as identified in the eligibility documents submitted for registration, are similar in nature

and complexity of the contract to be bid, based on the REI.

The BAC shall recommend the short list of consultants to the LCE for consideration and approval. The entire process of eligibility check and short listing shall not exceed twenty (20) calendar days. (Sec 24.5.4, IRR of RA 9184).

## **6. Pre-Bid Conference**

This is the forum where the BAC discusses the technical and financial component of the bid. Likewise, it gives an opportunity for short listed consultants to request for clarification about the bidding documents.

The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. If the procuring entity determines that, by reason of the method, nature, or complexity of the contract to be bid or when international participation will be more advantageous to the government, a longer period for the preparation of bids is necessary. The pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.

Short listed bidders may or may not attend the pre-bid conference, provided they have been duly notified of the date, time and place.

For the contracts to bid with an approved budget of One Million Pesos (1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference. Otherwise, the conduct of the pre-bid depends on the BAC.

## **7. Submission, Receipt, Opening and Examination of Bids**

Bids shall be received by the BAC on the date, time, and place specified in the REI. (Sec 25.4 IRR of RA 9184). The bid requirements are as follows:

## ***First Envelope***

- a. Bid Security;
- b. Organizational Chart;
- c. Approach, Work plan, and Schedule;
- d. Omnibus Sworn statement
  - not blacklisted
  - documents submitted are authentic
  - authorizing the LCE to verify documents
  - signatory is the authorized representative of the prospective bidder
  - complies with the disclosure provision
  - complies with responsibilities of prospective or eligible bidder complies with existing labor laws and standards,
- e. List of key personnel

## ***Second Envelope***

All Financial Information / documents specified in the Philippine Bidding Documents (PBDs)

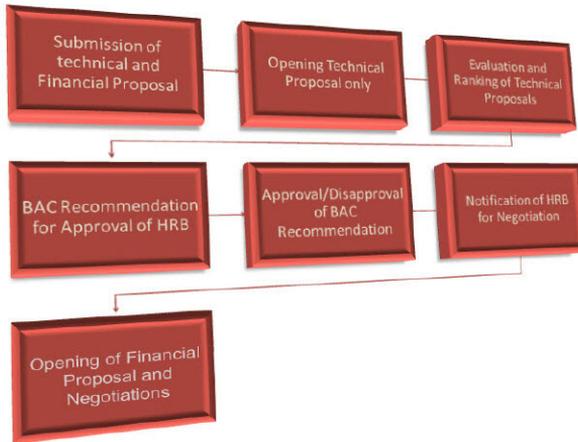
## **8. Bids Evaluation**

The purpose of bid evaluation is to determine the Highest Rated Bid (HRB).

There are two (2) methods of evaluating bids:

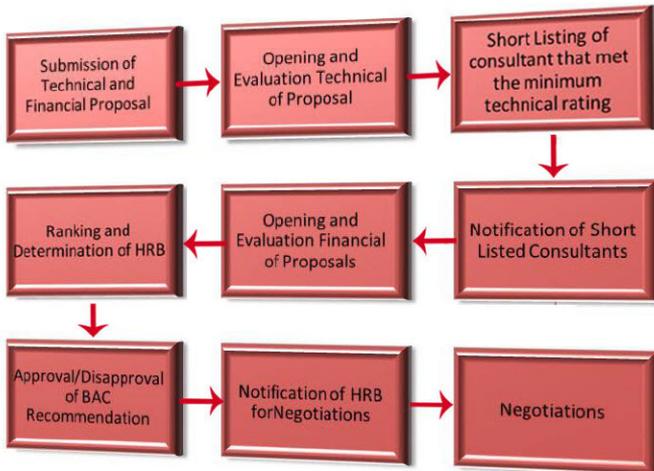
1. Quality Based Evaluation (QBE) considers only the technical proposals in the ranking of consultants.

Diagram 12: Process for Quality Based Evaluation



2. Quality-Cost Based Evaluation (QCBE) considers both the technical and financial proposals in the ranking of consultants.

Diagram 13: Process for Quality-Cost Based Evaluation



The BAC submits the evaluation results, including the rankings and the consultant with the HRB to the LCE who must approve or disapprove the BAC recommendations within two (2) calendar days after receipt of such results.

If the LCE disapproves the BAC recommendations, the LCE shall inform the BAC of its disapproval and the reasons for it, and shall instruct the BAC on the subsequent steps to be adopted.

If the LCE approves the BAC recommendations, the BAC furnishes all participating short listed consultants with the results of its evaluation (ranking and total scores only). The said results shall also be posted in the PhilGEPS and the website of the procuring entity, whenever available, for a period of not less than seven (7) calendar days. (Sec 33.2.4 IRR of RA 9184). The BAC shall also, within three (3) calendar days, notify and invite the consultant with the Highest Rated Bid for negotiation.

The entire evaluation process, including the submission of the results to the LCE for approval, shall be completed in no more than twenty-one (21) calendar days after the deadline for receipt of proposals.

## **9. Negotiation**

Negotiation shall cover the following:

- a. TOR and Scope of Services;
- b. Methodology and work program proposed by the bidder;
- c. Appropriateness of qualifications and pertinent compensation and manning of personnel involved in the project;
- d. Services, facilities and data, if any, to be provided by procuring entity concerned;
- e. Financial proposal submitted by the bidder (QBE only); and
- f. Provisions of the contract.

If there is no agreement between the BAC and the HRB on any or all items discussed, the BAC would terminate negotiations and invite the next ranked consultant. The procedure for negotiation shall be repeated until it is successfully completed.

## 10. Post Qualification

The highest rated bid shall undergo post-qualification to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions specified in the bidding documents.

Within three (3) calendar days from receipt of the BAC notice that the bidder has the HRB, the bidder shall submit the following documentary requirements:

- a. Tax Clearance;
- b. Latest Income/ Business Tax Returns;
- c. Certificate of PhilGEPs Registration; and
- d. Other appropriate licenses and permits required by law and stated in the bidding documents.

Failure to submit the documents on time or a finding against the veracity of such, shall be ground for the forfeiture of the bid security and disqualify the bidder for award. (Sec 34.2 IRR of RA 9184)

If the BAC determines that the bidder with the HRB passes all the criteria for post-qualification, it shall declare said bid as the Highest Rated Responsive Bid (HRRB).

In case the HRB fails the criteria for post-qualification, the BAC shall initiate and complete the same process on the next HRB, and so on until the HRRB is determined for award.

The post-qualification process shall be completed in not more than seven (7) calendar days from the determination of the HRB. In exceptional cases, the LCE may extend the conduct of post qualification, but in no case shall the aggregate period exceed thirty (30) calendar days.

## 11. Award of Contracts

### 11.1 Notice Award

The BAC shall issue a resolution recommending to the LCE award of the contract to the bidder with the HRRB at its submitted bid price or its negotiated bid price, whichever is lower (Sec 34.4, IRR of RA 9184). Should the LCE concur with the BAC recommendation for award, the LCE shall approve the same and cause the issuance of the NOA.

The LCE 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 HRRB.

The LCE shall also look into the following supporting documents to decide whether to approve or disapprove the award of the contract (Sec 37.1.1, IRR of RA 9184). :

- a) BAC resolution recommending award;
- b) Abstract of Bids;
- c) Duly approved program of work or delivery schedule and Cost Estimates;
- d) Document issued by appropriate entity authorizing the procuring entity to incur obligations for a specified amount; and
- e) Other pertinent documents required by existing laws, rules, and/or the LGU.

In case of approval, the LCE shall immediately issue the NOA to the bidder with the HRRB. In the event the LCE shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, copy furnished the BAC (Sec 37.1.3, IRR of RA 9184).

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

- a) Submission of a valid JVA if applicable, within ten (10) calendar days from receipt by the bidder of the BAC notice that the consultant has the HRRB;
- b) Posting of performance security; and,
- c) Signing of the contract

### **11.2. Contract Signing**

The LCE shall formally enter into contract with the winning bidder within ten (10) calendar days from receipt by the latter of the NOA, provided that the winning bidder has submitted the performance security and all other necessary documentary requirements are complied with (Sec 37.2.2 IRR of RA 9184)

### **11.3. Notice to Proceed**

The LCE shall issue the Notice to Proceed together with a copy of the approved contract to the successful bidder within three (3) calendar days from the date of contract approval. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000) and below, the maximum period is two (2) calendar days. The contract effectivity date shall be provided in the Notice to Proceed by the procuring entity, which date shall not be later than seven (7) calendar days from its issuance (Sec 37.4 IRR of RA 9184).

## II. ALTERNATIVE METHODS OF PROCUREMENT

Generally, procurement should be undertaken through competitive bidding. Subject to the approval of the LCE upon favorable recommendation by the BAC, alternative methods of procurement may be resorted to whenever justified by the conditions provided in the IRR of RA 9184.

In highly exceptional cases, the use of alternative methods of procurement is allowed to promote economy and efficiency.

### ***Terms and Conditions on the Use of Alternative Methods of Procurement***

1. Most advantageous price is obtained;
2. Advertisement and posting of the invitation and/or requests be dispensed with. Provided, however, that the BAC, through its Secretariat, shall post the invitation or request for submission of price quotations in the PhilGEPS website, the LGU's website, if available, and at any conspicuous place in the premises of the LGU for a period of seven (7) calendar days:
  - a) Shopping under Sections 52.1 (b); except those with an ABC of P 50,000.00
  - b) Negotiated Procurement under Section 53.1 (Two-failed biddings);
  - c) Negotiated Procurement under Section 53.10 (Lease of Real Property), except those with an ABC of P 50,000.00; and
  - d) Negotiated Procurement under Section 53.9 (small value procurement); except those with an ABC of P 50,000.00
  - e) Negotiated Procurement (NGO Participation)
3. In all instances of alternative methods of procurement, the BAC, through the Secretariat, shall post the NOA in the PhilGEPS website, the LGU website, if available, and at any conspicuous place reserved for this purpose in the premises of the LGU;

4. Bid Securities are no longer required for alternative methods except for Limited Source Bidding;
5. Performance and warranty securities are required except for:
  - a) Shopping;
  - b) Negotiated Procurement (Emergency Cases);
  - c) Negotiated Procurement (Small Value);
  - d) Negotiated Procurement (NGO Participation)
  - e) Negotiated Procurement (Lease of Real Property); and
  - f) Negotiated Procurement (United Nations Agencies)
6. Splitting of contracts shall be strictly prohibited.

Splitting of contracts is understood as the act of dividing or breaking up contracts into smaller quantities and amounts or breaking up contract implementation into subcontracts or artificial phases for purposes of evading or circumventing the requirements of the RA 9184 (e.g. When an LGU procures the same item more than once for one activity and the aggregate amount thereof exceeds P500, 000.00.)

## ***Five Alternative Methods of Procurement***

### **A. Limited Source Bidding or Selective Bidding,**

*Applicability: Goods and consulting services*

It involves direct invitation to bid by the LGU from the list of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract.

*Conditions:*

- a. Procurement of highly specialized types of goods and consulting services where only few suppliers or consultants are known to be available, such that resorting to public bidding will not likely result in any additional suppliers or consultants participating; or
- b. Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.

## **B. Direct Contracting or Single Source Procurement**

*Applicability: Goods*

This does not require elaborate bidding documents. The supplier merely submits a price quotation or a pro-forma invoice with the condition of sale. The offer may be accepted outright or after some negotiations.

*Conditions:*

- a. 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;
- b. When the procurement of critical 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; and,
- c. 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 terms to the Government.

## C. Repeat Order

*Applicability: Goods*

This method can be adopted whenever there is a need to replenish goods procured under a contract previously awarded.

*Conditions:*

- a. Unit prices of the repeat order must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the local government after price verification;
- b. The repeat order will not result in splitting of contracts, requisitions, or purchase orders;
- c. The repeat order shall be availed of only within six (6) months from the contract effectivity date stated in the NTP arising from the original contract except in cases duly approved by the GPPB; and
- d. The repeat order shall not exceed twenty-five percent (25%) of the quantity of each item in the original contract.

## D. Shopping

*Applicability: Goods*

It is a method of procurement of goods whereby the LGU 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.

*Conditions:*

- a. When there is an unforeseen contingency requiring immediate purchase and the amount shall not exceed the prescribed thresholds set by Annex H of the IRR.

*Table 9: Threshold Amount for Shopping When There is Unforeseen Contingency*

Classifications	Maximum amount (in Philippine Pesos)		
	Province	City	Municipality
1 <sup>st</sup> Class	100,000	100,000	50,000
2 <sup>nd</sup> Class	100,000	100,000	50,000
3 <sup>rd</sup> Class	100,000	80,000	50,000
4 <sup>th</sup> Class	80,000	60,000	50,000
5 <sup>th</sup> Class	60,000	50,000	50,000
6 <sup>th</sup> Class	50,000	50,000	50,000

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

Ordinary or regular office supplies shall 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.

For LGUs, a particular type of goods may be considered "ordinary or regular office supplies" depending on the mandate of the requesting end-user concerned.

Table 10: Thresholds Amount for Shopping and Small Value Procurement

Classifications	Maximum amount (in Philippine Pesos)		
	Province	City	Municipality
1 <sup>st</sup> Class	500,000	500,000	100,000
2 <sup>nd</sup> Class	500,000	500,000	100,000
3 <sup>rd</sup> Class	500,000	400,000	100,000
4 <sup>th</sup> Class	400,000	300,000	50,000
5 <sup>th</sup> Class	300,000	200,000	50,000
6 <sup>th</sup> Class	200,000	100,000	50,000

## E. Negotiated procurement

*Applicability:* Goods, Infrastructure Projects, and Consulting Services

It is a method of procurement, where a contract is directly negotiated with a technically, legally and financially capable supplier or consultant.

*Conditions:*

- a. **Two Failed Biddings.** Where there has been failure of public bidding for the second time as provided in Section 35 of R.A. 9184 and its IRR.
- b. **Emergency Cases.** In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.
- c. **Take-Over of Contracts.** Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.

- d. *Adjacent or Contiguous.*** Where the subject contract is adjacent or contiguous to an ongoing infrastructure project or consulting service where the consultants have unique experience and expertise to deliver the required service. Provided, however, that
- i. Original contract is the result of a Competitive Bidding;
  - ii. Subject contract to be negotiated has similar or related scopes of work;
  - iii. It is within the contracting capacity of the contractor/consultant;
  - iv. The contractor/consultant uses the same prices or lower unit prices as in the original contract less mobilization cost;
  - v. The amount involved does not exceed the amount of the ongoing project; and
  - vi. Contractor/consultant has no negative slippage/delay provided, further, that negotiations for the procurement are commenced before the expiry of the original contract.
- e. *Agency-to-Agency.*** Procurement of infrastructure projects, consulting services, and goods from another government agency like the Procurement Service, which is tasked with a centralized procurement of Common-Use Supplies for the government in accordance with the Letters of Instruction No. 755 and Executive Order No. 359, series of 1989. The term however excludes the GOCCs incorporated under Batas Pambansa Bldg. 68, otherwise known as the “Corporation Code of the Philippines.
- f. *Procurement Agent.*** The LCE may determine and request other government agencies to undertake procurement for the local government or at LCE option, recruit and hire consultants or procurement agents to assist the LGU directly and/or train their staff in the management of the procurement function to hasten project implementation.

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

**h. Small Value Procurement.** Where the procurement does not fall under Shopping in Section 52 of the IRR and the amount involved does not exceed the thresholds prescribed in Annex “H” of the IRR.

**i. Defense Cooperation Agreement.** Upon prior approval by the President of the Philippines, this mode of procurement may be used under the following circumstances:

- i. when the procurement for use by the AFP involves major defense equipment or material and/or defense-related consultancy services;
- ii. when the expertise or capability required is not available locally; and
- iii. the Secretary of National Defense has determined that the interests of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations.

Provided, however, that the performance by the supplier of its obligations under the procurement contract shall be covered by a performance security in accordance with Section 39 of the IRR.

**j. Lease of Real Property.** Lease of privately owned real property and venue for official use, subject to guidelines to be issued by the GPPB.

- k. NGO Participation.** When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB.
- l. Community Participation.** Where, in the interest of project sustainability or to achieve certain specific social objectives, it is desirable in selected project components to call for participation of local communities in the delivery of services, the procuring entity shall propose the procedures, specifications, and contract packaging which are subject to the approval of the GPPB.
- m. United Nations Agencies.** Procurement from specialized agencies of the United Nations of any of the following: (a) small quantities of off-the-shelf goods, primarily in the fields of education and health; and (b) specialized products where the number of suppliers is limited, such as vaccines or drugs.

For in depth discussion on Design and Build Scheme, see CD attachment on Guidelines for the Design and Build Scheme for Infrastructure Project, approved by the GPPB in Resolution 22-2007 Dated September 28, 2007

### III. PROCUREMENT RELATED SCHEMES AND PROCEDURES

Aside from what RA 9184 provides, there are other schemes of procurement for infrastructure projects:

1. Design and Build Scheme.
2. Implementation by Administration.

#### 1. Design and Build Scheme

*Conditions:*

- For flagship, priority, and fast track projects on a tight completion schedule, as included in the Medium Term Public Investment Program (MTPIP) for national projects and in the Regional Development Investment Plan (RDIP) for regional and provincial projects;
- For infrastructure projects requiring advanced engineering or construction technologies or whose intellectual property rights belong to private companies;
- For infrastructure projects where design, equipment, plant and construction can be provided exclusively by a company or where Manual of Procedures for the Procurement Infrastructure Projects For Local Government Units manufacturer's know-how is important in the construction of such facility;
- For small projects where there are previously approved drawings or standardized designs and an innovation in design and construction methods under the design and build scheme will result in lower costs and higher quality projects. Examples are school buildings, rural health units, among others;

Using the Design and Build scheme, in the Post-qualification and Award of the Contract, the LCE shall approve or disapprove the BAC recommendations within a period of seven (7) calendar days from the determination and declaration by the BAC of the Lowest Calculated and Responsive Bid.

## 2. Implementation by Administration

### *Conditions:*

- If the original mode of procurement recommended in the APP was public bidding but cannot be ultimately pursued;
- The project to be undertaken has not been previously included in the APP;
- The BAC, through a resolution, shall justify and recommend the change in the mode of procurement or in the updating of the APP to be approved by the LCE;
- The implementing agency must:
  - a. have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand; and
  - b. own the tools and construction equipment to be used or have access to such tools and equipment owned by other government agencies;
- Any project costing Twenty Million (P 20,000,000) or less may be undertaken by administration or force account by the implementing agency concerned;
- A project costing over Twenty Million (P 20,000,000) may be undertaken by the agency only in the following cases:
  - a. emergency arising from natural calamities or where immediate action is necessary to prevent imminent loss of life or property;

- b. to comply with government commitments, as certified by the concerned government authority;
- c. failure to award a contract after competitive bidding for a valid cause;
- d. termination or rescission of contract;
- e. areas with critical peace and order problems as certified by the Local Peace and Order Council;

Provided, that prior authority shall be obtained from the Secretary of Public Works and Highways if the project cost is Twenty Million (P 20,000,000) up to Fifty Million (P50,000,000), or from the President of the Philippines upon the favorable recommendation of the Secretary of Public Works and Highways if the project cost is more than Fifty Million (P50,000,000).

- For projects funded by the national government and implemented by an LGU, the latter shall be required to post the necessary warranty security;

The manual labor component of projects by administration may be undertaken in-house by the implementing agency, by job-order or through the pakyaw contracting system. The in-house labor is undertaken if the workers are employees or personnel occupying regular plantilla positions in the implementing agency. Job-order contracts shall be governed by relevant Commission on Audit (COA) and/or Civil Service Commission (CSC) rules.

### The Pakyaw Contracting System

- Pakyaw labor shall be drawn from the vicinity of the project, or Pakyaw labor groups belong to various barangay associations contiguous to the project site;
- Unskilled labor should be drawn from the barangay where the project is located; semi-skilled labor shall be recruited within the municipality, preferably within the barangay; skilled labor shall be recruited within the province but preferably within the barangay/municipality;

- The formation of Pakyaw Groups should actively involve the barangay leaders and the community.
- A Project Facilitator (PF) shall be appointed by the implementing agency to assist in the organization of the Pakyaw Groups and in the preparation of the Pakyaw Contracts. The PF shall inform the community of the project, organize pakyaw groups, and shall convene community meetings, with the assistance of the barangay chairperson/s. The PF shall cause the registration of all unemployed or underemployed members of the community who are interested to join Pakyaw groups being formed for the project.
- The Pakyaw workers should be formed into groups of workers based on the lump sum works. In case of competitive selection, pakyaw groups which were not selected for a particular lump sum work may choose to compete for other works requiring pakyaw groups.
- Where there is competition for the award of Pakyaw works, the pakyaw labor contract shall be awarded through competitive selection with at least three (3) Pakyaw Groups participating.
- There is deemed to be a competition for the award of Pakyaw contracts when the number of laborers who registered during the community meeting is more than what is reasonably needed for the lump sum work required under the project. The competitive selection shall be done on a “per-output” basis. And the winner(s) shall be determined based on what group(s) undertake(s) to deliver the desired output at the lowest rate, either per item of output or per lump sum work, within the required period.
- The number of members per group shall be determined by the Project Facilitator to ensure that at least three Pakyaw Groups are organized for the competitive selection. The determination by the Project Facilitator of the number of members per Pakyaw Group shall be exercised with regard to the objective of providing work to as many labourers as possible.

- A Group Leader shall be elected from among the members of the group who shall be the signatory to the Pakyaw Contract and any other documents pertaining to the work on behalf of the Pakyaw Group. He may be replaced at any time by the group through an election for that purpose, after due notice to the Project Facilitator and the Barangay Chairperson. Any such replacement shall not invalidate any previous Pakyaw Contract.
- In no case may Pakyaw Groups be regular or licensed contractors or organized by and/or under the management of a regular or licensed contractor. Laborers supplied by job-contractors/labor-only contractors are likewise disqualified to become members of the Pakyaw groups when the job contracting/ labor-only contracting is specifically carried out for the purpose.
- The amount of a Pakyaw labor contract per project shall not exceed Five Hundred Thousand Pesos (P500,000.00) per pakyaw group.
- All materials, plant/s and workmanship shall be of the kind described in the contract and in accordance with the instructions of the LGU's engineer. To ensure that this, indeed, is the case, these materials, plant/s and workmanship will be subjected, from time to time, to such tests as the engineer of the LGU concerned may require. These tests must be at the place of manufacture, fabrication or preparation, or on site or at such other place or places as may be specified in the contract, or at all or any of such places.

For in depth discussion on Implementation by Administration, see CD attachment on Guidelines for Implementation of Infrastructure project by Administration, approved by the GPPB in Resolution 018-2006 Dated December 6, 2006

Chapter 3

# Implementation of Contract





## I. Warranty

### a. Warranty requirements for Goods

To ensure that the supplier, manufacturer or distributor of goods will correct any manufacturing defect, submission of a warranty security is required after issuance of the Certificate of Final Acceptance.

The warranty security for the procurement of goods, equivalent to at least ten percent (10%) of the contract price, shall conform to the following forms and effectivity period:

Table 11: Warranty conditions

Type	Allowable Form	Effectivity Period
<p><b>Expendable Supplies</b></p> <p>[Refer to articles which are normally consumed in use within one (1) year or converted in the process of manufacture/construction, or those having a life expectancy of more than one (1) year but which shall have decreased substantially in value after being put to use for only one (1) year (e.g., medicines, stationery, fuel, and spare parts)]</p>	Special bank guarantee or Retention money	3 mos., unless earlier consumed
<p><b>Non-expendable Supplies</b></p> <p>[Refer to articles which are not consumed in use and ordinarily retain their original identity during the period of use, whose serviceable life is more than one (1) year and which add to the assets of the government (e.g., furniture, fixtures, transport and other equipment)]</p>		1 year
Service	None	None

The warranty security 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.

## **b. Warranty requirements for Infrastructure Projects**

For the procurement of infrastructure projects, the following warranties shall be made:

1. From the time project construction commenced up to final acceptance, the winning contractor shall assume full responsibility for the following:
  - a) any damage or destruction of the works except those occasioned by force majeure; and,
  - b) safety, protection, security, and convenience of personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by the construction work
2. The warranty against Structural Defects and Failures shall cover the following periods from final acceptance, except those occasioned by force majeure:
  - a) Permanent Structures: 15 years;
  - b) Semi-Permanent Structures: 5 years; and
  - c) Other Structures: 2 years

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

The warranty security required to be posted shall be in accordance with the following schedule:

Table 12: Warranty Security Schedule

Form of Warranty Security	Amt of Warranty Security (% of Contract Price)
a) Cash or LC from a Universal/Commercial Bank	5%
b) Bank guarantee from Universal/Commercial Bank	10%
c) Surety bond callable upon demand issued by GSIS or a surety/insurance company certified by the Insurance Commission.	30%

## II. Amendment to Order/Variation Order (Change Order/Extra Work Order)

### a. For the Procurement of Goods

Amendments to Order may be issued by the LGU 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, i.e a change in the place of delivery;
  - b) Time is of the essence in the project implementation, 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 needed to reflect the parties' intention; and
  3. Other analogous circumstances that could affect the conditions of the procurement at hand.

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.

Any increase in contract price, however, must not exceed ten percent (10%) of the original contract price. Otherwise, the procurement should be subject to bidding, unless the original procurement was done using any of the alternative methods that did not involve bidding.

Moreover, in the price adjustment, the supplier and the LGU must ensure that the principle of “no loss, no gain” applies, such that neither party gains nor losses anything from the resulting price adjustment.

Under no circumstances shall a supplier proceed to commence work under any Amendment to Order unless the same has been approved by the LCE or the duly authorized representative.

## **b. For the Procurement of Infrastructure Projects**

A **Variation Order** refers to any increase/decrease in quantities within the general scope of the project as bid and awarded.

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

An **Extra Work Order** covers the introduction of new work necessary for the completion/ improvement or protection of the project which are not included as items of work in the original contract.

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

### *Conditions for the Issuance of a Variation Order*

1. That there will not be any short changes in the original design;
2. That it will not affect the structural integrity and usefulness of the structure; and
3. That it is covered by an Obligational Request, if necessary.

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

A cumulative positive Variation Order should not exceed ten percent (10%) of the original contract price. Otherwise, it shall be subject of another contract to be bid out if the works are separable from the original contract.

The LCE may authorize the immediate start of work under any Change/ Extra Work Order, subject to any or all of the following conditions:

1. In the event of any emergency where the prosecution of the work is urgent to avoid any detriment to public service, or damage to life and/or property; and/or
2. When time is of the essence, for work in critical path based on the approved Program Evaluation and Review Technique/ Critical Path Method (PERT/CPM);

Provided, however, that such approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been fully approved does not exceed five percent (5%) of the adjusted original contract price whichever is less.

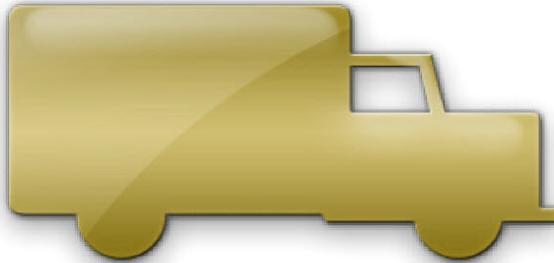
Immediately after the start of work, the corresponding Change Order or Extra Work Order shall be prepared and submitted for approval in accordance with the abovementioned rules.

Payments for work satisfactorily accomplished may be made only after approval by the LCE or the duly authorized representative.

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

Any cumulative positive Variation Order beyond ten percent (10%) of the original contract price shall be subject of another contract to be bid out if the works are separable from the original contract.

In exceptional cases where it is urgently necessary to complete the original scope of work, the LCE may authorize a positive variation order that will make the cumulative value of the positive Variation Orders go beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price, subject to the guidelines to be determined by the GPPB: Provided, however, that appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).



### III. Suspension

#### A. Suspension of Delivery

The LCE or the duly authorized representative 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.

Appropriate adjustments shall be made in the delivery or contract schedule, or contract price, or both, and the contract shall be modified accordingly. The LCE or the duly authorized representative shall then approve or disapprove the contract amendment submitted by the BAC.

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

The parties involved in the issuance of a suspension order

1. The end-user unit;
2. The supplier/ manufacturer/ distributor; and
3. The LCE or the duly authorized representative

## **B. Suspension of Work**

The LGU has the authority to suspend the work wholly or partly by written order due to the following:

1. Force majeure or any fortuitous event; or
2. Failure on the part of the contractor to:
  - a. Correct bad conditions which are unsafe for workers or for the general public;
  - b. Carry out valid orders given by the LGU
  - c. Perform any provisions of the contract; or
  - d. Adjust plans to suit field conditions as found necessary during construction.

It is suggested that the contract specify a period of seven (7) calendar days from date of receipt of the written order or notice, after which the said order may take effect and thus bind the contractor to immediately comply therewith. The order/notice may specify the period deemed necessary for its effectivity.

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

1. There exist right-of-away problems, that prohibit the contractor from performing work in accordance with the approved construction schedule;
2. Requisite construction plans, which must be furnished by the LGU, are not issued to the contractor, in the process precluding any work called by such plans.
3. Peace and order conditions make it extremely dangerous, if not impossible, to work, such conditions having been certified in writing by the PNP station which has responsibility over the affected area and confirmed by the DILG Regional Director;

4. There is a failure on the part of the LGU to deliver government-furnished materials and equipment as stipulated in the contract; or
5. The payment of the contractor's claim for progress billing beyond forty-five (45) calendar days from the time the claim has been certified by the LGU's authorized representative as having been supported by complete documentation, unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

The contractor may suspend work fifteen (15) calendar days after the municipal/city/provincial engineer of the LGU concerned, as the case may be, have received a written notice of the suspension of work. Work must be resumed or delivery must be made either upon lifting or expiration of the suspension order. However, if the LGU terminates the contract covered by such order, resumption of work cannot be done.

The parties involved in the issuance of a suspension order

1. The end-user unit;
2. The supplier/ manufacturer/ distributor; and
3. The LCE or the duly authorized representative

## IV. Contract Time Extension

### A. For the procurement of Goods

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

If delays are likely to be incurred, the supplier/manufacturer/distributor must notify the LCE in writing. It must state therein the cause/s and duration of the expected delay. The LCE 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.

### B. For the procurement of Infrastructure Projects

*The contract may be extended under the following conditions:*

1. There are additional works or other special circumstances that would entitle the contractor to an extension of its contract;
2. The affected activities fall within the critical path of the Program Evaluation and Review Technique/Critical Path Method (PERT/CPM) network;
3. The contractor shall have notified the local government that the



- amount of work or occurrence of the special circumstance merits the extension of its contract, and that it would be done prior to the expiration of the contract and within thirty (30) calendar days after the start of the additional work or of the special circumstance has arisen; and
4. The LGU, after due investigation, finds the request justified, determines the appropriate extension period, and approves the request for a contract extension.

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

No extension of contract time will be granted if the reason given for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents.

*Special circumstances to be considered for contract time extension:*

1. Major calamities such as exceptionally destructive typhoons, floods, earthquakes, and epidemics;
2. Non-delivery on time of materials, working drawings, or written information to be furnished by the LGU;
3. Non-acquisition of permit to enter private properties within the right-of-way resulting in complete stoppage of construction activities;
4. Region-wide or nationwide shortage of construction materials, as certified by the Department of Trade and Industry Secretary;
5. Region-wide or nationwide general labor strikes, as certified by the Labor Secretary; and
6. Serious peace and order problems as certified by the DILG or Armed Forces of the Philippines Provincial Commander and approved by the Department of National Defense Secretary.

No contract time extension shall be granted to a contractor due to:

1. Ordinary unfavourable weather conditions, if such had already been taken into consideration and anticipated in the computation of



- the unworkable days; and
2. Inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials.

## V. 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)

When the winning bidder fails to perform its obligations under the contract within the specified delivery schedule or project implementation schedule, inclusive of duly granted time extensions, if any, the winning bidder shall be liable to the LGU for liquidated damages, not by way of penalty.

For the procurement of Goods, Infrastructure Projects and Consulting Services, the amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.1%) of the cost of the unperformed portion for every day of delay.

Liquidated damages can be imposed for every day of delay until such goods, services or infrastructure projects are finally delivered/performed/completed and accepted by the LGU. The LGU need not prove that it has incurred actual damages to be entitled to liquidated damages.

The LGU need not prove that it has incurred actual damages to be entitled to liquidated damages.

## VI. Contract Price

For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price adjustment and escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB, or when a treaty or international or executive agreement expressly allows it pursuant to Sec. 4 of the IRR (See Sec. 61.1, IRR of R.A. 9184).

In cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the government, promulgated after the date of bid opening, a contract price adjustment shall be made or appropriate relief shall be applied on a loss-no gain basis (See Sec. 61.2, IRR of R.A. 9184).

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

Extraordinary circumstances shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned (See Sec. 61.3, IRR of R.A. 9184).

<sup>1</sup>Refer to Appendix 9 for the Guidelines for Contract Price Escalation.

## A. Rule on Price Escalation

As a general rule, price escalation is not allowed. Requests for price escalation during contracts implementation for the procurement of goods and infrastructure projects under extraordinary circumstances should be in accordance with Section 61 of R.A. 9184 and its IRR. No contract price escalation for consulting services shall be allowed.

The term “extraordinary circumstances” shall refer to the following articles of the Civil Code of the Philippines:

- 1.1. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen or which could be reasonably foreseen but are inevitable, such as, but not limited to the following:
  - a. Typhoons;
  - b. Thunderstorms;
  - c. Flooding of lowly areas; and
  - d. Vehicular accidents;

*Provided that the following requisites are present:*

- (i) The cause of the extraordinary circumstance must be independent of the will of the parties;
- (ii) The event must be either unforeseeable or unavoidable;
- (iii) The event must be such as to render it difficult but not impossible for the supplier or contractor to fulfill the obligation in a normal manner or within the contemplation of the parties;
- (iv) The supplier or contractor must be free from any participation in or aggravation of the injury to the procuring entity; and
- (v) The allowance for price escalation should an ordinary fortuitous event occur is stipulated by the parties or the nature of the obligation requires the assumption of risk.

- 1.2. Article 1250, as it pertains to Extraordinary Inflation or Deflation, as defined in Section 3.3 hereof.



1.3. Article 1680, as it enumerates Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following:

- a. Fire;
- b. War;
- c. Pestilence;
- d. Unusual flood;
- e. Locusts; and
- f. Earthquake;

Provided that the circumstances before, during and after the event shall be taken into consideration.

### **A.1. Procedure for Price Escalation**

The burden of proving the occurrence of extraordinary circumstances shall rest upon the entity requesting for purposes of price escalation.

The NEDA shall only respond to such request after receiving the proof and the necessary documentation.

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

1. Endorsement – the LCE shall endorse the request for Price Escalation to NEDA, through its Director General, accompanied by several documentary requirements.
2. Two-Stage Review Process – which 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 the Second Stage (Technical Parameters) reviews of the NEDA.
3. Amount of Price Escalation to be granted – the amount of price 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 Request for Price Escalation – request 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, it shall only be granted to those items included in a specific request.

Request 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 LGU 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 complete 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 during one of its meetings, to be attended by the LCE concerned or the duly authorized representative/s.

## VII. Payment

The method and conditions of payment shall be specified in the contract.

Any kind of payments, including advance and progress payments, must be made promptly by the LGU, but in no case later than forty-five (45) days after the submission of an invoice or claim by the winning supplier or contractor, accompanied by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract.

In case of procurement of goods, the supplier's request/s for payment shall be made in writing, accompanied by an invoice describing the goods delivered and/or services performed, 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.

### A. Currency of Payments

As a general rule, all contracts shall be denominated and payable in Philippine Peso, and this shall be stated in the Bidding documents. Provided, however, that subject to the Guidelines on Payment Denominated in Foreign Currency and Letters of Credit, the LGU may provide in the Bidding documents that obligations may be paid

in foreign currency; Provided, further, that should the procuring entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening for purposes of bid comparison and evaluation.

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 LGU 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 LGU in determining the ABC, to ensure that the project cost reflects currency values at the time of project implementation.

## **B. Advance Payment**

### ***B.1. Advance Payment for Goods***

#### *General Rule:*

In accordance with P.D. No. 1445, advance payment maybe 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.

#### *Exceptions:*

Advance payment can be done without prior approval of the President only with the following conditions:

- 1) A single advance payment not to exceed fifty percent (50%) of the contract amount shall be allowed for contracts entered into by the LCE for the services which requires down payment as a standard industry practice such as:
  - a) Hotel and restaurant services;
  - b) Use of conference/seminar and exhibit areas; and
  - c) Lease of office space.
- 2) Advance payment not to exceed fifteen percent (15%) of the contract amount, unless otherwise directed by the President 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.
- 3) For goods supplied from abroad ten percent (10%) of the Contract Price shall be paid within sixty (60) days from signing of the contract and upon submission of a claim and a bank guarantee issued by a licensed bank for the equivalent amount valid until the goods are delivered and in the form provided in the Bidding documents.

## **B.2. Advance Payment for Infrastructure Projects**

The contractor can request for advance payment not to exceed fifteen percent (15%) of the total contract price, and must be made in lump sum or, at the most, two (2) installments according to a schedule specified in the contract and bidding documents. It must be made only upon the submission by the contractor of a written request. The contractor must also submit to the LGU an irrevocable standby letter of credit from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the LGU of equivalent value to the advance payment requested and must be accepted by the LGU.

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

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

## **C. Progress Payment for Infrastructure Projects and Retention Money**

Once a month, the contractor may submit a Statement of Work Accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed.

The procuring entity's representative/project engineer shall check the contractor's monthly SWA and certify the amount to be paid to the contractor as progress payment. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

The LGU shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:

- a) Amount to cover uncorrected discovered defects in the works;
- b) Cumulative value of the work previously certified and paid for;
- c) Portion of the advance payment to be recouped for the month;
- d) Retention money in accordance with the condition of contract; and
- e) Amount to cover third party liabilities.

Payments shall be adjusted by deducting from the amounts for advance payments and retention. The LGU shall pay the Contractor the amounts certified by the LCE within twenty eight (28) days from the date each certificate was issued. No payment of interest for delayed payments and adjustments shall be made by the LGU.

The first progress payment may be paid by the LGU to the Contractor provided that at least twenty percent (20%) of the work has been accomplished as certified by LCE.

Progress payments are subject to retention of ten percent (10%), referred to as the "retention money." Such retention shall be based on the total amount due to the Contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of Works, as determined by the LGU, are completed. If, after fifty percent (50%) completion, the Work is satisfactorily done and on schedule, no additional retention shall be

made; otherwise, the ten percent (10%) retention shall again be imposed using the rate specified. The total "retention money" shall be due for release upon final acceptance of the works. The contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit of from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to Government, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made.



Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the Government shall be valid for a duration to be determined by the concerned implementing office/agency or procuring entity and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

## VIII. Taxes

The foreign supplier is 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.

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

## IX. Subcontracts

Generally, a supplier or contractor may be allowed to subcontract a portion of the contract or project. However, in case of goods, the supplier should not be allowed to subcontract a material or significant portion of the contract or project. The bidding documents must specify what are considered as significant/material component/s of the project. The allowable portion of the contracts that may be subcontracted are as follows:

- a) Goods - Procuring entity has the discretion as long as it is specifically stated in the bidding documents;
- b) Infrastructure - Must not exceed fifty percent (50%) the total project cost; and
- c) Consulting - Must not exceed twenty percent (20%) of the total project cost.

All subcontracting arrangement must be disclosed at the time of the bidding, and subcontractors must be identified in the bid submitted by the supplier. Any subcontracting arrangements made during project implementation is allowed only in cases where it is duly approved by the LCE.

If the subcontracting arrangement is disclosed during bid submission, the prospective bidder shall include the subcontractor's eligibility documents in the 1st Envelope (Technical Proposal Envelope). Subcontractors must comply with the eligibility criteria & documentary requirements as specified in the bid docs. If sub-contractor is ineligible, sub-contracting shall be disallowed.

The subcontracting arrangement shall not relieve the principal supplier or contractor of any liability or obligation under the contract.

## **X. Standards**

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 DTI-Bureau of Product Standards.

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.

## **XI. Insurance**

### **A. 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.

The contract must contain provision on who will bear the cost of transportation (and custom duties, in case of importation). For this purpose, the specific Incoterm must be used and identified in the contract. The Incoterm defines the point at which the risk of loss or damage to the

goods passes from the seller to the buyer. The LGU 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 Cost Insurance and Freight (CIF), Carriage and Insurance Paid to (CIP), or Delivery Duty Paid to (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 incurred in the transport of these goods, the cost to be included in the contract price.

Transportation and Insurance in Foreign Assisted Project bidding documents should permit supplier 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.

## **B. For Infrastructure Projects**

The Contractor shall, under his name and at his own expense, obtain and maintain, for the duration of the contract, the following insurance coverage:

- a) Contractor's All Risk Insurance;
- b) Transportation to the project Site of Equipment, Machinery, and Supplies owned by the Contractor;
- c) Personal injury or death of Contractor's employees; and
- d) Comprehensive insurance for third party liability to Contractor's direct or indirect act or omission causing damage to third persons.

The Contractor shall provide evidence to the BAC that the insurances required under this Contract have been effected and shall, within a reasonable time, provide copies of the insurance policies to the BAC. Such evidence and such policies shall be provided to the LGU through the BAC.

If the Contractor fails to obtain and keep in force the insurances referred to herein or any other insurance which he may be required to obtain under the terms of this Contract, the LGU may obtain and keep in force any such insurances and pay such premiums as may be necessary for the purpose. From time to time, the LGU may deduct the amount it shall pay for said premiums including twenty five percent (25%) therein from any monies due, or which may become due, to the Contractor, without prejudice to the LGU exercising its right to impose other sanctions against the Contractor.

In the event the Contractor fails to observe the above safeguards, the Procuring Entity may, at the Contractor's expense, take whatever measure is deemed necessary for its protection and that of the Contractor's personnel and third parties, and/or order the interruption of dangerous Works. In addition, the Procuring Entity may refuse to make the payments under General Conditions of Contract (GCC) clause until the Contractor complies with the requirements.

## **XII. Inspection and Tests**

### **A. For Goods**

The LGU, through the LCE or the duly authorized representative has the right to inspect and/or test the goods to confirm their conformity to the contract specification at no extra cost to it. However, the conduct of such shall not release the supplier from any warranties or other obligations under the contract.



The Bidding documents and the contract must specify what inspection and tests are required by the LGU, and where these are to be conducted. The LGU must notify the supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

The inspection and test maybe conducted on the premises of the supplier or its subcontractor(s), at the point of delivery, and/or goods' final destination. If conducted on the premises of the supplier or its subcontractor(s), all reasonable facilities and assistance, must be provided by the supplier to the inspectors at no charge to the LGU.

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

Reasonable costs and expenses incurred by the supplier in carrying out test and/or inspection not required by the contract but deemed necessary to verify compliance with the technical specifications, codes and standards under the contract shall be added to the contract price.

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

## **B. For Infrastructure Projects**

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

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

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

If, at the time and place agreed above, the materials or plant are not ready for inspection or testing, the LGU's engineer may reject these materials or the plant and must notify the contractor of such rejection immediately. He/she must also do so if, as a result of the inspection or testing, he/she determines that the materials or plant are defective or otherwise not in accordance with the contract. The notice must state the LGU's engineer objection and the reasons for the objection. The contractor, for its part, must then promptly make good the defect or

ensure that rejected materials or plant comply with the contract. If the LGU engineer so requests, the test of rejected materials or plant shall be made or repeated under the same terms and conditions.

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

### **XIII. Intellectual Property Rights**

The LGU 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 LGU free and harmless against such claims. These terms should be expressed in the contract.

#### *Limitations of Liability*

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 LGU, whether in contract, 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 LGU. This is without prejudice to any other liability, penalty or appropriate sanction that maybe imposed upon the supplier under RA 9184 and other applicable laws.

## XIV. Termination of Contract

### ***Grounds for termination of a contract by reason of default***

#### **A. By Reason of Default**

##### *In contracts for Goods*

1. There being no force majeure, the supplier fails to deliver at least ten percent (10%) of the contract price of any or all of the goods within the period(s) specified in the contract, or within any extension granted pursuant to a request made by the supplier prior to the delay;
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 LGU 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 judgement of the LGU, has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the contract.

On contract termination and damages

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

(see Appendix 4 IRR of RA 9184)

*In contracts for Infrastructure Projects:*

1. Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870 ;
2. Due to the Contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; or
3. The Contractor:
  - i. abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;
  - ii. does not actually have on the project site the minimum essential equipment listed on the Bid necessary to prosecute the Works in accordance with the approved work plan and equipment deployment schedule as required for the project;
  - iii. does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
  - iv. neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
  - v. sub-lets any part of the contract works without approval by the Procuring Entity.

*In contracts for Consulting Services:*

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

If the LGU 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 defaulted supplier will be liable to the LGU for any costs for such similar goods or services.

Assignment of contractual obligations or the contract itself may generally not be done for 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 awardees', although indirectly.

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

## **B. By reason of insolvency:**

The LGU 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, the 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 LGU and/or the supplier.

## **C. By reason of convenience**

The LGU, 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 LGU's convenience, the extent to which performance of the supplier under the contract is terminated, and the date upon which such termination becomes effective.

### *C.1. Grounds:*

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 LCE;
2. The LCE 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 LGU; or

4. Any circumstances analogous to the foregoing.

*C.2. Effects of termination for convenience 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 LGU at the contract terms and prices. For the remaining goods, the LGU may choose:

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 manufactured for the LGU which cannot be sold in the open market, it shall be allowed to recover partially from the contract on a quantum merit basis. The fact of the loss must be established before recovery may be made.

**D. By Reason of Unlawful Acts**

In case it is determined prima facie that the Supplier/Contractor/Consultant has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- a) Corrupt, fraudulent, collusive and coercive practices;

- b) Drawing up or using forged documents;
- c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- d) Any other act analogous to the foregoing.

## **E. By the Contractor/Consultant**

### *In contracts for Infrastructure Projects:*

The Contractor may terminate its contract with the Procuring Entity if the works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to any of the following reasons:

- a) Failure of the Procuring Entity to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of the contract; or
- b) The prosecution of the work is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.

### *In contracts for Consulting Services:*

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

## XV. Assignment of Contract

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 LGU's prior written consent.

## XVI. Blacklisting

The LGU shall impose on bidders or prospective bidders the penalty of suspension for one (1) year for the first offense and for two (2) years for the second offense from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution, as provided by applicable laws, for the following violations:

### A. During competitive bidding

- a. Submission of eligibility requirements containing false information or falsified documents;
- b. Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids to influence the outcome of eligibility screening or any other stage of the public bidding;
- c. Unauthorized use of one's name for purpose of public bidding;
- d. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid;

- e. Refusal or failure to post the required performance security within the prescribed time;
- f. Refusal to clarify or validate in writing its bid during post qualification within a period of seven (7) calendar days from receipt of the request for clarification;
- g. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor;
- h. All other acts that tend to defeat the purpose of the competitive bidding, such as but not limited to: an eligible contractor not buying bid documents or not complying with the requirements during bid evaluation, and contractors habitually withdrawing from bidding or submitting letters of non-participation for at least three (3) times within a year, except for valid reasons.

## **B. During contract implementation stage**

- a. Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed;
- b. Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract.

For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:

1. Employment of competent technical personnel, competent engineers and/or work supervisors;

- 
2. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
  3. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
  4. Deployment of committed equipment, facilities, support staff and manpower; and
  5. Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.

Assignment and subcontracting of the contract or substitution of key personnel named in the proposal without prior written approval by the procuring entity.

For the procurement of consulting services, poor performance by the consultant of services arising from fault or negligence. Any of the following acts by the consultant shall be construed as poor performance:

1. Defective design resulting in substantial corrective works in design and/or construction;
  2. Failure to deliver critical outputs due to consultant's fault or negligence;
  3. Specifying materials which are inappropriate, substandard, or way above acceptable standards.
  4. Allowing defective workmanship or works by the contractor being supervised by the consultant.
- c. For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System (CPES) rating sheet.

In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the constructor shall be construed as poor performance:

1. Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
  2. Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.
- d. For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract;
  - e. Willful or deliberate abandonment or non-performance of the project or contract resulting to substantial breach without lawful and/or just cause.

## **Procedures:**

### **A. Blacklisting during competitive bidding**

Any bidder or prospective bidder or duly authorized observer may initiate the suspension and blacklisting proceedings by filing a written complaint with the BAC. The BAC may also motu proprio (by itself) commence the proceedings upon prima facie (self-sufficient) determination that the contractor as a bidder or prospective bidder has committed any of the grounds for blacklisting during the competitive bidding stage.

Upon verification of the existence of grounds for blacklisting, the BAC shall immediately notify the contractor concerned in writing on the complaint and the necessary procedure that the bidder must undergo if s/he intends to clarify his/her case.

Within five (5) calendar days from receipt of notification, the contractor shall submit its written answer with documentary evidence to the BAC with a manifestation for request of hearing to determine questions of fact, if he/she so desires. No time extension shall be allowed.

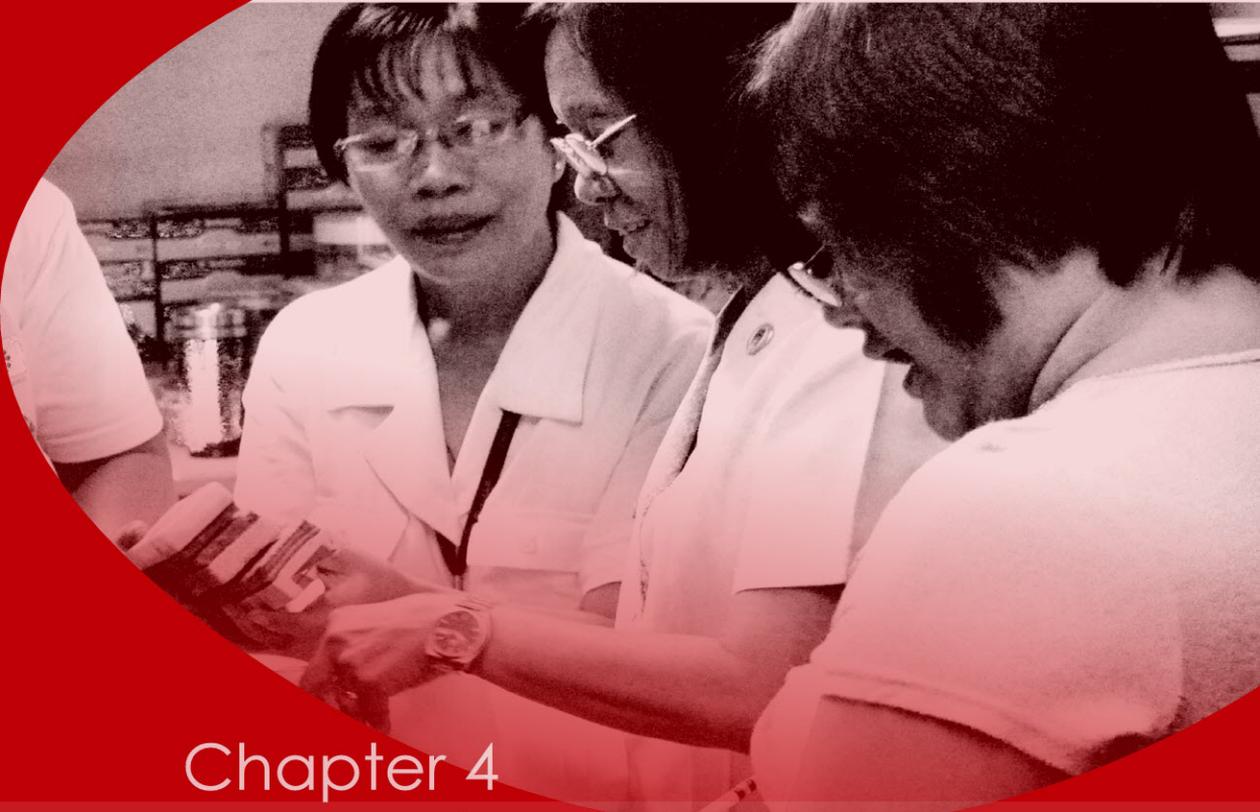
If contractor fails to answer within the given period or if no request for hearing is made, the BAC shall make a determination of the case based on the complaint, on the answer, on the documentary evidence submitted and facts verified. Once the BAC is convinced that the contractor is at fault, it shall issue a resolution recommending to the LCE the suspension of the contractor from participating in any bidding process of the agency and the forfeiture of his bid security.

The LCE shall, within fifteen (15) days from receipt of the resolution and the records of the BAC proceedings, determine that reasonable cause exists for the contractor's suspension and forfeiture of the bid security. The LCE shall issue a decision suspending the contractor otherwise, the LCE shall dismiss the case.

## **B. Blacklisting during contract implementation stage**

Upon termination of contract due to default of the contractor, the LCE shall immediately issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects. The performance security of the said contractor shall also be forfeited.

For in depth discussion on Blacklisting, see Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Consultants, approved by the GPPB in Resolution 09-2004 Dated August 20, 2004.



Chapter 4

# Practical Tips on Procurement Practice





## I. Red Flags in Procurement

The RA 9184 and its IRR lay down the tenets of transparency and accountability to the local governments. But even with its good intention, there are many instances where the LCE, as the HOPE, is put on risk being sanctioned or charged with graft and corruption mostly stemming from lapses in the process.

The LCE must lead in addressing procurement inefficiencies in the local bureaucracy to avoid unnecessary delays in the delivery of basic social services to the constituents. The LCE must also lead in protecting the taxpayers' interests and in safeguarding the resources allotted to each of his/her department. It bears stressing that LCEs must not only do the right things, but must also do it the right way.

This section provides common red flags that the LCE should be cautious about. A red flag signals a warning danger ahead. As a champion and advocate in local procurement reform, the LCE must be keen on identifying red flags to help prevent inefficiency in procurement transactions and waste of government's meager resources.

### **Absence of Annual Procurement Plan**

The LCE is the approving authority of the APP. The absence of an APP reflects the local government's inability to exercise proper budgeting measures and fiscal discipline. It also puts the LGU at high risk for uncontrolled spending.

The LCE must ensure that APP is being crafted by the BAC members along the budgeting cycle of the LGU. It may also be stressed that the LCE should always ascertain that no procurement activity shall be undertaken unless it is in accordance with the approved APP. Lack of procurement planning also shows that the LGU plans to fail.

Giving importance to transparency and accountability as institutionalized values, the Department of Interior and Local Government Memorandum Circular 2010-83 requires LGUs to post their APPs in the procuring entity's website and conspicuous places in the locality.

### **Countless amendments to the APP**

The APP is required to be updated at least every six (6) months or as often as necessary as may be determined by the LCE. But countless amendments (i.e. one amendment per month) can only reflect poor planning outcome.

All procurement activities should be meticulously and judiciously planned. As a general rule, LGUs should plan the procurement activities every year. The APP shall also include lump sum provisions to cover foreseeable emergencies based on historical records. All procurement activities should also consider proper scheduling of the BAC members to well-manage procurement transactions.

### **Unnecessary government purchases and advance deliveries**

No procurement shall be undertaken unless it is in accordance with the approved APP. 'A goal without a plan is just a wish.' To avoid inconvenience, the LCE is encouraged to establish a system or process (i.e. workshops, memos) where end-user units or PMOs can become prompt and synchronized in the preparation of their respective PPMPs, reflecting therein their respective requirements.

It is advised that the PPMPs should be prepared promptly to give lead time for LGU to come up with proper budget estimates and for the BAC through its Secretariat to consolidate the PPMPs into an APP.

## **Rampant use of alternative methods**

The LCE approves the use of alternative methods upon a favorable recommendation of the BAC that the conditions for adopting such set forth in the RA 9184 and its IRR have been complied with. Competitive bidding, however, remains the prescribed mode of procurement activity.

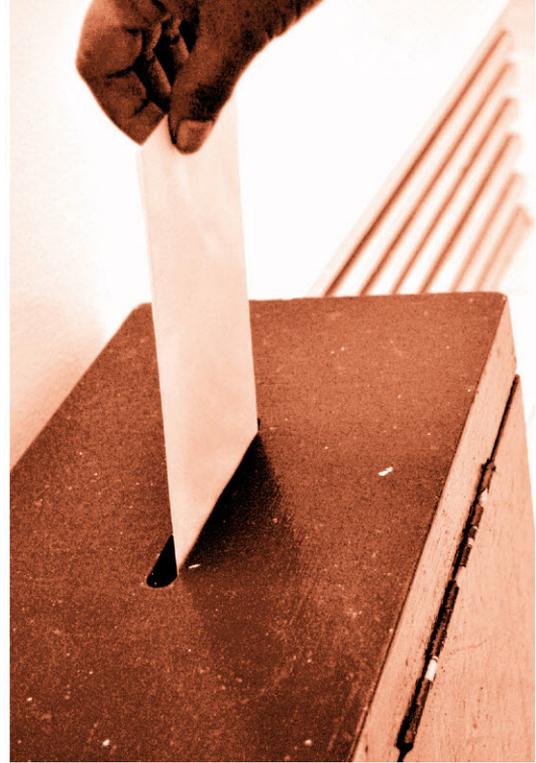
The APP should reflect the appropriate mode of procurement to be used for each specific procuring activity. Were the alternative methods done as planned? How much is the total value of contracts procured through alternative methods, i.e.

shopping, direct contracting, repeat order, or negotiated procurement? Although generally allowed, the total volume of procurement activities conducted through alternative methods is higher than the total volume of procurements conducted through competitive bidding. Nevertheless, the total value of contracts completed through competitive bidding should reflect higher than the total value of contracts awarded through alternative methods.

Alternative methods should be done in only highly exceptional cases to promote efficiency and economy. Rampant use of alternative methods limits market competition.

## **Unwarranted use of direct negotiation (the suki system)**

Sound procurement planning prevents unwarranted use of direct negotiation. Procurement from a single supplier all the time runs counter to the governing principles of transparency and competition. Competition among bidders will urge them to offer more beneficial terms to the LGU.



Exclusive distributorship per se does not give rise to the use of direct contracting as an alternative mode. To justify direct contracting, the BAC shall conduct a thorough market study and should conform to the exclusivity of the source of goods and services to be procured.

### **Procurement of items tailor-fitted to a specific brand.**

Reference to brand names shall not be allowed (see Sec. 18 of RA 9184 and its IRR). The specifications and other terms of the items subject for procurement shall reflect the minimum requirements or specifications in clear and unambiguous terms to meet the needs of the procuring entity.

The technical specifications should not just refer to the physical description of the goods and/or services to be procured but it should also indicate its functional and performance descriptions, environmental interface, and design standard.

### **Limited number of participating bidders, becoming repetitive contractors.**

An average of only three (3) bidders who participates in the public bidding indicates absence of a competitive market. In some cases, a sole bidder is declared to have passed the eligibility and bidding requirements, thereby declaring its bid as a Single Calculated/Rated and Responsive Bid. The RA 9184 prescribes competitive bidding as the default mode in getting the lowest and best priced deal.

The LGUs should treat bidders as stakeholders. Regardless of the ABC, the LCE should encourage the BAC to conduct pre-bid conferences to give bidders an opportunity to give feedback on the provisions of the bidding documents and the LGU requirements. The LGU can also initiate worthwhile activities like orienting the bidders on the public procurement rules and procedures, as well as, organizing bidders' summit to determine issues and concerns in the desire to improve and streamline procurement process.

To increase further transparency, the LGU, in addition to the mandatory posting requirements, may also continue its old practice to post its bid notices in at least three conspicuous places and send them by mail or emails to prospective bidders in the locality and nearby areas. If local budget warrants, the LGU may also post its bid opportunities in a local newspaper.

### **Preference to bidders with familial ties**

All bids shall be accompanied by a sworn affidavit stating that the bidder is not related by consanguinity or affinity, up to the third (3rd) civil degree to the LCE, BAC members, BAC Secretariat, and the TWG or the head of the end-user or PMO. Failure to comply with such sworn affidavit shall be a ground for automatic bid disqualification. Further, any determination of familial relations of the bidder with the LCE and other procurement officials shall be a ground for the bidder's disqualification.

A relationship by blood is also referred to as being related by consanguinity. A relationship by marriage is sometimes referred to as being related by affinity.

To determine whether a particular relationship is within or outside of the prohibition, the relationship between two individuals is established by going back to their common ancestors.

A husband and wife are related in the first (1st) degree by marriage. For other relationships by marriage, the degree of relationship is the same as the degree of underlying relationship by blood. Example: Jose and Pedro are brothers and are therefore second (2nd) degree relatives by blood. Jose is related to his wife's brother in the second degree by marriage.

The wife of the brother-in-law (bilas) is no longer related by affinity, based on the definition of affinity, being relationship of the husband to the blood relatives of the wife, or of the wife to the blood relatives of the husband. Bilas is not a blood relative of Jose's wife.

## A *balae* is also no longer related by affinity.

Although under Sec. 47 of RA 9184 and its IRR, the prohibition only applies to the relationship within the 3rd civil degree of affinity and consanguinity, the LGU should consider the provisions of RA 3019, also known the Anti-Graft and Corrupt and Practices Act, particularly in Sec. 4 which provides that:

*“Sec. 4. Prohibition on private individuals. - (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.” (underscoring supplied)*

Diagrams of the possible relationship of individuals are shown below for reference:

Diagram 14: Degrees of Relationship 1

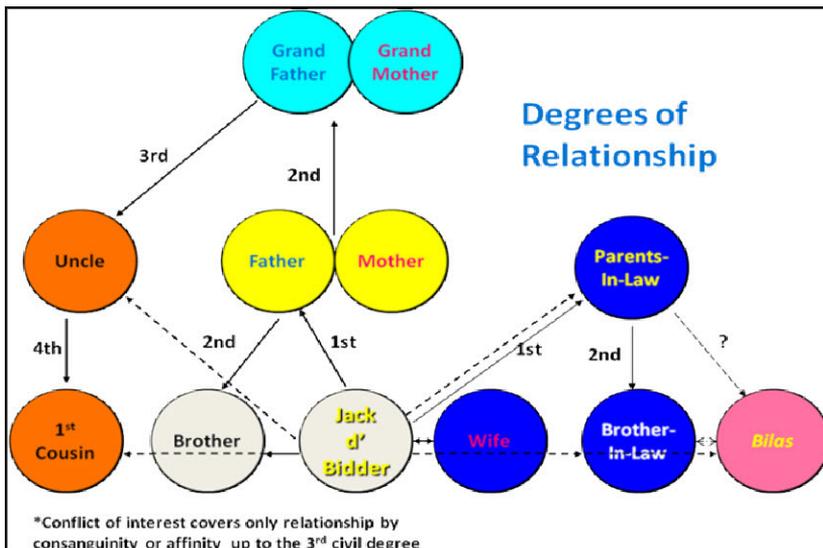
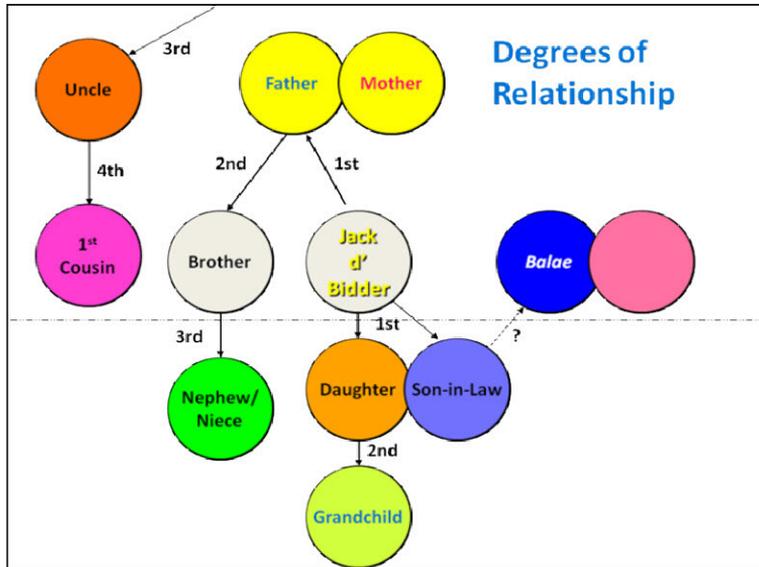


Diagram 15: Degrees of Relationship 2



### Invitation of observers with close personal ties with the LCE

Invited observers shall not have actual or potential conflict of interest in the contract to be bid and must inhibit in writing to the procuring entity concerned of any actual or potential interest in the contract as stipulated in Sec. 13 of IRR and RA 9184.

To promote transparency and public participation, the LCE shall encourage the BAC to invite in writing at least two (2) observers consisting of representatives from a private group knowledgeable of the procurement at hand, and from an NGO - in all stages of procurement activity in addition to the COA representative.

The LCE should also remind the observers, through the BAC, to submit reports that will assess the extent of the BAC's compliance with the RA 9184 and that will identify areas for improvement. The observers should submit the report to the LCE, copy furnished the BAC.

## **Constantly invoking the Reservation Clause**

The LCE should be prudent in the use of the reservation clause and should exercise the same in the situations provided under Sec. 41 of RA 9184 and its IRR.

If the LCE 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/her in accordance with Sec. 47 (Disclosure of Relations), or if it is proven that s/he exerted undue influence or undue pressure on any BAC member or any LGU officer or employee to take such action, and the same favors or tends to favor a particular bidder, the LCE shall be meted with appropriate sanctions.

## **Splitting of contracts**

Splitting of contracts is an act of dividing or breaking up government contracts into smaller quantities and amounts or dividing contract implementation into artificial phases or sub contracts for the purpose of circumventing the provisions of R.A. 9184 and its IRR on the conduct of public bidding and the resort to alternative methods of procurement.

The act of dividing and the intention of circumventing the provisions of the RA 9184 should be present in order to be considered as splitting of contracts. Splitting of contracts because of budgetary constraints may not be considered as splitting of contracts, but those undertaken due to lack of planning may be considered as such.

If the LGU is found out to have resorted to this mechanism, with the LCE, as the approving authority, all accountable officials shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years as stipulated in Sec. 65.1 of IRR and RA 9184. This is without prejudice to the imposition of other civil and administrative sanctions.

To avoid splitting of contracts, proper procurement planning is an utmost priority. In the formulation of the APP, the BAC should also be given sufficient lead time in the conduct of the procurement process.

### **Non-posting of Bid Notices and Notice of Award**

Bid notices and award results should be posted in the PhilGEPS, LGU's website, if any, and in conspicuous places within the premises of LGU. This is a directive provided under Secs. 8, 21 and 37 of the IRR of R.A. 9184.

The GPPB reiterated the directive of posting the notices of award in its Circular No. 01-2005, dated 24 January 2005 and in the Local Government Procurement Manuals.

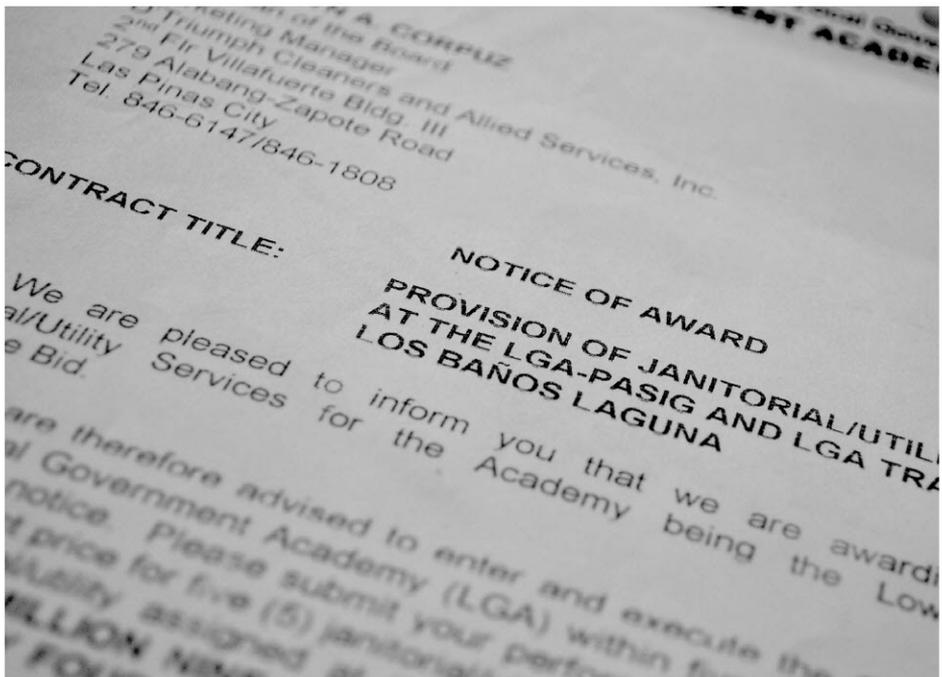
Furthermore, the directive of posting the LGU's procurement opportunities, results thereof, and other related information in the PhilGEPS was again stressed under Executive Order No. 662, dated 20 September 2007. Under the aforesaid executive issuance, non-compliance of the posting requirements in PhilGEPS shall render the accountable officials liable for dereliction of duty and conduct grossly prejudicial to the best interest of the service, without prejudice to other charges, whether administrative, civil or criminal that may be filed under appropriate laws and regulations.

Moreover, it is noteworthy to mention that DILG issued Memorandum Circular No. 2010-83, dated 31 August 2010, reminding LCEs to comply with the provisions of R.A. 9184 and its IRR calling for the posting of the Invitation to Bid, NOA, NTP and copy of the Approved Contract in the LGUs website, if any, and premises, newspapers of general nationwide circulation and PhilGEPS. It also directs LCEs to post in conspicuous places within public buildings in the locality or in print media of community or general circulation and in the LGUs websites, copies of the APP, Bid results and Abstract of Bids as calculated.

## Inaction or gross delays in awarding of contracts

Accountability rests on the LCE as the final decision-making authority. Inaction on the part of LCE defeats the purpose to expedite delivery of basic social services. The LCE also misses the opportunity to review the contract.

Delaying without justifiable cause the awarding of contracts beyond the prescribed periods of action provided for under the IRR can be a ground for the imposition of penal sanctions of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years as provided in Sec. 65.1 of IRR and RA 9184.



## Premature filing of protests

The LCE should ascertain that a prior request for reconsideration should have been filed by the losing bidder and the same has been resolved by the BAC prior to protest. The protest must be filed in the form of a verified position paper within seven (7) calendar days from receipt of BAC notice denying the losing bidder's request for reconsideration.

The verified position paper should be accompanied by a protest fee equivalent to one percent (1%) of the ABC and should contain the following:

1. The name of the bidder;
2. The office address of the bidder;
3. The name of the 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

Favoring the interest of the winning bidder i.e. time extensions beyond the original contract duration

This act might be considered as one source of graft and corruption, where the responsible government official may be held liable in accordance with the provisions of RA 3019.

In the case of granting time extensions, there are conditions which need to be complied with. Nonetheless, no extension of contract time shall be granted to the winning contractor of infrastructure projects due to ordinary unfavorable weather conditions and inexcusable failure of negligence to provide the required equipment, supplies, or materials. The request for time extension must also be supported by valid grounds and be submitted in writing.

## II. Good practices of Select LGUs

### **Bridging the public procurement divide in Bohol**

Perusal of the 2008 Country Procurement Assessment Report (CPAR) findings reveal that public bidding at the local level still fails to attain a sufficient level of competitiveness. Statistics show that an average of only three bidders participate in public biddings, indicating the absence of a competitive market. The lack of knowledge among private companies on the rudiments of the public procurement system is one reason.

But the private sector has a crucial role in public procurement. They compete contracts for the delivery of government services enabling them to offer the lowest best price possible. But misbehavior of some contractors and suppliers can result to unnecessary delays also jeopardizing efficient and effective service delivery.

The 2008 CPAR recommends encouraging bidders and other interested private sector companies to attend training programs on the procurement process.

In Bohol, the Provincial Bids and Awards Committee (BAC) balances the playing field for its prospective bidders by extending parallel opportunities and holding an annual bidders' forum.

Around 100 suppliers from various industries like construction, manufacturing, pharmaceuticals, resorts and hotels, and printing services attend the important gathering. According to Mr. Paul Rabuya, the BAC Secretariat Head, the forum provides a venue where private sector can articulate and raise issues on public procurement.

In the forum, participants assess the provincial procurement system. Most prospective bidders have expressed desire to improve and streamline procurement processes through the implementation of e-procurement and simplification of payment and collection system.



In an interview, Rabuya stressed the importance of incorporating suggestions from the stakeholders. He said that the provincial government is rationalizing its procurement systems.

As a major step, the provincial council has enacted an ordinance fixing the costs of bidding documents. A document tracking system has been put in place for faster and more efficient payment processing.

Provincial department heads also interact with the private sector representatives. They partake in educating prospective bidders and suppliers. For example, each provincial department offices (as the end-user units) discuss their respective roles in public procurement. Participants also map out their offices using a procurement flow chart provided by the BAC.

An action-planning session culminates the forum. The provincial government and private sector representatives jointly identify strategies to address procurement-related issues and concerns.

The landscape of public-private sector dynamics is rapidly changing. In Bohol, public procurement processes remain a testament to collaborative partnership.

Indeed, public service delivery is no longer the sole domain of the government. The private sector is taking an active role in increasing access to education, ensuring responsive healthcare services and other vital social services by offering the best advantageous price to the government. This has bridged the public-private sector divide by recognizing common pursuits for good governance.

*Source: 2008 Philippine Country Procurement Assessment Report*

## **A tale of two cities making public procurement work**

Few local governments have made public procurement efficiently work for them. Despite the constant lack of resources and the growing demand of basic services from them, they convert these challenges into opportunities where they can innovate and get the best deal.

In the 2008 CPAR, the local government units - provinces, cities, municipalities, and the barangays – have remained high at risk. The performance of LGUs to implement procurement reform is found wanting. The 2008 CPAR noted that LGUs need to level up its competitiveness for businesses to thrive.

Much of the underperformance, however, is attributed to the dynamism on the ground. There is a mismatch of demands between the national and local procurement training programs. Some LGU contract services are so small in amount that private companies lose interest. Alternative methods like shopping and direct contracting are still preferred than competitive bidding. Some civil society organization observers, even when invited, have yet to attend bidding. The 2008 CPAR said that the procurement practice is still far from the intent of the GPRA at the local government level.

In addressing these gaps, providing capacity development interventions and enabling local innovations in public procurement systems remain a development thrust. Exactly what these two cities- Marikina and Naga – have done. They may differ in strategies but they have proven that procurement efficiency serves at the government's best advantage.

Like in Naga City, a kilometer of concrete road costs only P5M to construct, a 40% difference against a government standard of Php 7M. The medicine price is 19% to 70% lower than the usual price quoted for other LGUs, and 62% lower than the branded products under the National Government Program.

Florencio Mongoso, the acting Naga City Administrator, however revealed that there is no secret why the city has been able to attain relatively lower costs of its purchase. “The rules for procurement and bidding of projects have long been laid out by the national government,” he added.

Mongoso said that the Government Procurement Reform Act or the Republic Act 9187 has built-in mechanisms to ensure that the procurement process is fair and that government is able to get the lowest possible cost from the suppliers. The GPRA, which governs all public purchases, prescribes competitive bidding as the default mode.

Meanwhile, in Marikina City, competitive bidding recorded a Php 16 million saving from its 414 programs of work in 2007. From an estimated cost of Php 391 million subjected to public bidding, the aggregated amount just totaled Php 375 million. Aside from the public bidding which generated savings, thanks to the city’s innovative centralized warehouse system.



From a fragmented supply management, Marikina city cut its personnel engaged in supply bidding by 75%, reduced its storage spending, and built a warehouse that would become the main repository of almost all kinds of supplies- from lumber, nails, electrical components, tiles to relief goods. Under the city’s General Services Office (GSO), the Warehouse is procuring on behalf of the city’s 45 departments.

When in need of supplies (i.e. lumber for construction of schools), city departments can easily request from the GSO and obtain the materials. The Warehouse replenishes in bulk, conducts competitive bidding and consequently, gets the lowest cost. The warehouse also carefully analyzes the historical usage trend of the different city offices to prevent lack of supply and wastage.

The Warehouse is employing four modes:

1. Actual withdrawal – Public bidding has been complied with and the materials were delivered by the supplier and are due for pick-up in the warehouse by end user;
2. Replenishment- Bidding procedure has not yet started, there is neither programs of work nor paperwork, but due to necessity and availability of materials, the intended project commences using warehouse materials subject to replenishment upon delivery of the procured materials;
3. Advanced withdrawal- The project is already due for public bidding, instead of waiting for the delivery of materials which will take time, the project commences utilizing the materials from the warehouse.
4. Borrowed only- Materials available in the warehouse are borrowed and then returned after use.

When processing procurement-related documents, Marikina City is also capitalizing on its electronic tracking system for easy retrieval to save time. The city posts its notices of bids on its website and Philippine Electronic Procurement System or Philgeps to broaden coverage.

Meanwhile, Naga City is also exhausting all channels to promote their bids like in radio, local television channels, newspapers, and even to accredited bidders. The city invites the Naga City People's Council, the group of local non government organizations, to sit as CSO observers.

For Naga City, procurement must not only be about the systems improvement but about the people who operate them. “The problem with guidelines and procedures is that people when given the opportunity can always find a way around them. That is why there is collusion of bidders, bloated cost of estimates, grease money, and even limited circulation of notices to bid.” Mongoso said.

Since 1999, Naga City has institutionalized the Productivity Improvement Program which promotes a culture of accountability and transparency by, among others, performance pledges of individual city government employee. The pledge contains the person's name, photos, and the expected delivery time for his/her service. It is displayed along city hall corridors for people to peruse.

For example, the city is adhering on its two to three weeks-time to pay all its incurred obligations, a major performance pledge to all its supplies and contractors. Proper standard cost estimation that is compared to private sector has also become an important practice. Unit cost estimates of different government agencies are also compared.

The focus is on people, Mongoso stressed. But in nurturing people and promoting a culture of excellence to take root, leadership becomes the pivotal role. In the city, it is the local chief executive who takes the lead.

Former three-term Marikina City Mayor Marides Fernando, in an interview with Probe, said that the city's mission is to make government delightful to work with, and to deal with. The warehouse facilitates easy flow of the supply chain and this promptly delivers basic services to the local constituencies.

The centralized warehouse was recognized by the Galing Pook Foundation as one of ten outstanding local government programs in 2008. Moreover, Marikina City is also using a GPPB-approved Customized Procurement Manual to help address local procurement issues.

Naga is doing it with less, Mongoso believed. Through the People's Council, the city has been reinforcing partnership with private sector and non-government organizations to tap resources and multiply its capacity.

Former three-term Naga City Mayor Jesse Robredo, who currently heads the Department of Interior and Local Government, said that third party engagement is almost non-existent in the procurement process.

In his 'Milking Them Dry' article, Sec. Robredo said that reforming procurement, particularly in public works where bloated estimates occur, is also dependent on citizen's participation. Project monitoring is encouraged like those Concerned Citizens of Abra for Good Governance (CCAG) does. Local groups can also be tapped to represent the private sector.

Two cities with divergent roads but all leading to one goal – that public procurement best serves government's interest when it gets the best price that translates to more quality items and services for their constituencies and when it is anchored on transparency and integrity along the process.

## SOURCES:

Approval of the Customized Procurement Manuals of the City of Marikina. Government Procurement Policy Board Resolution No. 14-2007.

League of Cities jumpstarts PROTECT-MDGs, ten pilot cities named. The Advocate Online. July 2009.

Marikina City. Service Without Delay through Centralized Warehousing System, Galing Pook Foundation 2008.

Padre-Isip, Rachele. The Public Procurement Process: Good Law, Poor Reality. Philippine Public Transparency Reporting Project. [http://www.transparencyreporting.net/index.php?option=com\\_content&view=article&id=63:the-public-procurement-process-good-law-poor-reality&catid=51:procurement-watch&Itemid=76#1](http://www.transparencyreporting.net/index.php?option=com_content&view=article&id=63:the-public-procurement-process-good-law-poor-reality&catid=51:procurement-watch&Itemid=76#1)

Robredo, Jesse. <http://jesserobredo.wordpress.com/2007/12/26/milking-them-dry/>

Ubalde, Lorenzo and Dorotan, Eddie. Best Practices in Promoting Transparency at the Local Level. [http://www.transparencyreporting.net/index.php?option=com\\_content&view=article&id=71:best-practices-in-promoting-public-transparency-at-the-local-level&catid=44:stories&Itemid=79](http://www.transparencyreporting.net/index.php?option=com_content&view=article&id=71:best-practices-in-promoting-public-transparency-at-the-local-level&catid=44:stories&Itemid=79)

# List of Diagrams

Diagram 1 :	Procurement Guidebook Framework
Diagram 2 :	Stages of Procurement Planning
Diagram 3:	Detailed Process of PPMP and APP Preparation
Diagram 4:	GPPB-Prescribed APP Content
Diagram 5:	Procurement Process Flowchart
Diagram 6:	Comparative process flow of procurement under Competitive Bidding
Diagram 7:	Procurement Process for Goods and Infrastructure Projects
Diagram 8:	Participants in the Pre-Bid Conference
Diagram 9:	Bid Opening
Diagram 10:	Opening and Examination of the Bid Envelopes
Diagram 11:	Procurement Process for Consulting Services
Diagram 12:	Process for Quality Based Evaluation
Diagram 13:	Process for Quality-Cost Based Evaluation
Diagram 14:	Degrees of Relationship 1
Diagram 15:	Degrees of Relationship 2

# List of Tables

Table 1:	Threshold for the conduct of a pre-procurement conference
Table 2:	Conditions for advertisement/posting of the Invitation to Bid
Table 3:	Contents of First and Second Envelope
Table 4:	Classification of Bid Documents for Goods and Infrastructure Projects
Table 5:	Eligibility Criteria for Goods and Infrastructure
Table 6:	Threshold and Requirement for Advertisement and Posting for Consulting Services
Table 7:	Classification of Bid Documents for Consulting Services
Table 8:	Eligibility Criteria for Consulting Services
Table 9:	Threshold Amount for Shopping When There is Unforeseen Contingency
Table 10:	Thresholds Amount for Shopping and Small Value Procurement
Table 11:	Warranty conditions
Table 12:	Warranty Security schedule

# Bibliography

Damalerio II, Alfonso . Personal Interview. 4 September 2010

Handbook on Philippine Government Procurement. 5th Ed. Philippines.  
Government Procurement Policy Board (GPPB). 2009.

Philippines. Government Procurement Policy Board. Republic Act No.9184:  
Government Reform Act. 7 Oct. 2010<[http://www.gppb.gov.ph/laws\\_rules\\_laws/RA\\_9184.pdf](http://www.gppb.gov.ph/laws_rules_laws/RA_9184.pdf)>

Philippines. Government Procurement Policy Board. Revised Implementing Rules and Regulations of Republic Act No. 9184. 7 Oct. 2010 < <http://www.gppb.gov.ph/irrb/RevisedIRR.pdf>>

Philippines. Government Procurement Policy Board. Procurement Manual For Local Government Units. Volume I: Procurement Systems and Organization. 7 Oct. 2010<<http://www.gppb.gov.ph/downloadables/forms/LGU-Volume%201.pdf>>

Philippines. Government Procurement Policy Board. Procurement Manual For Local Government Units. Volume II: Goods and Services. 7 Oct. 2010 <<http://www.gppb.gov.ph/downloadables/forms/LGU-Volume%202.pdf>>

Philippines. Government Procurement Policy Board. Procurement Manual for Local Government Units. Volume III: Infrastructure Projects. 7 Oct. 2010 <<http://www.gppb.gov.ph/downloadables/forms/LGU-Volume%203.pdf>>

Philippines. Government Procurement Policy Board. Procurement Manual for Local Government Units. Volume IV: Consulting Services. 7 Oct. 2010 <<http://www.gppb.gov.ph/downloadables/forms/LGU-Volume%204.pdf>>

Philippines. Government Procurement Policy Board. Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors And Consultants. 7 Oct 2010 < <http://www.gppb.gov.ph/issuances/Guidelines/2004/Blacklisting.pdf>>

Rabuya, Paul. Personal Interview. 4 September 2010

Yes, pigs Can Fly: Facing the Challenges of Fighting Corruption in Procurement.  
Philippines. Procurement Watch Inc. 2008







PROTECT MDG  
Technical Working Group

