

VOLUME 1

Guidelines on the Establishment of Procurement Systems and Organizations

GUIDELINES ON THE ESTABLISHMENT OF PROCUREMENT SYSTEMS AND ORGANIZATIONS

ABBREVIATIONS AND ACRONYMS.....	iv
GENERAL PROVISIONS.....	1
LEGAL BASIS FOR THE PROCUREMENT MANUAL	3
<i>Legal Reference</i>	3
COVERAGE, SCOPE, AND APPLICATION	4
<i>Legal Reference</i>	4
<i>Coverage</i>	4
<i>Scope</i>	4
<i>Application</i>	5
PRINCIPLES OF GOVERNMENT PROCUREMENT	6
<i>Legal Reference</i>	6
<i>Transparency</i>	6
<i>Competitiveness</i>	6
<i>Streamlining and use of technology in procurement</i>	6
<i>Accountability</i>	6
<i>Public Monitoring</i>	6
PROCUREMENT ORGANIZATIONS	9
THE ORGANIZATIONAL STRUCTURE	11
<i>Legal Reference</i>	11
1. <i>The Procuring Entity and the Procurement Unit / Office</i>	11
2. <i>The Bids and Awards Committee (BAC)</i>	12
3. <i>BAC Members</i>	13
4. <i>The Technical Working Group (TWG)</i>	18
5. <i>Observers</i>	19
ROLES AND RESPONSIBILITIES.....	21
<i>Legal Reference</i>	21
1. <i>The Procuring Entity and the Procurement Unit/Office</i>	21
2. <i>The BAC</i>	23
3. <i>The TWG</i>	25
4. <i>The Observers</i>	25
CONDITIONS FOR GRANTING HONORARIA.....	27
<i>Legal Reference</i>	27
PROFESSIONALIZATION OF PROCUREMENT UNITS, BAC, TWG.....	29
<i>Legal Reference</i>	29
PROCUREMENT PLANNING	31
PROCUREMENT PLANNING - PROCUREMENT PLANNING AND BUDGET LINKAGE 33	
<i>Legal Reference</i>	33
PROCUREMENT PLANNING – PREPARATION OF THE PROJECT PROCUREMENT MANAGEMENT PLAN (PPMP)	35
<i>Legal Reference</i>	35
1. <i>The PPMP</i>	35
2. <i>Developing the Project Requirements</i>	35
3. <i>Writing the Technical Specifications, Scope of Work and Terms of Reference</i>	36
4. <i>Determining the Approved Budget for the Contract</i>	37
5. <i>Procurement Milestones</i>	37
6. <i>Method of Procurement</i>	38
7. <i>Format of the PPMP (prepared by the PMO/end-user unit)</i>	38

PROCUREMENT PLANNING – PREPARATION OF THE ANNUAL PROCUREMENT PLAN (APP)	39
1. <i>The Annual Procurement Plan</i>	39
2. <i>Procurement Strategy</i>	40
3. <i>Format of the APP</i>	40
VARIOUS METHODS OF PROCUREMENT	43
COMPETITIVE BIDDING	45
<i>Legal Reference</i>	45
ALTERNATIVE METHODS OF PROCUREMENT	46
<i>Legal Reference</i>	46
1. <i>Conditions for Use of Alternative Methods of Procurement</i>	46
2. <i>The Different Alternative Methods</i>	46
PROCUREMENT BY ELECTRONIC MEANS AND THE PHILGEPS	49
PROCUREMENT BY ELECTRONIC MEANS AND THE PHILIPPINE GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM	51
<i>Legal Reference</i>	51
1. <i>The PhilGEPS</i>	51
2. <i>Features of the PhilGEPS</i>	51
USE OF PROCUREMENT SERVICE PROVIDERS	55
<i>Legal Reference</i>	55
<i>Minimum Requirements for Service Providers</i>	55
FOREIGN ASSISTED PROJECTS.....	57
FOREIGN ASSISTED PROJECTS	59
PENAL, CIVIL AND ADMINISTRATIVE LIABILITIES AND SANCTIONS.....	61
STANDARD OF ETHICS	63
<i>Definition of Corrupt, Fraudulent, Collusive, and Coercive Practices</i>	63
<i>Applicable penalty for fraud, misrepresentation and collusion</i>	63
CONFLICT OF INTEREST	64
PENAL LIABILITIES AND SANCTIONS	65
<i>Penal Liabilities of Public Officers</i>	65
<i>Penal Sanctions for Public Officers</i>	65
<i>Penal Liabilities of Private Individuals</i>	65
<i>Penal Sanctions for Private Individuals</i>	66
CIVIL LIABILITY	67
<i>Civil Liability in Case of Conviction</i>	67
<i>Liquidated Damages</i>	67
ADMINISTRATIVE LIABILITIES AND SANCTIONS	68
<i>Administrative Liabilities</i>	68
<i>Administrative Sanctions</i>	68
BLACKLISTING GUIDELINES.....	70
<i>Prohibition on blacklisted persons/entities to participate in the bidding of Government Projects/Contracts</i>	70
<i>Sanctions and Grounds for Blacklisting</i>	70
LEGAL ASSISTANCE AND INDEMNIFICATION.....	73
GENERAL CONDITIONS	75
<i>Free Legal Assistance</i>	75
<i>Liability Insurance</i>	76
<i>Medical Assistance</i>	76
PROCEDURE FOR GRANTING LEGAL ASSISTANCE AND INDEMNIFICATION	77
CASE STUDIES.....	79

CASE STUDY: PROCUREMENT OF INFRASTRUCTURE PROJECTS	81
<i>Analysis:</i>	81
CASE STUDY: PROCUREMENT OF CONSULTING SERVICES	83
<i>Analysis:</i>	84
ANNEX.....	87
GLOSSARY	89

ABBREVIATIONS AND ACRONYMS

ABC	Approved Budget for the Contract
ABM	Agency Budget Matrix
ADB	Asian Development Bank
AFP	Armed Forces of the Philippines
AFS	Audited Financial Statement
APP	Annual Procurement Plan
BAC	Bids and Awards Committee
BDS	Bid Data Sheet
BRS	Bureau of Research and Standards
BSP	Bangko Sentral ng Pilipinas
CAF	Certificate of Availability of Funds
CDA	Cooperatives Development Authority
CIAP	Construction Industry Authority of the Philippines
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid to (named place of destination)
COA	Commission on Audit
COFILCO	Confederation of Filipino Consulting Organizations
CPES	Contractors Performance Evaluation System
CPESIU	Contractors Performance Evaluation System Implementing Unit
CSO	Civic Society Organization
CSC	Civil Service Commission
DBCC	Development Budget Coordination Committee
DBM	Department of Budget and Management
DBM-PS/ PS-DBM	Department of Budget and Management-Procurement Service
DILG	Department of Interior and Local Government
DND	Department of National Defense
DOST	Department of Science and Technology
DTI	Department of Trade and Industry
E.O.	Executive Order
ESAO	Engineering Supervision and Administration Overhead
EXW	Ex Works, Ex Factory or Off-the-Shelf
FAPs	Foreign Assisted Projects
FMIS	Financial Management Information System
GAA	General Appropriations Act
GCC	General Conditions of Contract
GFI	Government Financial Institution
GOCC	Government-Owned or –Controlled Corporation
GOP	Government of the Philippines

GPPB	Government Procurement Policy Board
GPPB-TSO	Government Procurement Policy Board – Technical Support Office
GPRA	Government Procurement Reform Act
HRB	Highest Rated Bid
HRRB	Highest Rated and Responsive Bid
IAEB	Invitation to Apply for Eligibility and to Bid
ICB	International Competitive Bidding
ICT	Information and Communications Technology
IFI	International Financing Institution
IPR	Intellectual Property Rights
ITB	Instructions to Bidders
ITR	Income Tax Return
JVA	Joint Venture Agreement
JBIC	Japan Bank for International Cooperation
LC	Letter of Credit
LCB	Local Competitive Bidding
LCB	Lowest Calculated Bid
LCRB	Lowest Calculated and Responsive Bid
LGU	Local Government Unit
LIB	Limited International Bidding
LOI	Letter of Intent
MOOE	Maintenance and Other Operating Expenses
NACAP	National Constructors Association of the Philippines
NCB	National Competitive Bidding
NFCC	Net Financial Contracting Capacity
NGA	National Government Agency
NGO	Non-Government Organization
NSO	National Statistics Office
NTP	Notice to Proceed
OS	Obligation Slip
PA	Professionals' Association
PAGASA	Philippine Atmospheric, Geophysical and Astronomical Services Administration
PBDs	Philippine Bidding Documents
PCA	Philippine Constructors Association, Incorporated
PCAB	Philippine Contractors Accreditation Board
PCCI	Philippine Chamber of Commerce and Industry
PCAB	Philippine Contractors Accreditation Board
PERT/CPM	Project Evaluation Review Technique / Critical Path Method
PhilGEPS/ G-EPS	Philippine Government Electronic Procurement System
PICE	Philippine Institute of Civil Engineers
PICPA	Philippine Institute of Certified Public Accountants

PMO	Project Management Office
PNP	Philippine National Police
PPA	Programs, Projects and Activities
PPMP	Project Procurement Management Plan
PRC	Professional Regulation Commission
PWI	Procurement Watch Incorporated
R.A.	Republic Act
R.A. 9184	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"
RIS	Requisition and Issuance Slip
RFP	Request for Proposal
RFQ	Request for Quotation
ROW	Right-of-Way
SARO	Special Allotment Release Order
SBD	Standard Bidding Documents
SCC	Special Conditions of Contract
SEC	Securities and Exchange Commission
SME	Small and Medium Enterprises
SOW	Scope of Work
SUC	State Universities and Colleges
SWA	Statement of Work Accomplished
TOR	Terms of Reference
TSO	Technical Support Office
TWG	Technical Working Group
UNDB	United Nations Development Business
VAT	Value-Added Tax
WB	The World Bank
WFP	Work and Financial Plan

SECTION 1
General Provisions

Legal Basis for the Procurement Manual

Legal Reference

IRR-A Section 6 provides for the legal basis for this Procurement Manual.

The Government Procurement Manual was developed pursuant to R.A. 9184, otherwise known as the "Government Procurement Reform Act" and its IRR-A. The section provides for the development of generic procurement manuals and standard bidding forms that all Procuring Entities must use, once issued.

This Manual aims to standardize the procurement process, in effect preventing confusion, ensuring transparency, and enabling procuring entities to conform to the principles that govern all government procurement activities. However, whenever necessary to suit the particular needs of the Procuring Entity, it may be modified subject to the approval of the GPPB.

The GPPB will review this Manual periodically, and whenever necessary, ensure its applicability to existing conditions. Procuring Entities may submit to the GPPB its recommendations for specific revisions to the Manual. Any such revisions must be approved by the GPPB and must be consistent with existing procurement laws, rules, regulations, and policies.

In case of an inconsistency or conflict between this Manual and R.A. 9184 and/or its IRR-A, the latter shall govern.

Coverage, Scope, and Application

Legal Reference

IRR-A Sections 1, 4, and 5 provide the legal reference for the coverage, scope and application of the Procurement Manual.

Coverage

This Manual must be used for all procurement activities by the Government of the Philippines and all its branches and instrumentalities, as follows:

1. the Legislative Branch and its instrumentalities; the Senate, the House of Representatives, and all the offices and committees under them;
2. the Judiciary and its instrumentalities; the Supreme Court, the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the lower courts and all other bodies that form part of the Judiciary;
3. the Office of the President proper as described by E.O. No. 292 or the 1987 Administrative Code of the Philippines; the Executive Office, the Common Staff Support System, and the Office of the Presidential Special Assistants/Advisers System;
4. departments, bureaus, offices that form part of the Executive Branch; its regional and/or local offices;
5. Constitutional Commissions or Offices, and all instrumentalities/offices under them;
6. GOCCs and GFIs;
7. SUCs;
8. LGUs; and
9. all other instrumentalities/agencies/offices/units of the Government.

Consistent with National Budgeting and Accounting practice, the above mentioned offices/instrumentalities of government may also be classified into the following and shall be referred to as such throughout this Manual:

1. NGAs, which refer to items 1-5 above;
2. GOCCs;
3. GFIs;
4. SUCs; and
5. LGUs.

Scope

The provisions of R.A. 9184 shall apply to the procurement of goods, infrastructure projects, and consulting services, regardless of source of funds, whether local or foreign. However,

procurements funded partly or fully by IFIs shall follow the procedures specified under the loan or grant agreement; provided that in the absence of such procurement guidelines, or if the guidelines provided are silent on specific procurement procedures, then the procurement processes and procedures provided in R.A. 9184 and its IRR-A will apply suppletorily.

In view of the above, and in due regard to the harmonization efforts among GOP, WB, ADB, and JBIC, this Manual will not only cover R.A. 9184 and its IRR-A, but the harmonized procedures found in the PBDs as well. Unless otherwise indicated herein, the manuals shall apply to foreign-assisted projects as well.

This Manual does not cover private sector infrastructure or development projects, such as the build-operate-transfer scheme and its variants. Likewise, this Manual does not cover the acquisition of right-of-way site or location for infrastructure projects, and the leasing out of government-owned buildings or spaces for private use.

For application of procurement methods needed to address peculiar situations, agencies are advised to consult the GPPB.

Application

The procurement procedures provided in this Manual shall apply to the following:

1. Goods and Services;
2. Infrastructure Projects; and
3. Consulting Services.

This Manual shall be used together with the PBDs prescribed by the GPPB.

Principles of Government Procurement

Legal Reference

IRR-A Section 3 provides the legal reference for the principles of government procurement.

Government procurement shall be governed by the following principles:

Transparency

The procurement process and the implementation of procurement contracts must be transparent. Procuring entities must ensure the widest dissemination of bid opportunities and the participation of pertinent non-government organizations. Towards this end, posting in the Procuring Entity's website, in the PhilGEPS website, and in a conspicuous place within the premises of the Procuring Entity is required for all procurements. Moreover, in addition to the COA representative, the BAC of the Procuring Entity is required to invite observers coming from eligible and qualified PAs and NGOs to observe any or all stages of the procurement process. Finally, each procurement transaction must be properly documented and such records must be maintained and made available to proper parties.

Competitiveness

Public procurement must be competitive and, as a rule, be conducted through public bidding, except as otherwise provided for under the GPRA, its IRR-A and this Manual. A competitive bidding process treats bidders equitably and provides fair grounds for competition among themselves, thereby ensuring that no single bidder significantly influences the outcome of the bidding. Competition among proponents will urge them to offer more beneficial terms to the government. Hence, the alternative methods of procurement must only be resorted to when competitive bidding is not a feasible option, in accordance with the conditions laid down in R.A. 9184, its IRR-A and this Manual.

Streamlining and use of technology in procurement

A streamlined procurement process that will uniformly apply to all government procurement must be adopted. The procurement process must be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method. The GPPB conducts a periodic review of government procurement procedures, and whenever necessary, formulates and implements changes thereto.

Accountability

A system of accountability must be established. Thus, 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. In relation to this, the heads of the procuring entities are responsible for establishing and maintaining a transparent, effective, and efficient procurement system in their respective agencies. The responsibilities of each official involved in the procurement process must be clear and legally identifiable.

Public Monitoring

Public monitoring of the procurement process and the implementation of awarded contracts are provided for in R.A. 9184, with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the R.A. 9184 and its IRR-A, and that all these contracts are performed strictly according to specifications. A system of reporting to the GPPB is provided for, while eligible and qualified CSOs such as NGOs, PAs, academic

institutions, and religious groups are allowed to observe and monitor the procurement process and contract implementation.

To fully abide by these principles, Procuring Entities shall consistently follow the procedures prescribed in this Manual.

SECTION 2

Procurement Organizations

The Organizational Structure

Legal Reference

IRR-A Sections 5(q), 11, 13, and 14 provide for the legal reference for the organizational structure.

1. The Procuring Entity and the Procurement Unit / Office

a. The Procuring Entity

A Procuring Entity shall be the central office, or, when duly authorized to procure independently, the regional office or any decentralized, local or lower level agency/bureau/office of an NGA, GOCC, GFI, SUC or LGU. However, the authority to procure independently of the central office must not be presumed, as the entire structure of the organization would have to be considered to determine whether or not such regional, decentralized, local or lower level agency/bureau/office is authorized to undertake procurement activities. Additionally, the existence of directives from the central office delegating such authority to procure to its regional, decentralized, and local or lower level agency / bureau / office would have to be determined.

b. The Procurement Unit / Office and the BAC Secretariat

The Head of the Procuring Entity should create a permanent BAC Secretariat and, for this purpose, it has the discretion to create a new office or to merely designate an existing organic office to be the BAC Secretariat. With respect to the latter case the Head of the Procuring Entity may consider designating the existing Procurement Unit/Office as the BAC Secretariat, because this office is best equipped for the task. For this reason, in the absence of such Procurement Unit/Office, it is advisable for the Head of the Procuring Entity to create the same, not only to serve as the BAC Secretariat, but also to ensure continuity as well as professionalization of the procurement function.

The term "Procurement Unit" shall refer to the organic office of the Procuring Entity that carries out the procurement function.

In large Departments or Procuring Entities, this Office could be a Service or a Division, while in smaller organizations, the Procurement Unit / Office may be a Branch composed of a few personnel. The size of the Unit and the number of personnel are dictated by the volume of transactions done and the level of expertise required from the Procurement Officers.

The Head of the Procuring Entity should consider the following factors in selecting the personnel who will be assigned to the BAC Secretariat, among others:

- i. Integrity;
- ii. Procurement proficiency, as shown by experience and trainings attended;
- iii. Satisfactory completion in a certification program conducted by the GPPB-TSO or its accredited institutions, if any;
- iv. The appropriate Civil Service qualification standards;

- v. The appropriate rank of the head of the BAC Secretariat, which should be:
- At least a fifth ranking permanent employee, in Central/Head Offices of NGAs, GOCCs and GFIs, as well as SUCs and LGUs; or
 - At least a third ranking permanent employee, in bureaus/regional offices and sub-regional/district offices; or
 - A permanent official of the next lower rank, if the fifth or third ranking permanent employee is not available.

In designating members of the Procurement Unit / Office and the BAC Secretariat, the Head of the Procuring Entity must ensure that check and balance is maintained, and procurement personnel are not given assignments that may conflict with their designation as such.

The following guidelines may be considered by the Head of the Procuring Entity in organizing the Procurement Unit/Office:

- i. A Procuring Entity with a procurement budget exceeding THREE BILLION PESOS (₱3B), whether procurement is centralized or decentralized, must have a "Procurement and Supply Chain Management Directorate" which will be headed by a Director III.
- ii. A Procuring Entity with a procurement budget exceeding ONE BILLION PESOS (₱1B) but not more than THREE BILLION PESOS (₱3B) must have a "Procurement and Supply Chain Management Division".
- iii. A Procuring Entity with a procurement budget below ONE BILLION PESOS (₱1B) must have a "Procurement and Supply Chain Management Section".
- iv. The following organizational set-up may be adopted by the foregoing procurement organizations: (See Figure 1 and Tables I and II)

The positions indicated in Figure 1 shall be filled up using the "scrap and build" scheme, i.e., reclassification or transfer of filled itemized positions, or abolition of vacant itemized positions and reclassification of these positions into the above positions. If the latter scheme is adopted, the equivalent Personal Services requirement should not exceed the amount generated from the abolition of vacant positions.

In the Barangays, the Treasurer shall serve as the Head of the Procurement Unit/Office.

The Head of the Procuring Entity shall ensure that the Procurement Unit/Office will have a sufficient number of personnel who will provide secretariat support to the BAC and perform the other functions of the Procurement Unit/Office, as provided in this Manual. The said Unit shall be strengthened through continuing procurement training and education of the staff and deployment of additional personnel, if necessary.

2. The Bids and Awards Committee (BAC)

The Head of the Procuring Entity must create a single BAC in the Head Office of the Procuring Entity. However, separate BACs may be created under any of the following conditions:

- a. The items to be procured are complex or specialized; or

- b. If, even after undergoing "jury duty", the single BAC cannot manage the procurement transactions as shown by delays beyond the allowable limits.

The separate BACs may be organized according to:

- a. geographical location of the PMO or end-user units of the Procuring Entity; or
- b. nature of procurement.

Thus, a Procuring Entity may have separate BACs in its regional or decentralized offices (when warranted according to the above conditions) and/or separate BACs in the central office to handle procurements of ICT resources, infrastructure projects, textbooks, and other specialized procurements.

However, the Head of the Procuring Entity must limit the creation of separate BACs in order to facilitate professionalization and harmonization of procedures and standards. If the reason for creating a separate BAC is due to complexity of the procurement, it may be unnecessary, considering that the rule that requires the designation of provisional members (technical and end-user unit representative) is already responsive to the requirement of having a separate BAC for procurements that are complex in nature.

3. BAC Members

The Head of the Procuring Entity must designate the Members of the Bids and Awards Committee (BAC) in accordance with the following rules:

a. Central/Head Offices of NGAs, GOCCs/GFIs, and SUC:

- i. The BAC must consist of at least five (5) members and not exceed seven (7). Of the five (5) members, three (3) must be regular members, and two (2) must be provisional members. Should the Head of the Procuring Entity desire to create a seven (7)-member BAC, he/she may designate two (2) additional regular members, or two (2) additional provisional members, or one (1) additional regular and provisional members.

The regular members are:

- An officer, who is at least a third-ranking permanent official of the Procuring Entity, who shall also be designated as the Chairman;
- An officer, who holds at least a fifth ranking permanent plantilla position, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the legal or administrative area of the Procuring Entity;
- An officer, who holds at least a fifth ranking permanent plantilla position, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the finance area of the Procuring Entity.

The provisional members are:

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

- A representative from the end user unit who has knowledge of procurement laws and procedures.

In designating the provisional members, the Head of the Procuring Entity shall consider the types of procurement normally undertaken by them, and identify the relevant technical experts. For example, in procuring janitorial services, the technical member should be an officer of the Building Maintenance Unit.

Provisional members will only participate in the deliberations of the BAC for procurements over which they have a direct interest. For example, in the procurement of computers, the technical member for ICT will participate in BAC deliberations together with the representative of the PMO/end-user unit.

It should be noted that the designation of an alternate BAC member is not provided for by R.A.9184, and that BAC representatives are not counted for purposes of determining quorum.

- ii. The Chairman and Vice-Chairman must be regular members of the BAC.
- iii. The Head of the Procuring Entity is required to designate the BAC Chairman. Likewise, he is required to designate the Vice-Chairman from the remaining regular members.
- iv. The BAC members must be designated for a term of one (1) year only, reckoned from the date of designation. However, the Head of the Procuring Entity may renew such designation at his discretion.

It is noted that appointment to the BAC is in the nature of a designation, in addition to the regular duties of the subject official, and is not an appointment contemplated under the Civil Service rules.

In accordance with the thrust to professionalize the procurement organization, Heads of Procuring Entities are encouraged to re-appoint BAC members who have shown efficiency and probity in the performance of their duties.

- v. In case of resignation, retirement, separation, transfer, re-assignment, or removal of a BAC member, the Head of the Procuring Entity may designate a replacement, who shall be similarly qualified as the official replaced, and shall have the required ranking as provided for in R.A. 9184 and its IRR-A. The replacement shall serve for the unexpired term. In case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension.
- vi. The Head of the Procuring Entity may suspend or remove a member of the BAC for justifiable causes, including, but not limited to, violations of the provisions of the R.A. 9184 or its IRR-A.
- vii. The following officers of the Procuring Entity are disqualified from membership in the BAC:
 - the Head of the Procuring Entity;
 - the official who approves procurement transactions;
 - the Chief Accountant / Head of the Accounting Department and his/her staff, unless the Accounting Department is the end-user unit, in which case the Chief Accountant, Head of the Accounting Department or his/her staff may be designated as an end-user member.

b. For Bureaus/Regional Offices/Decentralized Units of NGAs, GOCCs, GFIs:

- i. The BAC must consist of at least five (5) members and not exceed seven (7). Of the five (5) members, three (3) must be regular members, and the two (2) must be provisional members. Should the Head of the Procuring Entity desire to create a seven (7)-member BAC, he/she may designate two (2) additional regular members, or two (2) additional provisional members, or one (1) additional regular and provisional members.

The regular members are:

- An officer, who is at least a third-ranking permanent official of the Procuring Entity, who shall be designated as the Chairman;
- An officer, who holds at least a third ranking permanent plantilla position, with knowledge, experience and/or expertise in procurement who represents the legal or administrative area of the Procuring Entity;
- An officer, who holds at least a third ranking permanent plantilla position, with knowledge, experience and/or expertise in procurement who represents the finance area of the Procuring Entity.

The provisional members are:

- An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement;
- A representative from the end user unit who has knowledge of procurement laws and procedures.

- ii. The Chairman and Vice-Chairman shall be regular members of the BAC.
- iii. The Head of the Procuring Entity shall designate the BAC Chairman, and may likewise designate the Vice-Chairman from the remaining regular members.
- iv. The BAC members shall be designated for a term of one (1) year only, reckoned from the date of designation. However, the Head of the Procuring Entity may renew such designation at his discretion.

It is noted that appointment to the BAC is in the nature of a designation, in addition to the regular duties of the subject official, and is not an appointment contemplated under the Civil Service rules.

In accordance with the thrust to professionalize the procurement organization, Heads of Procuring Entities are encouraged to re-appoint BAC members who have shown efficiency and probity in the performance of their duties.

- v. In case of resignation, retirement, separation, transfer, re-assignment, or removal of a BAC member, the Head of the Procuring Entity may designate a replacement, who shall be similarly qualified as the official replaced. The replacement shall serve for the unexpired term. In case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension.

- vi. The Head of the Procuring Entity may suspend or remove a member of the BAC for justifiable causes, including, but not limited to, violations of the provisions of the R.A. 9184 or its IRR-A.
- vii. The following officers of the Procuring Entity are disqualified from membership in the BAC:
 - the Head of the Bureau / Regional Office / Decentralized Unit;
 - the official who approves procurement transactions;
 - the Chief Accountant / Head of the Accounting Unit and his/her staff, unless the Accounting Department is the end-user unit, in which case the Chief Accountant, Head of the Accounting Department or his/her staff may be designated as an end-user member.

c. For LGUs

- i. For Provinces, Cities, Municipalities:
 - The BAC shall consist of at least five (5) members and shall not exceed seven (7).
 - The Local Chief Executive shall designate the members of the BAC, who should occupy plantilla positions of the Local Government concerned.
 - All members designated by the Local Chief Executive are regular members except the end-user member who is considered as a provisional member.
 - The officials from the regular offices under the Office of the Governor or Mayor, as the case may be, may be designated as members of the BAC. The offices that may be represented, are the following, among others:
 - ü the Office of the Administrator;
 - ü the Budget Office;
 - ü the Legal Office; and
 - ü the General Services Office.
 - In case of municipalities which do not have an Office of the Administrator or a Legal Office, the Mayor shall designate a representative from the office/s performing the functions equivalent to that of the former.

It is a good practice to always have a legal officer or a lawyer, if available, in the BAC. He can provide the legal direction especially in procurements where contentious issues surface. Having a technical expert in the BAC is also helpful, and is thus recommended.

- In addition, the Local Chief Executive shall also designate to the BAC a representative of the end-user unit of the procurement at hand as a provisional member.
- The BAC members shall elect among themselves the Chairman and Vice-Chairman. The Chairman shall be at least a third

ranking permanent official of the provincial/city/municipal government.

The IRR-A does not specify the rank of those who may be appointed as BAC members, although it mentions that the Chairman should be at least a third ranking permanent official. Considering the nature of BAC functions, the Local Chief Executive may choose to appoint officials of the local government who are holding positions of responsibility.

In GPPB Resolution No. 01-2004, dated March 10, 2004, for purposes of determining the rank in provinces, cities and municipalities, the first ranking permanent official shall be the governor or mayor, as the case may be; the second ranking permanent official shall be the vice-governor or vice-mayor, as the case may be; and the third ranking permanent official shall be the head of any of the regular offices under the Office of the Local Chief Executive: *Provided, however,* That the vice-mayor shall not be designated as member of the BAC as its office is not one of the regular offices under the Office of the Local Chief Executive.

- The BAC members shall be designated for a term of one (1) year only, reckoned from the date of designation. However, the Local Chief Executive may renew such designation at his discretion.

In accordance with the thrust to professionalize the procurement organization, Local Chief Executives are encouraged to extend the term of office or to re-appoint BAC members who have shown efficiency and probity in the performance of their duties.

- In case of resignation, retirement, separation, transfer, re-assignment, or removal of a BAC member, the Local Chief Executive may designate a replacement, who must be similarly qualified as the official replaced. If it is the Chairman, the Local Chief Executive must designate another third ranking permanent official of the provincial/city/municipal government, after which the BAC members shall immediately conduct an election to elect the new BAC Chairman. The replacement shall serve for the unexpired term. In case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension.
- The Local Chief Executive may suspend or remove a member of the BAC for justifiable causes, including, but not limited to, violations of the provisions of the R.A. 9184 or its IRR-A.
- The following officials are disqualified from membership in the BAC:
 - ü the Local Chief Executive and other elective officials of the province/city/municipality;
 - ü the official who approves procurement transactions;
 - ü the Chief Accountant or Head of the Provincial/City/Municipal Accounting Office and his/her staff, unless the Accounting Department is the end-user unit, in which case the Chief Accountant, Head of

the Accounting Department or his/her staff may be designated as an end-user member.

d. For Barangays:

- i. The Barangay Chairman shall designate at least five (5) but not more than seven (7) members of the BAC, from among the members of the Sangguniang Barangay. The designated BAC members shall elect among themselves the Chairman and Vice-Chairman.
- ii. The BAC members shall be appointed for a term of one (1) year only, reckoned from the date of appointment. However, the Punong Barangay may renew such appointment at his discretion.

In GPPB Resolution No. 01-2004, dated March 10, 2004, the BAC shall be composed of at least five (5), but not more than seven (7) regular members of the Sangguniang Barangay, except the Punong Barangay. The Punong Barangay, being the Local Chief Executive, shall designate the members of the BAC.

In accordance with the thrust to professionalize the procurement organization, Heads of Procuring Entities are encouraged to re-appoint BAC members who have shown efficiency and probity in the performance of their duties.

- iii. In case of resignation, retirement, separation, transfer, re-assignment, or removal of a BAC member, the Punong Barangay may designate a replacement, who shall be similarly qualified as the official replaced. The replacement shall serve for the unexpired term. In case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension.
- iv. The Punong Barangay may suspend or remove a member of the BAC for justifiable causes, including, but not limited to, violations of the provisions of the R.A. 9184 or its IRR-A and the Anti-Graft and Corrupt Practices Act.
- v. The following officials are disqualified from membership in the BAC:
 - the Punong Barangay;
 - the Barangay Treasurer;
 - other appointive barangay officials.

4. The Technical Working Group (TWG)

- a. The BAC may create a TWG from a pool of technical, financial and/or legal experts to assist in the procurement process.
- b. In creating the TWG, the BAC shall consider the expertise required based on the nature of the procurement.

It is recommended that the TWG should have as members, a representative or representatives of the end-user unit and experts in various disciplines who can handle the different aspects of the procurement at hand, namely, the technical, financial, legal and, in certain cases, the project management aspects. The presence of the end-user representative and the above-named experts will ensure that the bid documents properly reflect the requirements of the Procuring Entity, and the bids submitted will be rigorously evaluated.

- c. To be able to effectively study the requirements and evaluate the bids submitted, the BAC may create several TWGs to handle different procurements, for example:
- TWG for Infrastructure Projects, whose membership shall include experts in civil works like civil engineers, an architect, an accountant or finance expert to handle the financial aspect of the procurement, etc.;
 - TWG for ICT Projects, whose membership shall include experts in ICT like a computer engineer, a systems analyst, a programmer, etc.; and
 - The BAC may also create a TWG for a specific procurement, particularly if the procurement at hand is highly technical or is a major or priority project of the government.
- d. In highly meritorious cases, the Procuring Entity may also engage the services of consultants in accordance with the IRR-A and Volume 4 of this Manual, subject to the availability of funds, who will assist the TWG and the BAC on the procurement at hand. For this purpose, the Head of the Procuring Entity shall certify that the in-house experts cannot provide adequate technical, financial, legal or project or contract management advice related to the procurement. These consultants, however, shall only have an advisory capacity, and may not vote during deliberations.

5. Observers

- a. Purpose of the Observers. To enhance the transparency of the process, the BAC is required to invite Observers who may attend and observe all stages of the procurement, especially:
- i. the pre-bid conference;
 - ii. opening of bids;
 - iii. bid evaluation;
 - iv. post-qualification;
 - v. contract award; and
 - vi. special meetings of the BAC.

The Procuring Entity has the option to invite observers during the pre-procurement conference

- b. Who the Observers are. The BAC must invite three Observers, who shall be:
- i. a COA representative;
 - ii. at least one (1) observer who shall come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, for example:
 - for infrastructure projects
 - ü National Constructors Associations duly recognized by the CIAP, such as, but not limited to, the PCA; and the NACAP; or
 - ü The PICE
 - for goods
 - ü A specific relevant chamber-member of the PCCI.
 - for consulting services
 - ü a project-related professional organization accredited or duly recognized by the PRC or the Supreme Court, such as, but not limited to, the PICE; and the PICPA; or
 - ü the COFILCO
 - iii. at least one (1) observer who shall come from an NGO.
- c. Criteria for Observers from the Private Sector. In accordance with Section 13.2 of the IRR-A, the Observers coming from the private sector (*e.g.*, organization of experts and NGOs) should belong to an organization duly registered with the SEC. Moreover, they should meet the following criteria:
- i. knowledge, experience or expertise in procurement or in the subject matter of the contract to be bid;
 - ii. absence of direct or indirect financial interest in the contract to be bid out;
 - iii. any other criteria that may be determined by the BAC (for example, the BAC in decentralized units may require that the Observers should be based in the area to ensure their attendance during the meetings.)

Roles and Responsibilities

Legal Reference

IRR-A Sections 12, 13 and 14 provide the legal reference for the roles and responsibilities.

1. The Procuring Entity and the Procurement Unit/Office
 - a. Responsibilities of the Head of the Procuring Entity. The Head of the Procuring Entity, or his duly authorized representative, shall have the following responsibilities in the procurement process:
 - i. He/she must ensure that the APP is regularly prepared, reviewed and updated by the PMOs and end-user units, in accordance with the guidelines set forth herein. He/she must also approve the same, or delegate the approval authority to a second-ranking official. He/she must ensure that all procurements are in line with the APP.
 - ii. He/she must establish the BAC and the BAC Secretariat in accordance with the guidelines previously discussed.
 - iii. Upon submission by the BAC of the recommendation for award, the Head of the Procuring Entity or his/her representative must approve the same. He/she may, however, disapprove the recommendation but only on the basis of valid, reasonable and justifiable grounds to be expressed in writing, and furnished to the BAC.
 - iv. He/she must ensure that the BAC and the BAC Secretariat gives utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the said assignments at hand are completed. (IRR-A Section 14.3)
 - v. He/she must ensure that the staff of the Procurement Unit/Office and the members of the BAC, BAC Secretariat and TWG are given ample training on procurement and related matters, with the end in view of professionalizing the procurement organization of the Procuring Entity.
 - vi. He/she must impose the necessary administrative sanctions on errant members of the BAC Secretariat/BAC/TWG, in accordance with Section 70 of the IRR-A.
 - vii. He/she must ensure that the members of the BAC and the TWG shall receive their incentives.

Under Sections 37 and 38 of R.A. 9184, in cases where the Head of the Procuring Entity is required to approve specific contracts, he shall ensure that the same are approved within the time frame indicated in the IRR-A, that is, within 20 calendar days from receipt of the transmittal to his office. The BAC Secretariat, in coordination with the Internal Audit Unit of the agency, shall ensure that the contract is acted upon by the Head of the Procuring Entity within the reglementary period. Otherwise, such contracts, if not acted upon within the reglementary period, shall be deemed approved. In the case of GOCCs, the concerned board, or its duly authorized representative, shall act on the approval of the contract within 30 calendar days from receipt thereof together with all documentary requirements to perfect the said contract.

b. Responsibilities of the Procurement Unit/Office and the BAC Secretariat. The Procurement Unit/Office of each Procuring Entity shall have the following responsibilities:

i. It shall act as the BAC Secretariat. As such, it shall have the following responsibilities:

- Act as the main support unit of the BAC;
- Provide administrative support to the BAC and the TWG, if necessary;
- Organize and make all necessary arrangements for the BAC meetings as well as TWG meetings, if necessary;
- Attend BAC meetings as Secretary;
- Prepare Minutes of the BAC meetings;
- Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested buyers;

The BAC Secretariat shall ensure that all procurements undertaken by the Procuring Entity are properly documented, to provide an audit trail of the procurement process.

- Assist in managing the procurement process;
- Monitor procurement activities and milestones for proper reporting to relevant agencies and/or end-users, when required;
- Be the central depository of all procurement related information and continually update itself with the most current GPPB resolutions issuances, circulars and events, and downstream the same to all relevant officer, employees, and parties requiring information. For this purpose, all information released by the GPPB can be secured electronically from www.gppb.gov.ph;
- Prepare the APP from the consolidated PMPs submitted by the various PMOs and end-user units of the Procuring Entity, to make them available for review as indicated in Section 7 of the IRR-A;
- Make arrangements for the pre-procurement and pre-bid conferences and bid openings;
- Act as the central channel of communications for the BAC with the end-users, PMOs, other units of the line agency, other government agencies, providers of goods, civil works and consulting services, and the general public;
- Assist the BAC in preparing drafts of BAC resolutions; and
- Provide utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand are completed (Jury Duty).

- ii. Based on inputs from the BAC and the TWG, it must prepare the procurement documents, i.e., purchase orders, job orders, contracts, and their attachments, for processing by the Budget, Accounting, Legal and Finance Offices, 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.
- iii. It shall create, maintain and update the registry of suppliers, contractors, and consultants.
- iv. It shall create, maintain and update a price monitoring list, if one is maintained by the Procuring Entity.
- v. It shall manage and undertake procurements using the following alternative methods - Repeat order and shopping - upon prior resolution of the BAC and approval by the Head of the Procuring Entity.
- vi. It shall administer the PhilGEPS, as the counterpart of the service provider, if the Procuring Entity has outsourced the PhilGEPS for non-common use items. Depending on the Service Level Agreement covering the contract, such administration may be limited to registration of suppliers and other users, assigning access levels, and updating of data.
- vii. It shall transact with the PhilGEPS and PS-DBM in behalf of the Procuring Entity.

2. The BAC

- a. Responsibilities of the BAC. The following shall be the responsibilities of the BAC:
 - i. Recommend to the Head of the Procuring Entity the method of procurement of the goods, services, infrastructure projects included in the APP, *i.e.* whether to use public bidding or any of the alternative methods of procurement.
 - ii. Creation of the TWG, if necessary, from a pool of technical, financial and/or legal experts to assist in the procurement process.
 - iii. Undertake the advertisement and/or posting of the invitation to bid.
 - iv. Conduct pre-procurement and pre-bid conferences.
 - v. Determine the eligibility of prospective bidders in accordance with the guidelines set forth in R.A. 9184 and its IRR-A.
 - vi. Sole authority to receive and open bids.
 - vii. Conduct the evaluation of bids with the assistance of the TWG.
 - viii. Undertake post-qualification proceedings, with the assistance of the TWG.
 - ix. Resolve motions for reconsideration filed by prospective bidders and other concerned parties with respect to the conduct of the bidding process.
 - x. Recommend award of contracts to the Head of the Procuring Entity or a duly authorized second-ranking official.

- xi. Recommend the imposition of sanctions in accordance with Rule XXIII of the IRR-A.
- xii. Prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis or whenever required.
- xiii. For each procurement transaction, accomplish a checklist showing its compliance with R.A. 9184, its IRR-A and this Manual. This will be submitted to the Head of the Procuring Entity and made a part of the transaction record.
- xiv. Invite the Observers required by law to be present during all stages of the procurement process, in accordance with the guidelines stipulated in R.A. 9184, its IRR-A and this Manual.
- xv. Furnish the Observers, upon the latter's request, with the following documents:
 - Minutes of the proceedings of BAC meetings;
 - Abstract of bids;
 - Post-qualification summary report;
 - APP and related PPMP; and
 - Copies of "opened" proposals.
- xvi. Conduct due diligence review or verification of the qualifications of Observers.

In performing this due diligence review or verification of the qualifications of Observers, the BAC shall require the organization nominating the Observer to submit their Curriculum Vitae and proof of their technical expertise and procurement proficiency. The certifications / documents showing technical expertise and procurement proficiency should be issued by appropriate bodies and authenticated by the latter. Verification may be done by the BAC by inquiring with the bodies that issued the same.

- xvii. Give utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand are completed (Jury Duty).
- xviii. Perform such other related functions as may be necessary to the procurement process.

b. Quorum

The majority (one-half of membership plus one) of the BAC members shall constitute a quorum, provided that the Chairman or the Vice-Chairman should be present in all meetings and deliberations. The Chairman or, in his absence, the Vice-Chairman shall preside over the meetings. The Presiding Officer shall vote only in case of a tie.

All BAC decisions should be embodied in resolutions signed by at least a majority of the members and the Chairman or Vice-Chairman thereof, as the case may be.

3. The TWG

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

- a. Assist the BAC in the preparation of the bidding documents, ensuring that the same properly reflects the requirements of the Procuring Entity and that these conform to the standards set forth by R.A. 9184, its IRR-A and the PBDs prescribed by the GPPB.
- b. 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.
- c. Assist the BAC in the evaluation of bids and prepare the accompanying reports for the BAC's consideration and approval.
- d. Assist the BAC in the conduct of post-qualification activities and prepare the post-qualification summary report for the BAC's approval.
- e. Assist the BAC and BAC Secretariat in preparing the resolution recommending award, with regard to the technical aspect, if necessary.
- f. Provide utmost priority to BAC assignments over all other duties and responsibilities, until the requirements for the procurement at hand are completed (Jury Duty).

4. The Observers

Responsibilities of the Observers. The attendance of Observers ensures the transparency of the procurement process. They represent the public, the taxpayers who are interested in seeing to it that procurement laws are observed and irregularities are averted. The Observers shall have the following responsibilities:

- a. Preparation of the Procurement Observation Report either jointly or separately, indicating their observations made on the bidding activity conducted by the BAC.

In the said report, they shall indicate:

- i. An assessment of the extent of the BAC's compliance with the substantive and procedural requirements of R.A. 9184, its IRR-A and this Manual.
- ii. The areas of improvement in the BAC's proceedings.

In instances where the BAC has fully complied with R.A. 9184, its IRR-A and this Manual, the Observers shall prepare a Procurement Observation Report. When there are substantive or procedural irregularities in the procurement at hand, the Report shall provide therein details of the alleged irregularity.

The report shall be submitted to the Head of the Procuring Entity, and a copy thereof will be furnished the BAC Chairman, who shall forward it to the BAC Secretariat for inclusion in the procurement documents that will be submitted to the proper authorities for approval. This will be part of the official record of the bidding, and part of the audit trail. The Observer may also give a copy of the Report to the Office of the Ombudsman or the Resident Ombudsman and the COA Auditor of the Procuring Entity in any of the following instances:

- i. when the BAC has failed to follow the prescribed bidding procedures;
or

- ii. for any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government.
- b. For the purpose of preparing the report, the Observer may request for copies of the following documents from the BAC, which shall be promptly provided to the observer:
 - i. Minutes of related proceedings of BAC meetings;
 - ii. Abstract of bids;
 - iii. Post-qualification summary report;
 - iv. Pertinent portions of the APP and related PPMP; and
 - v. Copies of "opened" proposals.
- c. The Observer must sign as witness in the Abstract of Bids if, in their independent observation, the bidding process was conducted in accordance with the procedures described in the IRR-A of R.A. 9184 and this Manual. If the BAC failed to correctly observe the proper procedure, the Observer must sign the Abstract of Bids, and must indicate in the Procurement Observation Report the procedural and/or substantive lapses of the BAC. This will enable the approving authority to be apprised of any irregularities in the bidding process, for consideration.
- d. The Observers shall sign as witness in the post-qualification summary report if, in their independent observation, the BAC followed the procedure described in the IRR-A of R.A. 9184 and this Manual, and that the Observer is amenable to the results of the post-qualification. If the Observer finds the post-qualification procedures irregular or the report does not match the actual findings, he shall so state in writing addressed to the BAC Chairman, and the same shall be attached to the Post-qualification Summary Report submitted to the approving authority. The Observer's written dissent will be part of the official record of the procurement.

The above described irregularities observed during the bidding process shall not delay the bidding, but should be resolved before contract award.

Conditions for Granting Honoraria

Legal Reference

IRR-A Section 15 provides the legal reference for the conditions for granting honoraria.

The Procuring Entity is authorized to grant honoraria to the members of the BAC and the TWG, provided:

1. the amount so granted does not exceed twenty-five percent (25%) of their respective basic monthly salary;
2. funds are available for the purpose; and
3. the grant of honoraria conforms to the guidelines promulgated by the DBM.

Budget Circular No. 2004-5A issued by the DBM provides the guidelines on the grant of honoraria to government personnel involved in government procurement. Among others, this Circular provides the following:

1. The chairs and members of the BAC and the TWG may be paid honoraria only for successfully completed procurement projects. In accordance with Section 7 of the IRR-A of R.A. 9184, a procurement project refers to the entire project identified, described, detailed, scheduled and budgeted for in the Project Procurement Management Plan prepared by the agency. Furthermore, a procurement project shall be considered successfully completed once the contract has been awarded to the winning bidder.
2. The payment of honoraria shall be limited to procurement that involves competitive bidding. Competitive bidding activities are present only in:
 - a. Open and competitive bidding;
 - b. Limited source bidding;
 - c. Negotiated procurement under Section 53 (a) of the IRR-A, where there has been failure of bidding for the second time; and
 - d. Negotiated procurement under Section 53 (b) of the IRR-A following the procedures under Section 54.2 (b) thereof, whereby the Procuring Entity shall draw up a list of at least (3) suppliers or contractors which will be invited to submit bids.

Conversely, honoraria will not be paid when procurement is thru:

- a. Direct contracting;
- b. Repeat order;
- c. Shopping;
- d. Negotiated procurement under Section 53 (b) of the IRR-A following the procedures under Section 54.2 (d) thereof, whereby the Procuring Entity directly negotiates with previous supplier, contractor or consultant; or when the project is undertaken by administration or thru the AFP, in case of infrastructure projects; and

- e. Negotiated procurement under Section 53 (c) to (g) of the IRR-A.
- 3. To be entitled to honoraria, personnel should be duly assigned as chair or member of the BAC or the TWG by the head of the department/agency concerned.
- 4. The members of the BAC Secretariat who are performing the attendant functions in addition to their regular duties in other non-procurement units of the agency may likewise be paid honoraria at the same rate as the TWG chair and members, subject to the same regulations.

The members of the BAC Secretariat whose positions are in the Procurement Unit of the agency shall not be entitled to honoraria. The payment of overtime services may be allowed, subject to existing policy on the matter.

- 5. In lieu of honoraria, the payment of overtime services may be allowed for the administrative staff, such as clerks, messengers and drivers supporting the BAC, the TWG and the Secretariat, for procurement activities rendered in excess of official working hours. The payment of overtime services shall be in accordance with the existing policy on the matter.
- 6. Those who are receiving honoraria for their participation in procurement activities shall no longer be entitled to overtime pay for procurement-related services rendered in excess of official working hours.
- 7. The amount necessary for the payment of the honoraria and overtime pay authorized herein shall be sourced only from the following:
 - a. proceeds from sale of bid documents;
 - b. fees from contractor/supplier registry;
 - c. fees charged for copies of minutes of bid openings, BAC resolutions and
 - d. other BAC documents;
 - e. protest fees;
 - f. liquidated damages; and
 - g. proceeds from bid/performance security forfeiture.

- 8. Pursuant to the DOF-DBM-COA Permanent Committee Resolution No. 2005-2 dated June 2005, all agencies are authorized to treat the collections from the sources identified above as trust receipts to be used exclusively for the payment of honoraria and overtime pay duly authorized. Agencies may utilize up to one hundred percent (100%) of the said collections for the payment of honoraria and overtime pay subject to the guidelines in the Budget Circular. Any excess in the amount collected shall be remitted by NGAs to the Bureau of the Treasury. In the case of GOCCs and LGUs, the same shall form part of their corporate or local government funds, respectively.

Also see GPPB Resolution 21-2005 on the Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff, which provide the general conditions, procedures and funding source for free legal assistance, liability insurance and medical assistance.

Professionalization of Procurement Units, BAC, TWG

Legal Reference

IRR-A Section 16 provides the legal reference for the professionalization of procurement units, BAC and the TWG.

The GPPB, through its TSO, has established in cooperation with qualified organizations and institutions, a sustained training program to develop the capability of the BACs, BAC Secretariats, TWGs and the Procurement Units/Offices of the Procuring Entities, and professionalize the same. The professionalization program of the GPPB will address the continuing education needed to enhance the capacity and career path of procurement officers in government, including the development of plantilla positions for procurement officers.

It is the responsibility of the Head of the Procuring Entity to ensure that all officials and employees involved in the procurement process will avail of the procurement training conducted by the GPPB and other GPPB accredited bodies offering the different modules on procurement-related training. (See www.gppb.gov.ph for details) The Procuring Entities must also develop and implement their own in-house training programs in accordance with the guidelines and standards prescribed by the GPPB-TSO. For this purpose, they ought to include provisions for such training in their annual budget proposals submitted to the DBM and Congress.

Moreover, the Head of the Procuring Entity must regularly monitor the work quality of the procurement organization, through a review of the procurement monitoring reports regularly submitted by the BAC as mentioned previously in this Manual. Management meetings may likewise be conducted for this purpose.

In line with the standardization of the procurement procedures and the thrust towards strengthening the procurement function to increase operational efficiency and effectiveness, Heads of Procuring Entities must aim to consolidate or unify all procurement activities of the organization, whether locally funded or foreign assisted, and whether pertaining to goods, infrastructure projects or consulting services, subject to the provision of Section 11.1 of the IRR-A, which allows for the creation of several BACs.

SECTION 3

Procurement Planning

PROCUREMENT PLANNING - Procurement Planning and Budget Linkage

Legal Reference

IRR-A Section 7 provides the legal reference for procurement planning and budget linkage.

Planning is the “act or process of making or carrying out plans; specifically: the establishment of goals, policies, and procedures for a social or economic unit.” (Merriam-Webster’s Collegiate Dictionary, 2001) Plans could cover short-term, medium-term, or long-term periods. They could be small-scale or large-scale. But in all cases, a plan involves resource allocation and scheduling. This is particularly true for procurement planning, which is a critical component of a Procuring Entity’s budget. Plans ensure that the overall goal of the particular project will be achieved effectively and efficiently. Through plans, a Procuring Entity is able to effectively manage and track procurement all the way to contract performance. As such, it allows managers to determine how to allocate limited cash and other appropriate resources under a given time line and identify choke-points, weaknesses, and delays in the entire activity that can be addressed or eliminated.

Every year, upon issuance of the Budget Call by the DBM, the Procuring Entity prepares the Agency Budget Proposal for the succeeding calendar year, taking into consideration the budget framework for that year. At this stage, the PMO, end-user units or the different operating units of the Procuring Entity prepare their respective WFP for their different PPA, using forms provided by the DBM as annexes to the Budget Call.

The Procuring Entity’s Budget Proposal embodies the agency thrusts and the resources needed to produce the key services it delivers to the public. Procurement planning should be done within this budgetary context, reflecting the Procuring Entity’s priorities and objectives for the budget period. Procurement Planning therefore involves two levels: the Agency’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. In the context of budget preparation, the project and/or operational plans are reflected in the WFP for each PPA. The WFP contains the initial list of projects/requirements of each PMO/end-user unit and corresponding estimated budgetary requirement. The WFP is submitted by the PMOs or end-user units to the Procuring Entity’s Budget Office on or about May of each year, to coincide with the submission of their respective budget proposals. These WFPs will be evaluated and, if warranted, included in the Procuring Entity’s Budget Proposal. The WFPs will support the Budget Proposal submitted to DBM, and becomes basis for the proposed PPMP. The Budget Office shall furnish a copy of the WFPs and proposed PPMP to the BAC Secretariat for the consolidation of the initial list of items / projects for procurement into the proposed APP. All documents shall be approved by the Head of the Procuring Entity prior to any submission to other approving bodies.

As soon as the GAA becomes final, which is usually around November – December, the PMOs and end-user units must refine the proposed PPMP in accordance with the guidelines discussed below. Within fifteen (15) days from the date of issuance of the ABM during the first quarter of the fiscal year, the PMOs and end-user units shall finalize the PPMPs to reflect the budgetary allocation for their respective PPAs, as provided in the ABM. The final PPMPs shall be submitted to the BAC Secretariat for the finalization of the proposed Procuring Entity’s APP which will then be submitted to the Head of the Procuring Entity for confirmation or approval.

Insofar as NGAs are concerned, the ABC referred to in R.A. 9184 and its IRR-A basically refers to the proposed budget for the project contained in the agency budget as reflected in the GAA or to be proposed in succeeding GAAs and approved by the Head of the Procuring Entity. Thus, NGAs may post and/or advertise procurement opportunities for projects proposed in the succeeding GAA even prior to its enactment but cannot award contracts until after the Certificate of Availability of Funds has been issued. (GPPB Resolution 011-2005 dated 26 May 2005) However, this procedure is recommended to be adopted only for high priority projects,

as contained in the proposed APP, which are necessary to be implemented immediately upon the opening of the succeeding year.

PROCUREMENT PLANNING – Preparation of the Project Procurement Management Plan (PPMP)

Legal Reference

IRR-A Section 7 provides the legal reference for the preparation of the PPMP.

1. The PPMP

A Project Procurement Management Plan or PPMP, which is a component of the Project Management Plan, deals primarily with:

- a. planning for the procurement of project requirements;
- b. bidding or procurement strategy;
- c. source selection;
- d. delivery and payment schedules;
- e. contract administration;
- f. contract termination; and
- g. other major milestones;

in an effort to obtain goods, infrastructure and services from suppliers, contractors and consultants.

The PPMP serves as a guide document in the procurement and contract implementation process, as well as a vital reference in procurement monitoring. Moreover, it serves as an important tool in resource and financial management, allowing the Procuring Entity the flexibility to optimize the utilization of scarce resources. Well-planned procurement will significantly minimize the practice of doing short-cuts to ensure that the Procuring Entity is able to purchase its requirements for the delivery of public services.

2. Developing the Project Requirements

The development of the project requirements should be done during the preparation of the proposed PPMP. At this stage of the procurement planning process, the PMO or end-user unit must:

- a. Identify the need of the PMO or end-user unit
 What is the purpose of the procurement? What are the problem/s or needs that the project or procurement aims to address?
- b. Identify the alternative solutions/products/services
 What alternative solutions to the problem/s or need/s are available in the market? What are the sources of these products and services? What is the profile of the supply market? Are they easily obtainable? How much is the cost of each alternative?

The PMO or end-user unit should conduct the market research at this point, and gather as much information about the Goods, Services or expertise required. At the end of this activity, it should know the market or the industry well enough to make an informed choice.

- c. Compare the alternatives (consider qualitative and quantitative factors)

Consider how the PMO or end-user unit would rate the various alternatives in terms of the following:

- i. Value for money

The concept of value for money is not restricted to price alone. In addition to costs, other considerations are non-cost factors like suitability or fitness to the purpose, quality, among others. In comparing costs, all relevant costs should be considered, e.g., acquisition costs, life-cycle costs (including maintenance and operating costs for goods and infrastructure, spare parts of goods, etc.).

- ii. Risk assessment and management

Some risks that may be identified are the obsolescence of equipment, the availability of support services, the capacity of contractors to implement the project, among others. It is recommended, especially for high-technology, complex, or high value procurement, that the PMO or end-user unit identifies the risks involved and come up with its own risk management plan. Or the bidders could be required to submit, as part of their technical document, a risk assessment and risk management plan.

- iii. Government policies that have an impact on the project or procurement

Are there any restrictions on the procurement contemplated? What relevant government policies should be considered in determining the goods or services that will be purchased?

- iv. Other relevant factors that may be identified by the PMO or end-user unit.

- d. Choose from among the alternatives the one that is most beneficial to the Procuring Entity, and make the necessary recommendation to the approving authority.

In developing the project requirements and TS/SOW/TOR, the Procuring Entity shall engage the services of technical experts, whether in-house or consultants, to ensure that the requirements and the TS/SOW/TOR are adequate to achieve the objectives of the particular procurement.

3. Writing the Technical Specifications, Scope of Work and Terms of Reference

The Technical Specifications (for Procurement of Goods), Scope of Work (for 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.

The Technical Specifications, Scope of Work and Terms of Reference are discussed in detail in Volumes 2, 3 and 4, respectively. The following guidelines are, however, considered helpful in writing the TS/SOW/TOR:

- a. Quality Assurance actually starts at this stage of the procurement cycle, considering that the deliverables are decided at this time. It is therefore

important that all stakeholders are consulted, and the actual requirements of the PMO or end-user unit are determined and put in writing.

- b. If the procurement is complex, highly technical, or high value, and the Procuring Entity does not have sufficient technical proficiency, it would be prudent to engage the services of technical experts who will serve as consultants in the preparation of the TS/SOW/TOR. In engaging these consultants, the Procuring Entity shall follow the procedures for procurement of consulting services as laid down in Volume 4 of these Manuals. Moreover, care should be taken that possible conflict of interest is avoided; that is, the consultant/s engaged should not be connected with the prospective bidders/contractors, and are barred from being engaged by the latter for any purpose related to the procurement at hand.
- c. The description should be generic and flexible, not product-specific or seemingly tailored for a particular brand, product, contractor or consultant, unless the procurement involves products or services that have intellectual property rights attached to it, or are exclusively offered by a single source, and there are no suitable substitute products or services. If the procurement involves products or services that have intellectual property rights attached, or are exclusively offered by a single source without any suitable substitute, then the PMO or end-user unit must be able to satisfactorily justify the need for such a product or service.
- d. The description should be clear and unambiguous, to avoid confusion and to facilitate the evaluation process. It is noted that the TS/SOW/TOR is also the basis of the evaluation or, when applicable, the testing parameters.
- e. Considering that planning is done sometime before actual procurement and even farther from the date of actual delivery or project implementation, changes in technology or changes in the concerned industry or field of expertise should already be taken into account in writing the TS/SOW/TOR. This will allow the Procuring Entity to procure the latest products and/or services available in the market.

4. Determining the Approved Budget for the Contract

The ABC refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the GAA and/or continuing appropriations, in the case of NGAs; the corporate budget for the contract approved by the governing board, pursuant to E.O. No. 518 series of 1979 in the case of GOCCs and GFIs, and R.A. 8292 in the case of SUCs; and the budget approved by the Sanggunian in the case of LGUs. (IRR-A Section 5)

The ABC, insofar as National Government Agencies are concerned, refers to the budget for the contract duly approved by the Head of the Procuring Entity which is contained in the Agency Budget as reflected in the GAA or to be proposed in succeeding GAAs. Thus, the ABC referred to in the R.A. 9184 and its IRR-A basically refers to the proposed budget for the project approved by the Head of the Procuring Entity based on the APP as consolidated from various PPMPs. (GPPB Resolution 011-2005 dated 26 May 2005)

In determining the ABC, the PMO or end-user unit has to consider several factors, namely: the appropriation for the project or procurement (whether taken from the current year's appropriations or continuing appropriations), the market price of the goods and/or services being procured, inflation and cost of money which are directly related to the procurement time table.

The determination of the ABC for each type of procurement (Goods, Infrastructure Projects and Consulting Services) is discussed in Volumes 2, 3 and 4.

5. Procurement Milestones

The PPMP, like any plan, is not complete without including therein the schedule of significant activities. The procurement milestones referred to are the following: pre-procurement conference (if required or necessary), publication and/or posting of the IAEB, pre-bid conference, submission of eligibility requirements and LOI (for procurement of infrastructure projects and consulting services), submission of bids (for procurement of goods, submission of eligibility requirements and bids are done simultaneously), bid evaluation, determination of LCRB or HRRB, issuance of notice of award, contract execution and approval, issuance of notice to proceed, delivery dates or commencement of project implementation. For details on the specific activities for each type of procurement, please refer to Volumes 2 (for Goods), 3 (for Infrastructure Projects) and 4 (for Consulting Services). Each of these significant activities should be scheduled so as to provide the PMO or end-user unit with a guide in each procurement undertaken by the Procuring Entity. This will ensure that logistical support and other requirements of the Procuring Entity are promptly addressed, hence contributing to more efficient and effective delivery of public service.

The Procurement Milestones may be laid down in a Gantt chart similar to that shown in Section 4 (General Procurement Activities and Timelines) of this Volume.

6. Method of Procurement

As a general rule, all procurement should be through public bidding. This is the policy of the GOP, as laid down in R.A. 9184. However, the law recognizes that certain unique circumstances require the use of other methods of procurement. The selection of the method of procurement is dependent on the presence or absence of specific conditions that justify the use of a particular method (*e.g.*, if a product is patented, direct contracting is the preferred mode instead of public bidding). These are discussed in Section 5 (Various Methods of Procurement) of this Volume, and in Volumes 2, 3 and 4, when applicable to the type of procurement.

7. Format of the PPMP (prepared by the PMO/end-user unit)

The PPMP shall contain the following information:

- a. The name of the project/procurement;
- b. General description of the project/procurement;
- c. The extent/size of contract scopes/packages;

(This refers to the general description of the lot to be included in a particular contract, *i.e.* the goods, infrastructure project or services, or a combination of any two or three of these types of procurement, including quantities where applicable.)

- d. The procurement methods to be adopted, and indicating if the procurement tasks are to be outsourced as provided in Section 53(e) of the IRR-A;
- e. The time schedule for each procurement activity; and
- f. The ABC.

PROCUREMENT PLANNING – Preparation of the Annual Procurement Plan (APP)

1. The Annual Procurement Plan

The APP is the document that consolidates the various PPMPs submitted by the various PMOs and end-user units within the Procuring Entity. It reflects the entirety of the procurement activities that will be undertaken by the Procuring Entity within the calendar year.

The APP is prepared by the BAC through the BAC Secretariat upon submission by the PMOs and end-user units of their respective PPMPs and finalized after the ABM has been approved by the DBM. The APP shall subsequently be re-submitted by the BAC for approval to the Head of the Procuring Entity or a second-ranking official designated by the Head of the Procuring Entity to act on his behalf.

In preparing the APP, the BAC shall take into consideration the following factors:

- a. The APP should include all procurement activities planned for the year. The approved APP shall be the basis for the Procuring Entity's procurement, and only those projects / procurement included therein shall be undertaken.
- b. The APP shall include only those procurements that are considered crucial to the efficient discharge of governmental functions. The IRR-A considers a procurement crucial to the efficient discharge of governmental functions if:
 - i. it is required for the day-to-day operations of the Procuring Entity; or
 - ii. it is in pursuit of the principal mandate of the Procuring Entity concerned.
- c. The APP shall include provisions for foreseeable emergencies based on historical records. The BAC, through the BAC Secretariat, shall include therein a lump sum to cover for these emergencies or contingencies, which amount shall not be more than four percent (4%) of the Procuring Entity's total appropriations for MOOE.
- d. Scheduling of procurement activities should be done in such a manner that the BAC and the other offices/units in the Procuring Entity that are involved in the procurement process are able to efficiently manage the conduct of procurement transactions. Moreover, it is paramount that project implementation timelines are met.

A review and updating of the individual PPMPs and the APP shall be done regularly, at least once every six months or as often as necessary. The review and updating of the PPMPs will be done by the PMOs and the end-user units. These units may avail of the services of technical experts to review the individual PPMPs. The updated PPMPs will then be submitted to the BAC Secretariat for subsequent inclusion in the updated APP. For flexibility and to encourage advance procurement actions, the APP and PMPP should also be based on proposed budget to allow for advance planning for the succeeding budget year.

The APPs of decentralized procuring entities would have to be submitted to the central office for information and monitoring purposes.

2. Procurement Strategy

The procurement strategy refers to the approach that will be adopted by the BAC in the procurement of the goods, infrastructure projects and consulting services included in the APP.

In the review and consolidation of the PPMPs, the BAC will be able to determine the extent of diversity, quantities, quality, cost, the supply market, and other characteristics of the Procuring Entity's requirements for the year. The profile of the procurement is a major determinant in the choice of procurement strategy to be employed, as well as in the scheduling of procurement activities.

There may be common requirements for the various PPMPs. For example, three projects require the purchase of five (5) units of laptop computers for each project office, or a total of fifteen (15) laptop computers. Obviously, it will be more cost effective and efficient if the BAC will procure the 15 laptop computers in one bidding exercise and as one bid lot.

The individual PPMPs sometimes reflect a mix of procurement types, for example, an ICT project might involve the procurement of goods (*e.g.*, workstations, network equipment and peripherals), procurement of civil works (*e.g.*, the installation of cables might involve the repair of some offices and other related civil works) and procurement of consulting services (*e.g.*, design and development of information systems). In similar cases, the BAC will have to exercise judgment in determining the bid lots and contract package. There are two approaches to this case – the project could be bid out as one package, or it could be divided into several bid lots (*i.e.* supply of hardware, supply and installation of cables, design and development of information systems, and repair of facilities). There are advantages and disadvantages to either approach, and the BAC, through the help of the TWG and the Secretariat, shall determine which is the best option for the Procuring Entity.

In IRR-A, Section 5(p), in case of projects involving mixed procurements, the nature of the procurement, *i.e.* goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the project. This is helpful in determining which type of procurement procedure to apply. However, there may be instances when the PMO, end-user unit or the Procuring Entity itself may have difficulty determining or agreeing upon the primary purpose. In these cases, ascertaining the component with the highest price may be useful as an indicator of purpose, though not necessarily as a determining factor. In the example given above, it seems that the purpose is actually to computerize the internal operations of the Procuring Entity; hence the single most important component of the project is the design and development of information systems. This being the case, the project could be bid out as a consulting service.

3. Format of the APP

The BAC may prepare three APPs, one each for Goods, Infrastructure Projects, and Consulting Services or a consolidated APP for all procurement activities.

The APP shall contain the following information:

- a. Name of the project/procurement;
- b. PMO or end-user unit;
- c. General description of the project/procurement (general description of requirements and quantities, where applicable);
- d. The procurement methods to be adopted, and indicating if the procurement tasks are to be outsourced as provided in Section 53(e) of the IRR-A;
- e. The time schedule for each procurement activity; and

f. The ABC.

SECTION 4

Various Methods of Procurement

Competitive Bidding

Legal Reference

IRR-A Section 10 provides the legal reference for competitive bidding.

All procurement shall be through competitive or public bidding, except as provided in Rule XVI of the IRR-A, which provides for the conditions for use of the alternative modes of procurement. This is so specified in Section 10, Article IV of R.A. 9184 and Section 10, Rule IV of its IRR-A. In keeping with this policy, Procuring Entities are enjoined to provide for sufficient lead time in its procurement program for the conduct of public bidding.

Competitive Bidding or Public Bidding is defined in R.A. 9184 and its IRR-A as follows:

"Refers to the method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act."

Competitive bidding opens up the procurement opportunity to a greater number of suppliers or contractors who compete among themselves in providing the best goods or services to the Government for the best value. This enables the Government to obtain goods and services, infrastructure projects, and consulting services at lower prices and better terms, thus optimizing the use of scarce resources. In addition, it allows for greater transparency of the procurement process.

Competitive bidding is discussed in detail in Volumes 2, 3 and 4 of these Manuals.

It is conceded, however, that there are instances when resorting to any of the alternative modes of procurement is necessary.

Alternative Methods of Procurement

Legal Reference

IRR-A Sections 48 to 54 provide the legal reference for the alternative methods of procurement.

1. Conditions for Use of Alternative Methods of Procurement

In highly exceptional cases provided for in Article XVI of R.A. 9184 and Rule XVI of its IRR-A, the Procuring Entity is allowed to resort to the alternative methods of procurement in order to promote economy and efficiency, subject to the following conditions:

- a. The BAC should recommend to the Head of the Procuring Entity the use of alternative methods of procurement in cases where public bidding is not feasible, to be indicated in the APP;

In cases where the original method of procurement specified in the APP is public bidding and conditions arise justifying the use of an alternative method of procurement after the APP is finalized, the APP may be amended. This can be done after a BAC Resolution recommending the use of the alternative method is approved by the Head of the Procuring Entity. The procedures are discussed in Volumes 2, 3, and 4.

Procuring Entities may charge small value purchases or over-the-counter purchases against petty cash funds provided that the procurement is within the allowable contingency. This is further discussed in Volume 2 of this Manual, in Section 2 (Part 2).

- b. The Head of the Procuring Entity or his duly authorized representative has given prior approval of the use of any of the alternative methods of procurement;
- c. The conditions surrounding the procurement at hand justify the use of any of the alternative methods of procurement, as provided for in Sections 48-54, Article XVI of R.A. 9184 and Sections 48-54, Rule XVI of its IRR-A.

2. The Different Alternative Methods

- a. *Limited Source Bidding*, otherwise known as *selective bidding*, is a method of procurement of goods and consulting services that involves direct invitation to bid by the concerned entity of all pre-selected suppliers or consultants with known experience or proven capability on the requirements of the particular contract. The pre-selected suppliers or consultants shall be all those appearing in the list maintained by the relevant Government authority (e.g., Bureau of Food and Drugs for medicines, National Telecommunications Commission for telecommunication equipment, etc.) that has expertise and experience in the type of procurement concerned, which list should have been submitted to, maintained and updated with, the GPPB. For highly specialized goods and consulting services, where no such list is being maintained by a relevant Government authority, competitive bidding shall be conducted. It is

noted that the purpose of the list is to regulate the quality of goods being offered and the qualifications of consultants in the particular field of expertise.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Volume 2 (for procurement of goods, and Section 3, Part 2, Vol. 4 (for procurement of consulting services), of this Manual.

- b. *Direct Contracting or single source procurement* is a method of procurement of goods that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Vol. 2 of this Manual.

- c. *Repeat Order* is a method of procurement of goods from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through Competitive Bidding.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Vol. 2 of this Manual.

- d. *Shopping* is a method of procurement of goods whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Vol. 2 of this Manual.

- e. *Negotiated procurement* is a method of procurement of goods, infrastructure projects and consulting services, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor, consultant or, where allowed, an individual consultant, only in the cases provided for in Section 53 of R.A. 9184 and Section 53, Rule XVI of its IRR.

The particular conditions under which this alternative method of procurement may be used are outlined in Section 2, Part 2, Vol. 2, Section 3, Part 2, Vol. 3 and Section 3, Part 2, Vol. 4 of this Manual.

SECTION 5

Procurement by Electronic Means and the PhilGEPS

Procurement by Electronic Means and the Philippine Government Electronic Procurement System

Legal Reference

IRR-A Section 8 provides the legal reference for the procurement by electronic means and the PhilGEPS.

1. The PhilGEPS¹

Consistent with the policies of transparency and streamlining of the procurement process, and to achieve efficiency, ICT shall be utilized in the conduct of government procurement. 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.

The PS-DBM manages the PhilGEPS under the supervision of the GPPB. The PhilGEPS serves as the single portal and primary source of information on all government procurement.

All Procuring Entities shall utilize the PhilGEPS, through its Electronic Catalogue facility, for the procurement of common-use supplies. Moreover, all IAEB, notices of award, and all other procurement-related notices shall be posted in the PhilGEPS, regardless of the method of procurement used by the Procuring Entity.

The GPPB shall issue the necessary procedural guidelines covering procurement through the PhilGEPS.

2. Features of the PhilGEPS

a. Electronic Bulletin Board

The PhilGEPS shall have a centralized electronic bulletin board.

Procuring Entities are required to post the following in the PhilGEPS Electronic Bulletin Board:

- i. IAEB for competitive bidding and notices of other procurement opportunities using the alternative methods of procurement;
- ii. Supplemental/Bid bulletins;
- iii. Contract awards, the corresponding Notices of award, including the reasons for award of contract;
- iv. Results of bidding and related information; and
- v. Other notices, announcements, information for interested parties.

¹ In case of FAPs, e-procurement should be consistent with the requirements of the IFI concerned.

Failure to post a procurement opportunity will render the resulting contract null and void.

Failure to post a Notice of Award shall render the erring government official/s administratively liable in accordance with R.A. 6713 and other pertinent laws, rules and regulations, and appropriate sanctions shall be imposed.

Posting of notices and other transactions with the PhilGEPS shall be done through duly authorized personnel of the Procuring Entity. In accordance with Section 8.2.3 of the IRR-A, the Procuring Entity shall be required to designate its personnel who will be authorized to transact with the PhilGEPS. The internal procedures of PhilGEPS require that a Procuring Entity shall have at least one (1) but not more than two (2) such authorized personnel. For purposes of consistency with the prescribed procurement procedures, the Procuring Entity shall designate such personnel who is a member of the BAC Secretariat or assigned to the Procurement Unit/Office. *(Please refer also to Section 3, Volume 2 of this Manual for the procedures for transacting with the PS-DBM.)*

Posting of the IAEB shall follow the guidelines in Section 21 of the IRR-A, Section 2, Part 1, Vol.2, Section 3, Part 1, Vol.3, and Section 3, Part 1, Vol. 4 of this Manual.

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

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

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

Manufacturers, suppliers, distributors, contractors and consultants applying for registration must also indicate their account number with a bank duly licensed by the BSP to facilitate payment as well as the posting of bid and performance security, when applicable.

The PhilGEPS shall deny registration to or exclude from the registry any party that is found to have willfully misrepresented any of the information provided in the application for registration or who is in the "blacklist" of the Government or any of its procuring entities from participating in any of its procurement opportunities.

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

Once the PhilGEPS allows electronic bid submission and other on-line transactions requiring digital signatures, registered manufacturers, suppliers, distributors, contractors and consultants shall secure a digital certificate from the appropriate certification authority to be able to participate in the procurement activities of the PhilGEPS.

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

c. **Electronic Catalogue**

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

Procuring Entities are required to procure common-use goods, supplies, materials and equipment from the PS-DBM through the Electronic Catalogue in the PhilGEPS. Once the PhilGEPS is fully operational, the procedures for transacting with the PhilGEPS shall be provided for in detail in the websites of the PhilGEPS (procurement-service.net) and the PS-DBM (procurement-service.org).

The Electronic Catalogue may also feature non-common use items that may be procured directly and without public bidding by procuring entities from suppliers: *Provided, however,* That for an item to be carried in the Electronic Catalogue for this purpose, the supplier thereof must have been determined as the Lowest Calculated Responsive Bidder in a previous bidding conducted by PS-DBM or by a Procuring Entity for PS-DBM: *Provided, further,* That such item will be featured in the Electronic Catalogue for a maximum period of six (6) months unless another supplier offers a price lower by at least five percent (5%) and such supplier is determined by the Procuring Entity that conducted the previous bidding to meet the eligibility and bidding requirements for the item, in which case the item from the latter supplier will be that featured in the Electronic Catalogue for the remainder of the six (6)-month period.

Procuring entities without internet access may avail of the PhilGEPS Public Access Terminals which shall be installed at DBM-designated locations in the provinces and in Metro Manila.

d. **Additional Features**

The PhilGEPS will also feature the following:

- i. A Virtual Store that will enable the ordering of common-use and non-common use items online called a virtual store. This virtual store shall be open only to registered Procuring Entities and may not be accessed by suppliers.
- ii. An Electronic Payment function that will allow the system to manage the generation of purchase orders and the payment of bids processed through the system. The focus of this feature is to facilitate the electronic transfer of funds from PS-DBM to and from Procuring Entities and suppliers, and from Procuring Entities to suppliers for bids managed directly by the Procuring Entity. This system will:
 - Generate purchase orders from a bid notice, award notice or contract;
 - Support approval process for purchase orders before any payment or fund transfer is processed;
 - Have a process to submit request for payment upon delivery of goods and/or services and the completion of the approval process; and

- Have the ability to interface with the designated bank of the Procuring Entity and suppliers to support the electronic transfer of funds.
- iii. An Electronic Bid Submission that 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. This facility will cover all types of procurement for goods, infrastructure projects and consulting services.
 - iv. Other features that may be developed in the future under the policy guidance of the GPPB.

The PhilGEPS will also feature a Virtual Store, Electronic Payment, Electronic Bid Submission, and such other features that may be developed in the future. Procedures for the use of these features will be published once these become operational.

Use of Procurement Service Providers

Legal Reference

IRR-A Section 8 provides the legal reference for the use of procurement service providers.

Procuring Entities may hire service providers who will provide electronic procurement systems and/or services for the procurement of non-common use supplies, infrastructure projects and consulting services. The Procuring Entity shall conduct a public bidding for this service.

Minimum Requirements for Service Providers

Electronic procurement service providers must meet the following minimum requirements to qualify as a service provider to a Procuring Entity:

1. the system must comply with the provisions of R.A. 9184, its IRR-A, R.A. 8792 (Electronic Commerce Act);
2. the system must be linked to the PhilGEPS, particularly with regard to the posting of all bid opportunities and awards;
3. the system must allow parallel manual submission of bids to the Procuring Entity;
4. the system must ensure that the BAC shall have complete control of the bidding process, and that the BAC's sole authority to open bids is strictly observed;
5. the system must be virus-resilient and the infrastructure must provide sufficient security which is at least equivalent to that employed by the PhilGEPS, such as, but not limited to, firewall and encryption devices;
6. must provide for use of electronic signatures and other current electronic authentication devices;
7. the service provider must have sufficient redundant back-up facilities;
8. the system must have provisions for linkage to the Procuring Entity's Financial Management Information System, Logistics Management System, and other internal information systems that may interact with the procurement process; and
9. Electronic payment facilities, if used, shall comply with all laws, rules and regulations issued by the Government.

The GPPB shall determine and certify compliance with the above requirements. However, it may delegate this task to technically capable agencies/offices of the Government. For this purpose, it shall issue the necessary Guidelines.

SECTION 6

Foreign Assisted Projects

Foreign Assisted Projects

R.A. 9184 adopts international best practices in public procurement processes, and institutionalizes the need for a procurement manual, standard bidding documents and forms. With this, the next logical step is the harmonization of the GOP's procurement rules and those of the major and most active IFIs in the country. This activity was already initiated with ADB, JBIC and the World Bank, through the issuance of harmonized standard bidding documents and applicable procedures. It should be noted that these harmonized standard bidding documents only affect the procurement guidelines of the aforementioned IFIs for national or local competitive bidding procedures, and that ICB procedures would have to use the standard documents of the IFI concerned. Appendix ___ shows the major procurement harmonization points normally captured in the loan or grant agreement.

The harmonization of ICB procedures is currently on-going among the IFIs, and this would naturally be a continuing process. In any case, even if procurement harmonization in the Philippines began on the level of national/local competitive bidding procedures, the entire activity also opened the doors for the possible harmonization of ICB procedures. Since the IFIs' guidelines focus primarily on procurement procedures, evaluation and review processes, this leaves much room for readily adopting the provisions of R.A. 9184 and its IRR-A, except those rules that are not acceptable to the IFIs which are normally identified in the loan or grant agreement, the bidding documents or appropriately addressed in these Manuals. These pertain to the following areas:

1. The review procedures of the IFI concerned, including thresholds for prior review, if any
2. Thresholds for national/local competitive bidding
3. The posting of the ABC as the ceiling of bid prices
4. The timelines for the preparation of bids
5. The allowance of pre-qualification for complex or large projects
6. Eligibility criteria, which includes the participation of foreign bidders
7. Currency requirements
8. Domestic and provincial preferences
9. For ADB and JBIC funded projects, the country eligibility requirement shall be followed

SECTION 7

Penal, Civil and Administrative
Liabilities and Sanctions

Standard of Ethics

Definition of Corrupt, Fraudulent, Collusive, and Coercive Practices

Procuring entities and bidders, manufacturers, suppliers or distributors are required to observe the highest standard of ethics during the procurement and execution of contract. Bidders determined to have committed corrupt, fraudulent, collusive and coercive practices by the government will not be eligible to bid in its projects.² For this purpose:

1. "Corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contracting execution; entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.
2. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
3. "Collusive practice" means a scheme or arrangement between two (2) or more bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.
4. "Coercive practice means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.

The pertinent provisions of the Anti-Graft and Corrupt Practices Act, or R.A. 3019, shall also be applied in determining the existence of "corrupt or fraudulent practice".

Applicable penalty for fraud, misrepresentation and collusion

If a bidder is found to have committed an act that constitutes fraud or misrepresentation or to have colluded with others for the purpose of influencing the outcome of the bidding, it will be disqualified by the BAC, its bid security will be forfeited, and, upon conviction, it will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years. (IRR-A Section 65.2) Likewise, it will suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. (IRR-A Section 69.1)

² A firm declared ineligible by an IFI for engaging in corrupt, fraudulent, collusive and/or coercive practice/s, shall be ineligible to be awarded an IFI-financed contract during the period of time determined by the IFI concerned.

Conflict of Interest

A bidder that has a conflict of interest shall be disqualified to participate in the procurement at hand. A Bidder would be considered as having a conflict of interest with another bidder in any of the events described in paragraphs 1 through 3 below and a general conflict of interest in any of the circumstances set out in paragraphs 4 through 6 below:

1. If the bidder is a corporation or a partnership and it has officers, directors, controlling shareholders, partners or members in common with another bidder; or if the bidder is an individual or a sole proprietorship and he is the proprietor of another bidder, or an officer, director or a controlling shareholder of another bidder; or if the bidder is a joint venture and it or any of its members has officers, directors, controlling shareholders or members in common with another bidder, or any of its members is a bidder;
2. A bidder receives or has received any direct or indirect subsidy from another bidder;
3. A bidder has the same legal representative as any other bidder for purposes of the bidding at hand.
4. A bidder has a relationship directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder, or influence the decisions of the Procuring Entity regarding the bidding process. This will include a firm or an organization that lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;
5. A bidder submits more than one bid in the bidding process. However, this does not limit the participation of subcontractors in more than one bid; or
6. A bidder who participated as a consultant in the preparation of the design or technical specifications of the goods and related services that are the subject of the bid.

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

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

To establish the non-existence of the above relationship, and to bind the Bidders to its representation relating to the foregoing, all bids must be accompanied by a Disclosure Affidavit of the bidder to that effect. (IRR-A Sections 47 and 25.3.C.8)

Penal Liabilities and Sanctions

Penal Liabilities of Public Officers

Without prejudice to the provisions of R.A. 3019 and other penal laws, public officers who commit any of the following acts shall be criminally liable:

1. Opening any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.
2. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in the IRR-A.
3. Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take a particular action which favors, or tends to favor a particular bidder.
4. Splitting of contracts which exceed procedural purchase limits to avoid competitive bidding or to circumvent the limits of approving or procurement authority.
5. Abuse by the Head of the Procuring Entity of his power to reject any and all bids as mentioned under Section 41 of R.A. 9184 and its IRR-A, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of R.A. 9184 and its IRR-A.

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

Penal Sanctions for Public Officers

Without prejudice to the provisions of R.A. 3019 and other penal laws, public officers who commit any of the above acts shall, upon conviction, suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years. In addition, the public officer shall also suffer the penalty of temporary disqualification from public office, while any private individual found to have colluded with him shall be permanently disqualified from transacting business with the government.

The above penalties and offenses shall cover all types of procurement whether done manually or electronically.

When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts. If a person previously held liable or found guilty under the provisions of R.A. 9184 and its IRR-A has a controlling interest in a prospective bidder-entity the said bidder-entity shall be disqualified to participate in any procurement activity being conducted by the Government.

Penal Liabilities of Private Individuals

Private individuals who commit any of the following acts, shall be criminally liable:

1. When two or more bidders agree and submit different bids as bona fide, bidders, all the while knowing that the bid(s) of one or more of them was so much higher than

the other that the latter could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest bid.

2. When a bidder maliciously submits different bids through two or more persons, corporations, partnerships or any other business entity in which he has an interest to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.
3. When two or more bidders enter into an agreement which calls upon one or more of them to refrain from bidding for procurement contracts, or which requires one or more of them to withdraw Bids already submitted, in order to secure an undue advantage to any one of them.
4. When a bidder, by himself or in connivance with others, employs schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.
5. Submitting eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.
6. Submitting Bidding Documents of whatever kind and nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.
7. Participating in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.
8. Withdrawing a Bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or refuse to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

When any of the foregoing acts is done in conspiracy with a public officer, the public officer shall likewise be liable for the offense.

Penal Sanctions for Private Individuals

Private individuals who commit any of the above acts, and any public officer conspiring with them shall, upon conviction, suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years. In addition, the public officer involved shall also suffer the penalty of temporary or perpetual disqualification from public office and the private individual shall be permanently disqualified from transacting business with the Government.

The above penalties and offenses shall cover all types of procurement whether done manually or electronically.

When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts. If a person previously held liable or found guilty under the provisions of R.A. 9184 and its IRR-A has a controlling interest in a prospective bidder-entity the said bidder-entity shall be disqualified to participate in any procurement activity being conducted by the Government.

Civil Liability

Civil Liability in Case of Conviction

Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under R.A. 9184 and its IRR-A or R.A. 3019 shall carry with it civil liability, which may either consist of restitution for the damage done or the forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both, at the discretion of the courts.

Liquidated Damages

All contracts executed in accordance with R.A. 9184 and its IRR-A shall contain a provision on liquidated damages which shall be payable in case of breach thereof. For the procurement of goods 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. For the procurement of infrastructure projects, the amount of the liquidated damages shall be in accordance with Annex "E" of IRR-A, R.A. 9184. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the Procuring Entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.

Administrative Liabilities and Sanctions

Administrative Liabilities

The following violations shall warrant administrative sanctions:

1. Submission of eligibility requirements containing false information or falsified documents.
2. Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
3. Allowing the use of one's name, or using the name of another for purposes of public bidding.
4. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after he had been adjudged as having submitted the LCRB or HRRB.
5. Refusal or failure to post the required performance security within the prescribed time.
6. Termination of the contract due to the default of the bidder.
7. 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.
8. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.
9. All other acts that tend to defeat the purpose of the competitive bidding, such as an eligible contractor not buying bid documents, 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.

Administrative Sanctions

Without prejudice to the imposition of criminal sanctions or the effects of civil liability, the Head of the Procuring Entity shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, as well as disqualification from further participating in the public bidding being undertaken by the Procuring Entity concerned, where applicable, for any of the above violations. In addition to the penalty of suspension, the Bid Security or the Performance Security posted by the concerned bidder or prospective bidder shall also be forfeited.

The Head of the Procuring Entity may delegate to the BAC the authority to impose the administrative penalties.

The Head of the Procuring Entity may preventively suspend any member of the TWG, the BAC Secretariat, or the BAC if there are strong reasons or *prima facie* evidence showing that the officials or employees concerned are guilty of committing any of the acts constituting criminal or civil liability, or for dishonesty as defined by the Civil Service Laws. For uniformed personnel of the AFP, the substantive and procedural due process under its justice system shall be applied. In all cases, due process as mandated by the Constitution and Civil Service laws, rules and regulations, shall be strictly observed.

Lifting of preventive suspension pending administrative investigation, as well as removal of administrative penalties and disabilities shall be in accordance with the provisions of Sections 52 and 53, Chapter 6, Subtitle A (Civil Service Commission), Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

Blacklisting Guidelines

GPPB Resolution 09-2004 provides the guidelines that govern the blacklisting of manufacturers, suppliers, distributors, contractors and consultants involved in government procurement for offenses or violations committed during competitive bidding and contract implementation, in accordance with Section 69.4 of IRR-A, R.A. 9184.

Prohibition on blacklisted persons/entities to participate in the bidding of Government Projects/Contracts

A person/entity that is blacklisted by a Procuring Entity and/or included in the GPPB Consolidated Blacklisting Report shall not be allowed to participate in the bidding of all government projects during the period of disqualification unless it is delisted.

A joint venture or consortium which is blacklisted or which has blacklisted member/s and/or partner/s as well as a person/entity who is a member of a blacklisted joint venture or consortium are, likewise, not allowed to participate in any government procurement during the period of disqualification.

In the case of corporations, a single stockholder, together with his/her relatives up to the third civil degree of consanguinity or affinity, and their assignees, holding at least twenty percent (20%) of the shares therein, its chairman and president, shall be blacklisted after they have been determined to hold the same controlling interest in a previously blacklisted corporation or in two corporations which have been blacklisted; the corporations of which they are part shall also be blacklisted.

Sanctions and Grounds for Blacklisting

During the competitive bidding stage, pursuant to Section 69 of R.A. 9184, the Procuring Entity shall impose on bidders or prospective bidders the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution, as provided by applicable laws, for the following violations:

1. Submission of eligibility requirements containing false information or falsified documents.
2. Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
3. Unauthorized use of one's name, or using the name of the name of another for purpose of public bidding.
4. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the LCRB or HRRB.
5. Refusal or failure to post the required performance security within the prescribed time.
6. Refusal to clarify or validate in writing its Bid during post qualification within a period of seven (7) calendar days from receipt of the request for clarification.
7. Any documented unsolicited attempt by a bidder to unduly influence the outcome of

the bidding in his favor.

8. All other acts that tend to defeat the purpose of the competitive bidding, such as 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.

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

During Contract Implementation Stage, pursuant to Section 69 (6) of R.A. 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the Procuring Entity shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

1. Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the NTP;
2. 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:
 - a. Employment of competent technical personnel, competent engineers and/or work supervisors;
 - b. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 - c. 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;
 - d. Deployment of committed equipment, facilities, support staff and manpower; and
 - e. Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.
3. Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the Procuring Entity.
4. 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;
5. For the procurement of consulting services, poor performance by the consultant of his services arising from his fault or negligence. Any of the following acts by the consultant shall be construed as poor performance:
 - a. Defective design resulting in substantial corrective works in design and/or construction;
 - b. Failure to deliver critical outputs due to consultant's fault or negligence; and

- c. Specifying materials which are inappropriate, substandard, or way above acceptable standards.
 - d. Allowing defective workmanship or works by the contractor being supervised by the consultant.
6. 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 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:
- a. Negative slippage of fifteen percent (15%) and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
 - b. Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.
7. Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited.

SECTION 8

Legal Assistance and Indemnification

General Conditions

Pursuant to and in accordance with Section 73 of R.A. 9184 and its IRR-A, the GPPB issued the Guidelines on Legal Assistance and Indemnification of BAC Members and its Support Staff³ for the following purposes:

1. To prescribe the rule and procedures in granting legal assistance and indemnification of the BAC members and BAC Support Staff⁴.
2. To ensure that the mandate to insulate government procurement personnel from the unnecessary loss, damage or injury arising from the lawful exercise of their functions is implemented in accordance with the provisions of R.A. 9184.
3. To establish the legal parameters for the effective implementation of the legal assistance and indemnification provided for BAC members and BAC Support Staff.

The funds to be used for the grant of the free legal assistance, liability insurance or medical assistance shall be taken from the agency's annual appropriation. Protest fees, proceeds from the sale of bidding documents, and any other additional funds derived from other income-generating activities of the agency may be used to augment the funds.

Free Legal Assistance

In order for a member of the BAC or its Support Staff to avail of the free legal assistance, the following considerations must be met:

1. The procuring entity shall, to the fullest extent permitted by the, indemnify a BAC member and/or any of the BAC Support Staff who was or is a party to a pending or completed action, suit or proceeding whether civil, criminal or administrative in nature brought against him in the performance of his official functions as BAC member or as BAC Support Staff.
2. The BAC member or BAC Support Staff concerned must have engaged the services of a private lawyer or external counsel.
3. The BAC member or BAC Support Staff must have not been adjudged as guilty of gross negligence, misconduct, or grave abuse of discretion.
4. The free legal assistance shall cover actual cost of suit and attorney's fees. The attorney representing the BAC member or BAC Support Staff shall be entitled to a maximum of Five Thousand Pesos (Php5,000.00) per appearance which shall be paid by the procuring entity.
5. The free legal assistance shall not cover:
 - a. Any action or suit initiated by a BAC member or BAC Support Staff in his personal capacity or in behalf of the procuring entity, unless such action, proceeding, or claim was authorized by the head of the procuring entity or the approving authority therein; or
 - b. Any action or suit initiated by the Government against the BAC members or BAC Support Staff.

³ Approved and adopted by GPPB through its Resolution 021-2005, dated 07 October 2005, published at the Official Gazette on 09 January 2006.

⁴ Refers to the members of the BAC Secretariat and the Technical Working Group duly designated by the procuring entity pursuant to the provisions of Rule V of the IRR-A of R.A. 9184.

6. The BAC member or BAC Support Staff shall be entitled to actual, moral, and exemplary damages when awarded by the court. Likewise, the attorney representing the BAC member or BAC Support Staff shall be entitled to attorney's fees awarded by the court.

Liability Insurance

Following are the general conditions pertaining to the liability insurance for members of the BAC and the BAC Support Staff:

1. The procuring entity shall have the responsibility to procure and maintain adequate liability insurance for and in behalf of its BAC members or BAC Support Staff.
2. The liability insurance policy shall cover only those liabilities asserted against the public official and incurred by him in his capacity as such BAC members or BAC Support Staff as the case may be.
3. In order to avail of the liability insurance, the BAC members or BAC Support Staff should not be adjudged in such action or proceeding to be guilty of gross negligence, misconduct, or grave abuse of discretion or guilty of any other complaint or charges.
4. In the event of settlement or compromise, indemnification shall be confined only to matters covered by the settlement, and to which the procuring entity had been advised by counsel that the person to be indemnified have not committed gross negligence, misconduct, or grave abuse of discretion in the performance of their duties and functions.
5. The insurer shall pay for the loss arising from the claim or suit made against the BAC members or BAC Support Staff during the policy period where they serve in such capacity. For this purpose, the term "loss" shall include judgments, expenses for settlement or compromise, as well as all reasonable fees and other expenses incurred by such persons in connection with any administrative, civil, or criminal action, suit or proceeding to which they may be or have been made a party be reason of the lawful performance of their official functions and duties in such capacity.

Medical Assistance

Medical assistance should be provided to BAC members and BAC Support Staff for injuries/disabilities incurred in the lawful performance of their official functions and duties. The medical assistance consists of indemnification for medicines, laboratory and hospitalization expenses and granted to the claimant as a matter of right and subject to the conditions mandated by law.

Following are the general considerations pertaining to the medical assistance:

1. The claimant(s) should be entitled to indemnification for any injury or disability resulting from the performance of their official functions as defined by law and without any contributory negligence on their part; provided that they exercised due diligence to prevent harm or injury to themselves.
2. The claimant(s) or his/her relatives must notify the head of the procuring entity within seven (7) calendar days from the occurrence of the injury or disability.
3. The amount claimed shall not exceed the actual amount incurred, substantiated by receipts and other supporting documents. Indemnification shall only be made upon presentation of the proof of payment in connection with the injury or disability suffered.

Procedure for Granting Legal Assistance and Indemnification

The claimant(s) should file their respective claim(s) for legal assistance, liability insurance, or medical assistance as the case may be, with the head of the procuring entity; and shall secure the approval of the latter on the terms and conditions of the engagement of counsel.

The head of the procuring entity should be given at least fifteen (15) to thirty (30) calendar days to examine, review, verify and validate the authenticity of the documents presented by the claimant.

Upon finding that all the requirements have been duly complied with and that all the necessary documents submitted are genuine, it should then order the processing of the claims and the subsequent release of funds for the approved claims.

Any expenses incurred in advance by the claimant arising from the performance of his official functions in such capacity shall be subject to reimbursement upon submission of the necessary documents and approval thereof by the head of the procuring entity.

If the BAC member or its support staff is found to be not guilty for gross negligence, misconduct, or grave abuse of discretion, he shall liquidate his cash advances by presenting receipts of payment and other necessary documents. On the other hand, if the BAC member or its support staff is found to be guilty for gross negligence, misconduct, or grave abuse of discretion, he shall pay the cash advances made through salary deductions or reimbursement.

SECTION 9
Case Studies

Case Study: Procurement of Infrastructure Projects

A concrete road project with an ABC of ₱10.0 million was advertised for bidding. Twenty (20) contractors expressed interest in the project by submitting a LOI on or before the deadline specified in the IAEB. On the day of the Eligibility Check/Screening, only ten (10) were found to be eligible.

On or before the day of Bid Opening, all of the ten (10) eligible contractors submitted a bid. All their technical envelopes were rated "passed" during the preliminary examination of bids. Further, their financial envelopes were likewise complying. After reading all the financial bids, Contractor A, which submitted a bid of ₱8.5 million, was declared the bidder with the LCB. The second lowest bid was ₱9.1 million, submitted by Contractor B.

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

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

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

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

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

Analysis:

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

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

IRR-A Section 23.4 says: "Notwithstanding the eligibility of a prospective bidder, the Procuring Entity concerned reserves the right to review its qualification at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the preset eligibility criteria, the Procuring Entity shall consider the said prospective bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract."

Further, even if Contractor A posted a credit line enough to compensate for the difference in its NFCC and the project's ABC; in the first place, the BAC should not have accepted the credit line as this is tantamount to an improvement in the qualification/bid of Contractor A. Corollary to this, it should be noted that the eligibility requirement from a bidder as proof of its capacity to absorb additional obligations in connection with the contract and to finance its implementation and completion is a choice among the NFCC, a credit line, or a cash deposit certificate, not a combination of the three.

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

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

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

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

In view of the foregoing, the BAC would have to award the contract to the bidder which submitted the second lowest bid among all the others who have been found eligible, *i.e.* Contractor B. While this contractor has had a negative slippage of -12% in his other projects, the eligibility requirement on track record only requires that the negative slippage, if any, be not more than -15%. Further, while the owner of Contractor B is a first cousin of the BAC Chairman, it is still not in violation of IRR-A Section 47, because the prohibition refers to the participation of bidders related to the members of the BAC within the third civil degree. A first cousin falls within the fourth civil degree.

Case Study: Procurement of Consulting Services

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

The project, which has an approved budget of ₱6,500,000, was advertised on 01 and 07 November 2003 in a newspaper of nationwide general circulation, the agency's website, the PhilGEPS, and a conspicuous place in the agency's premises. Fifteen (15) firms responded by submitting their LOI and eligibility documents on or before the deadline specified in the IAEB.

During the eligibility check conducted by the BAC on 24 November 2003, the BAC declared eight (8) firms as ineligible for failing to pass all the eligibility requirements. The 8 ineligible firms received their notice of ineligibility before the meeting adjourned. The seven (7) other firms were declared by the BAC as eligible for shortlisting. One of the 8 ineligible firms, Company X, filed a request for reconsideration with the BAC on 02 December 2003. After an assessment of the justification provided by the said ineligible bidder, the BAC decided on 05 December 2003 to grant its request for reconsideration and declared Company X as eligible.

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

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

The BAC deliberated on the number of firms to be included in the shortlist, and agreed to have a shortlist of six (6) firms. All 6 firms were informed of their inclusion in the shortlist through a letter dated 22 December 2003 and signed by the BAC Chairman. The RFP was forwarded to the 6 firms on 23 December 2003 stating, among others, the place and deadline for the submission of the technical and financial proposals.

A pre-bid conference was scheduled on 13 January 2004, while the deadline for submission of technical and financial proposals was set on 23 January 2004, 10:00 a.m., at the Conference Room, 3rd floor of the agency's building.

The BAC specified that the attendance of the 6 firms in the pre-bid conference is mandatory, and that failure to attend would be considered a ground for disqualification. All 6 firms attended the pre-bid conference and the minutes of the pre-bid conference were issued to the 6 bidders on 16 January 2004.

Five of the six firms submitted their technical and financial proposals on or before the 23 January 2004, 10:00 a.m. deadline, at the 3rd floor Conference Room. The sixth firm (Company F) arrived at the 3rd floor Conference Room at 10:03 a.m. and insisted that its technical and financial proposals be accepted as they were in the building at 9:57 a.m., as recorded in the security guard's logbook. The BAC decided to accept the technical and financial proposals of Company F.

The BAC started opening the technical envelopes of the six firms at the time indicated in the RFP to determine the presence of the required technical documents. All the firms, except Company F, submitted all the required technical documents. Company F was declared disqualified by the BAC for failure to pass all the technical requirements. After agreeing with

the declaration of the BAC on its disqualification, Company F accepted its financial proposal that was returned unopened by the BAC.

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

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

The BAC sent a letter to Company A dated 16 February 2004, informing the firm that it submitted the highest rated bid, and thus inviting it for contract and financial negotiations on 19 February 2004 at 9:00 a.m. The authorized representative of Company A met with the BAC and discussed, among others, its financial proposal. Upon opening of the financial proposal of Company A, the submitted bid price was read as ₱6,800,000, exceeding the ABC by ₱300,000. The BAC checked the calculation of company A and it determined the correct bid price to be ₱6,550,000, still exceeding the ABC by ₱50,000. Company A offered a discount of ₱50,000 so that the cost of its financial proposal would not exceed the ABC. Satisfied with the high technical score obtained by Company A, the BAC accepted the discount offered.

Negotiations were successfully completed on 20 February 2004. Company A was considered to have submitted the highest rated and responsive bid after its successful post-qualification on 27 February 2004.

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

Analysis:

1. While the IAEB was advertised twice in a newspaper of general nationwide circulation, Section 21.2.1.a of the IRR-A provides that there should be a minimum period of six (6) days in between publications. The BAC had a shorter period of five (5) days for disseminating the procurement opportunity for consulting services.
2. The request for reconsideration by Company X, which was declared by the BAC to be ineligible, should not have been favorably considered by the BAC as it was filed eight (8) days after it received the notice of ineligibility. Section 24.13 provides that prospective bidders "found ineligible have seven (7) calendar days upon written notice... within which to file a request for reconsideration with the BAC."
3. During the pre-procurement conference, the BAC should have already determined the number of shortlist of consultants, as provided in Section 24.15.2. The Section further provides that "(s)hould less than the required number apply for eligibility and shortlisting, pass the eligibility check, and/or pass the minimum score required in the shortlisting, the BAC shall consider the same." Determining the number of shortlist and the minimum score during actual shortlisting gives the BAC the opportunity to have a lesser or larger number of shortlist, from three (3) to seven (7), to favor a preferred firm.
4. The BAC is a recommendatory body. It should have obtained the approval of the Head of the Procuring Entity for its recommended shortlist before inviting all the firms in the shortlist to submit proposals, as provided in Section 24.15.4.
5. Section 22.2 provides that attendance to the pre-bid conference should not be mandatory, and should be conducted at least twelve (12) days before the deadline for the submission and receipt of bids. Conducting it ten (10) days before the deadline may not give the shortlisted bidders enough time to revise their proposals if these were affected by agreements reached

during the pre-bid conference. To be binding on both parties, any agreements reached during the pre-bid conference should be stated in writing and issued as a Supplemental/Bid Bulletin.

6. The technical and financial proposals of Company F should not have been accepted by the BAC as these were submitted at the designated place, which is the 3rd floor Conference Room of the agency's building and not just any place, beyond the deadline. Section 25.2 provides that "(b)ids submitted after the deadline should not be accepted by the BAC."

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

8. When the BAC calculated the cost of the financial proposal of Company A and determined that it exceeded the ABC, it should have disqualified Company A at this point as Section 31 provides that the ABC shall be the upper limit or ceiling for acceptable bid prices. The discount offered by Company A should not have been accepted as this is tantamount to an improvement of its bid. Since Company A should have been disqualified, Company B should be invited by the BAC for negotiations as it has the second highest technical score. If negotiations and post-qualification were successful, Company B would be determined to have submitted the Highest Rated and Responsive Bid, and recommended for award of contract.

ANNEX

Glossary

Glossary

Abstract of Bids – The corresponding document prepared by the BAC after all bids have been received, opened, examined, evaluated and ranked.

Abstract of Bidding Documents – A summary containing general information on the procurement at hand that is posted in the PhilGEPS.

Advance payment – Refers to any payment made prior to the delivery and acceptance of Goods, Works, or Consulting Services.

Amendment to Order – Refers to any change within the general scope of the contract, in any of the following aspects: drawings, design or specifications of the Goods; the method of shipment or packing; the place of delivery; scope of work or services to be rendered; the place of performance of the services; additional items needed and necessary for the protection of the Goods procured, which were not included in the original contract; or any other change affecting the specifications or scope of work of the Goods and/or services to be procured.

Approved Budget for the Contract – The budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act (GAA) and/or continuing appropriations, in the case of national government agencies (NGAs); the corporate budget for the contract approved by the governing board, pursuant to Executive Order No. 518, series of 1979 (“E.O. 518”), in the case of GOCCs and GFIs, and Republic Act No. 8292 in the case of SUCs; and the budget approved by the *Sanggunian* in the case of LGUs.

BAC – The Bids and Awards Committee, established in accordance with Rule V of the IRR-A of R.A. 9184.

Bid – A signed offer or proposal to undertake a contract submitted by a bidder in response to and in consonance with the requirements of the bidding documents. Also referred to as *Proposal* and *Tender*, particularly when referring to the procurement of consulting services.

Bid Evaluation – The process of determining the Bidder with the Lowest Calculated Bid (LCB) or the Highest Rated Bid (HRB).

Bid Opening Date – The date specified in the IAEB for the opening of bids.

Bid Security – Cash, check, bank draft, letter of credit, bank guarantee, surety bond or a foreign government guarantee that serves as a guarantee that the successful bidder shall not default on his offer, and shall enter into contract with the Procuring Entity and furnish the performance security.

Bid Validity – A reasonable period determined by the Head of the Procuring Entity concerned, but in no case shall exceed one hundred twenty (120) calendar days from the date of the opening of bids, wherein a Bid Security is considered valid.

Bidder – An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives. More specifically, a contractor, manufacturer, supplier, distributor and/or consultant competing for the award of a contract in any government procurement. See *Eligible bidder*, *Prospective bidder*.

Bidding Documents. – The documents issued by the Procuring Entity as the bases for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods and/or consulting services required by the Procuring Entity.

Blacklisting – To place on, or as if on, a list of persons or organizations that have incurred disapproval or suspicion or are to be boycotted or otherwise penalized.

Brand Name – A trade name or product name, which identifies a product as having been made by a particular manufacturer.

Calculated bid price – The price of a bid, after taking into account minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed.

Civil Works – See *Infrastructure Projects*.

Collusion – An agreement between two or more persons, to commit acts to accomplish a fraudulent or deceitful purpose.

Common-Use Supplies – Goods, materials and equipment that are repetitively used in the day-to-day operations of procuring entities in the performance of their functions, which are included in the Price List of the Procurement Service (PS) of the Department of Budget and Management (DBM).

Competitiveness– A principle in Government procurement that allows broad participation by eligible and qualified suppliers, contractors, consultants to put forward offers for a project.

Competitive Bidding – A method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract. Also referred to as *Public Bidding*.

Communication costs – mail and fax costs, plus cost of advertising, meetings, internet/web posting, and other costs incurred for the dissemination of information about the bidding.

Conference Notice – A formal written communication sent to the participants of the conference (such as the Pre-procurement, Pre-bid and Post-Award Conference) informing them when and where the conference will be held.

Conflict of Interest – Refers to a clash between public interest and the private pecuniary interest of the individual concerned (Black's law Dictionary, 5th ed.)

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

Consolidated Blacklisting Report – A report issued by the GPPB that contains a list of people and/or organizations that are barred from participating in any Government procurement project.

Consulting Services – Services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the Government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.

Contract Completion – Project sign-off or acceptance of the project/goods by the end-user.

Contract Implementation – The execution of a contract, covering the following milestones: effectivity of the contract; contractor's performance of his contractual obligations; Procuring Entity's performance of its contractual obligations, as specified in the Contract; final acceptance or project sign-off; all other related activities; and payment by the Procuring Entity.

Contractor – One who undertakes to perform a work or service, or supply goods for a public or private entity.

Contract Termination – Ending of a contract prior to its completion.

Corrupt practice – the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution. Compare *fraudulent practice*.

Cost Recovery Component – Direct and indirect costs accounted for in determining the price of Bidding Documents to be sold to interested suppliers/contractors.

Demand Regulation Component – a positive (+) or negative (-) unit amount allocated to the bidding activity for the purpose of regulating the participation of bidders

Development Cost – Costs incurred in developing the original content of the documents, designs, plans and specifications. The design cost may be excluded if the same is to be included in the capitalized cost of the project which is to be recovered from the usage of the completed project facility.

Direct Contracting – An alternative method of procurement of goods that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Also referred to as *Single Source Procurement*.

Direct Costs - Costs directly incurred such as development, reproduction, and communication costs allocated to the bidding activity. See *Communication Cost, Development Cost, Reproduction Cost*. Compare *Indirect Costs*.

Disclosure – The act of disclosing, uncovering, or revealing

Disqualification – The act of barring a bidder from further participation in the procurement at hand, even if, in some instances, it has initially been declared eligible or post-qualified.

Domestic Bid – Any offer of unmanufactured articles, materials, or supplies of the growth or production of the Philippines, or manufactured articles, materials or supplies manufactured or to be manufactured in the Philippines, substantially from articles, materials or supplies of the growth, production or manufacture, as the case may be, of the Philippines.

Eligible Bidder – A contractor, manufacturer, supplier, distributor or consultant who meets all the eligibility requirements issued by the Procuring Entity.

Eligibility – Refers to the status of a Bidder in relation to its legal, technical and financial competence to comply with the requirements of the contract to be bid, as shown by eligibility documents submitted to and checked by the BAC.

Eligibility Check – The process of determining the compliance of Prospective Bidders with the eligibility requirements prescribed, using a non-discretionary, “pass/fail” criteria.

Eligibility Screening – see *Eligibility Check*.

Financial Bid – One of two components comprising a bid, the other being the *Technical Bid*.

Force Majeure – see *Fortuitous events*.

Foreign Bid – Any offer of articles, materials or supplies not manufactured or to be manufactured in the Philippines, substantially from articles, materials or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.

Foreign Supplier – A supplier who is not a local supplier.

Fortuitous events – An event which could not be foreseen, or which though foreseen, was inevitable. (Art. 1174, Civil Code)

Fraudulent practice – Misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity. Compare *corrupt practice*.

Goods – Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the Procuring Entity for such services. The term “related” or “analogous services” shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity. (IRR-A Section 5[k])

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

IAEB – Invitation to Apply for Eligibility and to Bid. This serves as the notice to the public and all interested parties of the procurement opportunity.

Incidental Services – services ancillary to the supply of the Goods, such as transportation and insurance; installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the contract, RFP, TOR, and/or bidding documents.

Indirect Costs - Costs indirectly incurred such as overhead, supervision, and administrative costs allocated to the bidding activity. Compare *Direct Costs*.

Ineligible Bidder – A contractor, manufacturer, supplier, distributor or consultant who fails to meet any or all of the eligibility requirements issued by the Procuring Entity.

Infrastructure Projects – Include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. (IRR-A Section 5[n]) Also referred to as *civil works*.

Inspection – Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition, and to verify that it conforms to the applicable specifications.

Latent Defect – A defect that is not apparent to the buyer by reasonable observation. A latent defect is “hidden” or one that is not immediately determinable.

Limited Source Bidding – An alternative method of procurement for Goods and Consulting Services that involves direct invitation to bid by the concerned Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract.

Liquidated Damages – Damages agreed upon by the parties to a contract, to be paid in case of breach thereof.

Motion for Reconsideration – In procurement, it is an application made to the BAC for the purpose of obtaining a rule or order setting aside a previous decision.

Negotiated Procurement – An alternative method of procurement of goods, infrastructure projects and consulting services, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

Notice of Award – The document issued by the Head of the Procuring Entity to the bidder to whom the contract is awarded.

Notice of Eligibility – The document issued by the BAC to the eligible bidder/s formally informing the same that he/she/they met the eligibility requirements issued by the Procuring Entity.

Notice of Ineligibility – The document issued by the BAC to the bidder/s who failed to meet any or all of the eligibility requirements issued by the Procuring Entity.

Notice of Post-qualification – The document issued by the BAC to the bidder with LCB whose bid is found responsive.

Notice of Post-disqualification – The document issued by the BAC to the bidder with LCB whose bid is found non-responsive.

Notice to Proceed – The document issued by the Head of the Procuring Entity to the winning bidder to proceed with the implementation of the contract.

Observer – One who is invited to attend and observe all stages of the procurement, especially: the pre-bid conference; opening of bids; bid evaluation; post-qualification; contract award; and special meetings of the BAC.

Patent Defect – A defect that is apparent to the buyer on normal observation. An apparent or obvious defect.

Performance Security – A security posted by the winning bidder to guarantee the faithful performance by the same of its obligations under the contract prepared in accordance with the bidding documents.

Portal – A website that integrates a wide variety of contents for the purpose of attracting and aggregating multiple users together in a central virtual space.

Post-qualification – The process of validating and verifying the documents, information and statements made in the Eligibility Documents by the Bidder who submitted the Lowest Calculated Bid, as well as ascertaining the said Bidder's compliance with the legal, financial and technical requirements of the bid.

Post-qualification Report – The report prepared by the TWG containing the findings/results of the post-qualification conducted on the bidder with the LCB or HRB, as the case may be.

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.

Pre-procurement Conference – is the forum called by the BAC for procurements undertaken through public bidding, where all officials involved in the procurement meet and discuss all aspects of the transaction, including the technical specifications, the Approved Budget for the Contract (ABC), the applicability and appropriateness of the recommended method of procurement and the related milestones, the bidding documents, availability of the pertinent budget release for the project / contract, among others.

Procurement – The acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of R.A. 8974 and other applicable laws, rules and regulations.

Procurement Observation Report – The report submitted by the Observer to the Head of the Procuring Entity, based on the procurement checklist.

Procurement Unit – Refers to the organic office of the Procuring Entity that carries out the procurement function.

Procuring Entity – Any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of the Government, including GOCC, GFI, SUC and LGU procuring Goods, Consulting Services and Infrastructure Projects.

Project Management Office – The unit/office/department of the Procuring Entity that is primarily responsible for implementing and managing a project.

Proposal – See *Bid*.

Protest – A formal declaration made by a person interested or concerned in some act to be done, or already performed, whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such declaration is usually to save some right which would be lost to him if his implied assent could be made nil, or to exonerate himself from some responsibility which would attach to him unless he expressly negated his assent. (Black's Law Dictionary, 5th Ed.)

Provincial bidder – A contractor who participates in the bidding of provincial priority programs and infrastructure projects as defined in Section 44 of the IRR-A of R.A. 9184, and whose principal office is within the same province.

Public Bidding – See *Competitive Bidding*.

Public Monitoring – A principle in Government procurement...

Repeat Order – An alternative method of procurement of goods from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through *Competitive Bidding*.

Reproduction cost – labor, supplies and equipment rental costs incurred in the reproduction of the documents.

Request for Clarification – A written request submitted by the bidder to the BAC, asking the latter to clarify a particular provision of the Bidding Documents.

Request for Proposal – A written request for proposals concerning goods or services the government intends to acquire by means of Competitive Bidding. The solicitation document used in Competitive Bidding. The procedure allows changes to be made after other proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

Shopping – An alternative method of procurement of goods whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications.

Single source procurement – See *Direct Contracting*.

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

Specification – A description of what the purchaser requires and what a bidder must offer.

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

Standard – The established and fixed measure used in assessing quality or performance.

Subcontractor – One who takes a specific part of the work undertaken by the principal contractor. (Black's Law Dictionary, 5th Ed.)

Submitted bid price – The bid price as indicated in the financial proposal submitted by the bidder.

Supplemental/Bid bulletin – A notice issued by the Procuring Entity to Prospective Bidders with respect to any clarifications or modifications in the Bidding Documents, including those affecting the technical specifications, eligibility requirements, procurement schedule, and other similar matters.

Technical Bid – One of two components comprising a bid, the other being *Financial Bid*.

Tender – See *Bid*.

Two-Stage Competitive Bidding – Bidding process divided into two stages. In the first stage, bidders submit only the technical bids. In the second stage, when the technical specifications have already been well defined, the regular procedure for public bidding is followed. This may be employed for the procurement of Goods where, due to the nature of the requirements of the project, the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically unequal bids is likely to occur.

Warranty – An undertaking by the supplier, manufacturer or distributor to guarantee that it will correct any manufacturing defects of the goods procured by the government.