

VOLUME 4

# Manual of Procedures for the Procurement of Consulting Services



## **MANUAL OF PROCEDURES FOR THE PROCUREMENT OF CONSULTING SERVICES**

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## ABBREVIATIONS AND ACRONYMS

<b>ABC</b>	Approved Budget for the Contract
<b>ADB</b>	Asian Development Bank
<b>AFP</b>	Armed Forces of the Philippines
<b>APP</b>	Annual Procurement Plan
<b>APR</b>	Agency Procurement Request
<b>BAC</b>	Bids and Awards Committee
<b>BDS</b>	Bid Data Sheet
<b>BIR</b>	Bureau of Internal Revenue
<b>BOC</b>	Bureau of Customs
<b>BSP</b>	Bangko Sentral ng Pilipinas
<b>CAF</b>	Certificate of Availability of Funds
<b>CDA</b>	Cooperatives Development Authority
<b>CQS</b>	Selection Based on the Consultants' Qualifications
<b>CSC</b>	Civil Service Commission
<b>DBM</b>	Department of Budget and Management
<b>DBM-PS/ PS-DBM</b>	Department of Budget and Management-Procurement Service
<b>DOJ</b>	Department of Justice
<b>DTI</b>	Department of Trade and Industry
<b>DV</b>	Disbursement Voucher
<b>E.O.</b>	Executive Order
<b>FAP</b>	Foreign Assisted Project
<b>FBS</b>	Selection under a Fixed Budget
<b>GAA</b>	General Appropriations Act
<b>GCC</b>	General Conditions of Contract
<b>GFI</b>	Government Financial Institution
<b>GOCC</b>	Government-owned and/or –controlled corporation
<b>GOP</b>	Government of the Philippines
<b>GPPB</b>	Government Procurement Policy Board
<b>GPPB-TSO</b>	GPPB – Technical Support Office



<b>GPRA</b>	Government Procurement Reform Act (R.A. 9184)
<b>HRB</b>	Highest Rated Bid
<b>HRRB</b>	Highest Rated Responsive Bid
<b>IAEB</b>	Invitation to Apply for Eligibility and to Bid
<b>IFI</b>	International Financing Institution
<b>IPR</b>	Intellectual Property Rights
<b>IRR</b>	Implementing Rules and Regulations
<b>IRR-A</b>	The Implementing Rules and Regulations Part A of R.A. 9184
<b>ITB</b>	Instructions to Consultants
<b>JVA</b>	Joint Venture Agreement
<b>LBP</b>	Land Bank of the Philippines
<b>LC</b>	Letter of Credit
<b>LCS</b>	Least-Cost Selection
<b>LGU</b>	Local Government Unit
<b>LOI</b>	May refer to Letter of Intent or Letter of Instructions, depending on the manner of usage
<b>MDS</b>	Modified Disbursement Scheme
<b>NCA</b>	Notice of Cash Allocation
<b>NEDA</b>	National Economic and Development Authority
<b>NFCC</b>	Net Financial Contracting Capacity
<b>NGA</b>	National Government Agency
<b>NGO</b>	Non-Government Organization
<b>NTP</b>	Notice to Proceed
<b>P.D.</b>	Presidential Decree
<b>PhilGEPS/ G-EPS</b>	Philippine Government Electronic Procurement System
<b>PMO</b>	Project Management Office
<b>PPMP</b>	Project Procurement Management Plan
<b>PWI</b>	Procurement Watch Inc.
<b>QBE</b>	Quality-Based Evaluation Procedure
<b>QBS</b>	Quality-Based Selection
<b>QCBE</b>	Quality-Cost Based Evaluation Procedure

<b>QCBS</b>	Quality- and Cost- Based Selection (for IFIs)
<b>R.A.</b>	Republic Act
<b>R.A. 9184</b>	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"
<b>RFP</b>	Request for Proposals
<b>SARO</b>	Special Allotment Release Order
<b>SBDs</b>	Standard Bidding Documents
<b>SCC</b>	Special Conditions of Contract
<b>SEC</b>	Securities and Exchange Commission
<b>SOW</b>	Scope of Work
<b>SRRB</b>	Single Rated and Responsive Bid
<b>SSS</b>	Single-Source Selection
<b>SUCs</b>	State Universities and Colleges
<b>SWAps</b>	Sector Wide Approaches
<b>TOR</b>	Terms of Reference
<b>TWG</b>	Technical Working Group
<b>UN</b>	United Nations
<b>UNDB</b>	United Nations Development Business
<b>WB</b>	The World Bank

SECTION 1  
**Introduction**



## Scope of Volume 4

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

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

This Manual focuses on public procurement of Consulting Services. The PBDs on Consulting Services are harmonized to a large extent with the WB. There are, however, policies which are specific to the WB and the PBD for Consulting Services highlight these differences. The circumstances that would permit the use of the Harmonized PBDs in WB projects require that: (a) the Legal Agreement should provide for it; (b) all short listed firms are national firms; and (c) that the amount does not go beyond \$200,000. For projects funded by ADB and JBIC, the respective guidelines on selection of consultants will be followed, as these IFIs have yet to harmonize with the PBDs for Procurement of Consulting Services.

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

### What are the types of consulting services?

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

#### 1. Advisory and Review Services

These services consist of the review and the provision of advice on particular projects or problems. These include planning, system and implementation design, financial, fiscal, legal and other professional services, as well as management, production, inspection, testing and quality control. They also include such services as appearances before commissions, boards or other judicial bodies to give evidence or otherwise submit professional opinions.

#### 2. Pre-Investment or Feasibility Studies

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

- a. To establish investment priorities and sector policies - Studies conducted for this objective include basic resource inventories, such as, river basin surveys, transport sector surveys, and studies of alternative development patterns and of sectors on a regional or nationwide scale;

- b. To determine the basic features and the feasibility of individual projects - Studies toward this objective include functional designs, project site selections, architectural and space programming and physical layout of specific projects, preliminary designs and cost estimates, and the economic, financial and environmental impact analyses required for project evaluation; or
- c. To define and propose changes in governmental policies, operations and institutions necessary for the successful implementation or functioning of investment projects - Studies undertaken in pursuit of this objective include analyses of project related organizations, administrative problems, planning machinery, regulatory and marketing policies, accounting and management systems, and manpower resources and training requirements.

### 3. Design

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

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

### 4. Construction Supervision

Consulting services under this category include:

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

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

## **5. Management and Related Services**

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

- a. Sector policy and regional development studies;
- b. Planning, feasibility, market, economic, financial, technical, operations and sociological studies;
- c. Project management, including procurement advisory services, impact monitoring, and post-evaluation services;
- d. Production management, inventory control, and productivity improvement;
- e. Marketing management and systems;
- f. Information and communications technology services, including but not limited to, information systems design and development, and network design and installation;
- g. Institutional strengthening, organization development, manpower requirements, training and technology transfer;
- h. General management consultancy; and
- i. Other related services.

## **6. Other Technical Services or Special Studies**

Other technical services include:

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

Special studies include the following:

- a. Soils investigation;
- b. Studies, tests and process determination performed to establish design criteria for water facilities;
- c. Detailed mill, shop, and / or laboratory inspection of materials and equipment;
- d. Land surveys, establishment of boundaries and monuments, and related office computations and drafting;
- e. Parcellary surveys;
- f. Engineering surveys (for design and construction) and photogrammetry;
- g. Assistance in litigation arising from the development or construction of projects and in hearings before various approving and regulatory agencies;
- h. Investigation involving detailed consideration of the operation, maintenance, and overhead expenses; and the preparation of rate schedules; earning and

expense statements, feasibility studies, appraisals, evaluations, and material audits or inventories required for certification of force account construction performed by the agencies;

- i. Preparation of environmental statements and assistance to the agencies in public hearings;
- j. Preparation of operating instructions and manuals for facilities and training of personnel and assistance in initial operation of facilities;
- k. Designs to meet unique and / or above normal requirements brought about by severe earthquakes, tornadoes, or blasts, or satisfy unique or abnormal tolerances, safety requirements, etc.;
- l. Site and physical planning;
- m. Environmental and other aspects of planning;
- n. Housing;
- o. Interior design;
- p. Studies on preservation and restoration of historical, cultural, and artworks;
- q. Landscaping;
- r. Construction management; and
- s. Defense systems design, including self-reliance defense program.

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



SECTION 2

# Preparing for the Procurement of Consulting Services



## Preparing for the Procurement of Consulting Services

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

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

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

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

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

## Procurement Planning

### What is the purpose of procurement planning?

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

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

### What is the "Approved Budget for the Contract" or the ABC?

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

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

Thus, the ABC referred to in R.A. 9184 and its IRR-A basically refers to the proposed budget for the project approved by the Head of the Procuring Entity based on the APP as consolidated from various PMPs.<sup>1</sup>

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

In determining the ABC (keeping in mind that contract prices are fixed prices), the PMO or end-user unit, with the assistance of the TWG (when necessary), must consider the different cost components, namely:

1. The cost or market price of the service itself;
2. The cost of money, to account for government agencies usually buying on credit terms; and
3. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date.

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

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

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

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

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

### **How do you compute the cost of consultancy?**

The cost of consultancy shall be computed on the basis of cost to the consultant of actual services to be rendered by the consultant plus a reasonable level of management fee. The amount of management fee depends on the complexity and magnitude of the project, and other direct expenses associated to the undertakings.

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

#### **1. Remuneration Costs**

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

The umbrella organization of consultants shall, from time to time, disseminate information on the rates or fees of consultants per expertise as guide to the BAC and end-user during financial negotiation.

##### **a. Basic Rates**

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

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

##### **b. Billing Factor or Multiplier**

The billing factor or multiplier shall be derived from the following to be supported by audited financial statements prepared by an independent auditing/accounting firm/entity and certified by the consulting firm with a sworn statement:

- i. Overhead Cost

These are incidental and general administrative and management expenses of the firm other than those directly related to the project,

and are expressed in percent of the total of the basic salaries of all the personnel of the firm. Normally not exceeding one hundred twenty percent (120%) of the basic salary of the personnel, these expenses may include a combination of the following:

- Executive, administrative, accounting, and legal salaries, other than identifiable salaries included in the basic man-month salaries;
- Legal and corporate expenses including licenses, professional membership fees;
- Business costs including representation allowances, advertisements, promotions;
- Research and development activities including personnel development programs;
- Provision for office, electricity, water, and similar items for working space;
- Depreciation and amortization;
- Financial and banking costs including interest expenses and handling charges;
- Building and equipment insurance; and
- Provision for loss of productive time of technical employees between assignments, and taxes.

ii. Social Charges

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

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

iii. Management Fee

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

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

## 2. Reimbursable Costs

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

### a. Based on Agreed Fixed Rates

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

#### i. Housing Allowance

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

### **Tips: Let's make doing things easier**

#### **On per diems**

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

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

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

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

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

#### ii. Per Diems

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

- Outside of the base of operation for consultant staff stationed there; and

- Outside of the designated official station of duty for consultant staff stationed there, except when staying at the base of operation. Per diems shall be reckoned from a 24-hour day trip of at least 50 kilometers away from the station.
- iii. For foreign consultants, miscellaneous international travel expenses such as, the cost of transportation to and from the airports, airport taxes, passports, visas, travel permits and vaccinations.

**b. Based on Actual Cost**

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

- i. International Travel  

This covers the cost of full fare economy class air transportation, preferably through a Filipino-owned airline, by the most direct and expeditious air routes of the consultant's expatriate staff from their point of origin. An expatriate shall be allowed the cost of excess baggage up to 20 kilograms each per round trip.
- ii. Domestic Travel  

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

This covers the provision of vehicles either through purchase or rental.
- iv. Communication Expenses  

This includes telephone, mobile, two-way radio, telegrams, Internet, parcel, freight, courier, fax and etc.
- v. Cost of office/engineering supplies and cost of preparing/reproduction drawings and other documents to be submitted;
- vi. Cost of field office either through rental or construction;
- vii. Equipment rental and purchases whenever justifiable;
- viii. Acquisition of software licenses; and
- ix. Cost of other items deemed necessary for the project as certified by the agency concerned.

**3. Contingency**

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



**Tips: Let's make doing things easier**

**On determining reasonable rates**

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

## Preparing the Bidding Documents

### Legal Reference

IRR-A Section 17 provides the rules in relation to the preparation of the bidding documents.

### What are Bidding Documents?

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

1. The objectives, scope and expected outputs and/or results of the proposed contract;
2. The expected contract duration;
3. The obligations, duties and/or functions of the winning bidder; and
4. The minimum eligibility requirements of bidders, such as track record to be determined by the Head of the Procuring Entity. **(IRR-A Section 17.2)**

### What are the contents of Bidding Documents?

The PBDs contain the following:<sup>2</sup>

1. IAEB;
2. Eligibility Documents;
3. Eligibility Data Sheet;
4. Letter of Invitation to Bid;
5. ITB;
6. BDS;
7. GCC;
8. SCC;
9. Technical Proposal – Standard Forms;
10. Financial Proposal – Standard Forms;
11. Terms of Reference; and
12. Appendices.

### What should the ITB provide?

The ITB should contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection

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<sup>2</sup> The contents of the standard bidding documents for FAPs may vary.

procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score. The ITB should indicate an estimate of the level of key staff inputs (in staff time) required of the consultants or the total budget.

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

### **Who shall participate in the preparation of the Bidding Documents?**

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

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

### **When should you prepare the Bidding Documents?**

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

### **How are the Bidding Documents prepared?**

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

1. ABC and source of funds;
2. Date, time and place of the pre-bid conference (where applicable), submission of proposals and opening of proposals;
3. Eligibility Requirements;
4. ITB, including, the type of evaluation procedure, criteria for proposal evaluation and post-qualification;
5. TOR, which shall be crafted by the end-user/PMO, assisted by external/internal technical experts (whenever needed) and approved by the Head of the Procuring Entity or his authorized or approving official, and which shall define the following:
  - a. The objectives, scope and expected outputs and/or results of the proposed contract;
  - b. The expected contract duration and/or time frame;
  - c. The obligations, duties and/or functions of the consultant and government counterparts and staff, including working arrangement between the consultant, its staff and the counterpart staff;

- d. The minimum qualifications of consultants, such as track record to be determined by the Head of the Procuring Entity; and
- e. The services, facilities and data, if any, to be provided to the consultants;
- 6. Form of proposal and price form;
- 7. Completion schedule;
- 8. Form, amount and validity period of bid security, the amount being stated in Philippine peso terms; **(IRR-A Section 27)**
- 9. Form and amount of the performance security and warranty; and
- 10. Form of contract, GCC and SCC.

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

**What is a Bid Security?**

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

- 1. Not default on its offer, and
- 2. Enter into contract with the Procuring Entity within ten (10) calendar days, or less as indicated in the ITB, from receipt of the Notice of Award, and furnish the performance security provided for in Section 39 of the Act and its IRR-A. **(IRR-A Section 27.1)**

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

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

The bid security shall be in any of the following forms, with the corresponding required amount: **(IRR-A Section 27.2)**<sup>3</sup>

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

<sup>3</sup> For FAPs, reference should be made to the appropriate standard bidding documents for the project in order to determine the requirement of a bid security and, if one is so required, the applicable amount and form thereof.

executive, bilateral or multilateral agreement, as may be required by the Head of the Procuring Entity concerned.	
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### **Who determines the form of the Bid Security to be submitted by Consultants?**

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

The Procuring Entity is encouraged to specify forms of bid securities that are both easier to call and more accessible to consultants, such as managers' checks, cashiers' checks, irrevocable letters of credit or bank guarantees.

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

Bids and bid securities must be valid for a reasonable period of time as determined by the Head of the Procuring Entity. This time period must be indicated in the bidding documents, but in no case should it exceed one hundred twenty (120) calendar days from the date of the opening of bids. **(IRR-A Section 28)** The recommended norm for bid validity is ninety (90) calendar days with the corresponding bid security valid for one hundred twenty (120) calendar days to provide reasonable time (thirty (30) calendar days) for the Procuring Entity to act if the security is to be called.

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

### **In what currency shall the Bid Security be denominated?**

The bid security must be denominated in Philippine currency **(IRR-A Section 27.3)**, except in the case of foreign bidders, which are allowed to submit foreign currency denominated bids.

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

Its bid will be rejected.

### **When should Bid Securities be returned to the bidders?**

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

### **When may a Bid Security be forfeited?**

A bidder's bid security may be forfeited when:

1. The bidder withdraws its bid beyond the deadline therefor;

2. The bidder does not accept correction of arithmetical errors;
3. The bidder being considered for award does not accept the award or does not sign the contract within the period prescribed in the bidding documents;
4. The bidder being post-qualified did not provide the BAC the required clarifications; or
5. The bidder is proven to commit any of the acts under Sections 65 and 69 (Imposition of Administrative Penalties).

**What is a Performance Security?**

Within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity, and in all cases upon the signing of the contract, the successful bidder should furnish the Procuring Entity with the performance security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents. **(IRR-A Section 39.1)** The performance security forms part of the contract. **(IRR-A Section 37.2.3)** *(Please refer to Step 9, Post-Qualify for further discussions on the HRRB.)*

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

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

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

The performance security may be in any of the following or a combination of forms with the corresponding required amounts:<sup>4</sup>

<b>FORM OF PERFORMANCE SECURITY</b>	<b>MINIMUM AMOUNT</b>
a. Cash, certified check, cashier’s/manager’s check, bank draft; or	5% of contract price
b. Irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the same shall be confirmed or authenticated by a reputable local bank; or	5% of contract price
c. Bank guarantee confirmed by a reputable local bank or in the case of a foreign winning bidder, bonded by a foreign bank; or	10% of contract price
d. Surety bond callable upon demand issued by any reputable surety or insurance company; or	30% of contract price
e. Any combination of the foregoing forms; or	The total amount shall not be less than 30 % of the Contract Price.

<sup>4</sup> Performance securities are not required for consulting services in FAPs.

**Who determines the form of the Performance Security to be submitted by Winning Bidder?**

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

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

Yes. The winning bidder shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements, as the case may be. The percentages in the schedule above must be applied to increases in the original value of the contract, not to the contract price. The winning bidder must also cause the extension of the validity of the performance security to cover approved contract time extensions.

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

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

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

**Methodology: How is the Performance Security posted?**

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

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

**When may the Performance Security be released?**

Subject to the conditions of the contract, the performance security may be released by the Procuring Entity concerned after the issuance of the Certificate of Acceptance of the final report, provided that there are no claims filed against the contract awardee or the surety company. **(IRR-A Section 39.4)**

## Conduct of the Pre-Procurement Conference

### Legal Reference

IRR-A Section 20 specifies the rules and the guidelines in relation to the conduct of a pre-procurement conference.

### What is a Pre-procurement Conference?

The pre-procurement conference is the forum where all officials involved in the procurement meet and discuss all aspects of the transaction. These aspects include the scope of work, the ABC, the applicability and appropriateness of the recommended method of procurement and the related milestones, the draft bidding documents, and availability of the pertinent budget release for the project.

### Why do you conduct a Pre-procurement Conference?

A pre-procurement conference is conducted to determine the readiness of the Procuring Entity to procure consulting services with ABCs of more than One Million Pesos (₱ 1 Million), in terms of the legal, technical and financial requirements. Even when the ABC amounts to ₱ 1 Million and below, the BAC is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the technical specifications, warrant the holding of such a conference before the Procuring Entity proceeds with the procurement.

### What should a pre-procurement conference achieve:

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

1. Ensure that the procurement is in accordance with the PPMP and APP;
2. Determine the feasibility of the procurement by ascertaining, among other factors, the availability of the appropriations and programmed budget for the contract, and the adherence of the bidding documents, TOR and other related matters to relevant general procurement guidelines;
3. Review, modify and agree on the criteria for eligibility screening, and ensure that the said criteria are fair, reasonable, and that they are of the "pass / fail" type and are written in such manner;
4. Review, modify and agree on the criteria for short listing, including the weights for each criterion;
5. Determine the actual number of consultants to be included in the short list. The number shall be from three (3) to seven (7) consultants, with five (5) as the preferable number, as well as the minimum score required; **(IRR-A Section 24.15.2)**
6. Review, modify and agree on the criteria for the evaluation of proposals, and ensure that the said criteria are fair, reasonable and applicable to the procurement at hand. The pre-procurement conference should also determine whether the evaluation procedure should be quality based or quality-cost based. If the procedure will be quality-cost based, the corresponding weights for the technical and financial proposals should be agreed upon and then recommended by the BAC to the Head of the Procuring Entity for approval. The weights of the financial proposal shall be from



fifteen percent (15%) up to a maximum of forty percent (40%). **(IRR-A Section 33.5)**. When the assignment can be accomplished in a fairly limited number of ways and/or involves repetitive or standardized approaches, it is recommended that the weight of the financial proposal be closer to forty percent (40%);

7. Finalize and approve the IAEB;
8. Reiterate and emphasize the “no contact rule” during the bid evaluation process, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing; and
9. Ensure that the requirements are in accordance with the ABC.

### **When do you conduct a Pre-procurement Conference?**

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

### **Who calls for a pre-procurement conference?**

The BAC calls for a pre-procurement conference.

### **Who are the participants of a pre-procurement conference?**

The participants of the pre-procurement conference are:

1. The BAC;
2. The Secretariat;
3. Representatives of the PMO or end-user unit/s;
4. The Director for Finance or Budget Officer,
5. The members of the TWG/s
6. Technical experts who assisted in the preparation of the TOR and bidding documents for the procurement at hand;
7. Officials who reviewed the above-enumerated documents prior to final approval, if any; and
8. Other officials concerned, as may be required.

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

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

1. Quality of personnel to be assigned to the project. This criterion covers suitability of key staff to perform the duties of the particular assignments and their general qualifications and competence, including education and training (Recommended weight: 30%-70%);
2. Experience and capability of the consultant. The consultant’s experience and capability should include its record in previous engagements and the quality of its

performance in similar and other projects. These also include its relationship with previous and current clients, overall current work commitments, the geographical distribution of its current/impending projects, and the level of attention it is going to give to the project in question. In rating a consultant on this criterion, the BAC ought to consider both the overall experiences of the firm and the individual experiences of the principal and key staff, including those experiences when the staff were employed by other consultants (Recommended weight: 10%-30%); and

3. Plan of approach and methodology in delivering the services required. This criterion should emphasize the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of the interpretation of project problems, risks and the suggested solutions (Recommended weight: 20%-40%).

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

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

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

SECTION 3

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

PART ONE – COMPETITIVE BIDDING



## Competitive Bidding

### What is competitive bidding?

Competitive or public bidding is a method of procurement that is open to any interested and qualified party. It is preferred over other methods of procurement. A Procuring Entity should, therefore, see to it that its procurement program allows for enough time to conduct such public bidding. **(IRR-A Section 10)**

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

The procurement process from the last day of the period of advertising and/or posting of the IAEB up to the opening of bids should not exceed sixty (60) calendar days, **(IRR-A Section 21.2.2)** and the opening of bids up to the award of contract should not exceed three (3) months, or a shorter period to be determined by the Procuring Entity concerned. In case the deadline for each activity falls on a non-working day (*i.e.* Saturday and Sunday), legal holiday, or special non-working holiday, the deadline shall be the next working day. **(IRR-A Section 38.1)**

## **Step 1 Advertise and Post an Invitation to Apply for Eligibility and to Bid (IAEB)**

### **Legal Reference**

IRR-A Section 21 specifies the rules in relation to the advertising and posting of the IAEB.

### **What is the IAEB?**

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

### **Why do you post an IAEB?**

Posting the IAEB and ensuring its widest possible dissemination will increase the number of prospective bidders and intensify competition for the procurement activity or project. Intensified competition, in turn, will ensure that the government, in general, and the Procuring Entity, in particular, will get the best possible proposals, quality- and cost-wise.

### **What does an IAEB?**

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

1. The name of the contract to be bid, a general description of the project and other important or relevant information on the project;
2. A general statement on the criteria to be used by the Procuring Entity for
  - a. The eligibility check; and
  - b. The short listing of eligible consultants;
3. The nature of the evaluation process, that is, whether Quality-Based or Quality Cost-Based; **(IRR-A Section 33.3.1)**
4. The weights for the technical and financial proposals under the Quality Cost-Based Evaluation process; **(IRR-A Section 33.5)**
5. The number of firms to be included in the short list;
6. The date, time and place of the:
  - a. Deadline for the submission of the LOI, and application for eligibility and short listing;
  - b. Deadline for the submission and receipt of the eligibility and short listing requirements; and
  - c. Pre-bid conference, if any;
7. The ABC
8. The source of funding;

9. The period of availability of the eligibility documents, the place where the eligibility documents may be secured and, where applicable, the price of the eligibility documents;
10. The contract duration;
11. The name, address, telephone number, facsimile number, and e-mail and website addresses of the concerned Procuring Entity, as well as its designated contact person;
12. The Reservation Clause, which is normally located at the bottom of the notice; and
13. Such other necessary information that are deemed relevant by the Procuring Entity.

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

The IAEB for projects with ABCs of more than One Million Pesos (₱ 1 Million) and/or those with a duration of more than four (4) months should be posted: **(IRR-A Section 21.2.2)**

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

Except with respect to newspaper publications, the IAEB of projects with ABCs of ₱1 Million or less and/or those with durations of four (4) months or less must be posted in all those areas/media where the IAEB of projects with ABCs of more than ₱1 Million and/or those with durations of more than four (4) months should be posted/published. The same periods shall also apply. **(IRR-A Section 21.2.3)**

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

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

**Methodology: How are IAEBs advertised and posted?**

The following steps are followed in the advertising and posting of IAEBs:<sup>5</sup>

1. For public bidding of contracts with an ABC costing more than One Million Pesos (₱1 Million) and/or those with a duration of more than four (4) months:
  - a. The BAC Secretariat prepares the draft IAEB for review/approval of the BAC.

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<sup>5</sup> FAPs may have additional publication requirements. For this reason, reference should be made to the appropriate standard bidding documents for the project.

- b. The BAC approves the contents of the IAEB during the pre-procurement conference.
  - c. The BAC Secretariat posts the IAEB in any conspicuous place reserved for this purpose in the premises of the Procuring Entity for the duration required; and this fact will be certified to by the head of the Secretariat.
  - d. The BAC Secretariat advertises the IAEB in a newspaper as described above for the duration required, as prescribed above.
  - e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IAEB in the following websites: the PhilGEPS, that of the Procuring Entity, and it's the Procuring Entity's e-procurement service provider, if any, for the duration required.
2. For public bidding of contracts with an ABC costing One Million Pesos (₱1 Million) and below, and/or those with durations of four (4) months or less, and for alternative methods of procurement:
- a. The BAC Secretariat prepares the draft IAEB for review/approval of the BAC.
  - b. The BAC approves the contents of the IAEB.
  - c. The BAC Secretariat performs steps c and e in item No. 1 above.

### **What is the Reservation Clause?**

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

In the case of Mata v. San Diego, G.R. No. L-30447 (March 21, 1975), the Supreme Court of the Philippines declared that a bidder is bound by the reservation clause, and the said clause vests in the authority concerned the discretion to ascertain who among the bidders is the lowest responsive bidder or the lowest and best bidder or most advantageous to the best interest of the Government. As such, a bidder has no right or cause of action to compel the BAC or agency to award the contract to it. The Court further stated that this requires inquiry, investigation, comparison, deliberation and decision – a quasi-judicial function which, when honestly exercised, may not be reviewed by the courts. It should be noted, however, that R.A. 9184 Section 41, has placed some limiting qualifiers on the possible contents of the Reservation Clause.

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

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

1. If there is prima facie evidence of **collusion** between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
2. If the **BAC is found to have failed** in following the prescribed bidding procedures, for which the applicable sanctions shall be applied to the erring officers, as provided in IRR-A Section 65; or
3. For any justifiable and reasonable ground where the award of the contract **will not redound to the benefit of the government** as follows:



- a. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the Head of the Procuring Entity;
- b. If the project is no longer necessary as determined by the Head of the Procuring Entity; and
- c. If the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

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

## **Step 2 Accept LOIs, Issue Eligibility Documents, and Conduct Eligibility Check**

### **Legal Reference**

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

### **When should Letters of Intent and Applications for Eligibility and Short listing be submitted?**

Prospective bidders should submit their written LOIs and Applications for Eligibility and Short listing to the BAC and have these received not later than seven (7) calendar days from last date of posting of the IAEB. Upon receipt of these documents, the BAC must give the prospective bidders the list of eligibility requirements, and inform them in writing of the date, time, and venue for the submission of such requirements. **(IRR-A Section 21.3.1)**

Once the PhilGEPS is fully established, prospective bidders may also submit their LOIs and Applications for Eligibility and Short listing electronically to the Procuring Entity through the PhilGEPS, likewise within the deadline set for the submission of the written form of the documents.

### **When should the Eligibility Forms be released?**

The eligibility forms must be released by the BAC immediately upon its receipt of the LOIs and applications for eligibility.

### **What happens if only one bidder submits a Letter of Intent?**

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

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

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

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

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

the Procuring Entity resorts to negotiated procurement, the terms, conditions, and specifications of the project as well as the ABC must be maintained.

### **How do you determine the eligibility of the prospective bidders?**

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

### **When could consultants be hired?**

Consultants may be hired if:

1. The services they would be providing is beyond the capability of the Procuring Entity to undertake, either because it does not have the expertise or it could not devote enough time to the work due to numerous other assignments; and
2. The services they would be providing and their hiring would not be inconsistent with the government's policy of not competing with the private sector. **(IRR-A Section 24.3)**

### **Who may be hired as consultants?**

In order to manifest trust and confidence in and promote the development of Filipino consultancy, Filipino consultants should be hired whenever the services required for the project are within the expertise and capability of Filipino consultants. It is only when the Head of the Procuring Entity determines that Filipino consultants do not have the sufficient expertise and capability to render the services required under the project may foreign consultants be hired. **(IRR-A Section 24.5.2)** Where applicable, technology and knowledge transfer to the Procuring Entity shall be required in the provision of consulting services. **(IRR-A Section 24.5.4)** A Procuring Entity may hire a joint venture composed purely of Filipino consultants or, when circumstances require the participation of foreign consultants, a joint venture composed of Filipino and foreign consultants. The preference for Filipino consultants merely reflects Article XII of the 1987 Constitution, which mandates the government to give preference to qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony, including the purchase of goods, services and the hiring of consultants, contractors and other professionals.

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

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

Under the same Section 1 of E.O. 278, where Filipino capability is determined by appropriate authorities to be insufficient, Filipino consultants may hire or associate themselves with foreign consultants, **provided that the Filipino shall be the lead consultant.** It further provides that where foreign funding is indispensable, foreign consultants for the project must

enter into joint venture with Filipino consultants. It should be noted, however, that this E.O. only covers consultancy services for foreign-assisted government infrastructure projects.

To be considered a Filipino consultant, whether as an individual, a sole proprietorship, a partnership, a corporation, or a joint venture, one must satisfy the following requirements: **(IRR-A Section 24.1)**

**1. Individual**

- a. He/she must be a citizen of the Philippines; and
- b. When the consulting services involve professions regulated by Philippine laws, he/she must be a registered professional authorized by the appropriate regulatory body to practice those professions and allied professions.

**2. Sole Proprietorship**

- a. The owner of the sole proprietorship must be a citizen of the Philippines;
- b. The sole proprietorship firm must be registered with, and authorized by, the Bureau of Domestic Trade; and
- c. When the consulting services involve professions regulated by Philippine laws, the owner and key staff of the sole proprietorship must be registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

**3. Partnership**

- a. At least sixty percent (60%) of the partnership's interest must be owned by citizens of the Philippines;
- b. The partnership firm must be registered with, and authorized to engage in the particular type of consulting service/s by, the SEC; and
- c. When the consulting services involve professions regulated by Philippine laws, all the partners of the professional partnership firm and those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

**4. Corporation**

- a. At least sixty percent (60%) of the outstanding capital stock must be owned by citizens of the Philippines;
- b. The corporation must be registered with and authorized by the SEC and whose primary purpose is to engage in the particular type of consulting service/s involved; and
- c. When the consulting services involve the practice of professions regulated by Philippine laws, all the stockholders and directors of the corporation and those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

**5. Joint Ventures** are associations among Filipino consultants and among Filipino and foreign consultants who may wish to complement their respective areas of expertise. Such an association may be for the long term or for a specific assignment. All the members of the association shall sign the contract and shall be jointly and severally liable for the entire assignment.

- a. At least sixty percent (60%) of the interest must be owned by citizens of the Philippines; and
- b. When the consulting services involve the practice of professions regulated by Philippine laws, all the stockholders and directors of the corporation and those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions.

In determining the eligibility of the joint venture, the principle of "collective compliance" will be applied to its members/principals in the sense that each of the entities of the joint venture must submit all of the documents that are required to establish eligibility, although the non-compliance of one member/principal may be compensated by the compliance of another member/principal.

Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If the Procuring Entity employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; all members of the joint venture should sign the contract and should be jointly and severally liable for the entire assignment.<sup>6</sup>

A **Foreign Consultant** may be an individual, sole proprietorship, partnership, corporation or joint venture that does not meet the citizenship, ownership, interest and/or registration/authorization requirements for a Filipino consultant, but must satisfy the following minimum requirements: **(IRR-A Sections 24.1.2 and 24.5.3)**

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

### **Can a government employee or officer become a consultant of a Procuring Entity?**

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

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

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<sup>6</sup> Under IFI guidelines, the Procuring Entity should not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.

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

See CSC Resolution 021264, dated September 27, 2002.

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

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

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

The GPPB recognizes an umbrella organization of Filipino consultants as the representative of all Filipino consultants. It deals and consults with this organization on matters relative to the consulting industry in the country. **(IRR-A Section 24.6.1)**

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

These documents will be submitted to the GPPB and all other concerned government agencies. They will be updated at least annually, or as often as necessary. The GPPB will then post these documents in the PhilGEPS.

The umbrella organization's certification and list of consultant-members will guide the BAC in determining the fields where Filipino consultants are already qualified and capable, and thus would not require foreign consultants. **(IRR-A Section 24.6.2)**

### **What is an Eligibility Check?**

It is a procedure to determine if a prospective bidder is eligible to participate in the bidding at hand. In determining a prospective bidder's eligibility, the BAC shall use non-discretionary

“pass/fail” criteria, as stated in the IAEB and the ITB. Essentially, this means that the absence, incompleteness or insufficiency of a document shall make a prospective bidder ineligible to bid for the particular procurement.<sup>7</sup> **(IRR-A Section 23.2)**

### **When is a prospective bidder eligible to bid?**

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

As Procuring Entities and consultants are required to observe the highest standard of ethics during the procurement and execution of contract, bidders should not be under a declaration of ineligibility for corrupt, fraudulent, collusive and coercive practices by the government.

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

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

1. **Conflict between consulting activities and procurement of goods, works or services**

A firm that has been engaged by the Procuring Entity to provide such goods, works or services for a project, and each of its affiliates, will be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, will be disqualified from subsequently providing goods, works or services resulting from or directly related to the firm’s consulting services for such preparation or implementation.

2. **Conflict among consulting assignments**

Neither consultants (including their personnel and sub-consultants) nor any of their affiliates will be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare engineering design for an infrastructure project should not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets should neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare TOR for an assignment should not be hired for the assignment in question.

3. **Relationship with the Procuring Entity’s staff**

Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the Procuring Entity’s staff who are directly or indirectly involved in any part of:

- a. The preparation of the TOR of the contract;
- b. The selection process for such contract; or

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

- c. Supervision of such contract;

may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Procuring Entity throughout the selection process and the execution of the contract.

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

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

### **What are the minimum eligibility requirements?**

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

#### **1. Class "A" Documents**

##### **a. Legal Documents**

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

##### **b. Technical Documents**

- i Declaration of the prospective bidder of all its ongoing and completed government and private contracts within the period specified in the IAEB, including contracts awarded but not yet started, if any. The declaration must include, for each contract, the following:
  - Name and location of the contract/project;
  - Date of the contract;



- Type of consulting service;
  - Amount of contract;
  - Contract duration;
  - Copies of all certificates of satisfactory completion issued by clients for completed contracts;
- ii. The types and number of equipment that the consultant owns, has under lease, and / or has under purchase agreements, if any;
- iii. If it is a juridical entity, the prospective bidder's statement:
- Of the kinds and number of its ownership and key staff, partners or principal officers, as the case may be, as well as their respective curriculum vitae;
  - That, if it is a corporation and the consulting services involve professions regulated by Philippine laws, all its owners and key staff, and those who will actually perform the service, are registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions;
  - That, if it is a professional partnership and the consulting services involve professions regulated by Philippine laws, all its partners and key staff, and those who will actually perform the service, are registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions; and
  - On the prospective bidder's technical competence, experience and staff capabilities;

If the consultant is an individual, the consultant's statement:

- Of his citizenship; and
- When the consulting services involve professions regulated by the laws of the Philippines, he is a registered professional authorized by the appropriate regulatory body to practice those professions and allied professions.

**Let's make things easier**

To facilitate eligibility checking, the BAC may maintain a file of Class "A" documents submitted by consultants. When such file is required by the Procuring Entity, a consultant who wishes to participate in a public bidding for consultancy services should maintain this file current and updated at least once a year, or more frequently when needed. A consultant who maintains a current and updated file of his Class "A" documents will be issued a certification by the BAC to that effect, which certification may be submitted to the Procuring Entity in lieu of the Class "A" documents.  
**(IRR-A Section 24.7.1.1)**

**c. Financial Document**

The prospective bidder's audited financial statements, stamped "received" by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, the consultant's total and

current assets and liabilities.

## **2. Class "B" Documents**

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

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

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

Foreign consultants, when allowed to be under the law, must submit the same eligibility requirements as local consultants. However, the legal documents and audited financial statements under the Class "A" documents may be substituted by the appropriate equivalent documents issued by the country of the foreign consultant. **(IRR-A Section 24.8)** These documents must be duly acknowledged or authenticated by the Philippine consulate located in that country.

## **3. Other Eligibility Documents**

The consultant or its duly authorized representative shall certify under oath that each of the documents submitted in satisfaction of the eligibility requirements is an authentic and original copy, or a true and faithful reproduction or copy of the original, complete, and that all statements and information provided therein are true and correct. **(IRR-A Section 24.9)** The BAC may require that the bidder's authorized representative should initial every page of the documents it submits as originals. The purpose of this exercise is to ensure that the documents reviewed by the BAC are authentic, and to protect the BAC from any insinuation of tampering with the said documents.

### **How and when shall the Eligibility Requirements be submitted?**

Prospective bidders must submit their eligibility requirements in a sealed envelope or any such appropriate container to the BAC on or before the deadline specified in the IAEB. Eligibility requirements submitted after the deadline should not be accepted by the BAC. The envelope or container must be marked in the following manner: "Eligibility Envelope of \_\_\_\_\_ (name of Bidder) – Public Bidding for \_\_\_\_\_ (name of the contract to be bid)". These envelopes or containers will be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders.

A prospective bidder which had submitted "Class A" documents in written form to the registry of such documents maintained by the BAC of the Procuring Entity and had kept such documents current and updated can submit:

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

### What happens if only one bidder submits an Eligibility Envelope?

Even if only one bidder submits its eligibility envelope, the bidding process continues. If it is declared eligible, passes short listing, and its bid is found to be responsive to the bidding requirements, its bid will be declared as a Single Rated and Responsive Bid (SRRB) and considered for contract award. **(IRR-A Section 36)**

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

The following parties participate in the eligibility check/screening:

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

### How should Eligibility Envelopes be received?

Upon receiving an eligibility envelope, the BAC Secretariat must stamp an eligibility envelope as "RECEIVED," indicating thereon the date and time of receipt, and have the stamp countersigned by an authorized representative. It then accomplishes in triplicate a pre-numbered receipt indicating the name of the prospective bidder and the date and time when the eligibility envelope was received. It then attaches one triplicate copy of the receipt on the eligibility envelope, gives the other triplicate copy to the prospective bidder, and keeps the original copy for records purposes.

### How is an Eligibility Check conducted?

1. The BAC shall open in public the Eligibility envelopes on the date specified in the IAEB. **(IRR-A Section 24.10)** The BAC shall read in public the contents of the Eligibility envelopes, and shall examine each prospective bidder's eligibility requirements or statements. It shall record the presence or absence of eligibility documents in a checklist.

This procedure is referred to as Eligibility Check, the purpose of which is to determine if a prospective bidder is eligible to participate in the bidding at hand. In determining a prospective bidder's eligibility, the BAC shall use non-discretionary "pass/fail" criteria, as stated in the IAEB and the ITB. Essentially, this means that the absence, incompleteness or insufficiency of a document shall make a prospective bidder ineligible to bid for the particular procurement. **(IRR-A Section 24.12)**

2. The BAC shall declare prospective bidders as either "eligible" or "ineligible", based on the findings in Item 1 above, and inform them accordingly. The Eligibility envelopes shall likewise be marked as such, and these markings shall be countersigned by the BAC chairperson or his duly designated authority. **(IRR-A Section 24.12)** The BAC shall prepare a pro-forma Notice of

#### Let's make things easier

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

Eligibility and a Notice of Ineligibility which will be duly accomplished by the BAC Secretariat and signed by the BAC members present during the Eligibility Check/Screening. In case a prospective bidder is declared ineligible, the Notice of Ineligibility shall state the reason for such ineligibility. The Notice will be received officially by the bidder's authorized representative.

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

### **What can a potential bidder do if it is found ineligible?**

A prospective bidder that was absent during the Eligibility Check and was found ineligible has seven (7) calendar days from receipt of the Notice of Ineligibility, within which to file a written request for reconsideration before the BAC. If the prospective bidder was present during Eligibility Check and was duly notified (a verbal notification will suffice in this case) of its ineligibility, it also has 7 calendar days upon such notice within which to file a written request for reconsideration. Seven (7) calendar days after it receives a letter requesting for reconsideration, the BAC should resolve such request. In the meantime, it will hold on to the Eligibility envelopes of the prospective bidder until the request for reconsideration is resolved. In so doing, it can request the prospective bidder to clarify its eligibility documents, if necessary. **(IRR-A Section 24.13)**

If its request for reconsideration is denied, the ineligible bidder may protest the decision in writing with the Head of the Procuring Entity within seven (7) calendar days from receipt of the resolution. A protest may be made by filing a verified position paper with the Head of the Procuring Entity concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be in an amount equivalent to no less than one percent (1%) of the ABC. **(IRR-A section 55.1)**

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

### **How's that again?**

#### **What shall the position paper contain?**

The verified position paper shall contain the following information:

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

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

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

Notwithstanding the eligibility of a prospective bidder, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the preset eligibility criteria, the Procuring Entity shall consider the said prospective bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract. **(IRR-A Section 24.14)** A prospective bidder found guilty of false information faces imprisonment of not less than six (6) years and one (1) day but not more than 15 years. **(IRR-A Section 65.3)**

### **What happens if only one prospective bidder is declared eligible?**

Even if only one bidder passes the eligibility check, the bidding process continues. Again, if the eligible bidder submits a bid that is found to be responsive to the bidding requirements, its bid shall be declared as a SRRB and considered for contract award. **(IRR-A Section 36)**

### **What happens if no prospective bidder is declared eligible?**

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

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

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

## Step 3 Short list Eligible Consultants

### Legal Reference

IRR-A Section 24.15 specifies the rules in relation to the eligibility requirements for the procurement of consulting services.

### What is short listing?

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

### Why is there is a need to short list?

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

### Who shall be considered for short listing?

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

1. Have been declared eligible by the BAC; and
2. Have had implemented completed contracts, as stated in their eligibility documents, that are similar in nature and complexity to the project, as described in the IAEB. **(IRR-A Section 24.15.1)**

### Methodology: How are eligible consultants short listed?

In short listing the eligible consultants, the BAC, assisted by the TWG, shall:<sup>8</sup>

1. Rate each eligible consultant based on the following criteria, among others: **(IRR-A Section 24.15.3)**:
  - a. Applicable experience of the consultant (meaning the consulting firm) and associates in case of joint ventures (Recommended weight: 50%);
  - b. Qualification of principal and key staff of the consultant who may be assigned to the job vis-à-vis extent and complexity of the undertaking (Recommended weight: 30%); and
  - c. Current workload relative to capacity (Recommended weight: 20%).
2. Rank the eligible consultants based on the average of the rates given them by its members;

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

3. If the number of eligible consultants that got the minimum average rating for the short list exceeds the predetermined number of the short list of consultants, those obtaining the highest ranks shall be considered. If the number of eligible consultants that got the minimum average rating required does not exceed the desired number of the short list, the BAC shall consider all such consultants as being short listed. **(IRR-A Section 24.15.2)**
4. Recommend the short list of consultants to the Head of the Procuring Entity for consideration and approval; **(IRR-A Section 24.15.4)** and
5. If the Head of the Procuring Entity approves the recommendation, inform the short listed consultants about the results of the short listing process. If the Head of the Procuring Entity disapproves the recommendation, he must inform the BAC of the reasons for the disapproval and instruct the BAC on the measures that ought to be adopted.

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

The entire process of eligibility check and short listing must not exceed twenty (20) calendar days after opening the eligibility envelopes. **(IRR-A Section 24.15.4)**

### **Are disassociations and associations among short listed consultants allowed?**

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

### **What happens if no eligible bidder passes short listing?**

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

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

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

## Step 4 Issue the Bidding Documents

### Legal Reference

IRR-A Section 17 provides the rules for the issuance of bidding documents.

### To whom and when should the bidding documents be issued?

The BAC Secretariat should make the bidding documents available to the short listed consultants once the Head of the Procuring Entity approves the short list of consultants. It would then ask the short listed consultants to pay for the bidding documents to recover the cost of development, reproduction and communication, as well as indirect costs such as overhead, supervision and administrative costs. It must then issue the bidding documents upon payment of these costs. **(IRR-A Section 17.5)**

Under no circumstances should the bidding documents, as a whole, or individually, be divulged or released to any prospective bidder prior to their official release to the short listed consultants. Neither should these be divulged to any person with or without direct or indirect interest in the project being bid out, except those officially authorized to handle them. **(IRR-A Section 19)** However, after its official release, it shall be made available to the public, unless the procurement at hand affects national security.

### How much must short listed consultants pay for the bidding documents?

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

The cost recovery component may include the following:

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



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

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

### **How are the bidding documents issued?**

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

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

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

A short listed consultant must be responsible for having: **(IRR-A Section 17.7.1)**

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

Failure to observe any of the above responsibilities shall be at the risk of the short listed consultant concerned. For this purpose, one of the contents of the technical proposal would have to be a sworn statement executed by the said consultant attesting to these responsibilities.

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

Moreover, the short listed consultants are deemed to have become familiar with all existing Philippine laws, decrees, ordinances, acts and regulations that may affect the contract in any way. However, if the contract is affected by new laws, ordinances, regulations or other acts

of government promulgated after the date of the bidding, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis. **(IRR-A Section 17.7.4)**

## Step 5 Call A Pre-Bid Conference and, if necessary, Issue Supplemental/Bid Bulletins

### Legal Reference

IRR-A Section 22 specifies the rules in relation to the conduct of a pre-bid conference.

### What is a Pre-bid Conference?

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

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

It is important that responsible and knowledgeable officials attend the conference. The persons who actually formulated the Terms of Reference for the project should be present among those representing the Procuring Entity. Short listed consultants, on the other hand, should be encouraged to send representatives who are legally and technically knowledgeable about the requirements of the procurement at hand. It is also important that the short listed consultants be given ample time to review the bidding documents prior to the pre-bid conference.

### When do you hold a Pre-bid Conference?

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

The pre-bid conference must be held **at least twelve (12) calendar days before the deadline for the submission and receipt of bids. (IRR-A Section 22.2)** In addition to this, it is suggested that it not be held earlier than seven (7) calendar days after the second newspaper advertisement or the last day of posting the IAEB. If the pre-bid conference is held less than 12 calendar days before the deadline for the submission and receipt of bids, that deadline should be moved to a later date. A supplemental/bid bulletin shall be issued for this reason. Note that these periods are all within the maximum period of ninety (90) calendar days from the last day of the period of advertising and/or posting of the IAEB up to the opening of bids, as provided under IRR-A Section 21.2.2 (iii).

### Who must attend the Pre-bid Conference?

The following shall attend the pre-bid conference:

1. The BAC;
2. The BAC Secretariat;
3. The TWG members;

4. The observers;
5. The end-user/PMO;
6. Technical experts on the consulting services to be procured; and
7. The short listed consultants.

Short listed consultants may or may not attend the pre-bid conference. **(IRR-A Section 22.2)**

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

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

### **How is the Pre-bid Conference conducted?**

How the pre-bid conference is conducted depends on the discretion of the BAC chairperson or his/her duly authorized representative who shall chair the proceedings. However, several events need to take place in the conference, namely:

1. The presentation by the BAC of the eligibility requirements as well as the technical and financial components of the contract to be bid, the evaluation procedure, evaluation criteria, and possible causes of failure of the bidding.
2. The recording by the BAC Secretariat of minutes of the pre-bid conference, and its availability to all participants not later than three (3) calendar days after the pre-bid conference. **(IRR-A Section 22.3)**

### **What happens if there is a need for clarification or interpretation on the Bidding Documents after the pre-bid conference had been held?**

Requests for clarification(s) on any part of the bidding documents or for an interpretation may be made by eligible bidders provided that these are in writing and are submitted to the BAC at least ten (10) calendar days before the deadline for the submission and receipt of bids. In this case, the BAC shall issue its response by issuing a supplemental/bid bulletin, to be made available to all those who have properly secured the bidding documents at least seven (7) calendar days before the deadline for the submission and receipt of bids. **(IRR-A Section 22.5.1)**

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

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

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

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

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

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

1. The BAC;
2. The BAC Secretariat;
3. The TWG members; and
4. The short listed consultants.

### **Methodology: How is a Supplemental/Bid Bulletin issued?**

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

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

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

1. The short listed consultant submits to the BAC, through the BAC Secretariat, a written request for clarification, within the period prescribed above.
2. The BAC directs the BAC Secretariat and/or the TWG to study the request for clarification.
3. The TWG, BAC and BAC Secretariat perform the steps undertaken in the issuance of the supplemental/bid bulletin issued at the initiative of the BAC.

## **Step 6 Receive and Open the Technical and Financial Envelopes**

### **Legal Reference**

IRR-A Sections 25 to 31 specify the rules in relation to the submission and receipt of bids.

### **What is a Bid?**

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

### **What are the contents of the Technical Proposal?**

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

1. The bid security in its required form, amount and validity period;
2. Authority of the signatory to sign on behalf of the bidder, all documents pertaining to the bid and the contract, which must be contained in a Board Resolution if the bidder is a corporation or a cooperative, a Joint Venture Resolution if the same is a Joint Venture, a Partnership Resolution if the bidder is a Partnership, or a Special Power of Attorney (SPA) issued by the General Manager or Proprietor if the bidder is a sole proprietor;
3. Organizational chart for the contract to be bid;
4. List of completed and on-going projects;
5. Approach, work plan, and schedule, provided that for architectural design, submission of architectural plans and designs shall not be required during the consultant's selection process;
6. List of key personnel to be assigned to the contract to be bid with their curriculum vitae indicating their relevant qualification, experience data and signed written commitment to work for the project once awarded the contract;
7. Certificate from the bidder under oath of its compliance with existing labor laws and standards;
8. A sworn affidavit of compliance with the Disclosure Provision under Section 47 of R.A. 9184 and its IRR-A in relation to other provisions of R.A. 3019;;
9. A sworn statement by the bidder attesting to have complied with the responsibilities enumerated under IRR-A Section 17.7.1, particularly that the bidder has taken steps to carefully examine all of the bidding documents, has acknowledged all conditions, local or otherwise, affecting the implementation of the contract, has made an estimate of the facilities available and needed for the contract to be bid, and has complied with its responsibility of inquiring and securing all supplemental/bid bulletins issued by the BAC; and

10. Other information and/or documents specified in the bidding documents.

### **What are the contents of the Financial Proposal?**

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

1. Remuneration cost indicating the basic salary, overhead cost, social charges, management fee and billing rate;
2. Reimbursable cost; and
3. Other items as may be required in the bidding documents.

The financial proposal should clearly estimate the value added tax, income tax, local taxes, duties, fees, levies and other charges, as applicable.

### **How should the envelopes be submitted and received?**

Both envelopes must be labeled with the name of the contract to be bid and the name of the bidder in capital letters, addressed to the BAC of the agency concerned. The bidder shall mark the two (2) envelopes: "Do not open before (date and time of opening of bids)." Both envelopes shall then be put in an outer envelope, which shall be sealed and addressed to the BAC Chairperson. The Financial Proposal shall also be marked with a warning: "Do not open with the Technical Proposal." This outer envelope must be marked as specified in the ITB. **(IRR-A Section 25.1)**

The bid must be submitted to the BAC through the bidder's authorized managing officer or its duly authorized representative. **(IRR-A Section 25.1)**

As with eligibility envelopes, the BAC Secretariat, upon receipt of a bid envelope, must stamp it as "RECEIVED" and have the stamp countersigned by an authorized representative. It then must accomplish in triplicate a pre-numbered receipt indicating the name of the prospective bidder and the date and time when the bid envelope was received. It then attaches one triplicate copy of the receipt on the bid envelope, gives the other triplicate copy to the prospective bidder, and keeps the original copy for records purposes.

### **When should the bids be submitted?**

Bids should be submitted on or before the specified **time and date of the deadline for submission of bids, as stated in the bidding documents, and within ninety (90) calendar days after the last day of the period for advertising and/or posting the IAEB. (IRR-A Section 21.2.2 [i])** Bids submitted after the specified deadline shall not be received or accepted by the BAC. **(IRR-A Section 25.2)**

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

Even if only one short listed consultant submits a bid envelope, the bidding process continues. If its bid is found to be responsive to the bidding requirements, its bid will be declared as a SRRB and considered for contract award. **(IRR-A Section 36 [c])**

### **What happens if no short listed bidder submits a bid?**

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

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

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

**TIPS: Let's make things easier**

The BAC shall require one (1) original and at least two (2) duplicate copies of the Technical Documents and Financial Documents. The original copy will be the one initialed by the BAC members or their authorized representatives and will be kept by the BAC Secretariat for check and balance purposes while the duplicate copies will be the ones used during Bid Evaluation.

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

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

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

**How are bids received, opened, and preliminarily examined?**

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

1. Short listed consultants submits their bids through their respective authorized managing officers or representatives **(IRR-A Section 25.1)** in two (2) separate sealed bid envelopes, the first containing the technical component of the bid, and the second containing the financial component of the bid. The two envelopes shall be placed in an outer envelope or any container, which shall be sealed and addressed to the BAC and marked as specified in the ITB. **(IRR-A Section 25.1)**

**TIPS: Let's make things easier**

At the minimum, the BAC shall require one (1) original and at least two (2) duplicate copies of the technical documents and financial documents. The original copy will be the one initialed by the BAC members or their authorized representatives and will be kept by the BAC Secretariat for check and balance purposes while the duplicate copies will be the one evaluated by the BAC.



2. The BAC convenes on the Bid Opening Date. The presence of the majority of the BAC members shall constitute a quorum, provided that the chairperson or the vice-chairperson is present.
3. The BAC receives the technical and financial envelopes at the time, date and place specified in the bidding documents. Upon receipt of the envelope containing the technical and financial envelopes, the BAC shall stamp on the face of the outer envelope the date and the time of receipt thereof.

### How's that again?

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

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

4. The BAC then proceeds with the opening and preliminary examination of bids in public, following the same procedure as the eligibility check. For each bid, the BAC opens the Technical Envelopes of short listed consultants to determine each one's compliance with the required documents for the technical component of the bid. The BAC checks the submitted documents of each bidder against a checklist of required

documents to ascertain if they are all present in the technical envelope, using non-discretionary "pass/fail" criteria. **(IRR-A Sections 30.1)** The opening of bids must be done in public, following the same procedure as the eligibility check.

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

The order of opening is as follows:

- a. The letters of short listed consultants that decide not to participate;
  - b. The letters of short listed consultants that decide to withdraw the bids that they have submitted earlier than the deadline;
  - c. The letter of short listed consultants that decide to modify their bids that they have submitted earlier than the deadline, followed by the opening of their technical envelopes; and
  - d. The technical envelopes of short listed consultants that have submitted bids on the deadline itself.
5. In case one or more of the required documents is missing, incomplete, or patently insufficient, it must rate the bid concerned as "failed". Otherwise, it shall rate the said first bid envelope as "passed."

A document that is not signed and/or not notarized shall be considered a patently insufficient submission. If the requirement is for the audited financial statements (AFSs) or the income tax returns (ITRs) for three (3) immediately preceding years, and the bidder submits its AFS or ITR for the past two (2) years only, such shall be considered an incomplete submission.

6. All members of the BAC, or their duly authorized representatives who are present during bid opening, shall initial every page of the original copies of all bids received and opened. **(IRR-A Section 29)**

7. The financial envelopes of all short listed consultants must remain sealed and secured.
8. All technical envelopes must be resealed. Those rated "passed" will be secured in preparation for the detailed technical evaluation (which normally starts the following day). Those rated "failed" will be secured for purposes of potential filing of motion for reconsideration.
9. The BAC Secretariat shall record the proceedings using an electronic tape recorder, or a video recorder. The minutes of the bid opening should be prepared within three (3) calendar days after the bid opening date, so that copies thereof could immediately be sent to the BAC members, Observers, Bidders and other interested parties. Copies of the minutes shall also be made available to the public upon written request and payment of a specified fee to recover cost of materials.

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

A short listed consultant may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. If such a consultant modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked or related to its original bid and marked as a "MODIFICATION" of the original, and stamped "RECEIVED" by the BAC. Bid modifications received after the applicable deadline will not be considered and must be returned to the consultant unopened. **(IRR-A Section 26.1)** Any discount should form part of the bid submission in the financial envelope.

A short listed consultant may, through a letter, withdraw its bid before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline must be subject to appropriate sanctions as prescribed in the IRR-A. A short listed consultant may also express its intention not to participate in the bidding through a letter which should reach and be stamped "RECEIVED" by the BAC before the deadline for the receipt of bids. A consultant that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. **(IRR-A Section 26.2)** Moreover, a consultant that withdraws its bid without any justifiable cause therefor shall be subject to the administrative sanctions provided in Section 69.1 of the IRR-A.

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

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

The bid security of the consultant shall be forfeited.

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

The short listed consultant that has failed to comply with any of the technical requirements of the Bid will be disqualified by the BAC. Similar to ineligible bidders, it may file a written request for reconsideration but only within three (3) calendar days from the receipt of the communication regarding its bid's deficiency. **(IRR-A Section 30.3)**

In case a bidder is determined to have failed in the first envelope, which contains the Technical Proposal, and it signifies its intention to file for a request for reconsideration, the BAC must hold this bidder's second envelope unopened until the request for reconsideration has been resolved. **(IRR-A Section 30.3)**

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

If no short listed consultant passes the preliminary examination of bids, there is a failure of bidding and the BAC should declare such a failure. As with other failures of bidding, the BAC must then review the terms and conditions stated in the IAEB, changing any of such terms and conditions if needed. It may wish to change the cost estimates; however, it must do so without changing the ABC. It then must conduct a re-bidding, in the process formulating a new IAEB and advertising and posting this as required. **(IRR-A Section 35)**

If a second failure of bidding occurs, the Procuring Entity finds that there is a need to evaluate the responsiveness of the ABC, and decides to revise the ABC accordingly, the Procuring Entity should conduct another public bidding with re-advertisement and/or posting. However, if the Procuring Entity resorts to negotiated procurement, the terms, conditions and specifications of the project as well as the ABC must be maintained

## Step 7 Evaluate the Bids

### Legal Reference

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

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

### Why do you need to evaluate the bids?

The purpose of bid evaluation is to determine the HRB. This bid shall be subject to post-qualification to validate its eligibility and its bid requirements. Once post-qualified, it is designated as the HRRB and then awarded the contract. **(IRR-A Section 33.1)** The HRB shall be determined in two (2) ways: **(IRR-A Section 33.2)**

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

### How are bids evaluated?

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

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

In other cases, the QCBE procedure shall apply.

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

1. Individual Evaluation Process

In the individual rating process, each BAC member participating in the evaluation assigns numerical rates to a proposal, these rates range from 1 to 100, with 100 as the highest value. These rates are tabulated, and then the highest and lowest rates are disregarded. The latter step is done to remove the possibility of one BAC member unduly influencing the results of the evaluation. The average of all remaining rates is then calculated. **(IRR-A Section 33.3)**

The table below illustrates how the highest and lowest rates are disregarded in calculating the average rate of proposals.

Evaluators	Firm A	Firm B	Firm C	Firm D	Firm E
A	<del>95</del>	<del>75</del>	<del>84</del>	<del>83</del>	<del>84</del>
B	84	88	86	81	82
C	84	86	85	79	84
D	<del>83</del>	85	84	79	82
E	84	87	86	80	83
Average	84	86	85	80	83
Rank	3	1	2	5	4

If the highest and lowest rates were not eliminated, the example below will show that the scores of Evaluator A, which appears to be biased for Firm 1, would have unduly placed Firm 1 at an advantage.

Evaluators	Firm A	Firm B	Firm C	Firm D	Firm E
A	95	75	84	83	84
B	84	88	86	81	82
C	84	86	85	79	84
D	83	85	84	79	82
E	84	87	86	80	83
Average	86	84.2	85	80.4	83
Rank	1	3	2	5	4

## 2. Collegial Evaluation Process

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

### How is QBE done?

The following steps are followed under the QBE procedure:<sup>9</sup>

1. The BAC evaluates the Technical Proposal based upon the criteria set forth.
2. The BAC ranks the consultants in descending order based upon the numerical ratings of their Technical Proposals and identifies the HRB, which should have passed the minimum technical rating. **(IRR-A Section 33.4.1)**
3. The BAC submits the results of the evaluation, including the rankings and the consultant with the HRB, to the Head of the Procuring Entity, who must approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of such results.
4. If the Head of the Procuring Entity disapproves the BAC recommendations, he shall inform the BAC of its disapproval and the reasons for it, and shall instruct the BAC on the subsequent steps to be adopted.
5. If the Head of the Procuring Entity approves the recommendations of the BAC, the BAC furnishes all participating short listed consultants with the results of its evaluation (ranking and total scores only). The results must also be posted in the PhilGEPS and the website of the agency for a period of not less than two (2) weeks, to make these results available to the GPPB and the umbrella organization of consultants. **(IRR-A Section 33.3.6)**
6. Within seven (7) days of the approval of its recommendations, the BAC invites the consultant with the HRB for the opening of its financial proposals and for contract

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

negotiations. In its letter of notification, the BAC shall inform the consultant of the issues in the Technical Proposal the BAC may wish to be clarified on during negotiations. **(IRR-A Section 33.4.2)**

### How is QCBE done?

The following steps are followed under the QCBE procedure:<sup>10</sup>

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

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

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

Example:

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

<sup>10</sup> The steps may vary for FAPs, and so reference should be made to the appropriate standard bidding documents for the project.

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

The formula is as follows:

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

Where:

S is the Total Score;

St is the Technical Score;

Sf is the Financial Score;

T is the weight given to the Technical Proposal; and

F is the weight given to the Financial Proposal.

Example:

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

12. The BAC ranks the consultants in descending order, with the consultant obtaining the highest total score being declared as the bidder with the HRB. **(IRR-A Section 33.5)**
13. The BAC submits the results of its evaluation to the Head of the Procuring Entity, identifying the consultant with the HRB, and recommending that it be authorized to negotiate with this consultant.
14. The Head of the Procuring Entity approves or disapproves the recommendations of the BAC within two (2) calendar days after receiving these from the BAC.
15. If the Head of the Procuring Entity disapproves the recommendation, he shall state the reason(s) for the disapproval and instruct the BAC on the subsequent steps to be adopted. If the Head of the Procuring Entity approves the recommendations, the BAC furnishes all participating short listed consultants with the results of its evaluation (ranking and total scores only). The results must also be posted in the PhilGEPS and the website of the agency for a period of not less than two (2) weeks, to make these results available to the GPPB and the umbrella organization of consultants. **(IRR-A Section 33.3.6)**
16. Within three (3) calendar days of the approval of its recommendations, the BAC invites the consultant with the HRB for the opening of its financial proposals and for contract negotiations. In its letter of notification, the BAC shall inform the consultant of the issues in the technical proposal the BAC may wish to be clarified on during negotiations. **(IRR-A Section 33.4.2)**

### **How long does the Evaluation Procedure take place?**

The entire evaluation process, from bid opening until submission of the bid evaluation results to the Head of the Procuring Entity, should not exceed twenty-one (21) calendar days **(IRR-A Section. 33.3.3)**

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

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

### **Who are the participants in the Bid Evaluation?**

The following must participate in the bid evaluation:

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

### **What happens if no bid passes the minimum technical rating for QCBE?**

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

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

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



## Step 8 Negotiate with the Consultant with the Highest Rated Bid

### Legal Reference

IRR-A Section 33 provides the rules for the conduct of negotiations.

### Who are the parties involved in the negotiations?

The following are involved in the negotiations:

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

### What are covered during negotiations?

For contracts awarded using the QBE procedure, the following are covered during negotiations:

1. Discussion and clarification of the TOR and Scope of Services, provided that if changes in the TOR become necessary, the cost of these changes shall be within the ABC;
2. Discussion and finalization of the methodology and work program proposed by the consultant;
3. Consideration of the personnel to be assigned to the job, taking note of over-qualified personnel to be commensurate with the compensation of personnel with the appropriate qualifications, number of man-months and schedule of activities (manning schedule) [Note that there should be no replacement of key personnel, except for justifiable reasons such as death, incapacity or delay in the evaluation process due to the fault of the government. The BAC shall immediately consider negotiation with the next ranked consultant if unjustifiable replacement of key personnel is made. **(IRR-A Section 33.6)**];
4. Discussion on the services, facilities and data, if any, to be provided by Procuring Entity concerned;
5. Discussion on the financial proposal submitted by the consultant (Note that if the proposed price is greater than the ABC, the bidder will be disqualified); and
6. Provisions of the contract.

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

### **When is the Financial Proposal opened?**

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

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

### **How long should the negotiations take?**

Except for meritorious reasons, negotiations with any one consultant shall be completed within ten (10) calendar days. **(IRR-A Sections 33.4.4 and 33.5)**

### **Who Will Finalize the Draft Contract After Negotiation?**

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

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

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

### **What happens if negotiations with all qualified bidders fail?**

If negotiations with all qualified bidders fail, the BAC should declare a failure of bidding. In such a case, the BAC shall issue a resolution declaring a failure of bidding. The BAC then reviews the terms and conditions stated in the IAEB. If warranted, it changes any of the terms and conditions, including the quantities or specifications, provided that the ABC is left unchanged. It must, thereafter, conduct a re-bidding, in the process formulating a new IAEB and posting and publishing this as required. **(IRR-A Section 35)** All bidders that have initially responded to the IAEB in the first bidding shall be allowed to submit new bids.

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

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

### **What additional guidelines may a Procuring Entity adopt during negotiations?**

1. Negotiations should include discussions of the TOR, the methodology, staffing, the Procuring Entity's inputs, and special conditions of the contract. The Procuring Entity should give the consultants adequate authority to discharge their responsibilities and carry out the terms of their contract.

2. The discussions should not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected.
3. Major reductions in work inputs should not be made solely to meet the budget.
4. The final TOR and the agreed methodology should be incorporated in the description of services, which should form part of the contract.
5. The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution should have qualifications equal to or better than the key staff initially proposed.
6. Financial negotiations should include clarification of the consultant's tax liability in the Procuring Entity's country (if any) and how this tax liability has been or would be reflected in the contract.
7. As **Lump-sum Contracts** payments are based on delivery of outputs (or products), the offered price should include all costs (staff time, overhead, travel, etc.). Consequently, if the selection method for a Lump-sum contract included price as a component, **this price should not be negotiated.**
8. In the case of **Time-based Contracts**, payment is based on inputs (staff time and reimbursables) and the offered price should include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, **negotiations of staff rates should not take place, except in special circumstances**, like for example, staff rates offered are much higher than typically charged rates by consultants for similar contracts. Consequently, the prohibition of negotiation does not preclude the right of the client to ask for clarifications, and, if fees are very high, to ask for change of fees.
9. **Reimbursables** are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are **not subject to negotiations.** However, if the Procuring Entity wants to define ceilings for unit prices of certain reimbursables (like travel rates), it should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.
10. If the negotiations fail to result in an acceptable contract, the Procuring Entity should terminate the negotiations and invite the next ranked firm for negotiations.
11. Once negotiations are commenced with the next ranked firm, the Procuring Entity should not reopen the earlier negotiations.
12. After negotiations are successfully completed, the Procuring Entity should promptly notify other firms on the short list that they were unsuccessful.

## Step 9 Post-qualify

### Legal Reference

IRR-A Section 34 specifies the rules for post qualification.

### Why do you need to conduct a Post-qualification?

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

### When does a consultant pass Post-qualification?

A consultant passes post-qualification if the BAC verifies, validates and ascertains that the consultant satisfies the following criteria: **(IRR-A Section 34.2)**

1. Legal Requirements. The post-qualification process under this criterion involves the verification, validation and ascertaining of the consultant's claim that it is not included in any government "blacklist," as well as all the licenses, permits and other documents it submitted, including the following:
  - a. DTI business name registration or SEC registration certificate;
  - b. Valid and current Mayor's permit/municipal license;
  - c. Taxpayer's Identification Number;
  - d. Valid Tax Clearance and Tax Returns;
  - e. Certificate of Compliance with labor laws; and
  - f. Authority of signatory.

The bidder's status with regard to "blacklisting" may be verified by checking the Consolidated Blacklisting Report issued by the GPPB, or the "blacklist of any government agency.

2. Technical Requirements. Post-qualification under this criterion means that the BAC would have to verify, validate and ascertain the veracity of the documents submitted by a consultant to prove compliance of the consulting services it offers with the requirements of the contract and bidding documents. These documents include:
  - a. Documents proving the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, such as:
    - i. A list of completed projects; and

### How's that again?

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

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

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

### **When should Post-qualification be conducted?**

The post-qualification process must be conducted and completed **within seven (7) calendar days** from date of determination of the HRB. **(IRR A Section 34.1)** For consulting services, this period is reckoned from the date of successful negotiation with the consultant concerned.

However, in exceptional cases, the Head of the Procuring Entity may extend the post-qualification period, but the aggregate period should in no case exceed thirty (30) calendar days. **(IRR-A Section 34.1)**

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

The following parties ought to be involved in the conduct of post-qualification:

1. The BAC;
2. The TWG; and
3. The BAC Secretariat; and
4. The consultant, ranked starting from bidder with the HRB.

### **How is Post-qualification conducted?**

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

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

2. The BAC/TWG inquires about the consultant's performance in relation with other contracts/transactions as indicated in its eligibility statement (statement of on-going, completed or awarded contracts).
3. If the TWG conducts post-qualification, it TWG prepares a Post-qualification Report to be submitted to the BAC. The Report shall contain, among others, the activities undertaken with regard to the Post-qualification process, including feedback from inquiries conducted.
4. The BAC reviews the Post-qualification Report submitted by the TWG.
5. The BAC determines whether the consultant with the HRB passes all the criteria for post-qualification.

6. If the HRB passes the post-qualification, the BAC declares it as the HRRB.
7. After the BAC has determined the HRRB, the Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the HRRB and the corresponding Notice to the said bidder informing it of its post-qualification.

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

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

**What happens if a bidder or its employees is related within the third civil degree of consanguinity to the Head of the Procuring Entity or any of officials of employees of the Procuring Entity with direct access to information that may substantially affect the results of the bidding?**

Such a bidder will be disqualified by the BAC. **(IRR-A Section 47)**

**What happens if a bidder is found to have committed an act that constitutes fraud or misrepresentation or to have colluded with others for the purpose of influencing the outcome of the Bidding?**

Such bidder will be disqualified by the BAC, its bid security forfeited and, upon conviction, it will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years, **(IRR-A Section 65.2)** and likewise suffer the administrative penalties of suspension from participation in government procurement for the first offense, and suspension for two years on the second offense. **(IRR-A Section 69.1)**

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

If the consultant with the HRB fails to pass post-qualification, the BAC shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it. The post-disqualified bidder shall have three (3) calendar days from receipt of the said notification to request the BAC to reconsider this decision. The BAC shall evaluate the request for reconsideration, using the same non-discretionary criteria, and shall issue its final determination of the said request within seven (7) calendar days from receipt thereof. **(IRR-A Section 34.4)**

Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the negotiation and post-qualification process on the bidder with the second HRB. If the negotiations with the second bidder are successful, and it passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the HRRB. The Head of the Procuring Entity shall then award the contract to it. In case of the QBE procedure, the sealed financial envelopes of the unsuccessful bidders shall be returned by the BAC unopened and duly sealed only when the consultant with the HRRB has signed the contract and furnished the performance security. **(IRR-A Section 34.6)**

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

### **What happens if all qualified bidders fail post-qualification?**

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

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

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

## Step 10 Award the Contract

### Legal Reference

IRR-A Section 37 specifies the rules and guidelines for the awarding of contract.

### Who will be the recipient of the award of contract?

The award of contract shall be made to the consultant with the HRRB at its submitted bid price or its calculated bid price, whichever is lower. In the case of QBE, the award shall be based on the negotiated price or the submitted price, whichever is lower. In the case of an SRRB, as provided for in IRR-A Section 36, the bidder with the SRRB shall be awarded the contract. **(IRR-A Section 37.1)**

### What is the Timeline for Contract Award?

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

The **Notice of Award** shall be given to the bidder with the HRRB/SRRB **immediately** after approval of the recommendation. Simultaneously, a copy of the Notice shall be furnished to all losing Bidders, and posted in the website of the PhilGEPS, as well as the websites of the Procuring Entity and its electronic procurement service provider, if any. **(IRR-A Section 37.2.1)**

### How's that again?

#### What is the maximum period of time that a contract can be awarded?

Contract award must be made within the bid validity period as specified in the bidding documents, with the period lasting for a maximum of ninety (90) days from the date of bid opening. **(IRR-A Section 37.2.2)** If award cannot be made within the said period, the bid validity period shall be extended.

### Who are involved in the Award of the Contract?

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

1. The Head of the Procuring Entity;
2. The BAC;
3. The Procurement Unit/Office;
4. The BAC Secretariat;
5. The consultant who submitted the HRRB/SRRB; and
6. The Observers.



## **How is a contract awarded?**

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

1. The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand.
2. The BAC Secretariat drafts the BAC Resolution recommending award.
3. The BAC approves and signs the Resolution Recommending Award, and transmits the same to the Head of the Procuring Entity or his or her duly authorized representative.
4. The Head of the Procuring Entity, or his/her duly authorized representative, acts on the recommendation for award within fifteen (15) calendar days from the date of determination and declaration by the BAC of the HRRB/SRRB. In the case of GOCCs and GFIs, the governing Board shall have thirty (30) calendar days within which to approve the recommendation for award.
5. In case of approval of the recommendation, the Head of the Procuring Entity, through the procurement unit/office, issues the Notice of Award to the bidder with the HRRB/SRRB while the BAC accordingly notifies the losing bidders. In case of a disapproval of the recommendation of award, the Head of the Procuring Entity shall state the reason(s) for disapproval and instruct the BAC on the subsequent steps to be adopted.
6. The bidder with the HRRB/SRRB accepts the Notice of Award.

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

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

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

## **Step 11 Have the Contract Signed and Approved and Issue the NTP**

### **Legal Reference**

IRR-A Section 37 specifies the rules regarding contract signing and approval.

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

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

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

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

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

When, after contract signing, further approval of a **higher authority** is required, the approving authority for the contract, or his duly authorized representative, shall be given a **maximum of fifteen (15) calendar days** from receipt thereof, together with all documentary requirements to perfect the said contract, to approve or disapprove it. In the case of GOCCs and GFIs, when further approval of the governing Board is required, the said governing Board or its duly authorized representative has **twenty-five (25) calendar days**. **(IRR-A Section 37.3)**

### **When shall the Procuring Entity issue the NTP?**

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

### **When is a contract "effective"?**

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

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

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

1. The Procurement Unit/Office/End-User Unit;
2. The Head of the Procuring Entity and/or higher contract approving authority; and
3. The winning bidder.

### **What documents form part of the contract?**

The contract shall include the following:

1. The Contract Agreement;
2. Conditions of Contract;
3. Terms of Reference;
4. Drawings/Plans, if applicable;
5. Specifications, if applicable;
6. IAEB;
7. Bidding Documents;
8. Addenda and/or Supplemental/Bid Bulletins, if any;
9. Bid form including all the documents/statements contained in the winning bidder's two bidding envelopes, as annexes;
10. Eligibility requirements, documents and / or statements;
11. Performance Security;
12. Notice of Award of Contract and winning bidder's "Conforme" thereto; and
13. Other contract documents that may be required by existing laws and / or the Procuring Entity concerned.

#### **How's that again?**

The first ten (10) requirements are provided by the Procuring Entity, while the winning bidder submits the rest.

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

1. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
2. The procurement unit/office transmits the contract and its attachments to the Budget Office (for issuance of OS) and the Chief Accountant (for issuance of the CAF).
3. The procurement unit/office transmits the contract documents to the appropriate signing authority for signature, together with the following documents:
  - a. The OS;
  - b. The CAF;
  - c. Summary of Bid Evaluation Report;

- d. Resolution of the BAC or duly designated procurement office recommending Award;
- e. Approval of award by appropriate government approving authority; and
- f. Other pertinent documents that may be required by existing laws and/or the Procuring Entity concerned.

**TIPS: Let's make doing things easier**

In most procuring entities, particularly the bureaus or lower-level offices of national government agencies (NGAs) or centrally managed GOCCs or GFIs, the contract signatory is a different official from the approving authority. For example, a bureau director may only be authorized to approve contracts up to P50M. Contracts exceeding the said amount are brought up to the Secretary for approval. Different Procuring Entities have different levels of delegated authority, but the principle is essentially the same – the higher the contract amount, the higher is the level of the approving authority. In cases like this, the contract is usually deemed effective upon approval of such higher authority. The existence of this policy is the usual cause of delays in procurement transactions.

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

Only contracts that are duly signed by the appropriate signatory are covered by this rule. An unsigned contract is a mere piece of paper and cannot be the basis of a government liability.

4. After signing, if the contract needs the approval of a higher authority – such as, for bureaus, the Department Secretary, when required – the procurement unit/office transmits the contract and related documents to the approving authority or his authorized representative for approval.
5. The approving authority or his authorized representative acts on the contract within twenty (20) calendar days, or thirty (30) calendar days for GOCCs and GFIs, from receipt thereof.
6. If higher approval is required (e.g., approval of the Office of the President), or a review by another government body is necessary (e.g., NEDA or DOJ review), the Head of the Procuring Entity transmits the contract documents to the appropriate approving authority or reviewing body. The periods indicated above for approval of contracts still apply, except if the approving authority is the Office of the President.
7. The Head of the Procuring Entity or his/her duly authorized representative - issues the NTP within seven (7) calendar days from the date of the approval of the contract.

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

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

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

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

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

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

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

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

1. Its bid security is forfeited;
2. It is disqualified from further participating in the bidding at hand;
3. Upon conviction, it will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years; and
4. Upon determination of administrative liability, it will suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense.

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

If, on the other hand, the bidder that fails to post the performance security and sign the contract happens to be one with the SRRB, the BAC must declare the bidding a failure. It then conducts a re-bidding with re-posting and re-advertisement. Should there be another failure of bidding after the conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement **(IRR-A Section 40.3)**

**What happens if the failure of the bidder with the HRRB/SRRB to sign the contract within the prescribed period is not its own doing?**

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

## Reservation Clause

### Legal Reference

IRR-A Section 41 provides the rules governing the Reservation Clause.

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

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

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

#### How's that again?

#### What are instances of the BAC not following prescribed procedures?

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

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

2. If the **BAC is found to have failed** in following the prescribed bidding procedures, for which the applicable sanctions shall be applied to the erring officers; or

3. For any justifiable and reasonable ground where the award of the contract **will not redound to the benefit of the Government** as follows:

- a. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the Head of the Procuring Entity;

- b. If the project is no longer necessary as determined by the Head of the Procuring Entity; and
- c. If the source of funds for the project has been cancelled, withheld or reduced through no fault of the Procuring Entity.

However, abuse by the Head of the Procuring Entity of his power to reject any and all bids as provided by the Reservation Clause, with manifest preference to any bidder who is closely related to him in accordance with IRR-A Section 47 shall be meted with penalties provided in IRR-A Section 65. **(IRR-A Section 65.1.5)**





SECTION 3

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

PART TWO - ALTERNATIVE METHODS OF  
PROCUREMENT



## The Alternative Methods for the Procurement of Consulting Services

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

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

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

One of the reasons for the use of alternative methods of procurement is for administrative convenience. This means that the Procuring Entity is given the opportunity to procure consulting services at advantageous terms without having to undergo the entire public bidding process which could be time-consuming. Or, there could be changes in circumstances that preclude the use of public bidding as originally proposed in the APP, like in those cases where the BAC has twice declared a failure of bidding.

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

While the law allows the use of alternative methods of procurement, it emphasizes that splitting of government contracts is not allowed. **(IRR-A Section 54.1)** There is splitting of government contracts when, for the purpose of evading or circumventing the requirements of law and the IRR-A, especially the necessity of public bidding and the requirements for the alternative methods of procurement, the Procuring Entity:

1. Divides or breaks up government contracts into smaller quantities and amounts; or
2. Divides contract implementation into artificial phases or sub-contracts.

Thus, the amount indicated in the ABM/SARO (or the equivalent documents in GOCCs/LGUs) shall not be divided into several projects for bidding.

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

## Procurement through the Limited Source Bidding Method

### What is limited source bidding?

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

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

### Who will be invited to bid?

The pre-selected prospective bidders shall be those appearing in a list maintained by the relevant government authority that has expertise in the type of procurement concerned, which list should have been submitted to, and maintained updated with, the GPPB. **(IRR-A Section 49)** In the absence of the aforementioned relevant government authority, the Procuring Entity has to resort to open competitive bidding in its selection of a consultant.

### What if the expertise is not available locally?

If Filipino consultants do not have enough expertise and capability to render the services required under the project, foreign consultants may be hired.

The umbrella organization of consultants that will be recognized by the GPPB as representative of the consulting industry in the Philippines, will prepare and certify a list of fields wherein Filipino consultants can provide competent consulting services. As proof of the availability of Filipino expertise, it will also prepare a list of its members that have expertise in a specific field. It will list its standards for competence in the field and certify that the members that it has listed have passed such standards.

The absence of these lists will indicate the lack of local expertise in an area.

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

1. The Head of the Procuring Entity;
2. The BAC;
3. The TWG;
4. The BAC Secretariat;
5. The pre-selected prospective bidders; and
6. The Observers.

### **How is limited source bidding conducted?**

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

1. The end-user secures the list of pre-selected consultants from the GPPB or from the relevant government authority that has expertise in the type of procurement at hand.
2. It is highly advisable for the BAC to conduct a pre-procurement conference to confirm the existence of the condition required by law for procurement through limited source bidding.
3. The BAC recommends to the Head of the Procuring Entity the use of limited source bidding method for the particular procurement through a Resolution to be approved by the Head of the Procuring Entity.
4. The Head of the Procuring Entity decides whether or not to approve the same.
5. If the Head of the Procuring Entity disapproves of the recommendation, he shall state the reason(s) for disapproval and instruct the BAC on the subsequent steps to be adopted. If the recommendation is approved, the BAC, through the TWG and the BAC Secretariat, finalizes the bidding documents, including the IAEB (indicating therein the method of procurement to be used) and the TOR, in accordance with the procedures laid down in the IRR-A, this Manual and the PBDs. It also informs the pre-selected consultants that they are being considered for the project.
6. The BAC, through the Secretariat, posts for information purposes the IAEB in:
  - a. The PhilGEPS;
  - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity;Continuously for a period of seven (7) calendar days prior to the opening of the bids.
7. The BAC Secretariat sends the IAEB to the pre-selected consultants. The IAEB is sent to ALL consultants in the list.
8. The pre-selected consultants are expected to inform the BAC if they are interested in participating in the project or not. If interested, a pre-selected consultant will have to submit its LOI.
9. The BAC issues an RFP to the consultants that have submitted the LOI. This RFP must already contain the relevant information that would enable the consultants to prepare their bids.
10. The BAC conducts a pre-bid conference (if deemed warranted under the circumstances), and require the simultaneous submission of the prospective bidders' eligibility/qualification statements, and technical and financial bids on or before the deadline indicated in the bidding documents. The BAC then proceeds with the eligibility check, bid evaluation, negotiation, post-qualification, contract award, signing and approval, following the procedures for Competitive Bidding.

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

Yes, these are required.

## Procurement through the Negotiated Procurement Method

### What is negotiated procurement?

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

### When is Negotiated Procurement allowed?

Negotiated procurement may only be resorted to under the following instances:

1. There has been a second failure of public bidding as provided in IRR-A Section 35, in which case, the negotiation must be made with a consultant in good standing and with proven track record with the Procuring Entity or other government agencies;
2. There exists imminent danger to life or property during a state of calamity, or when time is of the essence arising from actual or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.
3. The project is adjacent or contiguous to another on-going consulting services project, provided, however, that:

**How's that again?**

**Who is a consultant in good standing?**

A consultant in good standing is someone who:

1. Is not included in the Consolidated Blacklisting Report issued by the GPPB, and
2. Has satisfactorily completed similar contracts and has no negative slippage in its on-going contracts.

The prospective bidder should issue a statement that it is not "blacklisted" or barred from bidding by the government or any of its agencies, offices, corporations or LGUs, and that it is not included in the Consolidated Blacklisting Report issued by the GPPB, once released in accordance with the guidelines to be issued by the GPPB.

- a. The original contract is the result of a competitive bidding;
- b. The subject contract to be negotiated has a scope of work that is similar or related to that of the original contract;
- c. The consultant uses the same prices or lower unit prices as in the original contract less mobilization cost;
- d. The amount involved does not exceed the amount of the ongoing project; and

e. The consultant is in good standing, e.g. has no negative slippage.

In such instances, negotiations for the procurement must be commenced before the expiry of the original contract. **(IRR-A Section 53 [d])** This negotiated contract can only be undertaken once for a particular ongoing project.

5. Individual consultants are hired to do work that is:
  - a. Highly technical or proprietary, or
  - b. Primarily confidential or policy-determining, where trust and confidence are the primary consideration for the hiring of the consultant, provided that the term of the individual consultants shall be, at the most, six (6) months, renewable at the option of the appointing Head of the Procuring Entity, but in no case shall exceed the term of the latter.
6. Where the procurement does not fall under Shopping in Section 52(a) of the IRR-A and amounts to Fifty Thousand Pesos (₱50,000) and below, provided that the procurement does not result in splitting of contracts.

**With whom can a Procuring Entity negotiate for projects located in areas where a state of calamity exists?**

For projects in areas where a state of calamity exists, the Procuring Entity can negotiate with a previous consultant of good standing with it, or with a consultant of good standing situated within the vicinity where the calamity or emergency occurred. **(IRR-A Section 54.2 [d])**

**With whom can a Procuring Entity negotiate for the implementation of projects that had been taken over?**

For projects that are taken over, the contract may be negotiated starting with the second highest rated bidder for the project under consideration. The negotiation ought to be based on the unit prices of the original contract, and in no case be higher than the bid price of the consultant with whom negotiation is being conducted. If negotiation fails, then negotiation must be done with the third highest rated bidder. If negotiation fails again, the Procuring Entity must negotiate with a consultant in good standing and with proven track record therewith or with other government agencies. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the heads of the Procuring Entities concerned, within their respective limits of approving authority. **(IRR-A Section 54.2 [e])**

**Who are the parties involved in negotiated procurement?**

The following must participate in the procurement of consulting services using the negotiated procurement method:

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

**How is negotiated procurement conducted?**

Except for adjacent or contiguous projects and for the hiring of individual consultants under special cases, negotiated procurement is conducted in the following manner:

1. It is highly advisable for the BAC to conduct a pre-procurement conference to confirm the existence of the condition required by law for negotiated procurement.
2. The BAC recommends to the Head of the Procuring Entity the use of the negotiated procurement method through a Resolution to be approved by the Head of the Procuring Entity.
3. The Head of the Procuring Entity decides whether or not to approve the recommendation.
4. If the Head of the Procuring Entity disapproves of the recommendation, he shall state the reason(s) of this disapproval and instruct the BAC on the subsequent steps to be adopted. If its recommendation is approved, the BAC, through the TWG and the BAC Secretariat, finalizes the TOR and other action documents, including draft contracts, in accordance with the procedures laid down in this Manual and in the IRR-A.
5. The Head of the Procuring Entity approves the action documents, and the BAC informs the consultant that it is being considered for the project.
6. The BAC, through the Secretariat, posts for information purposes the IAEB in:
  - a. The PhilGEPS;
  - b. The website of the Procuring Entity and its electronic procurement service provider, if any; and
  - c. Any conspicuous place in the premises of the Procuring Entity;

The posting shall be done for a maximum period of fourteen (14) calendar days prior to bid opening. The Procuring Entity, however, may waive the period for posting in cases when:

- a. There is imminent danger to life and property;
- b. Time is of the essence arising from actual or man-made calamities or other causes, where immediate action is necessary to prevent damage to, or loss of, life or property; or
- c. To restore vital public services, infrastructure facilities and other public utilities.

At any rate, the award must be posted in the aforementioned websites. **(IRR-A Section 54.2 [d])**

7. If the procurement is being negotiated because of:
  - a. Two previous failures of bidding;
  - b. In case of imminent danger to life or property;
  - c. When time is of the essence arising from actual or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property; or
  - d. To restore vital public services, infrastructure facilities and other public utilities;

The BAC issues an RFP to the identified and qualified consultant, with the RFP already containing the relevant information required for the consultant to prepare its proposal. The procedures for the conduct of public bidding should be observed. However, the minimum period for each bidding procedure may be reduced. The consultant informs the BAC whether or not it is interested to provide the required services for the project. If the consultant is not interested, the BAC shall invite another qualified consultant.



All Procuring Entities must maintain a registry of contractors as basis for drawing up the short list and/or selecting the contractors. **(IRR-A 54.2 [c])**

In cases b, c and d above, the negotiation shall be made with a previous consultant of good standing of the Procuring Entity concerned, or a consultant of good standing situated within the vicinity where the calamity or emergency occurred. **(IRR-A Section 54.2 [d])**

If the procurement is being negotiated as a result of a terminated or rescinded contract being taken over because immediate action is necessary to prevent damage to, or loss of, life or property, or to restore vital public services, infrastructure facilities and other public utilities **(IRR-A Section 53 [c])**, then the contract may be negotiated starting with the second highest rated bidder for the project under consideration. The negotiation ought to be based on the unit prices of the original contract, and in no case be higher than the bid price of the consultant with whom negotiation is being conducted. If negotiation fails, then negotiation must be done with the third highest rated bidder. If negotiation fails again, the Procuring Entity must negotiate with a consultant in good standing and with proven track record therewith or with other government agencies. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the heads of the Procuring Entities concerned, within their respective limits of approving authority. **(IRR-A Section 54.2 [e])**

7. The consultant submits its proposal in a sealed envelope duly marked.

**Are bid and performance securities still required for negotiated procurement?**

As a general rule, both bid security and performance security must be posted when a Procuring Entity resorts to negotiated procurement. However, in the case of negotiated procurement through the hiring of individual consultants or due to imminent danger to life or property or when time is of the essence or to restore vital public services or infrastructure facilities, the posting of a bid security shall not be required.

SECTION 4

**Guidelines on Contract  
Implementation for the  
Procurement of Consulting  
Services**



## **Advance Payment for Mobilization**

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

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

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

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

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

## **Replacement of Consultant and Key Personnel**

### **Can a consultant replace a key personnel?**

Once the contract is effective, any change introduced in the key personnel that is not agreed to by the Procuring Entity and is not for reasons of death, illness or incapacity of the individual personnel, during the first fifty percent (50%) of the contracted inputs of the said individual, shall result in the imposition of damages. Violators will be fined an amount equal to the refund of the replaced personnel's basic rate, which should be at least fifty percent (50%) of the total basic rate for the duration of the engagement. **(IRR-A 33.6)**

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

If the Procuring Entity finds that any of the personnel has committed serious misconduct or has been charged with having committed a criminal action under Philippine law, or has reasonable cause to be dissatisfied with the performance of any of the personnel, then the consultant must, at the Procuring Entity's written request specifying the grounds therefor, forthwith provide as replacement a person with qualifications and experience acceptable to the Procuring Entity. The replacement should have equal or better qualifications but will receive remuneration not exceeding that which would have been payable to the person replaced. The consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of staff.

## Contract Price and Payment

### Are contract prices fixed?

Price escalation is not allowed. For the given scope of work in the contract as awarded, the price must be considered as a fixed price.<sup>11</sup>

### How are contract prices to be denominated?

All contract prices must be denominated and payable in Philippine currency, and this shall be stated in the bidding documents. Should the Procuring Entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate officially prescribed for similar transactions as established by the BSP on the date of the bid opening. **(IRR-A Section 61.1)**

### When shall payments be made?

Any kind of payment, including advance and progress payments, must be made by the Procuring Entity as soon as possible, but in no case later than **forty-five (45) days** after the submission of a request for payment, accompanied by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract. The Procuring Entity must also ensure that all accounting and auditing requirements are met prior to payment. Only the portion of a claim that is not satisfactorily supported/accepted may be withheld from payment subject to the usual accounting and auditing rules and regulation.

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

### In what currency shall payments be made?<sup>12</sup>

Payments must be made in the Philippine currency.

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

#### 1. Lump Sum Contract

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

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

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

2. **Time-Based Contract**

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

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

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

4. **Percentage Contract**

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

5. **Indefinite Delivery Contract (Price Agreement)**

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

## Liquidated Damages

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

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

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

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



## Incentive Bonus

### Can a Procuring Entity give incentive bonuses to consultants?

No incentive bonus, in whatever form or for whatever purpose, shall be allowed.<sup>13</sup> (**IRR-A Section 42.4**)

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<sup>13</sup> For FAPs, any allowable incentive bonus would be provided in the standard bidding documents for the project. However, an incentive bonus is generally allowed only when it would be of benefit to the Procuring Entity. The option to grant incentive bonus is given by the IFIs to the Procuring Entity.

## **Subcontracting**

### **Is subcontracting allowed for the procurement of consulting services?**

The consultant may subcontract work relating to the project to an extent and with such specialists and entities as may be approved in advance by the Procuring Entity, provided that it submits to the Procuring Entity for prior approval the text of any proposed subcontract and any amendments thereto which may subsequently be proposed. It is suggested that the work subcontracted should not be a material or significant portion of the project, or should not exceed twenty percent (20%) of the total project cost. Notwithstanding the approval of the subcontract, the consultant should retain full responsibility for the project and for the content of all reports required therefor. In the event that any subcontractor is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity may request the consultant to provide a replacement, with qualifications and experience acceptable to the Procuring Entity, or to resume the performance of the work itself.

All subcontracting arrangements should be disclosed at the time of bidding, and subcontractors shall be identified in the bid submitted by the bidder. For them to be allowed to do so, subcontractors should also pass the eligibility check for the portions of the contract that they will undertake.

## Suspension of Work

### Can the Procuring Entity suspend services on a project?

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

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

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

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

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

### Methodology: How is a Suspension Order issued?

The following steps are undertaken in the issuance of a suspension order by the Procuring Entity:

1. The PMO or end-user unit determines the existence of any of the grounds for suspension enumerated above.
2. The PMO or end-user unit drafts the suspension order for the approval of the Head of the Procuring Entity.
3. The suspension order is issued to the consultant, stating the grounds therefor.
4. Prior to the expiration of the suspension order, the PMO or end-user unit shall determine whether or not the grounds for suspension still exist.
  - a. If such grounds continue to exist, or if it is no longer practicable to continue with the work, it shall terminate the work subject of the order or cancel the delivery of the items subject of such suspension.
  - b. If, however, the grounds for suspension no longer exist, and continuation of the work is practicable, the PMO, with the approval of the Head of the Procuring Entity or his/her duly authorized representative, shall lift the suspension order and notify the consultant to proceed with the work/delivery of items in accordance with the amended contract.

### **Can the consultant suspend work?**

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

1. Failure on the part of the Procuring Entity to deliver government-furnished equipment, resources, reports or data as stipulated in the contract;
2. Peace and order conditions that make it extremely dangerous, if not impossible, to work, provided that the consultant secures a written certification from the Philippine National Police station that has responsibility over the affected area, as confirmed by the Department of the Interior and Local Government Regional Director, that such conditions exist; or
3. Delay in the payment of consultant's claim for progress billing beyond forty five (45) calendar days from the time the consultant's claim has been certified by the Procuring Entity as being supported by complete documentation and a notice from the consultant has been received by the Procuring Entity that such payment is overdue, unless there are justifiable reasons which shall be communicated in writing to the consultants.

### **When can a Procuring Entity order the resumption of work?**

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

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

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

## Contract Termination for Default, Unlawful Acts or Insolvency

### Legal Reference:

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

### When may a Procuring Entity terminate a contract for default?

The Head of the Procuring Entity may terminate a contract for default when any of the following conditions attend its implementation:

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

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

### May a Procuring Entity terminate a contract by reason of Unlawful Acts?

The Procuring Entity may terminate the contract in case it is determined *prima facie* that the consultant has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

1. Corrupt, fraudulent, collusive and coercive practices;
2. Drawing up or using forged documents;
3. Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
4. Any other act analogous to the foregoing.

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

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

Yes. The Procuring Entity should terminate the contract if the consultant is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the consultant.

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

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

The consultant must serve a written notice to Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination.

In cases of termination, the Procuring Entity shall return to the consultant its performance security and unpaid claims.

## **Contract Termination for Convenience**

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

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

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

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

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

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

## **Warranty**

### **What is a warranty and when is it required?**

A warranty is an assurance that the consultant who prepared the design or undertook construction supervision for the project shall be held liable when structural defects and/or failures arise during the applicable warranty period due to faulty and/or inadequate design and specifications as well as construction supervision. It is required of a consultant for detailed engineering design and construction supervision, but may also be incorporated as a provision of the contract for other consulting services, as mutually agreed upon by the consultant and the Procuring Entity. (Please refer to the Warranty Section of the Manual on the Procurement of Infrastructure Projects for a more detailed discussion on the Warranty.)





# ANNEX

Frequently Asked Questions



## Frequently Asked Questions

- Q1: Does procurement of consulting services cover janitorial, security and copying services?
- A1: These services, and other general services, are not covered under procurement of consulting services but under procurement of goods. **(IRR-A Section 5 [k])**
- Q2: Can foreign consultants be hired?
- A2: If the services required for the project are within the expertise and capability of Filipino consultants, then Filipino consultants shall be hired. In case Filipino consultants do not have sufficient expertise and capability to render the required services, as determined by the head of Procuring Entity, then foreign consultants may be hired. **(IRR-A Section 24.5.2)**
- Q3: Are all consulting services procurements required to be advertised in the newspapers?
- A3: For contracts with ABC of P1,000,000 or less, or those whose duration is four months or less, advertisement in the newspapers may be dispensed with. However, the Invitation to Apply for Eligibility and to Bid still has to be posted in the agency website, the PhilGEPS, and in conspicuous places in the agency premises. **(IRR-A Section 21.2.3)**
- Q4: What is the process of short listing?
- A4: The objective of short listing is to determine the most qualified consultancy firms to undertake the project. Using the eligibility documents submitted by the eligible bidders as basis, eligible bidders may be included in the short list taking the following into consideration: extensive experience in similar projects; qualifications of top officials of the firms or the experts proposed to be engaged for the project; and job capacity. **(IRR-A Section 24.15.3)** Short listing is undertaken primarily due to the substantial cost incurred by a bidder in preparing a proposal. If all eligible bidders are invited to submit proposals, the chance of a firm getting the award diminishes greatly. This discourages a firm from participating because the effort in terms of time and money is not commensurate to the probability of getting the award. A short list of, say, five (5) greatly increases the chance of a firm and is thus encouraged to put in more time and effort in preparing a good proposal.
- Q5: Can the BAC declare a failure of bidding if the number of firms short listed is less than the number agreed upon during the pre-procurement conference?
- A5: Should less than the required number apply for eligibility and short listing, pass the eligibility check, and/or pass the minimum score required in the short list, the BAC shall proceed with the bidding process. **(IRR-A Section 24.15.2)** Even if only one firm passes short listing, the firm shall be requested to submit a bid and it shall be considered for award if the bid is responsive to the bidding requirements. **(IRR-A Section 36)**
- Q6: Can a bidder be disqualified for failure to attend the pre-bid conference?
- A6: No, attendance of the bidder is not mandatory. **(IRR-A Section 22.2)**
- Q7: Who determines if the evaluation procedure is Quality-Based or Quality-Cost Based?
- A7: The Head of the Procuring Entity shall have the option as to the evaluation procedure to be adopted for the selection of consultants. **(IRR-A Section 33.3.1)**

- Q8: What is the formula for computing the points for the financial proposal under the quality-cost based evaluation procedure?
- A8: The IRR does not provide a formula but the most widely adopted scoring method is that the financial proposal with the lowest cost automatically gets 100 points, assuming it is within the ABC. The scores of the other financial proposals are determined by pro-rating their costs with that of the lowest financial proposal.
- Q9: Is the replacement of key staff to be assigned to the project allowed before awarding of contract?
- A9: There should be no replacement of key personnel before the awarding of contract, except for justifiable reasons, such as delay in the evaluation process due to the fault of the Procuring Entity, death or incapacity of the proposed personnel. The Procuring Entity shall immediately consider negotiation with the next-ranked consultant if unjustifiable replacement of personnel by the first-ranked firm is made. **(IRR-A Section 33.6)**
- Q10: What happens when, at the stage of negotiation, the consultant and the Procuring Entity have irreconcilable positions on certain terms and conditions of the draft contract?
- A10: If the consultant and the Procuring Entity fail to come to an agreement, then negotiations shall be deemed unsuccessful and negotiations with the next-in-rank consultant shall be undertaken.
- Q11: Why is the posting of bid security and performance security now required?
- A11: Prior to RA 9184 and its IRR-A, posting of bid and performance securities was not required. However, due to the number of incidents wherein consultancy firms being considered for award have refused to accept the award or have simply abandoned their consultancy assignments, the posting of such securities have not been required to serve as additional protection for the government and help prevent such incidents from recurring.
- Q12: Is the privilege granted to provincial bidders to match the bid of a non-provincial bidder for procurement of infrastructure projects and of goods also applicable to procurement of consulting services?
- A12: No, the privilege granted to provincial bidders will not apply to procurement of consulting services, even if the selection of consultant adopted the quality-cost based evaluation procedure. **(IRR-A Section 45.1)**
- Q13: Are there alternative methods of procurement that a Procuring Entity may adopt?
- A13: Subject to prior approval by the Head of the Procuring Entity, alternative methods may be resorted to, that is, limited source bidding and negotiated procurement. **(IRR-A Sections 48.1)**
- Q14: How long is the entire process of public bidding for consulting services?
- A14: From advertisement up to issuance of the NTP, the maximum period is estimated to be thirty (30) weeks, while the minimum period is estimated to be fourteen (14) weeks. **(IRR-A Annex "C")**