

Welbrit's Manual of
Procedures for the
Procurement of
Infrastructure Projects

Welbrit Ltd.



MANUAL OF PROCEDURES FOR THE PROCUREMENT OF INFRASTRUCTURE PROJECTS

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ABBREVIATIONS AND ACRONYMS

ABC	Approved Budget for the Contract
ABM	Agency Budget Matrix
ADB	Asian Development Bank
AFP	Armed Forces of the Philippines
APP	Annual Procurement Plan
APR	Agency Procurement Request
ARCC	Allowable Range of Contract Cost
BAC	Bids and Awards Committee
BDS	Bid Data Sheet
BIR	Bureau of Internal Revenue
BOC	Bureau of Customs
BRS	Bureau of Research and Standards
BSP	Bangko Sentral ng Pilipinas
CAF	Certificate of Availability of Funds
CARI	Contractor's All-Risk Insurance
CDA	Cooperatives Development Authority
CIAP	Construction Industry Authority of the Philippines
CPE	Constructors Performance Evaluators
CPES	Constructors Performance Evaluation System
DBCC	Development Budget Coordination Committee
DBM	Department of Budget and Management
DBM-PS/ PS-DBM	Department of Budget and Management-Procurement Service
DND	Department of National Defense
D.O.	Department Order
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DOST	Department of Science and Technology
DPWH	Department of Public Works and Highways
DENR	Department of Environment and Natural Resource

DILG	Department of Interior and Local Government
DTI	Department of Trade and Industry
DV	Disbursement Voucher
E.O.	Executive Order
ESAO	Engineering Supervision and Administrative Overhead
FAP	Foreign Assisted Project
GAA	General Appropriations Act
GCC	General Conditions of Contract
GFI	Government Financial Institution
GOCC	Government-owned and/or –controlled corporation
GOP	Government of the Philippines
GPPB	Government Procurement Policy Board
GPPB-TSO	GPPB – Technical Support Office
GPRA	Government Procurement Reform Act
GSIS	Government Service Insurance System
IAEB	Invitation to Apply for Eligibility and to Bid
ICB	International Competitive Bidding
IFI	International Financing Institution
IPR	Intellectual Property Rights
IRR	Implementing Rules and Regulations
IRR-A	Implementing Rules and Regulations Part A of R.A. 9184
ITB	Instructions to Bidders
IU	Implementing Unit
JCOC	Joint Congressional Oversight Committee
JVA	Joint Venture Agreement
LBP	Land Bank of the Philippines
LC	Letter of Credit
LCB	Lowest Calculated Bid
LCRB	Lowest Calculated Responsive Bid
LGU	Local Government Unit
LOI	May refer to Letter of Intent or Letter of Instructions, depending on the manner of usage

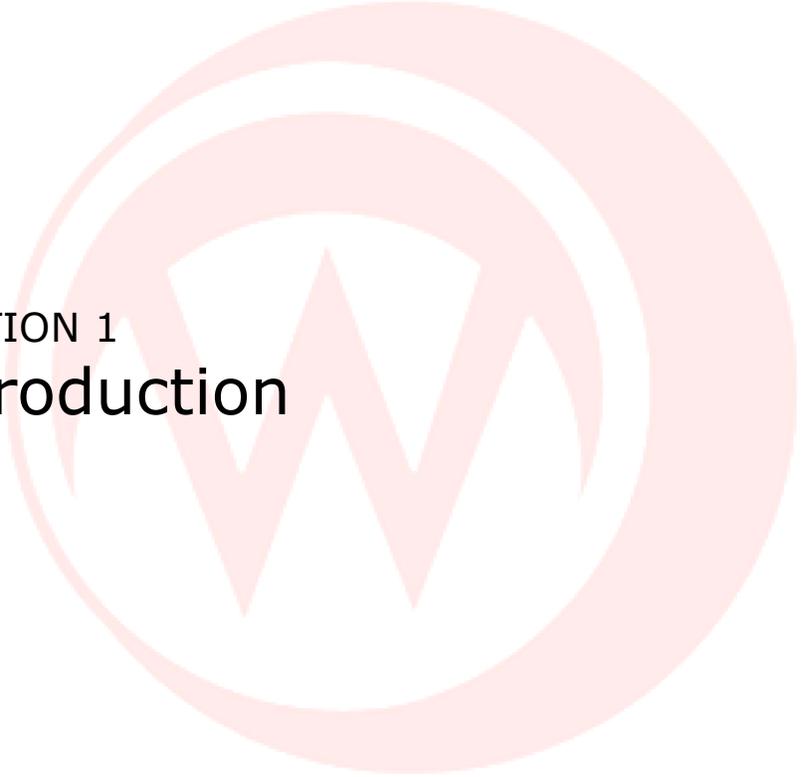
MDS	Modified Disbursement Scheme
NCA	Notice of Cash Allocation
NEDA	National Economic and Development Authority
NFCC	Net Financial Contracting Capacity
NGA	National Government Agency
NGO	Non-Government Organization
NSO	National Statistics Office
NTP	Notice to Proceed
OS	Obligation Slip
PAGASA	Philippine Atmospheric Geophysical and Astronomical Services Administration
PBD	Philippine Bidding Documents
PCAB	Philippine Contractors Accreditation Board
P.D.	Presidential Decree
PERT/CPM	Program Evaluation and Review Technique/Critical Path Method
PHILGEPS/ G-EPS	Philippine Government Electronic Procurement System
PMO	Project Management Office
PNP	Philippine National Police
PPMP	Project Procurement Management Plan
PWI	Procurement Watch Inc.
R.A.	Republic Act
R.A. 9184	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act of 2003"
ROW	Right-of-way
SARO	Special Allotment Release Order
SBDs	Standard Bidding Documents (of IFIs and bilateral agencies)
SCC	Special Conditions of Contract
SCRB	Single Calculated and Responsive Bid
SOW	Scope of Work
SPA	Special Power of Attorney
SUCs	State Universities and Colleges
TWG	Technical Working Group

UNDB United Nations Development Business

WB The World Bank



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SECTION 1
Introduction

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Scope of Volume 3

This Manual seeks to provide its users clear, concise, and accurate information on the **public procurement of infrastructure projects**, 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 procurement officials in all stages of infrastructure procurement, from the preparation of bid documents, to the actual bidding activity, monitoring of contract implementation and the final payment to the contractor.

This Manual focuses on public procurement of Infrastructure projects. 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.

Infrastructure projects are undertakings to construct, improve, rehabilitate, demolish, repair, restore, or maintain roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects. It also encompasses such infrastructures are irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. Under R.A. 9184 and its IRR-A, the term "infrastructure projects" has the same meaning as and is used interchangeably with the term "civil works." (**IRR-A Section 5 [n]**)

In addition, the following terms are used in the manner indicated below:

1. The bidder shall be referred to differently at different stages of the procurement process. Thus, the bidder is called:
 - a. "prospective bidder" from the posting of the Invitation to Apply for Eligibility and to Bid (IAEB) to the submission of the Letter of Intent (LOI);
 - b. "eligible bidder" after the eligibility check/screening;
 - c. "bidder with the LCB" after evaluation;
 - d. "bidder with the LCRB" after post-qualification; and
 - e. "contractor" after the issuance of the NTP.
2. The term "bid" will be used instead of "proposal" or "offer."
3. "Eligibility Check" and "Eligibility Screening" shall be used interchangeably.
4. Eligibility Requirements are Eligibility Documents enclosed in the Eligibility Envelope.
5. The Technical Envelope contains the Technical component of the bid.
6. The Financial Envelope contains the Financial component of the bid.

Finally, this Manual ought to be used together with the PBDs for Infrastructure Projects prescribed by the GPPB.



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SECTION 2

Preparing for the Procurement of Infrastructure Projects

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Preparing for the Procurement of Infrastructure Projects

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

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

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

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

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

The preparation of the bidding documents and the conduct of the pre-procurement conference for the procurement of infrastructure projects are discussed in this Volume.

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Procurement Planning

Legal Reference

IRR-A Sections 7, 17.6 and Annex "A" provide the rules in relation to Detailed Engineering and Procurement Planning.

What is the purpose of Procurement Planning?

The purpose of procurement planning is for the Procuring Entity to schedule its procurement activities in advance, consistent with its approved budget and its target date of implementation.

For infrastructure projects, the APP shall consider the appropriate timing/phasing of related project activities such as engineering design and acquisition of ROW to reduce/lower project costs, among others.

What is the importance of Detailed Engineering?

No bidding and award of contract shall be made unless the detailed engineering investigations, surveys and designs including the acquisition of the ROW for the project have been sufficiently carried out. These investigations must then be duly approved in accordance with the standards and specifications prescribed by the Head of the Procuring Entity concerned or his duly authorized representative, and in accordance with the provisions of Annex "A" of IRR-A. The only exception to this are design and build schemes wherein bidders are allowed to submit detailed engineering designs as part of their bids. **(IRR-A Section 17.6)**

How is Detailed Engineering commenced?

Prior to the conduct of the detailed engineering investigations, surveys and designs, the implementing office should draw a feasibility or preliminary engineering study which establishes the technical viability of the project and conformance to land use and zoning guidelines prescribed by existing laws.

The findings contained in the feasibility study, if undertaken for the project, should be examined. If, in the course of this exercise, it is found that changes would be desirable in the design standards of principal features, as proposed, specific recommendations for such changes should be supported by detailed justifications, including their effects on the cost, and, if necessary, the economic justification.

What Activities are covered by Detailed Engineering?

Only after the acceptance and approval of the feasibility study shall detailed engineering investigations be conducted. A schedule of detailed engineering activities shall include the following:

1. Survey
2. Site Investigation
3. Soils and Foundation Investigation

4. Construction Materials Investigation
5. Preparation of Design Plans and Design Analysis
6. Preparation of Technical Specifications
7. Preparation of Quantity and Cost Estimates
8. Preparation of Program of Work
9. Preparation of Proposed Construction Schedule [and estimated Cash Flow for projects with Schedule over six (6) Months]
10. Preparation of Site or Right-of-Way Plans including Schedule of Acquisition
11. Preparation of Utility Relocation Plan
12. Preparation and Submission of Design Report
13. Environmental Impact Statement for critical project or project in a critical area, as defined by the DENR
14. Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered
15. Preparation of Bidding Documents

Furthermore, work under detailed engineering shall include, but not necessarily be limited to, the following:

1. Design Standards – Design standards shall be in accordance with appropriate standards and accepted detailed engineering practice adopted by the agency concerned. Design standards for structures shall take into account, among other things, the seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage.
2. Field Surveys and Investigations – Necessary field surveys and investigations which may include aerial, hydrographic, topographic, hydrologic, sub-surface, monumenting and other surveys shall be carried out in accordance with the design guidelines, criteria and standards adopted by the agency concerned. All survey and investigation works shall be prepared in a manner satisfactory to carry out accurate design and production of plans.
3. Contract Plans – The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the Procuring Entity concerned, incorporating at least the following:
 - a. Site development plan;
 - b. Plans and profile sheet;
 - c. Typical sections and details;
 - d. Drainage details where applicable;
 - e. Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed; and
 - f. Other details which may be required by the head of the agency.
4. Quantities – All construction quantities shall be computed to a reasonable accuracy of plus or minus ten percent (10%).

5. Special Provisions – Specifications shall be prepared for specific items of work or methods of construction, measurement and payment under each contract, which are not covered by standard construction and material specifications adopted by the Procuring Entity concerned.
6. Unit Prices – These shall be prepared for each contract using costs based on reasonable approved current prices as projected over the proposed construction period, divided into local and foreign exchange costs, as the case may be.
7. Approved Budget for the Contract – The approved budget for the contract to be bid shall be prepared by official(s) duly designated by the Head of the Procuring Entity concerned or by his duly authorized official. It shall be approved by the Head of the Procuring Entity or his duly designated official.

Since the contracts are fixed price contracts, the approved budget for the contract to be bid must provide for the projected movements in construction costs over the construction period. It thus has to consider the projected inflation and foreign exchange rates as issued by the DBCC or other authorized agencies (NSO, BSP, others), as well as the cost of money. It must also show the local and foreign currency requirements, as the case may be.

The approved budget for the contract to be bid must also specify for each major work item, such as earthwork, roadwork, and massive concreting. It must also specify the components for equipment rentals, fuel, labor, materials and overhead, including the cost of the approved construction safety and health program and security premiums, taxes, profit, cost of money, inflation, contingencies, etc.

For infrastructure contract packages projects, the ABC shall cover the individual cost components of civil works only. The other components of the project such as ROW, consulting services and ESAO, shall comply with the applicable provisions of law or agency guidelines. **(IRR-A Section 7.1)**

8. Bidding documents as provided for in IRR-A.

In the preparation of the Bidding Documents, the agency must estimate the actual number of working days required to complete the project through a PERT/CPM analysis of the project activities and corrected for holidays and weekends. The agency must also estimate the number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site. These considerations must be indicated in the bidding documents, incorporated in the corrected actual number of working days determined above, and made the basis of the total contract time. The estimated number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site shall be made known before the date of bidding through the ITB for the purpose of guiding both the government and winning contractors in the request for an approval of time extensions. Without the estimated number of rainy/unworkable days established before the bidding date and known to all participating bidders, the contract time is presumed to have excluded the unfavorable conditions. The number of rainy/unworkable days may be taken from the records of PAGASA.

Likewise, the bidding documents should specify the type of project and the corresponding warranty period required by the Procuring Entity.

9. Program of Work – The program of work must include, among other things, estimates of the work, items, quantities and costs and a PERT/CPM network of the project activities. The program of work must cover at least a usable portion of the project and no construction shall be started for portions of the project that are less than usable, except projects requiring stage construction. In projects requiring stage construction, continuity of construction up to the completion of a usable portion must be assured.

The above rules shall apply to the implementation of infrastructure projects under normal or ordinary conditions. However, under emergency or extraordinary cases involving major

calamities and disasters as declared by the President of the Philippines, where time is of the essence to save lives and properties and restore damaged infrastructures, detailed engineering works shall be conducted in accordance with the guidelines and procedures, as prescribed by the head of the appropriate infrastructure agency and approved by the Infrastructure Committee of the NEDA Board. This ought to enable quick response to said cases, while maintaining the safety and integrity of the structure.

What are the considerations on setting the standards and technical specifications?

1. Standards and technical specifications quoted in bidding documents should promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement;
2. As far as possible, the Procuring Entity should specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship should comply, except that where such international standards are unavailable or are inappropriate, national standards may be specified; and
3. In all cases, the bidding documents should state that equipment, material or workmanship meeting other standards, which promise at least substantial equivalent, should also be accepted.

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. No. 8292 in the case of SUCs; or
3. The budget approved by the Sanggunian in the case of LGUs.

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

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

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

1. The cost or market price of the product or service itself;
2. Incidental expenses like taxes, training costs if necessary, and cost of inspection;
3. The cost of money, to account for government agencies usually buying on credit terms; and
4. Inflationary factor, since the planning phase is usually done one year ahead of the actual procurement date.

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

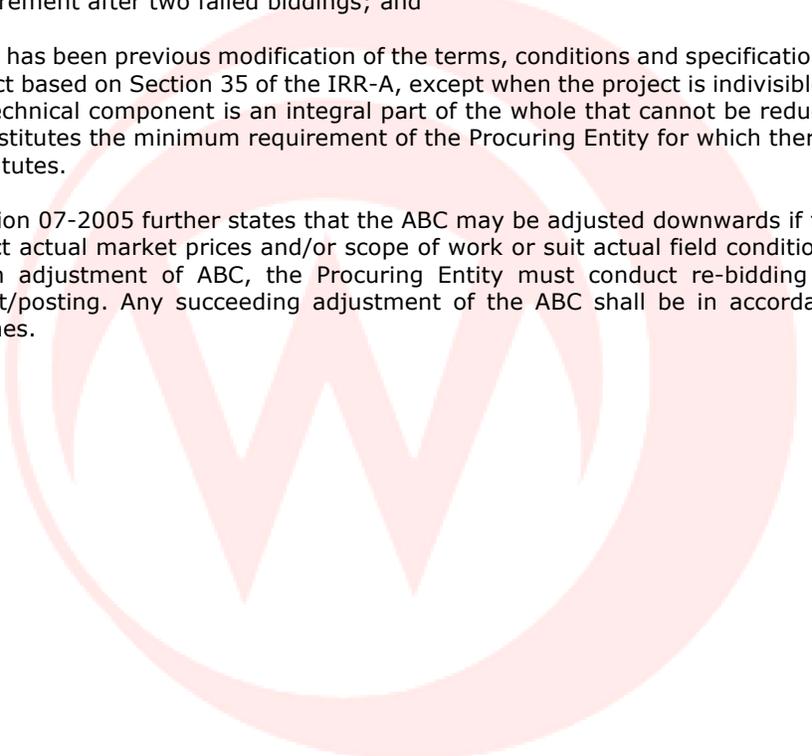
If the project or contract has a foreign component, it is also best to include a currency valuation adjustment factor, in order to hedge against any foreign exchange rate fluctuations between the planning phase and the actual procurement date. To determine the factor to be used, the PMO or end-user unit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

If the resulting 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.

Under GPPB Resolution 07-2005, the ABC may be adjusted upwards only under the following conditions:

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.



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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 Philippine Bidding Documents (PBDs) contain the following:²

1. Invitation to Apply for Eligibility and to Bid (IAEB);
2. Eligibility Documents;
3. Eligibility Data Sheet;
4. Instructions to Bidders (ITB);
5. Bid Data Sheet (BDS);
6. General Conditions of Contract (GCC);
7. Special Conditions of Contract (SCC);
8. Specifications;
9. Drawings;
10. Bill of Quantities; and
11. Forms and Qualification Information.

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

² The contents of the standard bidding documents for FAPs may vary.

having established compliance with the technical specifications, the next factor to consider would then be the price or financial bid.

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

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

Who shall participate in the preparation of the Bidding Documents?

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

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

When should you prepare the Bidding Documents?

The bidding documents must be prepared in time for presentation at the pre-procurement conference. After the conference, and preferably before the advertisement and/or posting of the IAEB, it should be ascertained that these documents are finalized.

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

The bidding documents should clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate therefore. The most common types of contracts provide for payments on the basis of a lump sum, unit price, or combinations thereof.³

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

1. For projects requiring a variety of goods and works, separate contracts may be awarded for the supply and/or installation of different items of equipment and plant ("plant" refers to installed equipment, as in a production facility) and for the works.

³ Reimbursable cost contracts are acceptable to IFIs only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advanced with sufficient accuracy. Such contracts should include appropriate incentives to limit costs.

2. For a project requiring similar but separate items of equipment or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms, which could be allowed, at their option, to bid for individual contracts (slices) or for a group of similar contracts (package). All bids and combinations of bids should be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest calculated cost to the Procuring Entity.
3. In certain cases, the Procuring Entity may require a turnkey contract under which the design and engineering, the supply and installation of equipment, and the construction of a complete facility or works are provided under one (1) contract. Alternatively, the Procuring Entity may remain responsible for the design and engineering, and invite bids for a single responsibility contract for the supply and installation of all goods and works required for the project component. Also acceptable where appropriate are contracts such as, but not limited to: (a) design and build; (b) design, build and operate; (c) design, build and lease; and (d) management contract.

Methodology: How are the Bidding Documents prepared?

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

1. ABC and source of funds;
2. Date, time and place of the pre-bid conference (where applicable), submission of bids and opening of bids;
3. Eligibility Requirements;
4. ITB, including criteria for eligibility, bid evaluation and post-qualification;
5. Scope of Work (SOW);
6. Plans and Technical Specifications;
7. Form of Bid and Bill of Quantities;
8. Completion Schedule;
9. Form, amount and validity period of Bid Security, the amount to be stated in Philippine peso terms **(IRR-A Section 27)** and its validity period to be determined by the Head of the Procuring Entity but not to exceed one hundred twenty (120) calendar days after the opening of bids **(IRR-A Section 28)**;
10. Form and amount of Performance Security and Warranty; and
11. 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 together 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 or a combination of the following forms, with the corresponding required amount:⁴ **(IRR-A Section 27.2)**

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

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

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

The Procuring Entity is encouraged to give preference to those forms of bid securities that are both easier to call and more accessible to contractors, such as manager's checks 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.

⁴ 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.

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 LCRB has signed the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period indicated in the ITB. **(IRR-A Section 27.4)**

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 corrections 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 is suspended for not providing the BAC required clarifications within the prescribed period; or
5. The bidder is proven to commit any of the acts under Sections 65 and 69 of R.A. 9184 and its IRR-A.

What is a Performance Security?

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

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

Within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity, and in all cases upon the signing of the contract, the successful

bidder should furnish the Procuring Entity with the performance security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents. **(IRR-A Section 39.1)** The performance security forms part of the contract. **(IRR-A Section 37.2.3)**

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

The performance security must be in any of the following or a combination of forms with the corresponding required amounts:⁵

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

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

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

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

Yes. The winning bidder shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of change orders or extra work orders, as the case may be. **(IRR-A Section 39.5)** The percentages in the schedule above must be applied to increases in the original value of the contract. The winning bidder must also cause the extension of the validity of the performance security to cover approved contract time extensions.

For partially completed works under the contract which are usable and accepted by the government, and the use of which, in the judgment of the implementing agency or the Procuring Entity, will not affect the structural integrity of the entire project, the 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 reductions are more than ten percent (10%) and the aggregate of such reductions is not more than fifty percent (50%) of the original performance security. **(IRR-A Section 39.6)**

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

When may the Performance Security be released?

Subject to the conditions of the contract, the Procuring Entity may release the performance security to the winning bidder after the issuance of the Certificate of Completion of the contract, provided that there are no claims for labor and materials filed against the contractor or the surety company, (**IRR-A Section 39.4**) and provided that it is replaced by a warranty covering the defects liability period in accordance with IRR-A Section 62.

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

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

Methodology: How is the Performance Security posted?

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

1. The bidder with the LCRB posts a performance security. In so doing, it must comply with the following conditions:
 - a. The performance security must be executed in the form prescribed by the Procuring Entity in the ITB; and
 - b. The following provisions shall form part of the performance security: "The right to institute action on the penal bond pursuant to Act No. 3688 of any individual firm, partnership, corporation and association supplying the contractor with labor and materials for the prosecution of the work is hereby acknowledged and confirmed."
2. The procurement unit/office accepts the performance security and indicates such posting and acceptance by attaching the appropriate form to the contract.

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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 technical specifications, the ABC, the applicability and appropriateness of the recommended method of procurement and the related milestones, the bidding documents, and availability of the pertinent budget release for the project.

Why is a Pre-Procurement Conference necessary?

For projects involving an ABC amounting to more than Five Million Pesos (P5 Million), a pre-procurement conference is conducted to determine the readiness of the Procuring Entity to procure infrastructure projects in terms of the legal, technical and financial requirements. More specifically, it ensures that the procurement will proceed in accordance with the PPMP and APP, confirms the availability of appropriations and programmed budget for the contract, and reviews all relevant documents in relation to their adherence to the law. **(IRR-A Section 20)**

Even when the ABC of the infrastructure project amounts to P5 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.

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 publication or issuance of the IAEB would be an advisable timeframe for the pre-procurement conference, to give the technical staff sufficient time to incorporate the necessary changes, amendments or revisions thereto.

Who calls for a Pre-Procurement Conference?

The BAC calls for a pre-procurement conference.

Who are the participants of a Pre-Procurement Conference?

The participants in a pre-procurement conference are:

1. The BAC;
2. The Secretariat;
3. Representatives of the PMO or end-user unit/s;

SECTION 3

**Instructions on the Procedural
Steps for the Procurement of
Infrastructure Projects**

PART ONE – COMPETITIVE BIDDING

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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 enough time to conduct such Public Bidding. **(IRR-A Section 10)**

Competitive Bidding consists of the following processes: advertisement, eligibility check/screening of prospective bidders, pre-bid conference, receipt of bids, opening and examination of bids, evaluation of bids, post-qualification, and award of contract. **(IRR-A Section 5 [h])**

The procurement process from 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. **(IRR-A Section 38)** 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.

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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 as to quality and cost.

What does an IAEB contain?

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

1. The name and location of the contract to be bid;
2. The project background and other relevant information regarding the proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works;
3. A general statement on the criteria to be used by the Procuring Entity for:
 - a. The eligibility check/screening;
 - b. The preliminary examination and detailed evaluation of bids; and
 - c. Post-qualification;
4. The date, time and place of the deadline for:
 - a. The submission and receipt of the Letter of Intent (LOI) together with the application for eligibility;
 - b. The submission and receipt of the eligibility requirements;
 - c. Notification of results of eligibility check/screening;
 - d. The pre-bid conference, if any;
 - e. The submission and receipt of bids; and
 - f. The opening of bids;
5. The ABC;

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

When, where, and for how long do you post an IAEB?

The IAEB for projects with ABCs of more than Five Million Pesos (P5 million) must be advertised and posted as follows: **(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. Moreover, the IAEB must also be posted at the city/municipal hall and/or provincial capitol where the project is located. Finally, the heads of contractors' organizations in the area must also be informed of such advertisement.

For projects with ABCs of P5 million and below, the IAEB should be posted:

1. Continuously on the website of the Procuring Entity concerned, if available, the website of the Procuring Entity's service provider, if any, as provided in IRR-A Section 8, and the PhilGEPS for seven (7) calendar days starting on date of advertisement, if applicable; and
2. At any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned, as certified by the head of the BAC Secretariat of the Procuring Entity concerned, for seven (7) calendar days, if applicable. Moreover, the IAEB must also be posted at the city/municipal hall and/or provincial capitol where the project is located. Finally, the heads of contractors' organizations in the area must also be informed of such advertisement.

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

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

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

Methodology: How are IAEBs advertised and posted?

The following steps are followed in the advertising and posting of IAEBs:⁶

1. For public bidding of contracts with an ABC costing more than Five Million Pesos (P 5 Million)
 - a. The BAC Secretariat prepares the draft IAEB for review/approval of the BAC.
 - b. The BAC approves the contents of the IAEB during the pre-procurement conference.
 - c. The BAC Secretariat posts the IAEB in any conspicuous place reserved for this purpose in the premises of the Procuring Entity for the duration required; and this fact will be certified to by the head of the Secretariat.
 - d. The BAC Secretariat advertises the IAEB in a newspaper for the duration required, as described above.. For priority programs and projects funded out of the annual GAA, which are intended for implementation within the province, the IAEB may also be advertised in a local newspaper for the same duration as above.
 - e. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IAEB in the following websites: the PhilGEPS, that of the Procuring Entity and the Procuring Entity's e-procurement service provider, if any, for the duration required.
2. For public bidding of contracts with an ABC costing Five Million Pesos (P 5 Million) and below, 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.

⁶ FAPs may have additional publication requirements. For this reason, reference should be made to the appropriate standard bidding documents for the project.

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**)

Welbrit Ltd.

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

Legal Reference

IRR-A Section 23 specifies the rules in relation to the eligibility criteria and requirements.

When should Letters of Intent and Applications for Eligibility be submitted?

Prospective bidders should submit their written LOIs and Applications for Eligibility to the BAC and have these received not later than seven (7) calendar days from last date of posting of the IAEB. **(IRR-A Section 21.3.1)** 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.

Once the PhilGEPS is fully established, prospective bidders may also submit their LOIs and Applications for Eligibility 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 to a prospective bidder 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 prospective 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 SCRB, 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 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.

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.⁷ **(IRR-A Section 23.2)**

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 such period as may be required by the Procuring Entity and stated in the invitation to bid. The eligibility requirements shall provide for fair and equal access to all prospective bidders.

Who may be eligible to participate in a public bidding for infrastructure projects?⁸

The following persons/entities shall be allowed to participate in the bidding: **(IRR-A Section 23.11.2.1)**

1. Duly licensed Filipino citizens/sole proprietorships;
2. Partnerships duly organized under the laws of the Philippines and of which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;
3. Corporations duly organized under the laws of the Philippines and of which at least seventy five (75%) of the outstanding capital stock belongs to citizens of the Philippines;
4. Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract, provided that:⁹
 - a. In accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest in the joint venture concerned shall be at least seventy-five percent (75%); and
 - b. In determining the eligibility of the joint venture, the principle of "collective compliance" will be applied to its members/principals in the sense that each of the entities of the joint venture must

Why is that?

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

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

⁷ Generally, FAPs do not utilize the eligibility check system of the GOP, unless so required by the pertinent IFI/bilateral lending agency. Moreover, pre-qualification may be utilized for large or complex works or in any other circumstances in which the high costs of preparing detailed bids could discourage competition such as custom designed equipment, industrial plant, specialized services, some complex information and technology, and contracts to be let under turnkey, design and build, or management contracting.

⁸ For FAPs, reference should be made to the appropriate standard bidding documents for the project to determine the appropriate qualification requirements of a bidder.

⁹ For FAPs, any firm may bid independently or in joint venture confirming joint and several liability, either with domestic firms and/or with foreign firms, but the IFIs generally do not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

submit all of the documents that are required to establish eligibility, although the non-compliance of one member/principal may be compensated by the compliance of another member/principal;

5. Cooperatives duly registered with Cooperative Development

Authority. All these entities must have:

1. A license by the PCAB, in accordance with the provisions of R.A. 4566. **(IRR-A Section 23.11.2.2)**
2. The experience of having satisfactorily completed a single contract similar to that to be bid, and whose value, adjusted to current prices using the National Statistics Office (NSO) consumer price indices available at the PhilGEPS website, is at least fifty percent (50%) of the ABC of the contract to be bid. **(IRR-A Section 23.11.2.3)**

What do we mean?

When is a contract "similar" to another?

A contract is similar to the contract to be bid if it has the same major categories of work, such as in both bridges and fly-overs.

Note, however, that Small A and Small B contractors without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the range of contract cost allowed for them. The ARCC per PCAB registration of contractor, as provided in PCAB Board Resolution No. 001, series of 2004 and, GPPB Resolution No. 012-2004, dated August 20, 2004, is as follows:

Registration Particulars				
Category	Allowable Range of Contract Cost (in Million Pesos)			
	Prior and up to CFY 2003-2004 (For projects advertised for bidding prior and to June 30, 2004)	CFYs 2004-2005 & 2005-2006 (For projects advertised for bidding from July 1, 2004 to June 30, 2006)	CFYs 2006-2007 & 2007-2008 (For projects advertised for bidding from July 1, 2006 to June 30, 2008)	CFYs 2008-2009 & 2009-2010 (For projects advertised for bidding from July 1, 2008 to June 30, 2010)
Small A	Up to 0.5	Up to 0.5	Up to 0.5	Up to 0.5
Small B	Up to 3	Up to 10	Up to 20	Up to 30
Medium A	Up to 15	Up to 50	Up to 100	Up to 150
Medium B	Up to 30	Up to 100	Up to 200	Up to 300
Large A	Up to 50	Up to 150	Up to 300	Up to 500
Large B	Less than or above 50	Less than or above 150	Less than or above 300	Less than or above 500

By virtue of an amendment to IRR-A Section 23.11.2, the ARCC per PCAB registration of contractor is no longer found in IRR-A but shall rather be based on the guidelines prescribed by PCAB.

3. A Constructors' Performance Evaluation System (CPES) rating that is satisfactory and/or a certificate of completion and owner's acceptance of the contract. **(IRR-A Section 23.11.2.4)** The CPES is a rating system, approved by the NEDA Infrastructure Committee, to evaluate the past performance of the contractors.
4. A certificate of commitment from a licensed bank to extend to him/it a credit line if awarded the contract to be bid, **which commitment should be specific to the**

Why is that?

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

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



contract to be bid; or a hold-out on deposit certificate issued by a licensed bank, which shall also be specific to the contract to be bid, both of which must be in an amount not lower than that set by the Procuring Entity in the bidding documents, which shall be at least equal to ten percent (10%) of the ABC of the contract to be bid; or a Net Financial Contracting Capacity (NFCC) at least equal to the ABC, calculated as follows: **(IRR-A Section 23.11.2.5)**

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

Where:

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

Example

Given:	
Current Assets=	P 3,000,000
Current Liabilities=	P 500,000
Value of Outstanding Works=	P 4,000,000
Contract Duration=	1 year
NFCC	= [(P 3,000,000 – P 500,000) x 10] – P 4,000,000
	= P 25,000,000 – P 4,000,000
	= P 21,000,000

Can entities with a majority of foreign ownership participate in the bidding?

Yes, provided that the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement, as determined by the Head of the Procuring Entity. These foreign entities have to form a joint venture with a Filipino entity, and the Filipino ownership or interest should not be less than twenty-five percent (25%). The Filipino ownership or interest must be based on the contributions of each of the members of the joint venture, as specified in the joint venture agreement (JVA). **(IRR-A section 23.11.2.1 [d])**

When is a prospective bidder eligible to bid?

A prospective bidder is eligible to bid for the procurement of infrastructure projects 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, bidders and contractors 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. For this purpose:

1. "Corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contracting execution; entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

2. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
3. "Collusive practice" means a scheme or arrangement between two (2) or more bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.
4. "Coercive practice means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.

The pertinent provisions of the Anti-Graft and Corrupt Practices Act, or R.A. No. 3019, shall also be applied in determining the existence of "corrupt or fraudulent practice"

What are the minimum eligibility requirements?

The eligibility of a prospective bidder that is a Filipino contractor is determined based on its submission to the BAC of the following documents, using the forms prepared by the BAC: **(IRR-A Section 23.6)**:

1. Class "A" Documents

a. Legal Documents

- i. DTI business name registration in the case of Single Proprietorships; or SEC registration certificate, in the case of Partnerships or Corporations;
- ii. Valid and current Mayor's permit/municipal license to operate a business;
- 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 note included in the Consolidated Blacklisting Report, once this is issued by the GPPB;
- 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. Statement of the prospective bidder of all its ongoing and completed government and private contracts within the period specified in the IAEB, including contracts awarded but not yet started, if any. This statement must include the following information for each of the contracts:
 - Whether the contract is ongoing, completed or awarded but not yet started within the relevant period;
 - The name and location of the contract;
 - The date of the award of the contract;
 - The contract duration;

- The owner's name and address;
 - The nature of work;
 - The contractor's role (whether sole contractor, sub-contractor, or partner in a joint venture);
 - The total contract value at award;
 - The date of completion or estimated completion time;
 - The total contract value at completion, if applicable;
 - The percentages of planned and actual accomplishments, if applicable;
 - The value of outstanding works, if applicable;

 - Supporting notices of award and/or notices to proceed issued by the owners;
 - Supporting CPES rating sheets, and/or certificate of completion and owner's acceptance, if applicable; and
 - Whether the contract is similar or not in nature and complexity with the contract to be bid.
- ii Valid PCAB license and registration for the type and cost of contract to be bid;
- (In the case of joint ventures, the license and registration must be those of the joint venture, not any of its members.)
- iii. A statement on the:
- Availability of key personnel, such as project managers, project engineers, materials engineers and foremen, that may be used for construction contracts; and
 - Availability of equipment that it owns, has under lease, and/or has under purchase agreements, that may be used for construction contracts, provided that ownership of equipment is not a requisite for eligibility;

c. Financial Documents

- i. The prospective bidder's audited financial statements, stamped "received" by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, the prospective bidder's total and current assets and liabilities; and
- ii. Proof of the prospective bidder's capacity to absorb the additional obligations in connection with the contract to be bid and to finance its implementation/completion:
- The prospective bidder's computation of its NFCC which shall be in accordance with Section 23.11.2.5 of the IRR-A; or
 - A certificate of commitment specific to the contract at hand, issued by a licensed bank to extend to it a credit line if awarded the contract to be bid, which shall be at least equal to ten percent (10%) of the ABC; or
 - A cash deposit certificate certifying a hold out on cash deposits issued by a licensed bank, which shall also be specific to the contract to be bid, in an amount not lower than that set by the Procuring Entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the ABC.

2. Class "B" Documents

- a. Valid JVA, if the prospective bidder is a joint venture, with the agreement containing a statement on who the joint venture/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;

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.

Let's make things easier

To facilitate eligibility checking, the BAC of a procuring entity may maintain a file of Class "A" documents submitted by contractors. When such file is required by the procuring entity, a contractor who wishes to participate in a public bidding for infrastructure projects should maintain this file current and updated at least once a year, or more frequently when needed. A contractor who maintains a current and updated file of his Class "A" documents will be issued a certification by the BAC to that effect, which certification may be submitted to the procuring entity concerned in lieu of the foregoing Class "A" documents.

(IRR-A Section 23.6.1)

3. Other Documents

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

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

What are the eligibility requirements of a prospective bidder that is a foreign entity?

Foreign contractors, when allowed to bid under the circumstances mentioned in IRR-A Section 23.11.2, must submit the same eligibility requirements as domestic entities. However, the legal documents and the audited financial statements under the Class "A" documents may be substituted by the appropriate equivalent documents issued by the country of the foreign contractor. **(IRR-A Section 23.7)** These documents must be duly acknowledged and authenticated by the Philippine consulate located in that country.¹⁰

¹⁰ Under FAPs, to foster competition, IFIs permit firms and individuals from eligible countries to offer goods, works, and services. Any conditions for participation should be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. In connection with any contract to be financed in whole or in part from an IFI loan, the IFI generally does not permit a procuring entity to deny pre- or post-qualification to a firm for reasons unrelated to its capability and resources to successfully perform the contract; nor does it permit a procuring entity to disqualify any bidder for such reasons. Consequently, Procuring Entities should carry out due diligence on the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

How and when must the Eligibility Envelope 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 prospective bidder submits an Eligibility Envelope?

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

How long should the process of Eligibility Check/Screening take?

The entire process of eligibility check/screening shall be completed in not more than three (3) calendar days. **(IRR-A Section 23.10)**

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.

Methodology: 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.

Methodology: How is an Eligibility Check/Screening conducted?

1. The BAC shall open in public the Eligibility envelopes on the date specified in the IAEB. **(IRR-A Section 23.1)** The BAC shall read in public the contents of the Eligibility envelopes, and shall examine each prospective bidder's eligibility requirements or statements. It shall record the presence or absence of 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 a 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 23.2)**

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 23.2)** The BAC shall prepare a pro-forma Notice of Eligibility and a Notice of Ineligibility which will be duly accomplished by the BAC Secretariat and signed by the BAC members present during the Eligibility Check/Screening. In case a prospective bidder is declared ineligible, the Notice

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.

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 the same in the presence of all the participants. These shall be deposited in the Bid Box or any other secured place or location. In fact, with or without any indication on the part of the prospective bidder of its intention to file a request for reconsideration, it would be advisable for the BAC to hold on to the Eligibility envelopes containing the eligibility requirements, duly re-sealed and deposited, until the expiration of the period for filing a request for reconsideration, to ensure the integrity of these documents; unless if the said prospective bidder waives its right to file a request for reconsideration.

What can a prospective bidder do if it is found ineligible?

A prospective bidder that was absent during the Eligibility Check and was found ineligible has three (3) 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 23.3)** 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.

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 23.4)** A prospective bidder found guilty of false information faces imprisonment of not less than six (6) years and one (1) day but not more than 15 years. **(IRR-A Section 65.3)**

What happens if only one 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 SCRB 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 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.



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Step 3 Issue the Bidding Documents

Legal Reference

IRR-A Sections 17 and 21 provide the rules in relation to the issuance of the bidding documents.

When must the bidding documents be made available to eligible bidders?

The bidding documents must be issued after the conduct of eligibility check and the same must be available for at least seven (7) calendar days from the date the bidding documents were issued. **(IRR-A Section 21.2.2)** Prospective bidders must be allowed to acquire or purchase the bidding documents as soon as they are found eligible to participate in the bidding. **(IRR-A Section 23.1)**

The bidding documents are strictly confidential and may not be divulged or released to any person prior to its official release, except to those officially authorized in the handling of the documents. However, after its official release, it shall be made available to the public, unless the procurement at hand affects national security.

How much must eligible bidders pay for the bidding documents?

The BAC must consider the cost recovery component in determining the price which interested contractors 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 contractor, it would be more advisable for the BAC to allow the project requirements to naturally limit competition among eligible contractors, by summarizing the qualification requirements in the IAEB and detailing these in the bidding documents, rather than for the BAC to unilaterally increase the price of the bidding documents and hope that this price discourages competition. As such, if the BAC wants to encourage the participation of as many bidders as possible to create competition, it should consider charging a lower price for the bidding documents, keeping in mind that this price should be sufficient to recover the above-enumerated costs.

Methodology: How are the bidding documents issued?

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

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

What are the responsibilities of an eligible bidder with regard to the bidding documents?

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

1. Taken steps to carefully examine all of the bidding documents;
2. Acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
3. Made an estimate of the facilities available and needed for the contract to be bid, if any; and
4. Complied with his responsibility as provided for under Section 22.5.1, which provides that it shall be the responsibility of all

How's that again?

What does acknowledging the conditions affecting the project mean to an eligible bidder?

It means determining and satisfying itself with the following:

1. The location and nature of the project;
2. Climatic conditions;
3. Transportation facilities;
4. Nature and condition of the terrain, geological conditions of the site; communication facilities; requirements, location and availability of construction aggregates and other materials, labor, water, electric power, and access roads; and
5. Other factors that may affect the cost, duration and execution or implementation of the project. **(IRR-A 17.7.2)**

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 eligible bidder concerned. For this purpose, one of the contents of the Technical proposal

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

Moreover, the eligible bidders are deemed to have become familiar with all existing Philippine laws, decrees, ordinances, acts and regulations that may affect the contract in any way. However, if the contract is affected by new laws, ordinances, regulations or other acts of government promulgated after the date of the bidding, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis, provided such is not covered by the contract provisions on price adjustment. **(IRR-A Section 17.7.4)**



Step 4 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 eligible bidders discuss the different aspects of the procurement at hand.

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

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

When do you hold a Pre-Bid Conference?

A pre-bid conference must be held for all contracts with ABCs of at least One Million Pesos (P 1 Million) and above. 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 such 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)** 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.

Who are the participants of a Pre-Bid Conference?

The following must attend the pre-bid conference:

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

5. The eligible bidders, including those ineligible bidders with pending requests for reconsideration with the BAC or those with pending protests with the Head of the Procuring Entity; and
6. The Observers.

The attendance of the eligible bidders shall not be mandatory.

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

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

Methodology: How is the Pre-bid Conference conducted?

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

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 eligible bidders.

Methodology: How is a Supplemental/Bid Bulletin issued?

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

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

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

1. The eligible bidder submits to the BAC, through the BAC Secretariat, a written request for clarification, within the period prescribed above.
2. The BAC directs the BAC Secretariat and/or 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 5 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 bidder in response to, and in consonance with, the requirements stated in the bidding documents. "Bid" is also equivalent to and may be used interchangeably with "Proposal" and "Tender". A Bid has two components, the **Technical Proposal or the Technical Bid**, and the **Financial Proposal or the Financial Bid**. The Technical and Financial Bids must each be contained in separate sealed bid envelopes.

What are the contents of the Technical Proposal?

The Technical Proposal should contain, at the minimum, the following technical information/documents for the contract to be bid:

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. Construction schedule (bar chart for the construction activities) and S-curve (for financial requirements);
4. Manpower schedule (weekly or monthly scheduling of skilled and unskilled workers, including the Project Manager, Project Engineers, Materials Engineers, and Foremen);
5. Construction methods (narrative description of how the contractor will undertake the works under the contract), including arrangements for subcontracting portions of the works, if any;
6. Organizational chart for the contract to be bid (not of the firm), with the subcontracting arrangements, if any, to be reflected in this chart;
7. List of contractor's key personnel (*viz.* the Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the contract to be bid, their complete qualification and experience data, and the key personnel's signed written commitment to work on the contract once awarded to the contractor;
8. List of contractor's equipment units pledged for the contract to be bid, which are owned (supported by proof/s of ownership), leased, and/or under purchase agreements (with corresponding engine numbers, chassis numbers and/or serial numbers), supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the contract;

9. Equipment utilization schedule (weekly or monthly scheduling of the minimum equipment required for the contract);
10. Affidavit of site inspection from the contractor, despite the fact that by the act of submitting its bid, the bidder shall be deemed to have inspected the site and determined the general characteristics of the contract works;
11. Written commitment from a licensed bank to extend to the bidder a credit line specific to the contract at hand if awarded the contract, or a cash deposit certificate, in an amount not lower than that set by the Procuring Entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the ABC, provided that if the bidder previously submitted this document as an eligibility requirement, the said previously submitted document shall suffice;
12. Construction safety and health program of the contractor. (This refers to a narrative description of the safety and health program of the contractor in accordance with DOLE D.O. No. 13. This program shall then be submitted by the winning bidder to the Bureau of Working Condition of the DOLE before any project will be allowed to start);
13. Certificate from the bidder under oath of its compliance with existing labor laws and standards;
14. 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;
15. 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
16. Documents/materials to comply with other non-discretionary criteria and requirements as stated in the ITB.

What are the contents of the Financial Proposal?

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

1. Bid prices in the Bill of Quantities in the prescribed Bid Form;
2. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used, indicating also the direct and indirect costs, in coming up with the bid; and
3. Cash flow by the quarter and payments schedule.

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, (IRR-A Section 29)**, and within the following periods from date of advertisement and/or 1st day of posting of the IAEB: **(IRR-A Section 21.2.2 [ii])**.

Approved Budget for the Contract (in pesos)	Period
Fifty (50) million and below	36 calendar days
Above fifty (50) million	50 calendar days

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 eligible bidder submits a bid envelope?

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

What happens if no eligible bidder submits a bid?

If no eligible 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 is 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.

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 and Opening of Bids?

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

Methodology: How are the bids received, opened and preliminarily examined?¹¹

¹¹ The receipt, opening and preliminary examination methodology may vary for FAPs. Reference should be made to the appropriate standard bidding documents for the project.

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

1. Eligible bidders submit 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 Proposal, and the second containing the Financial Proposal. The two envelopes shall be placed in an outer envelope or any appropriate container, which shall be sealed and addressed to the BAC and marked as specified in the ITB.
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 bids at the time, date and place specified in the bidding documents. Upon receipt of the bid envelope or container containing the Technical and Financial Proposals, the BAC Secretariat must stamp the face of the outer envelope/container as "RECEIVED," indicating thereon the date and time of receipt, and have the stamp countersigned by an authorized representative.
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 first opens the envelope containing the Technical Proposal to determine its compliance with the required documents for the technical bid. The BAC checks the submitted documents in the Technical Proposal of each bidder against a checklist of required documents to ascertain if they are all present, using non-discretionary "pass/fail" criteria. (**IRR-A Section 30.1**)

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.

5. In case one or more of the above-required documents in the Technical Proposal is missing, incomplete or insufficient, the BAC rates the bid "failed" and immediately returns the Technical Proposal to the bidder concerned, together with the unopened envelope containing the Financial Proposal. Otherwise, the BAC rates the Technical Proposal "passed".

6. The BAC then immediately opens the envelope containing the Financial Proposal of each remaining

bidder whose Technical Proposal (first envelope) was rated "passed." The Financial envelope of each complying bidder shall be opened within the same day. The BAC determines whether all the requirements/ documents required for the Financial Proposal are complete and sufficient, and if the total bid price does not exceed the ABC. If so, the BAC rates the bid "passed". If not, then the BAC rates the bid "failed". Only bids that are rated "passed" for both the Technical and Financial Proposals shall be considered for the next stage of the procurement process, *i.e.* detailed evaluation and comparison of bids. (**IRR-A Sections 30.2**)

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

7. The BAC reads the total bid prices of the bidders that are rated "passed."

8. All members of the BAC or their duly authorized representatives who are present during the bid opening, shall initial every page of the original copies of all bids received and opened. **(IRR-A Sections 29)**
9. The BAC members and the Observers (if they concur with the proceedings) shall also sign the "Abstract of Bids as Read" after the Preliminary Examination of Bids.
10. 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 eligible bidders allowed to modify or withdraw their bids?

A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. If a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked 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 bidder unopened. **(IRR-A Section 26.1)** Any discount should form part of the bid submission in the financial envelope.

A bidder may, through a Letter of Withdrawal, withdraw its bid, before the deadline for the receipt of bids. A bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped received by the BAC before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. Moreover, an eligible bidder 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 bidder that withdraws its bid prior to the deadline for submission of bids, for a justifiable cause, does not forfeit its bid security.

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

An eligible bidder that has failed to comply with any of the Technical or Financial requirements of the Bid will be rated as "failed" by the BAC and disqualified from participating therein. Similar to the case of ineligible bidders, it may file a written request for reconsideration within three (3) calendar days from the receipt of notice of its failure. **(IRR-A Section 30.3)**

To what extent can a contractor subcontract work?

A contractor may engage general subcontractors in the areas of manual and semi-skilled labor or construction materials, provided that the contractor undertakes not less than fifty percent (50%) of the value of the contracted works. Moreover, unless otherwise provided by the contract, it cannot subcontract any part of the works without the prior consent of the Head of the Procuring Entity. However, this does not relieve the contractor of any liability or obligation under the contract. It will be responsible for any act, default or negligence of any of its subcontractor, agent, servant or workman, as fully as if the same was its own act, default or negligence, or those of its agents, servants or workmen.¹²

¹² For FAPs, reference should be made to the standard bidding documents of the project for limits of subcontracting.



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When should the Procuring Entity be informed of subcontracting arrangements?

All subcontracting arrangements should be disclosed at the time of bidding, and subcontractors shall be identified in the bidding documents submitted by the eligible bidder. Subcontractors should also pass the eligibility check for the portions of the contract that they will undertake.



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Step 6 Evaluate the Bids

Legal Reference

IRR-A Section 32 specifies the rules and guidelines relative to the evaluation of bids.

What is the purpose of Bid Evaluation?

Bid evaluation is done to determine the LCB. **(IRR-A Section 32.1)** This is done by:

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

When should the bids be evaluated?

The entire evaluation process for the bids must be completed in not more than **fifteen (15) days** from the deadline for receipt of proposals. However, for projects costing P50 million and below, the entire evaluation process should be completed in not more than five (5) calendar days from the deadline for receipt of proposals. **(IRR-A section 32.3)** It is advisable that the BAC exert best efforts to complete the Bid Evaluation even before the lapse of the aforementioned periods as this will expedite the procurement process.

Who are the participants in Bid Evaluation?

The following must participate in the bid evaluation process:

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

Methodology: How are bids evaluated?¹³

1. After the preliminary examination of bids, the BAC, through the TWG, shall immediately conduct a detailed evaluation of all bids rated "passed," using a non-discretionary criteria, as stated in the IAEB and the ITB, which shall include a consideration of the following: **(IRR-A Section 32.4.1)**
 - a. The bid must be complete. Unless the ITB specifically allow partial bids, bids not addressing or providing all of the required items in the bidding documents including, where applicable, bill of quantities, shall be automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a "0" (zero) for the said item would mean that it is being offered for free to the Government.

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

- b. Minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed in the bidding documents, to enable proper comparison of all eligible bids. Any adjustment shall be calculated in monetary terms to determine the calculated prices. **(IRR-A Section 32.4.1 [b])** For evaluation purposes, in allowed instances, the bid must be converted into Philippine currency based on the exchange rate prevailing on the day of the bid opening. **(IRR-A Section 61.1)** The BSP reference rate prevailing on the date of the bid opening shall be used.
 - c. In the evaluation of bids, all bids shall be evaluated on an equal footing to ensure fair and competitive bid evaluation. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison. **(IRR-A Sections 32.4.2)**
 - d. In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; (b) total prices and unit prices, the latter shall prevail; (c) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail. **(IRR-A Sections 32.4.3)** The corrected per item cost for all items shall be the basis for the corrected grand total cost.
2. Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, to identify the LCB. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the ABC shall be disqualified. **(IRR-A Sections 32.4.4)**
 3. After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding Bid

Securities and the minutes or proceedings of the bidding. **(IRR-A Section 32.5)** The Observers shall also sign the Abstract of Bids if, in their independent observation, the bidding activity conducted by the BAC followed the correct procedure indicated under R.A. 9184 and its IRR-A. The Abstract of Bids shall contain the following:

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

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

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

- a. Name of the contract and its location, if applicable;
- b. Time, date and place of bid opening; and
- c. Names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of Bid Security and the name of the issuing entity.

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

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

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

What happens if no bid complies with all bid requirements?

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

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

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

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Step 7 Post-qualify

Legal Reference

IRR-A Section 34 specifies the rules and guidelines for the conduct of post-qualification.

What is Post-qualification?

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

If its eligibility documents had been validated and verified, and its compliance with the legal, financial, and technical requirements of the bid had been ascertained, the bidder must be declared the bidder with the "**Lowest Calculated Responsive Bid**" (LCRB).¹⁴ (IRR-A Section 34.1)

How's that again?

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

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

What does Post-qualification entail?

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

1. Legal Requirements. The post-qualification process under this criterion involves the verification, validation and ascertaining of the contractor'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. PCAB license;
 - b. SEC registration certificate or the DTI business name registration, whichever applies;
 - c. Mayor's permit;
 - d. BIR Certification, which contains the TIN;
 - e. Authority of signatory; and
 - f. Affidavit of compliance with the Disclosure Provision.

¹⁴ If bidders have not been pre-qualified, the procuring entity should determine whether the bidder whose bid has been determined to offer the lowest evaluated cost has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met should be set out in the bidding documents, and if the bidder does not meet them, the bid should be rejected. In such an event, the procuring entity should make a similar determination for the next lowest evaluated bidder. But even if pre-qualification has been undertaken, it may be advisable for the procuring entity to still conduct a post-qualification.

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 contractor to prove compliance of the infrastructure project it offered with the requirements of the contract and bidding documents. This involves the following processes:
 - a. Verification of the bidder's stated competence and experience, as well as the competence and experience of its key personnel to be assigned to the project, to ensure that these meet the minimum requirements,
 - b. Verification of availability and commitment, and/or inspection and testing, of equipment units to be owned or leased by the bidder, as well as checking the performance of the bidder in its ongoing government and private contracts, e.g., examination of the Construction Schedule, Construction Methods, Equipment Units and Equipment Utilization Schedule, List of projects that are on-going, completed and to be started, CPES rating sheets; Statement on similar projects to ensure that these meet the minimum requirements;
 - c. Verification if any of the bidder's on-going contracts shows:
 - A reported negative slippage of at least fifteen percent (15%); or
 - Substandard quality of work as per contract plans and specifications; or
 - Unsatisfactory performance of his obligations as per contract terms and conditions, at the time of inspection; or
 - That there are overlaps in the proposed utilization of the minimum required equipment with those equipment in the on-going works of the contractor; or
 - That the minimum required experience of the bidder's key personnel were not met;All of which will be grounds for disqualification if found by the BAC to be due to the bidder's fault or negligence.
 - d. Ascertainment of the sufficiency of the Bid Security as to type, amount, form and wording, and validity period.
3. Financial Requirements. Under this criterion, the BAC ought to verify, validate and ascertain the bid price proposal of the bidder and, whenever applicable, the required bank commitment to provide a credit line to the bidder in the amount specified and over the period stipulated. It also means verifying, validating and ascertaining the bidder's stated net worth and liquid assets, net working capital, the value of all outstanding or unfinished works under ongoing contracts, and the bidder's NFCC, as recalculated considering developments in the bidders' other projects, whenever applicable. This is done to ensure that the bidder can sustain the operating cash flow of the transaction. This process involves:
 - a. Examination of the Bill of Quantities, Detailed Estimates and Cash Flow;
 - b. Ascertaining of the sufficiency of the Bid Security as to type, amount, form and wording, and validity period;
 - c. Ascertaining of the NFCC, credit line, or cash deposit; and

- d. Examination of the BIR-audited financial statement.

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

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

Who are 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 contractor, ranked starting from bidder with the LCB.

Methodology: How is Post-qualification conducted?

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

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

In verifying the information contained in such documents, the 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 bidder'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 bidder with the LCB passes all the criteria for post-qualification.
6. If the LCB passes the post-qualification, the BAC declares it as the LCRB.
7. After the BAC has determined the LCRB, the Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the LCRB and the corresponding Notice to the said bidder informing it of its post-qualification.

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

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 my 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 for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. **(IRR-A Section 69.1)**

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

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

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

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

What happens if all 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 8 Award the Contract

Legal Reference

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

What is the rule on Contract Award?

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

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

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

What is the Timeline for Contract Award?

The Head of Procuring Entity or his duly authorized representative should approve or disapprove the recommendation of award **within seven (7) calendar days from the date of determination and declaration by the BAC of the LCRB, or four (4) calendar days in case of projects with an ABC of P50 million and below.** In the case of **GOCCs and GFIs**, the governing Board has a period of **fifteen (15) calendar days** to approve or disapprove the said recommendation. **(IRR-A Section 37.2)**

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

How's that again?

What is the maximum period of time 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 one hundred twenty (120) calendar 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 should be extended.

Who are involved in the Award of the Contract?

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

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

LCRB/SCRB; and

6. The Observers.

Methodology: How is a contract awarded?

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

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

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

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

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

Step 8 Have the Contract Signed and Approved and Issue the 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 should the Procuring Entity issue the NTP?

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

When is a contract “effective”?

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

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

The following parties are involved in contract signing and approval 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. Drawings/Plans, if applicable;
4. Specifications, if applicable;
5. Invitation to Apply for Eligibility and to Bid;
6. Bidding Documents;
7. Addenda and/or Supplemental/Bid Bulletins, if any;
8. Bid form including all the documents/statements contained in the winning bidder's two bidding envelopes, as annexes;
9. Eligibility requirements, documents and/or statements;
10. Performance Security and Contractor's All-Risk Insurance (CARI);
11. Credit Line issued by a licensed bank in accordance with the provisions of this IRR-A, if applicable; (Actual credit line from the same bank who issued the written commitment. This is different from the written commitment from the bank submitted during eligibility);
12. Notice of Award of Contract with the winning bidder's "Conforme" thereto;
13. PERT/CPM approved by the Procuring Entity; and
14. Other contract documents that may be required by existing laws and/or the Procuring Entity concerned.

How's that again?

The first nine (9) requirements are provided by the Procuring Entity, while the winning bidder submits the rest.

Methodology:

1. The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.
2. The procurement unit/office transmits the contract and its attachments to the Budget Office (for issuance of 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. Duly approved program of work and cost estimates;
 - b. The OS;
 - c. The CAF;
 - d. Abstract of Bids as Calculated;
 - e. Resolution of the BAC or duly designated procurement office recommending Award;
 - f. Approval of award by appropriate government approving authority; and
 - g. Other pertinent documents that may be required by existing laws and/or the Procuring Entity concerned.
4. After signing, if the contract needs the approval of a higher authority – such as, for bureaus, the Department Secretary, when required – the procurement unit/office transmits the contract and related documents to the approving authority or his authorized representative for approval.

TIPS: Let's make doing things easier

In most Procuring Entities, particularly the bureaus or lower-level offices of national government agencies (NGAs) or centrally managed GOCCs or GFIs, the contract signatory is a different official from the approving authority. For example, a bureau director may only be authorized to approve contracts up to ₱50M. Contracts exceeding the said amount are brought up to the Secretary for approval. Different Procuring Entities have different levels of delegated authority, but the principle is essentially the same – the higher the contract amount, the higher is the level of the approving authority. In cases like this, the contract is 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 R.A. 9184 and its IRR-A are designed to remove this cause for delay. These provisions mandate that if further approval of a higher authority (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.

5. The approving authority or his authorized representative acts on the contract within fifteen (15) calendar days, or twenty-five (25) calendar days for GOCCs and GFIs, from receipt thereof.
6. If 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 three (3) calendar days from the date of the approval of the contract.

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

Executive Order 423, s. 2005, prescribes the rules and regulations on the review and approval of government contracts. Essentially, E.O. 423 provides that, except for government contracts required by law to be acted upon and/or approved by the President, the Head of the Procuring Entity shall have full authority to give final approval and/or enter into all

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

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

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

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

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

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

1. Its bid security is forfeited;
2. It is disqualified from further participating in the bidding at hand;
3. Upon conviction, the relevant officers or individuals will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years; and
4. Upon determination of administrative liability, it will suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. This is without prejudice to the blacklisting proceedings undertaken in accordance with the Uniform Guidelines for Blacklisting (GPPB Resolution No. 09-2004).

For its part, the BAC must initiate and complete the post-qualification of the bidder the second LCB. This procedure must be repeated until the LCRB is determined for award. If no bidder passes post-qualification, the BAC declares the bidding a failure and conducts a re-bidding with re-posting and re-advertisement. Should there be another failure of bidding after the

conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement. **(IRR-A Section 40.2)**

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

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

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



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 lowest calculated bidder or for awarding the contract without justifiable cause;
3. Conducting the pre-bid conference or issuing the bidding documents in less than the required number of days before deadline for the submission and opening of bids;
4. Requiring the bidder to submit additional documents which is tantamount to improving his bidding documents; and
5. Allowing a bidder to be declared 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 contribute 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.

Bidding of Provincial Projects

Legal Reference

IRR-A Sections 44 and 45 provide the rules regarding the bidding for provincial projects.

What are provincial projects?

“Provincial projects” are infrastructure projects and priority programs that are located in engineering districts, are fully funded by the government, and are identified in consultation with the concerned members of Congress. These are priority programs and infrastructure projects that are funded out of the annual GAA and are intended for implementation within the province.

How are provincial projects procured?

The rules on public bidding and procurement processes prescribed in R.A. 9184 and its IRR-A shall apply to provincial projects. **(IRR-A Section 44)**

However, special privileges are given to provincial bidders, which are defined as contractors whose principal offices are within the province where a provincial priority program or infrastructure project, defined above, is being implemented. More specifically, in the bidding of such provincial projects, a provincial bidder is given the privilege of matching the LCB of a bidder that is not a provincial bidder. In implementing this rule, the following shall be observed: **(IRR-A Section 45.1)**

1. The subject bidding is done within five (5) years from the effectivity of R.A. 9184, or not later than January 26, 2008.
2. The provincial bidder that is given the privilege of matching the LCB submits the lowest bid among the provincial bidders, although it is higher than the LCB.
3. The said provincial bidder shall exercise the privilege of matching the LCB within forty-eight (48) hours from receipt of the notice from the BAC asking it to match the LCB.
4. The provincial bidder must agree to match the LCB in writing, through appropriate adjustments in the unit bid prices without changing the Scope of Work and work items prescribed by the Procuring Entity in the bidding documents.
5. If the provincial bidder is able to match the LCB within the prescribed period and it passes post-qualification, the contract will be awarded to him. However, if he fails to match the LCB or to pass the post-qualification, the contract will be awarded to the bidder that submitted the LCB.

This privilege granted to provincial contractors shall not apply to:

1. Contracts the coverage of which includes more than one (1) province;
2. Projects for implementation within Metro Manila; and
3. Foreign-assisted projects.

Is there any additional requirement for the advertisement and posting of opportunities for provincial projects?

The Procuring Entity must comply with the following requirements in publishing or posting the information on the release of funds for provincial projects, during the same period for the advertisement and posting of the IAEB: **(IRR-A Section 45.2)**

1. The notices must be published in a local newspaper with the widest region-wide circulation;
2. The notices must be posted at any conspicuous place reserved for the purpose in the premises of the Procuring Entity; and
3. The notices must be posted in the website of the DBM and the PhilGEPS.



SECTION 3

Instructions on the Procedural Steps for the Procurement of Infrastructure Projects

PART TWO – ALTERNATIVE METHODS OF
PROCUREMENT

Welbrit Ltd.



Welbrit Ltd.

The Alternative Methods for the Procurement of Infrastructure Projects

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 infrastructure projects 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 infrastructure projects, negotiated procurement is the only alternative method of procurement that may be used.

Negotiated Procurement

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 contractor. **(IRR-A Section 53)**

When is Negotiated Procurement allowed?

Negotiated procurement must be resorted to only if:

1. There has been a second failure of public bidding as provided in IRR-A Section 35;
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.

Under these conditions, in the case of infrastructure projects, the Procuring Entity has the option to undertake the project through negotiated procurement or "by administration" (which **may include pakyaw labor contracts** in accordance with P.D. 950), or, in high security risk areas, through the Armed Forces of the Philippines (AFP);

3. A contract has been rescinded or terminated for causes provided for in the contract and existing laws, and the Procuring Entity decides to take 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;
4. The subject contract is adjacent or contiguous to an on-going infrastructure project, provided, however, that:
 - 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 work is within his contracting capacity (Technical: work experience, personnel and equipment, Financial: NFCC, credit line), considering his outstanding works in the ongoing contract and other ongoing awarded contracts;
 - d. The contractor uses the same prices or lower unit prices as in the original contract less mobilization cost;
 - e. The amount involved does not exceed the amount of the ongoing project; and
 - f. The contractor has no negative slippage.

What's that?

What is the difference between the terms "adjacent" and "contiguous"?

None. Under **IRR-A Section 54.2 (f)**, both terms must be considered synonymous and must mean that the projects referred to are in actual physical contract with each other.

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 infrastructure project; or

5. Where the procurement does not fall under Shopping in Section 52(a) of the IRR-A and amounts to Fifty Thousand Pesos (P50,000) and below, provided that the procurement does not result in splitting of contracts.

In GPPB Resolution 013-2005, dated August 5, 2005, unless otherwise provided by law, in cases of Items 1 and 2 above, in order that the Procuring Entity may consider undertaking the project concerned by administration or through force account:

1. The said project should not cost more than Five Million Pesos (P5 Million)¹⁵;
2. The implementing agency should own the tools and construction equipment to be used to have access to such tools and equipment owned by other government agencies; and
3. The prior approval of the Head of the Procuring Entity concerned should be obtained.

For projects undertaken by administration, the labor component may be undertaken in-house by the Procuring Entity concerned or awarded through *pakyaw* labor contracts. In the latter case, following conditions must be satisfied:

1. The maximum capital outlay for each *pakyaw* labor contract shall be limited to Five Hundred Thousand Pesos (P500,000);
2. The *pakyaw* labor contract is awarded through public bidding conducted with at least three (3) *pakyaw* groups participating, and each group complying with the following requirements:
 - a. It is not a regular licensed contractor; and
 - b. It is drawn from the vicinity of the project or belongs to various Barangay Associations contiguous to the project site.
3. Unskilled labor shall be drawn from the Barangay where the project is located; semi-skilled labor shall be recruited within the Municipality, preferably within the Barangay; and skilled labor shall be recruited within the Province, preferable within the Barangay/Municipality.

Which contractors can the Procuring Entity invite for negotiations?

The Procuring Entity can invite for negotiations only bona fide contractors that:

1. Are licensed with the PCAB, and whose eligibility documents are on file with the Procuring Entity concerned; and
2. Have been classified under the type of contract/project where the subject contract falls are eligible to be invited for negotiation.

Other contractors not previously deemed eligible may also apply for eligibility. **(IRR-A Section 54.2 [c])** Eligible contractors other than those invited may also submit an LOI, which shall be considered by the Procuring Entity.

All Procuring Entities must maintain a registry of contractors, suppliers and consultants as basis for drawing up the short list and/or selecting the contractors for negotiations.

¹⁵ In the case of NGAs, GOCCs, GFIs, and SUCs, the total amount for all projects undertaken by administration should not exceed twenty-five percent (25%) of their budget for infrastructure projects as reflected in their approved APP; and in the case of LGUs, not to exceed fifty percent (50%) of the fund allotted for infrastructure projects.

Eligible contractor(s) for the project under consideration shall be furnished copies of the instructions to bidders, plans, specifications, proposal book form, and other tender documents for their use in submitting their bids and other information called for in the format. The contractors shall submit, simultaneously with their bid, the bid security as stipulated above. Negotiation may be made in ascending order starting from the lowest complying offerer.

(IRR-A Section 54.2 [c])

Who are the parties involved in negotiated procurement?

The following must participate in the undertaking of negotiated procurement:

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

Methodology: How is Negotiated Procurement conducted?

The following steps are followed in undertaking negotiated procurement:

1. If the original mode of procurement recommended in the APP was competitive bidding, the BAC recommends the change in the mode of procurement to negotiated procurement through a Resolution to be approved by the Head of the Procuring Entity.
2. The BAC convenes the appropriate officials for the pre-procurement conference, if deemed necessary.
3. The BAC, through the Secretariat, posts for information purposes the procurement opportunity 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 period of seven (7) 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.

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

4. 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, through the BAC Secretariat, issues invitations to at least three (3) contractors that will be invited to submit proposals within the period of posting. **(IRR-A Section 54.2 [b])** The procedures for the conduct of public bidding should be observed. However, the minimum period for each bidding procedure may be reduced. Bona fide contractors licensed with the CIAP whose eligibility documents are on file with the Procuring Entity concerned or the DPWH Contractor's Registry, as the case may be, and who are classified under the type of contract/project where the subject contract falls are eligible to be invited for negotiation, provided that other contractors not previously deemed eligible may also apply for eligibility. For this reason, 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 contractor of good standing of the Procuring Entity concerned, or a contractor 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 lowest calculated bidder for the project under consideration at the bidder's original bid price. If negotiation fails, then negotiation shall be done with the third lowest calculated bidder at his original price. If the negotiation fails again, a short list of at least three (3) eligible contractors shall be invited to submit their bids, and negotiation shall be made starting with the lowest bidder. 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])**

5. The contractors submit the proposals in a sealed envelope duly marked.
6. The steps following the submission of bids outlined in Competitive Bidding are followed.

Are bid and performance securities still required for negotiated procurement?

Bid security is required in negotiated procurement. Performance security is required for all cases of negotiated procurement.

SECTION 4

**Guidelines on Contract
Implementation for the
Procurement of
Infrastructure Projects**

Welbrit Ltd.



Welbrit Ltd.

Contract Implementation for the Procurement of Infrastructure Projects

Legal Reference

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

What is covered by Contract Implementation?

Contract implementation covers the following milestones:

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

Let's make things easier

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

When shall a contract be deemed effective?

A contract becomes effective either on the date of the receipt by the winning bidder of the NTP or, if an effectivity date is provided in the NTP, then on such date. All notices called for by the terms of the contract shall be effective only from either of these effectivity date. These provisions must be stated clearly in the contract itself. (**IRR-A Section 37.5**)

Procuring Entity's Responsibilities

What are the Procuring Entity's responsibilities to the contractor if the latter needs to coordinate with other government entities for it to be able to perform its contractual obligations?

Whenever the implementation of the infrastructure project requires that the contractor obtain permits, approvals, and import and other licenses from national or local government agencies, the Procuring Entity may, if so requested by the contractor, assist the latter in complying with such requirements in a timely and expeditious manner. However, the contractor shall bear the costs of such permits and/or licenses. On the other hand, the Procuring Entity shall pay all costs involved in the performance of its responsibilities, in accordance with the contract.

Subcontracting

Is subcontracting allowed for the procurement of infrastructure projects?

Generally, a contractor may be allowed to subcontract a portion of the contract or project. However, the contractor should not be allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed fifty percent (50%) of the total project cost. The bidding documents must specify what are considered as significant/material component(s) of the project. Moreover, except if otherwise provided by the contract, it should not subcontract any part of the works without the prior consent of the Head of the Procuring Entity. However, this consent shall not relieve the contractor of any liability or obligation under the contract. The contractor will be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen as fully as if these were its own acts, defaults or neglects, or those of its agents, servants or workmen.

All subcontracting arrangements must be disclosed at the time of bidding, and subcontractors must 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.

Inspection and Tests

What is the scope of the Procuring Entity's right to inspect the infrastructure project procured?

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

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

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

If, at the time and place agreed above, the materials or plant are not ready for inspection or testing, the Procuring Entity's engineer may reject these materials or the plant and must notify the contractor of such rejection immediately. He/she must also do so if, as a result of the inspection or testing, he/she determines that the materials or plant are defective or otherwise not in accordance with the contract. The notice must state the Procuring Entity's engineer's objection and the reasons for the objection. The contractor, for its part, must then promptly make good the defect or ensure that rejected materials or plant comply with the contract. If the Procuring Entity's engineer so requests, the test of rejected materials or plant shall be made or repeated under the same terms and conditions.

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

Dayworks

How are Dayworks undertaken and compensated?

If applicable, as indicated in the contract, the dayworks rates in the contractor's bid shall be used for small additional amounts of work, only when the Procuring Entity's engineer has given written instructions in advance for additional work to be paid for in that way.

All works to be paid for as dayworks shall be recorded by the contractor on forms approved by the Procuring Entity's engineer. Each completed form shall be verified and signed by the Procuring Entity's engineer within two (2) days of the work being done.

The contractor shall be paid for dayworks subject to obtaining signed dayworks forms.

The Use of Accredited Testing Laboratories

Can the Procuring Entity engage the services of private testing laboratories?

To help ensure the quality of materials being used in infrastructure projects, the Bureau of Research and Standards (BRS) of the DPWH, the DOST or the DTI shall accredit the testing laboratories that can be used in government infrastructure projects. All government agencies implementing infrastructure projects must use only these laboratories. Only tests done by these laboratories shall be recognized and accepted, except for the testing of new materials to be undertaken through procedures approved by the DPWH Secretary.

Evaluation of Contractor's Performance

What is the subject and scope of the Procuring Entity's evaluation of a contractor's performance?

All Procuring Entities implementing government infrastructure projects must evaluate the performance of their contractors using the NEDA-Approved CPES Guidelines for the type of project being implemented. These guidelines cover all infrastructure projects awarded by the government regardless of contract amount and funding source.

CPES evaluation must be done during construction and upon completion of the project. To ensure continuous implementation of CPES, all Procuring Entities concerned are required to include in their Projects' Engineering and Administrative Overhead Cost the budget for such system's implementation pursuant to NEDA Board Resolution No. 18 (s.2002).

What must a Procuring Entity do if there are no CPES Guidelines for the kind of infrastructure project it is implementing?

For project types that do not have specific CPES Guidelines, the Procuring Entities concerned may formulate and adopt their own implementing guidelines specific to their needs, provided that the NEDA Infrastructure Committee poses no objections to their adoption, and that the said guidelines are made known to all prospective bidders.

What implementation mechanisms ought to be established for the CPES Guidelines?

All Procuring Entities implementing infrastructure projects are required to establish or designate CPES Implementing Units (IUs) in their respective offices/agencies/corporations. The CPES Implementing Units shall be responsible for the implementation of the CPES Implementing guidelines, including but not limited to, the supervision of CPES to be accredited by the CIAP. The Procuring Entity's CPES IU shall be responsible for the following: a) pre-screening of applications of CPES; b) funding for CPES accreditation and training, including seminars; and c) yearly evaluation of CPES.

Where must a Procuring Entity submit its CPES evaluation results and how must these results be disseminated?

All Procuring Entities implementing CPES shall submit the results of their performance evaluation to the CIAP on a monthly basis or as often as necessary. The Procuring Entity's CPES IU shall likewise develop and maintain a databank and disseminate the CPES reports to the concerned units/departments within the Procuring Entity and to other interested users.

How are the CPES evaluation results used?

The CIAP shall consolidate all of the CPES evaluation results it receives and disseminate these to all Procuring Entities concerned. The CPES ratings and other information shall be used by the concerned government agencies for the following purposes:

1. Eligibility screening of constructors;
2. Awarding of contracts;
3. Project monitoring and control;
4. Issuance of Certificate of Completion;
5. Policy formulation/review;
6. Industry planning;
7. Granting of Incentives/Awards; and
8. Adoption of measures to further improve performance of contractors in the prosecution of government projects.

How are works to be measured?

The quantities set out in the Bill of Quantities are the estimated quantities for the works. They should not therefore be taken as the actual and correct quantities of the works to be executed by the contractor in fulfillment of his obligations under the contract. They can vary to up to ten percent (10%) of the contract price to account for variation orders as provided for in Annex E of the IRR-A.

The Procuring Entity's engineer must, except if otherwise stated in the Quantities of the Detailed Engineering, measure the value of the works actually in-place in accordance with the contract. This measurement will be the basis for the payment that will be made to the contractor in accordance with the Statement of Work Accomplished. The Procuring Entity's engineer must, when he/she needs to measure any part of the works, give reasonable notice to the contractor's authorized agent, who must:

1. Forthwith attend or send a qualified representative to assist the Procuring Entity's engineer in making such measurement; and
2. Supply all particulars required by the Procuring Entity's engineer.

How must infrastructure project impact on traffic and adjoining properties?

All operations necessary for the execution and completion of the works and the remedying of any defects therein must, so far as compliance with the requirements of the contract permits, be carried on so as not to interfere unnecessarily or improperly with:

1. The flow of traffic;
2. The convenience of the public; and
3. The access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Procuring Entity or any other person.

The contractor shall save harmless and indemnify the Procuring Entity in all claims, proceedings, damages, costs, charges and expenses arising out of, or in relation to, any such matters insofar as the contractor is responsible for them.

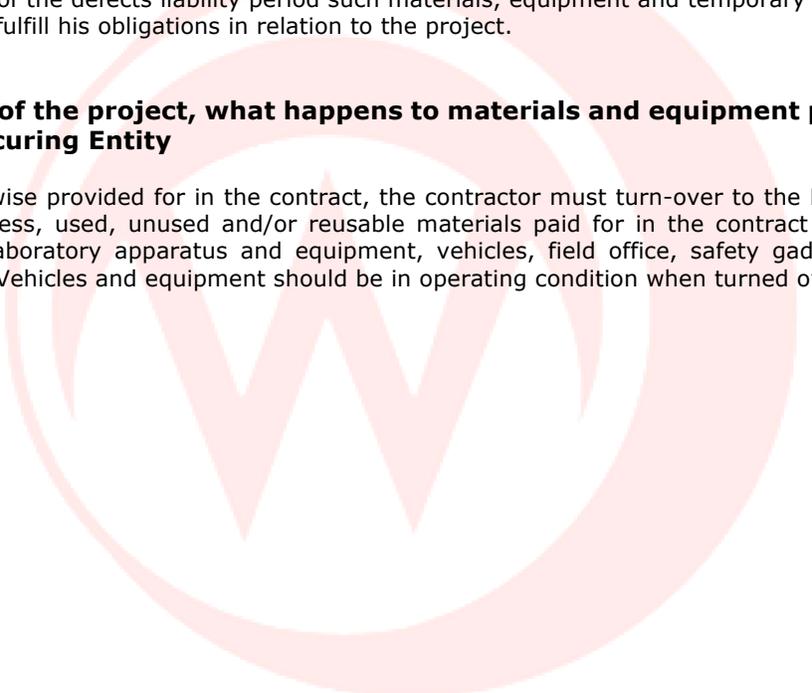
What are the responsibilities of the contractor as far as the project site is concerned?

During the execution of the works, the contractor must keep the site reasonably free from all unnecessary obstruction. It must also store or dispose of any equipment and surplus materials and clear away and remove from the site any wreckage, rubbish or temporary works that are no longer required.

Upon the issue of the Taking-Over Certificate, the contractor shall remove from that part of the site to which the certificate relates, all equipment, surplus material, rubbish and temporary works of every kind. It must leave such part of the site and works clean and in a workmanlike condition to the satisfaction of the Procuring Entity's engineer. However, it is entitled to retain until the end of the defects liability period such materials, equipment and temporary works he may need to fulfill his obligations in relation to the project.

At the end of the project, what happens to materials and equipment paid for by the Procuring Entity

Unless otherwise provided for in the contract, the contractor must turn-over to the Procuring Entity all excess, used, unused and/or reusable materials paid for in the contract such as, formworks, laboratory apparatus and equipment, vehicles, field office, safety gadgets and devices, etc. Vehicles and equipment should be in operating condition when turned over.



Welbrit Ltd.

Contract Price and Payment

Legal Reference:

IRR-A Section 61 and Annex "E" provide the rules for Contract Prices and Payment.

Are contract prices fixed?

Price escalation is generally not allowed.¹⁶ For the given scope of work in the contract as awarded, the price must be considered as a fixed price, except under extraordinary circumstances as determined by the NEDA in accordance with the Civil Code of the Philippines, upon recommendation of the Procuring Entity concerned, and upon prior approval of the GPPB. Any request for price escalation under extraordinary circumstances should be submitted by the concerned entity to the NEDA with the endorsement of the Procuring Entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

"Extraordinary circumstances" shall refer to events defined in the Civil Code of the Philippines, consistent with the guidelines issued by the GPPB. In particular, the Guidelines for Contract Price Escalation approved by the GPPB in Resolution 07-2004, dated July 22, 2004, provides that the term "extraordinary circumstances" shall refer to the following Articles of the Civil Code of the Philippines:

1. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen to which could be reasonable foreseen but are inevitable, such as, but not limited to the following: (a) typhoons; (b) thunderstorms; (c) flooding of lowly areas; and (d) vehicular accidents; provided that the following are present:
 - a. The cause of the extraordinary circumstances must be independent of the will of the parties;
 - b. The event must be either unforeseeable or unavoidable;
 - c. The event must be such as to render it difficult but not impossible for the supplier to fulfill his obligation in a normal manner or within the contemplation of the parties;
 - d. The supplier must be free from any participation in or aggravation of the injury to the Procuring Entity; and
 - e. The allowance for price escalation, should an ordinary fortuitous event occur, is stipulated by the parties or the nature of the obligation requires the assumption of risk.
2. Article 1250, as it pertains to Extraordinary Inflation or Deflation, which may refer to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed in accordance with the Guidelines for Contract Price Escalation, and such decrease or increase could not have

¹⁶ For FAPs, the bidding documents would have to state whether the bid prices will be fixed or whether price adjustments would be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving completion of works generally within twelve (12) months in the case of JBIC- or eighteen (18) months in the case of World Bank-funded projects, but should be included in contracts which extend beyond eighteen (18) months. Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable), and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.

3. Article 1680, as it enumerated Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following: (a) fire; (b) war; (c) pestilence; (d) unusual flood; (e) locusts; and (f) earthquake; provided that the circumstances before, during and after the event shall be taken into consideration.

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)**

What is the method of payment for works in the contract?

The method and conditions of payment shall be specified in the contract. Generally, payment for works can be made in two ways: unit price or lump-sum payment. Unit price payments are made based on the unit prices of specific items as applied to actual quantities accomplished according to the Statement of Work Accomplished. Lump-sum payments, on the other hand, are based on the value of actual accomplished work in proportion to total contract cost.

How's that again?

On payments

No procuring entity is allowed to issue a letter of credit in favor of a Philippine entity or any of the latter's foreign manufacturers or suppliers, with respect to any procurement. **(IRR-A Section 42.5)**

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 an invoice or claim by the contractor, 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. **The Procuring Entity should commence inspection within twenty-four (24) hours after delivery.**

In what currency shall payments be made?

Payments must be made in the Philippine currency.¹⁷

Can the contractor request an advance payment for mobilization?

Yes, it can. However, the payment must not exceed fifteen percent (15%) of the total contract price, and must be made in lump sum or, at the most, two (2) installments according to a schedule specified in the ITB and other relevant bidding documents. Moreover, it must

¹⁷ For FAPs, payment of the contract price should be made in the currency or currencies in which the bid price is expressed in the bid of the successful bidder. When the bid price is required to be stated in local currency but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments should be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain. At any rate, where the price is to be paid, wholly or partly, in a currency or currencies other than the currency of the bid, the exchange risk should not be borne by the supplier or contractor and, to this end, the contract should provide that amounts payable in a currency or currencies other than that of the bid should be calculated at the rates of exchange between these currencies specified for the purpose in the bidding documents.

be made only upon the submission by the contractor of a written request. The contractor must also submit to the Procuring Entity an irrevocable standby letter of credit from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the Procuring Entity. This letter of credit, surety bond or bank guarantee must be equal in value to the advance payment and must be accepted by the Procuring Entity.

How can the Procuring Entity recover the advance payment it made to a contractor?¹⁸

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

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

Are incentive bonuses allowed?

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

Progress Payment

How are progress payments made?

The first progress payment may be paid by the Procuring Entity to the contractor after 20% of the work had been accomplished. Thereafter, payments can be made once a month, provided that the latter submits a Progress Billing or a request for payment for work accomplished. Such request for payment, including the Statement of Work Accomplished by the contractor, must be verified and approved by the government project engineer concerned. Except as otherwise stipulated in the ITB, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

The Procuring Entity has the right to deduct from the contractor's progress billing such amount as may be necessary to cover third party liabilities. It must not process any progress payment unless the discovered defects are corrected.

Retention Money

What is "retention money" and why is it withheld?

"Retention money" refers to the amount equal to ten percent (10%) of the progress payments, before deductions are made, that is withheld by the Procuring Entity to cover the uncorrected discovered defects and third party liabilities. It is collected from all progress payments until works equivalent to fifty percent (50%) of the value of works, as determined by the Procuring Entity, is accomplished. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall continue to be imposed.

The total "retention money" shall be due for release after the defects liability period, upon final acceptance of the works.

¹⁸ For JBIC-assisted projects, advance payment is repaid through deductions following the total interim payments certified to have reached around thirty percent (30%) of the contract price. Deductions are made at a rate such that the advance payment should be completely repaid prior to the time when eighty percent (80%) of the contract price has been certified for payment.

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

The contractor may request the Procuring Entity that, instead of retention money being withheld from each progress billing, it issues in favor of the government, irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand. These financial instruments must be of amounts equivalent to the retention money substituted for and acceptable to government. They must also be valid for a duration to be determined by the concerned implementing office/agency or Procuring Entity and will answer for the purpose for which the ten percent (10%) retention is intended. The Procuring Entity, for its part, may agree to the request, provided that the project is on schedule and is satisfactorily undertaken.²⁰

Final Payment

In what manner are the final payments for a project made?

The contractor may request for the penultimate payment for the project it is implementing when ninety percent (90%) of the work has been completed.

The final payment will be made upon one hundred percent (100%) completion of the work. This payment will be reduced by whatever balance remains of the amount that is needed in order to return to the government the 15% advance payment previously made. Ten percent (10%) of the remainder will then be retained to cover for all defects that may be detected, including maintenance costs for one year after project completion. This amount will be returned to the contractor only after the one-year defects liability period. An alternative to the ten percent (10%) final retention would be for the contractor to post a guarantee bond equivalent to 10% of the contract price.

²⁰ For FAPs, the usual percentage of retention is from five percent (5%) to ten percent (10%).

Variation Orders

Legal Reference:

IRR-A Annex "E" provides the rules in relation to Variation Orders.

What is a Variation Order?

A Variation Order refers to any increase/decrease in quantities within the general scope of the project as bid and awarded, in any of the following aspects:

1. Introduction of new work items that are not included in the original contract; or
2. Reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the pre-construction plans used for purposes of the bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the government after award of the contract, or during actual construction.

A Variation Order may either be in the form of a Change Order or Extra Work Order.

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

An Extra Work Order covers the introduction of new work necessary for the completion/improvement or protection of the project which are not included as items of work in the original contract. As an example, there may be subsurface or latent physical conditions at the site that differ materially from those indicated in the contract. There might also be duly unknown physical conditions at the site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.

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

When can the Procuring Entity issue a Variation Order?

Variation Orders may be issued by the Procuring Entity concerned at any time during contract implementation. However, the adjustment provided for in these orders must be necessary to fully meet the requirements of the project. The issuance of a Variation Order, must conform to the following:

1. That there will not be any short changes in the original design;
2. That it will not affect the structural integrity and usefulness of the structure; and
3. That it is covered by a CAF.

How much Variation Order is allowed?

The net cumulative amount of the Variation Order should not exceed positive ten percent (+10%) of the original project cost.

If the adjustments provided for in a Variation Order costs more than ten percent (10%) of the original project costs, these shall be the subjects of another contract to be bid out if the works are separable from the original contract. However, if these adjustments are urgently necessary to complete the original scope of work, the Head of the Procuring Entity may authorize the Variation Order beyond ten percent (10%) but not more than twenty percent (20%), subject to the guidelines to be determined by the GPPB.

In case the Variation Order exceeds ten percent (10%), the Procuring Entity must ensure that appropriate sanctions are imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the conditions that led to the need for adjustments costing more than ten percent (10%) of the original total contract price.

What are the conditions under which a contractor may start work under Variation Orders and receive payments?

Under no circumstances can a contractor proceed to commence work under any Change Order or Extra Work Order unless the Head of the Procuring Entity or his/her duly authorized representative has approved the order.

The Procuring Entity's Regional Director or equivalent official, under whose jurisdiction the project is located, may, subject to the issuance of the CAF, authorize the immediate start of work under any Change or Extra Work Order, subject to any or all of the following conditions:

1. In the event of any emergency where the prosecution of the work is urgent to avoid any detriment to public service, or damage to life and/or property; and/or
2. When time is of the essence, for works in the critical path based on the approved PERT/CPM;

However, the approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the adjusted original contract price whichever is less. Furthermore, immediately after the start of work, the corresponding Change Order or Extra Work Order must be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after approval of the same by the Head of the Procuring Entity or his duly authorized representative.

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

What rules govern price adjustments due to a Variation?

The payment to the contractor for additional work under Variation Orders, must be derived based on the following:

1. For additional/extra works duly covered by Change Orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items in the original contract shall be used.
2. For additional/extra works duly covered by Extra Works Orders involving new work items that are not in the original contract, the unit prices will be based on the direct unit costs used in the original contract (e.g., unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both the government and the contractor. The direct unit costs of new components must also be based on the contractor's estimate as validated by the Procuring Entity, in comparison with the

construction price indices issued by the NSO. The Procuring Entity must validate these prices through a documented canvass among three eligible suppliers registered with the DPWH or PhilGEPS in accordance with existing rules and regulations. The direct cost of the new work item must then be combined with the mark-up factor (*i.e.* taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

The request for payment by the contractor for any extra work must be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. This request for payment must be included in the contractor's statement for progress payment.

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

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

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

Methodology: How is a Variation Order issued?

The following must be undertaken in issuing a Variation Order:

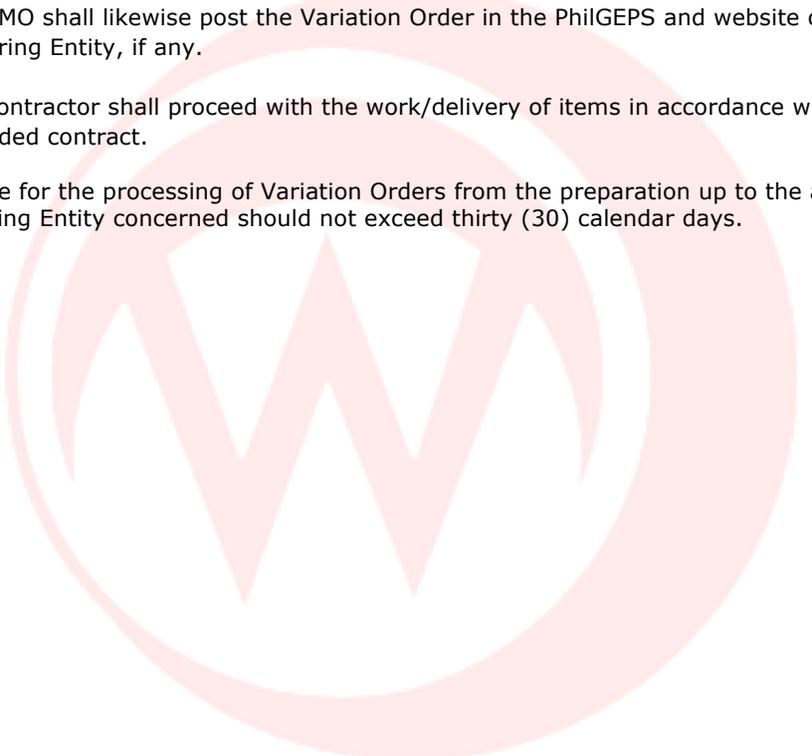
1. Within seven (7) calendar days after the contractor discovers that there is a need for variation order, the said contractor must communicate the same to the Procuring Entity by giving it notice of the findings. Afterwards, the contractor has twenty-eight (28) days to submit a full documentation of the variation order. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim.
2. If the Project Engineer finds that a Change Order or Extra Work Order is justified, he/she must prepare the proposed order, accompanied with the following:
 - a. Notices submitted by the contractor;
 - b. The plans to effect the adjustments;
 - c. The contractor's computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof; and
 - d. A detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order

The project engineer then submits the same to the Regional Director or equivalent official of the office/agency/corporation/LGU concerned.

3. The Regional Director or equivalent official concerned, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the technical staff of the Region to conduct an on-the-spot investigation to verify the need for the work to be prosecuted. A report of such verification shall be submitted directly to the Regional Director or equivalent official concerned.

4. The Regional Director or equivalent official concerned, after being satisfied that such Change Order or Extra Work Order is justified and necessary, shall review the estimated quantities and prices and forward the proposal with the supporting documentation to the head of Procuring Entity for consideration.
5. If, after review of the plans, quantities and estimated unit cost of the items of the work involved, the proper office of the Procuring Entity empowered to review and evaluate Change Orders or Extra Work Orders recommend approval thereof, the Head of the Procuring Entity or his duly authorized representative, finding that the Change Order or Extra Work Order is in order and covered by the CAF, shall approve the same.
6. Upon approval by the Head of the Procuring Entity or his duly authorized representative, the PMO or end-user unit shall notify the contractor to proceed with the work/delivery of items in accordance with the amendment.
7. The PMO shall likewise post the Variation Order in the PhilGEPS and website of the Procuring Entity, if any.
8. The contractor shall proceed with the work/delivery of items in accordance with the amended contract.

The timeframe for the processing of Variation Orders from the preparation up to the approval by the Procuring Entity concerned should not exceed thirty (30) calendar days.



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Suspension of Work

Legal Reference:

IRR-A Annex "E" provides the rules in relation to contract suspension.

When can the Procuring Entity suspend work?

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

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

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

When can the contractor suspend work?

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

1. There exist right-of-way problems that prohibit the contractor from performing work in accordance with the approved construction schedule;
2. Requisite construction plans, which must be furnished by the Procuring Entity, are not issued to the contractor, in the process precluding any work called by such plans.
3. Peace and order conditions make it extremely dangerous, if not impossible, to work, such conditions having been certified in writing by the PNP station which has responsibility over the affected area and confirmed by the DILG Regional Director;
4. There is a failure on the part of the Procuring Entity to deliver government- furnished materials and equipment as stipulated in the contract; or
5. The payment of the contractor's claim for progress billing beyond forty-five (45) calendar days from the time the claim has been certified by the Procuring Entity's authorized representative as having been supported by complete documentation, unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

The contractor may suspend work fifteen (15) calendar days after the district engineer/regional director/consultant or equivalent official, as the case may be, have received a written notice of the suspension of work.

Should the period of work suspension be considered in extending the contract time?

Yes, but only in cases when the total suspension or suspension of activities along the critical path is not due to the fault of the contractor. In such cases, the elapsed time between the effective order suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

Can the contract price be adjusted as a result of work suspensions?

No. No payment can be made to the contractor for any standby time expense during the suspension period, except when prior clearance is secured from the Head of the Procuring Entity and for justifiable reasons.

When must the contractor resume work?

Work must be resumed either upon notice from the Procuring Entity of the lifting of the suspension order or upon the expiration of the suspension order.

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 contractor.

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 contractor, 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 contractor to proceed with the work/delivery of items in accordance with the amended contract.

Contract Time Extension

Legal Reference:

IRR-A Annex "E" provides the rules in relation to contract time extension.

Can the contract time be extended?

Yes, provided that:

1. There are additional work or other special circumstances that would entitle the contractor to an extension of its contract;
 2. The affected activities fall within the critical path of the PERT/CPM network;
 3. The contractor shall have notified the Procuring Entity that the amount of additional work or the occurrence of the special circumstance merits the extension of its contract, and that it had done so before the expiration of the contract and within thirty (30) calendar days after the start of the additional work or of the special circumstance has arisen; and
 4. The Procuring Entity, after due investigation, finds the request justified, determines the appropriate extension period, and approves the request of the contractor for a contract extension.
- If the contractor fails to notify the Procuring Entity within the time period provided for, it waives any claims to contract extension.

Let's make things easier

Some special circumstances to be considered for contract time extension:

1. Major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics;
2. Non-delivery on time of materials, working drawings, or written information to be furnished by the procuring entity;
3. Non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralysis of construction activities;
4. Region-wide or nationwide shortage of construction materials, as certified by the DTI Secretary;
5. Region-wide or nationwide general labor strikes, as certified by the DOLE Secretary; and
6. Serious peace and order problems as certified by the DILG, or AFP Provincial Commander and approved by the DND Secretary.

Under what circumstances should the Procuring Entity automatically disapprove a request for contract extension?

No extension of contract time will be granted if the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents. The contract period includes a particular number of unworkable days, to cover days when unfavorable weather conditions and special circumstances not within the control of the

contractor prevent any work from being done. This number of unworkable days should be consumed first before any contract extension can be considered. For example, if the total project duration is two hundred (200) calendar days inclusive of the forty-five (45) calendar days of unfavorable weather condition, the contractor cannot claim for time extension citing unfavorable weather condition if the forty-five (45) calendar days anticipated unfavorable weather condition has not been consumed.

Thus, no contract extension must be given to a contractor due to:

1. Ordinary unfavorable weather conditions, in that such weather conditions had already been taken into consideration and anticipated in the computation of the unworkable days; and
2. Inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials.

If the reason of unfavorable weather condition will be used for the time extension, the considerations of both nationwide and region wide conditions should be looked into, using the records from PAGASA.



Delays in Work Completion and Liquidated Damages

Legal Reference:

IRR-A Section 68, Annex "E" and the Civil Code of the Philippines Article 2226 provide the rules in relation to delivery and liquidated damages.

What is the rule on the applicable period for the completion of work?

The contractor must complete the work procured within the period prescribed by the Procuring Entity as specified in the contract.

If delays are likely to be incurred, the contractor must notify the Procuring Entity in writing, stating therein the duration and causes of the expected delay. The Procuring Entity may grant time extensions, at its discretion, if such extensions are meritorious, with or without liquidated damages.

In all cases, the request for extension shall always be filed before the expiry of the original completion date. Maximum allowable extension shall not exceed the original construction period.

What are liquidated damages?

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

What are the grounds for the imposition of liquidated damages?

When the contractor refuses or fails to satisfactorily complete the works under the contract within the specified contract duration, plus any time extension duly granted, and is thus considered in default under the contract, it will be liable for liquidated damages for the delay. The Procuring Entity need not prove that it has incurred actual damages to be entitled to liquidated damages from the contractor, and the same shall not be by way of penalty. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or from the retention money or other securities posted by the contractor, whichever is convenient to the Procuring Entity.

What is the amount of Liquidated Damages that can be imposed upon the contractor?

The following formula will be used in determining the liquidated damages due to a Procuring Entity from a contractor:

$$TLD = VUUP \times [(1 + OCC)^n - 1] \times K$$

$$VUUP = TCP - VCUP$$

Where:

TLD = Total Liquidated Damages, in Pesos

VUUP = Value of the Uncompleted and Unusable Portions of the contract work, as of the expiry date of the contract, in Pesos

- TCP = Total Contract Price, in Pesos
- VCUP = Value of the Completed and Usable Portion of the contract work, as of the expiry date of the contract, in Pesos
- OCC = Prevailing Opportunity Cost of Capital for Government projects set by NEDA, which is currently pegged at 15%
- n = Total number of years that the contract work is delayed after the expiry date of the contract
- K = Adjustment factor to cover additional losses
 $= 1 + C + (I \times n)$

Where:

- C = Cost of construction supervision as a percentage, not exceeding 10%, of construction cost
- I = Annual inflation rate as defined by NEDA

The Head of the Procuring Entity may also impose additional liquidated damages on the contractor provided such is prescribed in the ITB.

A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned Procuring Entity.

In no case shall the sum of liquidated damages reach ten percent (10%) of the contract amount. If it does, the contract shall automatically be rescinded by the Procuring Entity, without prejudice to other courses of action and remedies open to it. The Procuring Entity may also take over the contract or award the same to a qualified supplier through negotiation. In addition to the liquidated damages, the erring contractor's performance security shall also be forfeited.²¹

Methodology: How must a request for extension be handled?

If a contractor incurs a delay and wishes to request for an extension of the completion or construction period:

1. It must submit a written request to the PMO or end-user unit for an extension of the completion or construction period, citing the reason/s for such delay.
2. The PMO or end-user unit shall either approve or disapprove the request for extension.
3. If the extension is granted, the liquidated damages shall not be imposed and the contractor will be so informed in writing.
4. If, however, the request for extension is denied, the PMO or end-user unit shall inform the contractor in writing of such denial, and ensure that the said notice or communication is received by the latter within a reasonable time from receipt of the request for extension. The Procuring Entity then imposes the liquidated damages in accordance with the provisions of the contract and the procedures outlined below Steps 2 to 3.

If the Contractor incurs a delay and there is no request for extension:

²¹ For FAPs, the applicable liquidated damages is at least 1/10 of 1% of the cost of unperformed portion for every day of delay. The maximum deduction shall be 10% of the amount of the contract, and the procuring entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.

1. The PMO or end-user unit shall, within a reasonable time from the first day of delay, inform the contractor that the Procuring Entity will impose the liquidated damages agreed upon by the parties.
2. Upon contract completion, the PMO or end-user unit and the Acceptance Committee shall record the delay in the inspection documents, noting therein the amount of the liquidated damages imposed on the contractor.
3. The amount of liquidated damages due shall be deducted from the total amount payable to the contractor, and the same shall be reflected in the disbursement vouchers. Or, if the contract provides that the liquidated damages shall be collected from securities or warranties posted by the contractor, the PMO or end-user unit shall so inform the official authorized to call on the securities or warranties about the delay and the corresponding liquidated damages imposed.



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. Due to the contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with P.D. 1870;
2. Due to the contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; or
3. The contractor:
 - a. Abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;
 - b. Does not actually have on the project site the minimum essential equipment listed on the bid necessary to prosecute the works in accordance with the approved work plan and equipment deployment schedule as required for the project;
 - c. Does not execute the works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
 - d. Neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
 - e. Sub-lets any part of the contract works without approval by the Procuring Entity.

The rescission of the contract shall be accompanied by the confiscation by the Procuring Entity of the contractor's performance security. The contractor will also be recommended for blacklisting. The contractor 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 contractor 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 contractor 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 contractor 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 contractor, 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 contractor.

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

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

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

The contractor 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. The contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

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

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Contract Termination for Convenience

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

The Procuring Entity, by written notice sent to the contractor, 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;
4. Failure of the Procuring Entity to acquire the necessary right-of-way; or
5. 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.

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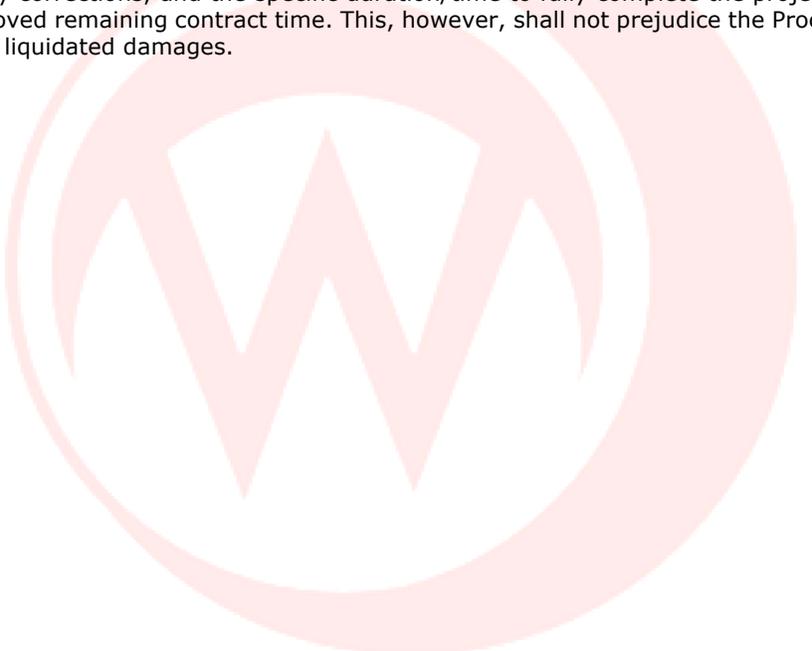
Contract Completion

Legal Reference:

IRR-A Annex "E" provides the rules in relation to contract completion.

What should the Procuring Entity do in anticipation of contract completion?

Once the project reaches an accomplishment level of ninety-five percent (95%) of the total contract amount, the Procuring Entity may create an inspectorate team to make preliminary inspection and submit a punch-list to the contractor in preparation for the final turnover of the project. This punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not prejudice the Procuring Entity's claim for liquidated damages.



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Warranty

Legal Reference

IRR-A Section 62 provides the rules in relation to Warranty.

What is the purpose of a Warranty?

A warranty is required to ensure that the contractor will correct structural defects and failures. It should be noted that a one-year period after the completion of the project, called the defects liability period, is observed until final acceptance by the Procuring Entity. At any rate, the length of the warranty period will depend on the nature of the project.

What are the arrangements during the Defects Liability Period?

The defects liability period for infrastructure projects shall be one year from project completion up to final acceptance by the government. As such, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the government and shall be held responsible for any damage or destruction of the works except those occasioned by force majeure. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work. During this period, the contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure projects on account of

How's that again?

On the warranty

During the defects liability period, the contractor shall post a warranty security in the form and amount prescribed below. In turn, the government will return to the contractor its Performance Security and issue the Certificate of Completion.

the use of materials of inferior quality within ninety (90) days from the time the Head of the Procuring Entity has issued an order to undertake repair. In case of contractor's failure or refusal to comply with this mandate, the government shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand at the cost of the contractor. **(IRR-A Section 62.2.1)**

Any contractor who fails to comply with the preceding paragraph shall suffer perpetual disqualification from participating in any public bidding and his property or properties shall be subject to attachment or

garnishment proceedings to recover the costs. All payables of government in his favor shall be offset to recover the costs. **(IRR-A Section 62.2.1)**

As security for the above responsibilities, the contractor shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, GSIS or surety bond callable on demand to be chosen by the Procuring Entity, in accordance with the following schedule:

Form or Warranty	Minimum Amount in % Total Contract Price
1. Cash deposit, cash bond or letter of credit	Five Percent (5%)
2. Bank Guarantee	Ten Percent (10%)
3. Surety Bond	Thirty Percent (30%)

What's that?

On Bank Guarantees

A special bank guarantee should be contract specific, that is, it shall be executed for the specific purpose of covering the warranty for the subject procurement contract.

The warranty security shall be stated in Philippine Pesos.

What are the arrangements during the Warranty Period?

After final acceptance of the project by the government, the contractor shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties: **(IRR-A 62.2.2)**

1. Permanent Structures: Fifteen (15) years

Buildings of types 4 (steel, iron, concrete, or masonry construction with walls, ceilings, and permanent partitions of incombustible fire resistance) and 5 (steel, iron, concrete, or masonry construction), steel and concrete bridges, flyovers, concrete aircraft movement areas, ports, dams, diversion tunnels, causeways, wharves, piers, dikes, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar structures;

2. Semi -Permanent Structures: Five (5) years

Buildings of types 1 (wooden), 2 (wood with 1 hour fire resistance), and 3 (masonry and wood construction), concrete roads, asphalt roads, river control, drainage, irrigation and drainage canals, municipal ports and river landing, deep wells, rock causeway, pedestrian overpass, and other similar structures; and

3. Other Structures: Two (2) years

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

In effect, even after the defects liability period, the warranty security shall still be required during the above applicable periods, and shall be returned only after the lapse of the above applicable warranty period. **The warranty should be the full amount for the first year, and renewable every year thereafter, but subject to a reduction every year by the amount of depreciation on a straight line basis.** For example, a project with a five (5) year warranty will have on its first year of warranty the full amount, for the second year 4/5 of the full amount, for the third year 3/5 of the full amount, for the fourth year 2/5 of the full amount, and the fifth year 1/5 of the full amount. Thus, for a five-year contract worth P 100 million, a warranty security in the form of a surety bond shall amount to P 30 million on the first year, P24 million on the second, P18 million on the third, P12 million on the fourth, and P6 million on the last year of effectivity.

What if the project is a combination of different types of structures?

A schedule of warranty shall be made to cover the warranty for the different types of structures for the project.

Who will be held responsible for defects/failures during the Warranty period?

In cases where structural defects and/or failures arise during the warranty period, the following persons/parties shall be held liable individually or solidarily, as the case may be: **(IRR-A Section 62.2.3)**

1. Contractor – Where structural defects and/or failures arise due to faults attributable to improper construction use of inferior quality/substandard materials, and any violation of the contract plans & specifications, the contractor shall be held liable;
2. Consultants – Where structural defects and/or failures arise due to faulty and/or inadequate design and specifications as well as construction supervision, then the consultant who prepared the design or undertook construction supervision for the project shall be held liable;
3. Procuring Entity’s Representatives/Project Manager/Construction Managers and Supervisors – The project owner’s representative(s), project manager, construction manager, and supervisor(s) shall be held liable in cases where the structural defects/failures are due to his/their willful intervention in altering the designs and other specifications; negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project;
4. Third Parties - Third Parties shall be held liable in cases where structural defects/failures are caused by work undertaken by them such as leaking pipes, diggings/excavations, underground cables and electrical wires, underground tunnel, mining shaft and the like, in which case the applicable warranty to such structure should be levied to third parties for their construction or restoration works.
5. Users - In cases where structural defects/failures are due to abuse/misuse by the end user of the constructed facility and/or non-compliance by a user with the technical design limits and/or intended purpose of the same, then the user concerned shall be held liable.

The term “structural defects” shall mean major faults/flaws/deficiencies in one or more key structural elements of the project which may lead to structural failure of the completed elements or structure. The term “Structural Failures” is defined as an occurrence where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public. **(IRR-A Section 62.2.3)**

In case of structural defects/failures occurring during the applicable warranty period provided above, the government shall undertake the necessary restoration or reconstruction works and shall be entitled to full reimbursement by the parties found to be liable, of expenses incurred therein upon demand, without prejudice to the filing of appropriate administrative, civil, and/or criminal charges against the responsible persons as well as the forfeiture of warranty securities posted in favor of the government. **(IRR-A Section 62.2.4)**

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General Procurement Activities and Timeline for Infrastructure Projects

Below is the timeline for the public bidding of infrastructure projects under R.A. 9184 and its IRR-A.²²

1a. Publishes the IAEB in the Newspaper. IRR-A Sec. 5 (h) states that: "**Competitive Bidding.** Refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract." Based on the order in which the processes are introduced, procurement through Competitive Bidding starts with advertisement. Hence, this activity shall be **Day 1** of the timeline for the procurement process. When a pre-procurement conference is necessary, it is advisable not to hold it too far from the initial planned date of the advertisement of the IAEB. Take note that advertisement of the IAEB in the newspaper is not required for contracts to be bid with an ABC \leq P5,000,000.00 (IRR-A Sec. 21.2.3) and for alternative methods as provided for in Rule XVI of the IRR-A of R.A. 9184. (IRR-A Sec. 21.2.4)

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

2a. Submit LOI & Application for Eligibility. IRR-A Sec. 21.3.1 states that: "For the procurement of infrastructure projects and consulting services, the interested party shall submit a written LOI together with its application for eligibility, which must be received by the BAC not later than seven (7) calendar days from last date of posting of the Invitation to Apply for Eligibility and to Bid provided in Section 21.2 of this IRR-A." Thus, the latest possible time for this activity is **Day 14**.

For the earliest possible time, nothing in the law or in the IRR-A of R.A. 9184 prohibits bidders from submitting their LOIs and Applications for Eligibility to the BAC immediately after seeing the advertisement. Thus, the earliest possible time for this activity is when the IAEB was published, which is **Day 1**.

2b. Issue Eligibility Forms. The BAC may immediately issue the eligibility forms to the prospective bidders after their submission of the LOI and Application for Eligibility. Thus, the earliest and latest possible times are **Day 1** and **Day 14**, respectively.

2c. Deadline of Receipt of LOI & Application for Eligibility. The BAC may immediately receive LOIs and Applications for Eligibility on Day 1, though there is a deadline for doing so. IRR-A Sec. 21.3.1 states that: "For the procurement of infrastructure projects and consulting services, the interested party shall submit a written LOI together with its application for eligibility, which must be received by the BAC not later than seven (7) calendar days from last date of posting of the Invitation to Apply for Eligibility and to Bid provided in Section 21.2 of this IRR-A." Since the last date of posting of the IAEB is Day 7, the deadline is pegged at **Day 14**.

2d. Submits Eligibility Envelopes. Nothing in the law or IRR-A of R.A. 9184 prohibits the bidders from submitting their Eligibility Envelopes to the BAC immediately after the eligibility forms are issued. Thus, the earliest possible time for this activity is immediately after the earliest possible issuance of eligibility forms, which is **Day 1**. IRR-A Section 23.6, allows the

²² The timeline for the procurement of works under IFI financing, with respect to ICB or NCB procedures, should be in accordance with the guidelines or procedures of the IFI concerned.

BAC to maintain a file of the Class "A" Eligibility Documents. When such file is required, a contractor may simply maintain a current file of these documents at least once a year or more frequently when needed. This means that, with respect to Class "A" Eligibility Documents," these may be submitted to the Procuring Entity even before any bidding activity – thus even before **Day 1**.

IRR-A Sec. 23.1 states: "... *The eligibility envelopes of prospective bidders for the procurement of infrastructure projects shall be submitted on or before the deadline specified in the Invitation to Apply for Eligibility and to Bid...*" The deadline for the submission of LOIs and Applications for Eligibility is also the latest possible time for the submission of Eligibility Envelopes. This then pegs this activity to **Day 14**. However, in order to provide prospective bidders sufficient time to prepare their eligibility documents, it is suggested that the latest time for this activity be pegged at seven (7) calendar days from the deadline of receipt of LOI and Application for Eligibility or **Day 21**. The basis for the earliest and latest possible submission of eligibility envelopes is not stated in the law or in the IRR-A, but is provided for in this Manual to give the bidders who submitted their LOIs at the last possible moment ample time to prepare their eligibility requirements.

2e. Opens Eligibility Envelopes/Conducts Eligibility Check. IRR-A Sec. 23.10 states that "*The entire process of eligibility check for the procurement of infrastructure projects shall not exceed three (3) calendar days.*" As the prospective bidder may be allowed to submit its eligibility envelope together with the LOI, the earliest possible time for the opening of eligibility envelope and the conduct of eligibility check is the last day provided in IRR-A Section 21.3.1 for the BAC to receive the LOI, *i.e.* seven (7) calendar days from last date of posting of the IAEB, as this period would have to be exhausted by the BAC. This pegs the earliest possible time for these activities at **Day 14**.

Since the latest possible submission of eligibility envelopes is pegged at Day 14, therefore the latest possible time to complete this activity is pegged at **Day 17**.

3a. Issue Bidding Documents. IRR-A Sec. 23.1 states that: "... *The eligibility envelopes of prospective bidders for the procurement of infrastructure projects shall be submitted on or before the deadline specified in the Invitation to Apply for Eligibility and to Bid, and shall be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders, who shall then be allowed to acquire or purchase the relevant bidding documents from the Procuring Entity.*" This implies that the bidding documents shall be issued only after determination of eligibility of prospective bidders. Therefore, the earliest possible time for this activity is immediately after the earliest possible notification of eligible bidders, which is **Day 14**.

With regard to the latest possible issuance, IRR-A Sec. 21.2.2 (ii) provides that a period of thirty six (36) calendar days, in case of projects with an ABC of P50 million and below, and fifty (50) calendar days, in case of projects with an ABC of above P50 million, should be observed from date of advertisement and/or 1st day of posting of the IAEB up to bid opening. This pegs the latest possible issuance at **Day 37** in case of projects with an ABC of P50 million and below, and **Day 51** in case of projects with an ABC of above P50 million.

3b. Secure Bidding Documents. For purposes of participating in the bidding, the Bidding Documents can be acquired as early as the earliest possible notification of eligible prospective bidders and as late as before the submission of bids. This pegs the earliest date to secure Bidding Documents at **Day 14** and the latest date at either **Day 37** or **Day 51**, depending on the ABC. However, time is against the bidder if he/she opts to get the Bidding Documents at the last minute.

4a. Calls a Pre-bid Conference. IRR-A Sec. 22.2 states that: "*The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids.*" Since the latest possible deadline for the submission and receipt of bids is either Day 37 or Day 51, depending on the ABC, (see **5a. Submits Technical and Financial Envelopes**) the latest possible time to call a pre-bid conference is at **Day 25** or **Day 39**, as the case may be.

Since there is nothing in R.A 9184 or in its IRR-A that prohibits the Procuring Entity from calling a pre-bid conference on the day after the earliest issuance of Bidding Documents or on

Day 14, the earliest possible time for this activity is **Day 15**. It is, however, suggested that a pre-bid conference be called at least seven (7) calendar days after the issuance of Bidding Documents in order to give eligible bidders ample time to study the Bidding Documents prior to the pre-bid conference, which also reflects the legislative intent behind IRR-A Sec. 22.2. This will then peg the earliest possible time for this activity to Day 21.

4b. Makes Available Copies of Minutes of the Pre-bid Conference. IRR-A Sec. 22.3 states that: *"The minutes of the pre-bid conference shall be recorded and made available to all participants not later than three (3) calendar days after the pre-bid conference."* Since the maximum period for the availability of the Minutes of the Pre-Bid Conference is three (3) calendar days, the BAC may actually issue it immediately after the meeting on the same day. Thus, the earliest possible availability of the copies of the minutes is **Day 15**. The latest possible availability of the copies of the minutes is **Day 28** or **Day 42**, depending on the ABC.

4c. BAC Issues Supplemental/Bid Bulletin. IRR-A Sec. 22.5.1 states that: *"The BAC shall respond to the said request by issuing a Supplemental/ Bid Bulletin, duly signed by the BAC chairman, to be made available to all those who have properly secured the bidding documents from the Procuring Entity, at least seven (7) calendar days before the deadline for the submission and receipt of bids."* Similarly, IRR-A Sec. 22.5.2 states that: *"Supplemental/Bid Bulletins may be issued upon the Procuring Entity's initiative for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids."* Since the latest possible deadline for the submission and receipt of bids is either Day 37 or Day 51, depending on the ABC, (see **5a. Submits Technical and Financial Envelopes**) the latest possible issuance shall then be **Day 30** or **Day 44**, as the case may be.

For the earliest possible time, it is possible for the BAC to issue Supplemental/Bid Bulletins at its own initiative immediately after the Bidding Documents are issued, even within the same day. Thus, the earliest possible day for the issuance of the Bidding Documents may actually be the earliest possible issuance of the Supplemental/Bid Bulletin as well, already taking into consideration the preparation of the Supplemental/Bid Bulletin and approval by the BAC Chairman. This pegs the earliest possible issuance of the Supplemental/Bid Bulletin to **Day 14**.

5a. Submits Technical and Financial Envelopes. IRR-A Sec. 21.2.2 states that: *"... The bidding documents must be issued after the conduct of eligibility check and/or short listing, and the same must be available for at least seven (7) calendar days from the date the bidding documents were first issued."* It is possible for an eligible bidder to submit a bid on the same day that the Bidding Documents were issued. Thus, the earliest possible issuance of the Bidding Documents may actually be the earliest possible submission of bids as well. This then pegs the earliest possible submission of the bids to **Day 14**.

For the latest possible submission of the bids, IRR-A Sec. 21.2.2 (ii) states that: *"For infrastructure projects, the following maximum periods from date of advertisement and/or 1st day of posting of the Invitation to Apply for Eligibility and to Bid up to bid opening shall be observed:"*

Approved Budget for the Contract (in pesos)	Period
Fifty (50) million and below	36 calendar days
Above fifty (50) million	50 calendar days

Since the date of advertisement and/or 1st day of posting of the IAEB is Day 1 and the maximum period from the 1st day of posting up to bid opening is thirty six (36) or fifty (50) calendar days, depending on the ABC, the latest possible submission date is either at **Day 37** for projects with an ABC P50 million and below, or **Day 51** for projects with an ABC above P50 million.

5b. Opens Technical and Financial Envelopes. IRR-A Sec. 22.2 states that: *"The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids."* This implies that, if the earliest possible time to call a pre-bid conference is Day 15, the earliest possible opening of bids is twelve (12) calendar days after that or **Day 27**.

The latest possible opening of bids is the same as the latest possible submission of bids which is either **Day 37** or **Day 51**, depending on the ABC.

6. Evaluates Bids and Determines LCB. IRR-A Sec. 32.3 states that: "... The entire evaluation process shall be completed in not more than seven (7) calendar days from the deadline for receipt of proposals." Since the latest possible deadline for opening of bids is either at Day 37 or Day 51, depending on the ABC, (See **5a. Submits Eligibility, Technical & Financial Envelopes**) the latest possible time for these activities is pegged at **Day 44** or **Day 58**, whichever is appropriate.

The earliest possible time for these activities is the same as the earliest possible date of opening of bids. This pegs the earliest possible time to evaluate bids and determine the LCB to **Day 27**.

7. Conducts Post-Qualification and Determines LCRB. IRR-A Sec. 34.1 states that: "Within seven (7) calendar days from the determination of the Lowest Calculated Bid, the BAC shall conduct and accomplish a post-qualification of the bidder with the Lowest Calculated Bid." Since the latest possible time for the determination of the LCB is either Day 44 or Day 58, depending on the ABC, the latest possible time to conduct post-qualification and determine LCRB is either **Day 51** or **Day 65**, whichever is appropriate. However, it should be noted that, in exceptional cases, the Head of the Procuring Entity may extend the seven (7) calendar day period but the aggregate period for post-qualification cannot exceed thirty (30) calendar days.

One (1) calendar day after the earliest possible time for the determination of the LCB is assumed for the earliest possible time of these activities, which pegs it to **Day 28**.

8a. Drafts the BAC Resolution Recommending Award. The earliest and latest possible dates for this activity are the same as the earliest and latest possible dates for post-qualification and determination of LCRB, which respectively are **Day 28** and, depending on the ABC, either **Day 51** or **Day 65**.

8b. Approves Recommendation and Issues Notice of Award. IRR-A Sec. 37.2.1 states that: "Within a period not exceeding seven (7) calendar days from the determination and declaration by the BAC of the Lowest Calculated and Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. However, for infrastructure projects with an ABC of fifty (50) million and below, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation within four (4) calendar days. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated and Responsive Bid." Since the latest possible time to determine LCRB is Day 51 or Day 65, depending on the ABC, the latest possible time for this activity shall then be pegged at either **Day 55** for projects with an ABC of P50 million and below or **Day 72** for projects with an ABC above P50 million. However, "[i]n the case of GOCCs and GFIs, the period provided herein shall be fifteen (15) calendar days." In which case, the latest possible time shall be pegged at either **Day 66** for projects with an ABC of P50 million and below or **Day 80** for projects with an ABC above P50 million.

One (1) calendar day after the earliest possible time for the BAC Secretariat to draft the BAC resolution recommending award is assumed for the earliest possible time of these activities, which pegs it to **Day 29**.

9a. BAC Finalizes the Contract with the Assistance of the TWG. The earliest possible date for finalizing the contract is the same as the earliest possible time for issuance of notice of award, which is **Day 29**.

The latest possible date for this activity is the same as the latest possible date for signing of the contract, which is either **Day 55** for projects with an ABC of P50 million and below or **Day 72** for projects with an ABC above P50 million or, in the case of GOCCs and GFIs, either **Day 66** for projects with an ABC of P50 million and below or **Day 80** for projects with an ABC above P50 million.

9b. Bidder with LCRB Posts Performance Security and Signs Contract. IRR-A Sec. 37.3 states that: *"The winning bidder or its duly authorized representative shall formally enter into contract with the Procuring Entity concerned, and submit all documentary requirements to perfect the contract, within ten (10) calendar days from receipt by the winning bidder of the Notice of Award."* If it were to be assumed that the winning bidder received the notice of award on the same date that it was issued, then the latest possible time for contract signing is either **Day 65** for projects with an ABC of P50 million and below or **Day 82** for projects with an ABC above P50 million or, in the case of GOCCs and GFIs, either **Day 76** for projects with an ABC of P50 million and below or **Day 90** for projects with an ABC above P50 million. –

One (1) calendar day after the earliest possible time for the contract to be finalized is assumed for the earliest possible time of this activity, which is pegged at **Day 30**.

9c. Head of the Procuring Entity or Contract Signatory Signs the Contract and Receives the Performance Security. The earliest possible date for the Head of the Procuring Entity to sign the contract is the same as the earliest possible time for the Bidder with LCRB to sign the same, which is **Day 30**.

The latest possible date for this activity is the same as the latest possible date for the Bidder with LCRB to sign the contract, which is either **Day 65** for projects with an ABC of P50 million and below or **Day 82** for projects with an ABC above P50 million or, in the case of GOCCs and GFIs, either **Day 76** for projects with an ABC of P50 million and below or **Day 90** for projects with an ABC above P50 million.

9d. Perfects & Approves Contract. IRR-A Sec. 37.4 states that: *"When further approval of higher authority is required, the approving authority for the contract, or his duly authorized representative, shall be given a maximum of fifteen (15) calendar days from receipt thereof, together with all documentary requirements to perfect the said contract, to approve or disapprove it. However, for infrastructure projects with an ABC of fifty (50) million and below, the maximum period is five (5) calendar days."* Since the latest possible time for contract signing is pegged at either Day 65 for projects with an ABC of P50 million and below or Day 72 for projects with an ABC above P50 million, the latest possible time for this activity is pegged at either **Day 70** for projects with an ABC of P50 million and below or **Day 87** for projects with an ABC above P50 million. However, *"In the case of GOCCs, the concerned board, or its duly authorized representative, shall act on the approval of the contract within twenty-five (25) calendar days from receipt thereof together with all documentary requirements to perfect the said contract."* Since the latest possible time for contract signing, in the case of GOCCs, is either Day 76 for projects with an ABC of P50 million and below or Day 90 for projects with an ABC above P50 million, this pegs the latest possible time for GOCCs at either **Day 101** for projects with an ABC of P50 million and below or **Day 115** for projects with an ABC above P50 million.

For the earliest possible time, one (1) calendar day after the earliest possible time for the contract to be signed by both parties is assumed for the earliest possible time of this activity, which pegs it at **Day 31**. Take note that this becomes step "9d" only when approval of higher authority is required.

9e. Issues NTP. IRR-A Sec. 37.5 states that: *"The concerned Procuring Entity shall then issue the NTP 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. However, for infrastructure projects with an ABC of fifty (50) million and below, the maximum period is two (2) calendar days."* In case of projects not requiring further approval, since the latest possible time for the approval of the contract for NGAs is either Day 65 for projects with an ABC of P50 million and below or Day 82 for projects with an ABC above P50 million, the latest possible time for this activity is **Day 67** or **Day 85**, as the case may be. For GOCCs, since the latest possible time for the approval of contracts not requiring further approval is either Day 76 for projects with an ABC of P50 million and below or Day 90 for projects with an ABC above P50 million, the latest possible time for the issuance of NTP is either **Day 78** or **Day 93**, as the case may be.

In case of projects requiring further approval, since the latest possible time for the approval of the contract for NGAs is either Day 70 for projects with an ABC of P50 million and below or

Day 87 for projects with an ABC above P50 million, the latest possible time to issue the NTP is **Day 72** or **Day 90**, as the case may be. For GOCCs, since the latest possible time for the approval of contracts requiring further approval is either Day 101 for projects with an ABC of P50 million and below or Day 115 for projects with an ABC above P50 million, the latest possible time for the issuance of NTP is either **Day 103** or **Day 118**, as the case may be.

One (1) calendar day after the earliest possible time for the contract to be signed by both parties is assumed for the earliest possible time of this activity, which pegs it to **Day 30** if further approval is not required, or **Day 31** if further approval is required. Take note that this becomes step "9d" when approval of higher authority is not required.





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