

UPDATES ON GOVERNMENT PROCUREMENT

3rd PAGBA Quarterly Seminar and Meeting
Waterfront Hotel, Lahug, Cebu City
December 4-7, 2013



OUTLINE

- Ordering Agreement
- GOP-Official Merchants Registry
- Sale of Bidding Documents
- Submission of LOI
- Eligibility Criteria on Infrastructure Projects
- Submission of Ongoing and Completed Projects
- Bid Securing Declaration
- Notice of Post-disqualification
- Rationalization of Protest Fees
- Policy on TWG Membership
- Policy re DOLE D.O. 18-A
- Policy on Participation of GOCCs
- Negotiated Procurement – Emergency Cases
- APCPI

Revised Guidelines on the Use of Ordering Agreement

- Governs situations where procurement necessitates entering into ordering agreement for **necessary and desirable goods** that by its nature, use, or characteristics, the quantity and/or **exact time of need cannot be accurately pre-determined**; and, in the case of expendable or non-expendable goods, it is **inadvisable to carry the same in stock** or commit to purchase a certain quantity within a given period.
- Ordering Agreement is in a nature of **option contract** between the procuring entity and the LCRB granting the procuring entity the **option to place an order or not buy at all** for any of the goods identified in the **Order Agreement List** within a given period of time.

Revised Guidelines on the Use of Ordering Agreement

- Previous **GPPB Resolution No. 06-2005** - Guidelines on the Use of Ordering Agreement,
- Use of Ordering Agreement is subject to the following conditions:
 - Limited only to procurement of **non-inventory parts of existing major equipment** which are inadvisable to carry on stock; and
 - Subject to the happening of a **fortuitous event**.
- Conditions restrict the successful use of the Ordering Agreement by procuring entities

Revised Guidelines on the Use of Ordering Agreement

- ⦿ **GPPB Resolution No. 01-2012** – Revised Guidelines on the Use of Ordering Agreement
- ⦿ Ordering Agreement may be used for:
 - **Expendable and non-expendable goods**; and
 - **Services for hotel accommodation, air travel, repair and maintenance**; and
 - No longer subject to the happening of a fortuitous event

Revised Guidelines on the Use of Ordering Agreement

● **General Conditions:**

- HOPE determines it will be **more advantageous for the procuring entity** based on:
 - **End-User Unit's certification** that the goods in the Order Agreement List are necessary and desirable ;
 - **Cost-benefit analysis**; and
 - **Order Agreement List** is prepared in the most practical, efficient, and economical manner that will encourage competition among interested bidders.
- Procurement shall be conducted thru **Competitive Bidding** Procedure under R.A. 9184 and its IRR

Revised Guidelines on the Use of Ordering Agreement

⦿ **Ordering Agreement:**

- Entered into by winning bidder with procuring entity within ten (10) c.d. from receipt of Notice of Award;
- **Consideration is One Peso** to be paid by procuring entity for the option granted to it to buy the items in the Order Agreement List when need arises;
- Includes the following:
 - Order Agreement List
 - Fixed contract price per item/service specified in the Order Agreement List
 - Delivery/service terms and conditions
 - Terms of payment

Revised Guidelines on the Use of Ordering Agreement

● **Ordering Agreement:**

- **No modification** during its lifetime is allowed;
- Valid only for a period indicated in the bidding documents but **not to exceed one (1) year** from time it is entered into and executed by the parties, and shall not be extended beyond its lifetime;
- **Performance Security** to be posted by winning bidder **based on total contract price** of the awarded items
- Shall **automatically terminate** when total estimated quantity in the Order Agreement List is exhausted or when specified duration of the Ordering Agreement has expired.

Revised Guidelines on the Use of Ordering Agreement

◎ **Delivery Order Contracts:**

- Trigger the **exercise of the option** to purchase;
- Constitute the **actual purchase** by the procuring entity;
- **No limit to the number** of Delivery Order Contracts that may be executed within the validity of the Ordering Agreement, provided the aggregate amount does not exceed the total contract price in the Ordering Agreement.

Guidelines on the Use of GOP-OMR

- ⦿ **GPPB Resolution 12-2012** dated 1 June 2012
- ⦿ **Government of the Philippines – Official Merchants Registry (GOP-OMR)** – centralized electronic database of manufacturers, suppliers, distributors, contractors, and consultants developed and maintained in the PhilGEPS
- ⦿ **All existing registries of merchants**, whether electronic or manual, maintained by procuring entities for government procurement **shall be integrated in the GOP-OMR**

Guidelines on the Use of GOP-OMR

- ⦿ Merchants shall submit their **registration (Class A) documents** either by sending electronic copies of the requirements using the PhilGEPS website or by sending printed copies to the PhilGEPS office.
- ⦿ A **merchant's registration and membership** in the GOP-OMR is neither contract-specific and **not understood to be tantamount to a finding of eligibility**.
- ⦿ Merchants have **option to choose membership classification** and shall be entitled to a **Certificate of Registration and Membership** depending on the chosen classification and **payment of corresponding membership fee**.

Submission of Letter of Intent (LOI)

- **GPPB Resolution No. 27-2012** dated 23 November 2012
- **Deletes** Sections 23.4.3 and 24.4.3 of the Revised IRR of R.A. 9184
 - **Provisions requiring the submission of a written LOI and/or application of eligibility** together with the latest Class “A” Documents in case the procuring entity maintains a registry system using the PhilGEPS or its own electronic system.
- Rationale: Harmonize with rules on GOP-OMR

Sale of Bidding Documents

- **GPPB Resolution 04-2012** dated 24 February 2012
- Provides **standard rates** for the sale of bidding documents
 - Rationalizes the fees
 - Regulates price of Bidding Documents
 - Lessens the exercise of discretion of PEs
 - Encourages market participation and competition

Sale of Bidding Documents

Approved Budget for the Contract	<u>Maximum</u> Cost of Bidding Documents in PhP
500,000 and below	500.00
More than 500,000 up to 1 Million	1,000.00
More than 1 Million up to 5 Million	5,000.00
More than 5 Million up to 10 Million	10,000.00
More than 10 Million up to 50 Million	25,000.00
More than 50 Million up to 500 Million	50,000.00
More than 500 Million	75,000.00

Eligibility Criteria on Infrastructure Projects

- ⦿ **GPPB Resolution No. 11-2012** dated 1 June 2012
- ⦿ Amends Sections 23.5.2.4 and 23.5.2.5 of the revised IRR
 - **Removes the ten-year period limitation** on projects to be considered as similar contract
 - **Allows option to submit** an Owner's Certificate of Final Acceptance or the Constructors Performance Evaluation Summary (CPES) Final Rating and/or the Certificate of Completion, which **must be satisfactory**

Submission of Statement of On-Going and Completed Projects

- **GPPB Resolution No. 29-2012** dated 23 November 2012
- Amends Section 23.1(a)(iii), as follows:
 - **Statement of the prospective bidder of ALL its ONGOING government and private contracts**, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid, within the relevant period as provided in the Bidding Documents
 - Statement identifying the **bidder's SINGLE LARGEST COMPLETED CONTRACT similar to the contract to be bid**, except under the conditions provided for in Section 23.5.1.3 of the IRR, within the relevant period as provided in the Bidding Documents in the case of goods.

Bid Securing Declaration

- ⦿ **GPPB Resolution 03-2012** dated 27 January 2012
- ⦿ Adopts Bid Securing Declaration as an **additional form of bid security**
 - A document/undertaking signed by the bidder **committing to pay the corresponding fine and be suspended for a period of time** from being qualified to participate in any government activity **in the event of violation of any of the conditions** stated therein as required by the GPPB Guidelines.

Bid Securing Declaration

⦿ Existing forms

- Have substantial monetary value.
- Increases transactional costs and bid prices.

⦿ Bid Securing Declaration

- Insignificant monetary value
- Increases bidder's participation
- Decreases the transaction costs
- Reduces bid prices

Notice of Post-disqualification

- ⦿ **GPPB Circular 03-2012** dated 17 August 2012
- ⦿ Provides guidance in the **proper process of post-qualification** and on notification of bidders determined to be post-disqualified.
- ⦿ Requires that the **notice of post-disqualification** shall clearly **state all the grounds for the post-disqualification** pursuant to the requirements or conditions in the Bidding Documents that the bidder failed to comply with.

Rationalization of Protest Fees

- ⦿ **GPPB Resolution 05-2012** dated 30 March 2012
- ⦿ Adopts **graduated rates of protest fees** based on the ABC
 - Strikes a balance between the institution and filing of valid protests and the deterrence of filing vexatious and frivolous ones
- ⦿ Requires the submission of **certificate of non-forum shopping**

Rationalization of Protest Fees

ABC RANGE	PROTEST FEE
50 Million Pesos and Below	0.75% of the ABC
More than 50 Million Pesos to 100 Million Pesos	PhP 500,000.00
More than 100 Million Pesos to 500 Million Pesos	0.5% of the ABC
More than 500 Million Pesos to 1 Billion Pesos	PhP 2,500,000.00
More than 1 Billion Pesos to 2 Billion Pesos	0.25% of the ABC
More than 2 Billion Pesos to 5 Billion Pesos	PhP 5,000,000.00
More than 5 Billion Pesos	0.1% of the ABC

Policy on TWG Membership

- **GPPB Resolution 07-2012** dated 27 April 2012
- Adopts an official position relative to HB 5366
 - HB 5366 seeks to amend RA 9184 by appointing a “third party” from either a recognized academic institution or from a government office that is not part of the organizational structure of the procuring entity as a BAC member with respect to the procurement of highly technical equipment by the AFP and the PNP
 - “Third party” seen to help in evaluation of eligibility of bidders and technical specifications imposed by the bidding documents
 - Maintain Sections 11 and 12 of IRR unchanged

Policy on TWG Membership

- **GPPB Circular 02-2012** dated 3 August 2012
- Section 12.1 of the revised IRR of RA 9184 allows the BAC to create a TWG from a pool of technical, financial, and/or legal experts to assist in the procurement process
- TWG **not limited to the employees or officials of the Procuring Entity**
- BAC may engage the **assistance of other government personnel** and officials, and **consultants from the private sector and academe** with proven expertise

Policy Re DOLE D.O. No. 18-A

- ◎ **GPPB Resolution 02-2012** dated 27 January 2012
 - To issue circular reminding all procuring entities to ensure that contractors comply with existing labor laws and social legislations
- ◎ **GPPB Circular 01-2012** dated 3 August 2012
 - Section 25. 2 of the revised IRR supports enforcement of labor laws and social standards
 - Omnibus Sworn Statement also reflects the same statement
 - PEs should verify, validate, and ascertain compliance with labor laws during post-qualification

Policy Re DOLE D.O. No. 18-A

- ◎ **GPPB PM 03-2012** dated 30 November 2012
 - Section 9 (b) (ii) of DOLE D.O. 18-A prohibits bidders from offering bids lower than the sum of the Total Reimbursable Costs and 10% Administrative Cost.
 - Scenario **results in the imposition of floor in bid prices.**
 - **Runs counter to Section 31** of RA 9184.
 - GPPB is of the view that Section 9 (b) (ii) of DOLE DO 18-A should be considered **INVALID**, and thus, cannot be a source of any right, duty, obligation, or power.

Policy on Participation of GOCCs in Public Bidding and A2A Agreement

- **GPPB Res. 12-2013** dated 26 April 2013
- Amends Sec. 23.6 and 24.6 of the IRR of R.A. 9184 to **use the term GOCCs instead of GCEs** and replaced the term “dependent” with “attached”
 - **GOCCs may be eligible to participate in Competitive Bidding** only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) **not attached agencies** of the procuring entity.

Policy on Participation of GOCCs in Public Bidding and A2A Agreement

- ⦿ **Amends Sec. 53.5 of the IRR** on Agency-to-Agency Agreement with the **deletion of the 2nd paragraph**, to wit:
 - [For the purpose of this sub-section, the term agency shall exclude GOCCs incorporated under *Batas Pambansa Blg. 68*, otherwise known as the “Corporation Code of the Philippines.” The GPPB shall issue guidelines to implement this provision.]

Negotiated Procurement – Emergency Cases

- **GPPB Res. 34-2013** dated 14 November 2013
 - E.O. No. 423 s. 2005 as amended by E.O. 645 s. 2007 prescribed prior approval by the GPPB before proceeding with any of the alternative methods of procurement involving an amount of at least P500 million
 - Authorizes procurement of goods and infra projects for rescue, recovery, relief, and/or rehab efforts for Typhoon Yolanda thru Nego. Proc. under Sec. 53.2 (Emergency Cases) with ABC at least P500M for the duration of the State of National Calamity.
 - Reiterates that GPPB approval not necessary for alternative methods with ABC less than P500 million

Negotiated Procurement – Emergency Cases

- Concerned procuring entities are required to **comply with all the conditions and requirements of RA 9184 and its IRR and associated rules**
- GPPB will review the grant of authority every three (3) months from issuance of the Resolution or until the State of National Calamity is lifted by the President, whichever comes first
- Concerned procuring entities shall **submit a List of all transactions covered by the grant of authority at the end of every month to the GPPB-TSO**

Agency Procurement Compliance and Performance Indicators (APCPI)

- ◎ **GPPB Resolution 10-2012** dated 1 June 2012
- ◎ Approves the use of the **Agency Procurement Compliance and Performance Indicators (APCPI)** as the **standard procurement monitoring and assessment tool** of the Government
 - Provide standard procurement performance monitoring and evaluation tool for use by all procuring entities
 - Identify strengths and weaknesses in the agency's procurement system and to develop an Action Plan
 - Utilize the information submitted by the agencies as part of the procurement database that will be linked to other government databases

Agency Procurement Compliance and Performance Indicators

- APCPI assessment is the responsibility of the HOPE, with the assistance of the BAC, its Secretariat, and other offices concerned within the PE
- BAC Secretariat responsible for the conduct of the assessment
- HOPE has discretion to create an **Ad hoc Assessment Committee** for purposes of the assessment which will be conducted on an annual basis on the 1st quarter of the year covering performance accomplishments of the previous year

Agency Procurement Compliance and Performance Indicators

- ◎ **Pillar I – Compliance with the Legislative and Regulatory Framework**

- Looks at compliance to key legal requirements under RA 9184 as it relates to competitiveness

- ◎ **Pillar II – Agency Institutional Framework and Management Capacity**

- Looks at how the procurement system is operational through the management systems in the agency

Agency Procurement Compliance and Performance Indicators

◎ **Pillar III** – Procurement Operations and Market Practices

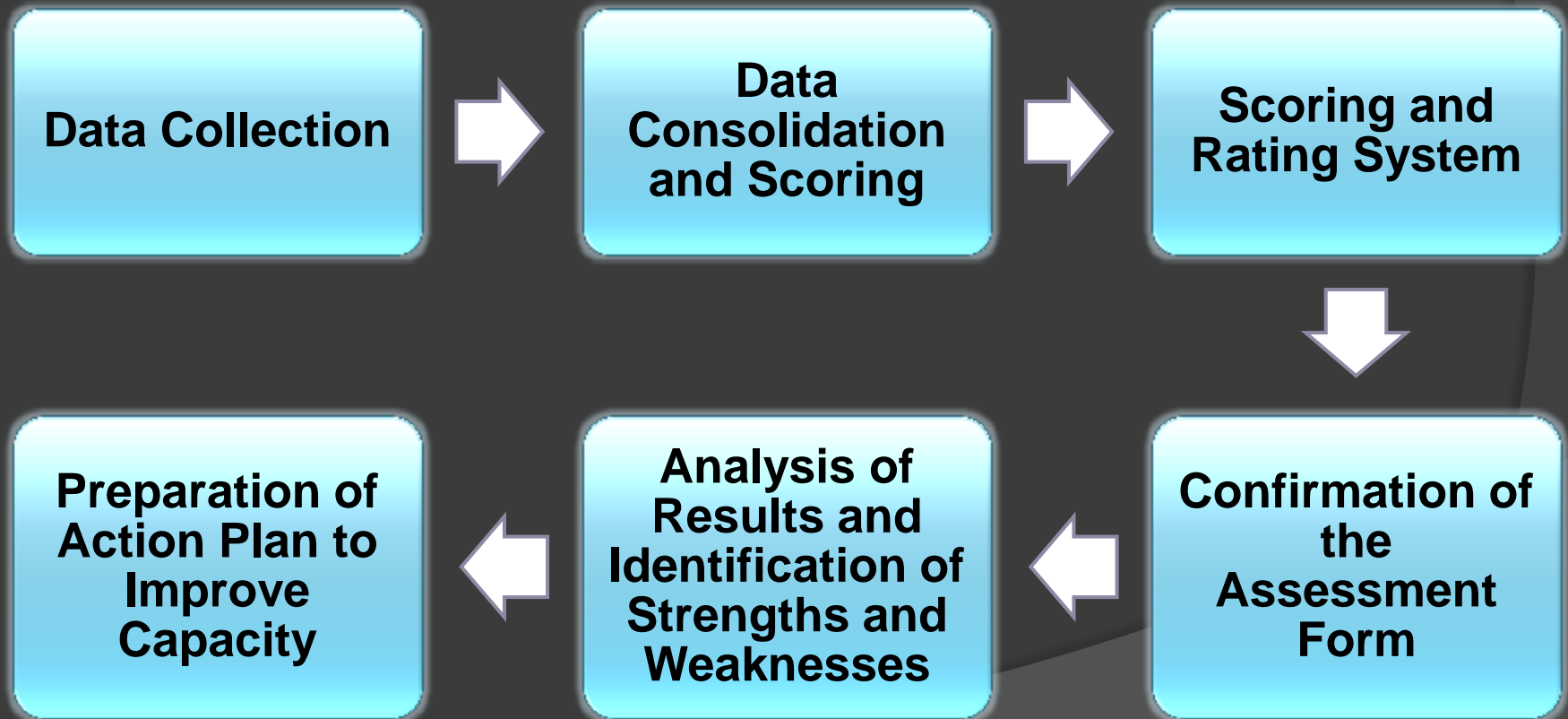
- Looks at the operational effectiveness and efficiency of the procurement system at the agency level

◎ **Pillar IV** – Integrity and Transparency of the Agency Procurement System

- Looks at indicators of the procurement system that contribute to integrity and transparency

Agency Procurement Compliance and Performance Indicators

Assessment Methodology



A green rectangular sign with a white border and a white dotted inner border is mounted on two brown wooden posts. The sign is tilted upwards and to the right. The text on the sign is as follows:

Thank You
Dir. Renato M. de Vera, MNSA
DBM-Regional Office IV-B

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DBM-Regional Office IV-B