

REGULATORY FRAMEWORK FOR BUSINESS TRANSACTIONS (RFBT)

CPALE Concept Notes

GOVERNMENT PROCUREMENT LAW

Source: ReSA Lecture and REO Pre-Recorded (Atty. Nicko)

Topics Covered:

6. General Procurement Law
 - 6.1. General Principles
 - 6.2. Scope and Application
 - 6.3. Definition of Terms
 - 6.4. Procurement Procedures
 - 6.5. Disclosure of Relations
 - 6.6. Alternative Methods of Procurement

Preliminaries to Government Procurement

Declaration Policy

To promote the ideals of good governance

Governing Principles

Transparency (Old)	Providing access to <u>all related information</u> with open contracting practice in both the procurement process and implementation of procurement contracts
Competitiveness (Old)	- Ensuring <u>equal opportunity</u> <u>As many participants</u> as possible
Efficiency (Old - Streamlined Procurement Process)	- Organized, uniform, and straightforward government procurement process - Use of <u>emerging technologies and innovative solutions</u>
Proportionality (New)	- Conditions and parameters are reasonably <u>proportional to the Procuring Entity's needs and the project's nature</u> - Considers <u>quality</u> that must be <u>fit for purpose</u>
Accountability (Old)	<u>All public officials and contracting parties</u> are held accountable for their actions
Participatory Procurement (Old - Public Monitoring)	<u>Public monitoring</u> of the procurement process and implementation of procurement contracts <u>to ensure accordance with the Act and prudent and judicious use of government resources</u>
Sustainability (New)	Covers the <u>whole lifecycle of a property</u>, ensures value for money and maximum benefits to the <u>society and economy</u>, and engenders <u>minimal impact to the environment</u>
Professionalism (New)	Development of <u>qualification standards</u>, <u>competency</u> and certification framework, and a <u>code of ethics</u> of public procurement professionals

Scope and Application

Applies to all procurements of infrastructure projects, goods, and consulting services, **regardless of source of funds**

XPN:

Treaties or international or executive agreement wherein the Philippine Government is a signatory

Approved Budget for the Contract (ABC)

Upper limit or ceiling price of procurement

NGAs	Budget duly approved by the HoPE within the authorized amount in the GAA, continuing and automatic appropriations, or other authorized source of funds
GOCCs, GFIs, and SUCs	Operating budget approved by the Governing Board
LGUs	Budget approved by the Sanggunian
Multi-Year Contracts	Total Project Cost
Foreign Funded	Cost Estimate prepared by the Procuring Entity, approved by the Foreign Gov't or Financing Institution

Definition of Relevant Terms

Bids and Awards Committee (BAC)	- Committee with <u>5 or 7 members</u> with <u>1-year terms for not more than 3 terms</u> - Functions include publishing and posting the invitation to bid, conducting pre-procurement and pre-bid conferences, receive bids, determine eligibility of prospective bidders, evaluate the bids, recommend award of contracts to the HoPE, prepare procurement monitoring report, among others
Common-Use Supplies and Equipment (CSE)	Goods, materials, and equipment used repetitively in day-to-day operations of Procuring Entities in the performance of their functions, included in the PhilGEPS' electronic catalogue
Government Procurement Policy Board (GPPB)	Central body setting strategic direction, making policy decisions as to all matters affecting public procurement, and tasked to lead the nation's efforts in advancing public procurement reforms
Head of Procuring Entity (HoPE)	<u>NGAs</u> Head of the Agency or Duly Authorized Official <u>GOCCs, GFIs, SUCs</u> Governing Board or Duly Authorized Official <u>LGUs</u> Local Chief Executive
Jury Duty	- Responsibility in which the BAC give utmost priority to procurement assignments over all other duties and responsibilities until the requirements for the procurement at hand are completed <u>Required for BAC until the Notice of Award is issued</u> by the HoPE
Philippine Government Electronic Procurement System (PhilGEPS)	Single electronic procurement portal managed by PS-DBM, serving as the <u>primary source</u> of information and channel in the conduct of all government procurement activities

Strategic Procurement Planning

Procuring Entity shall ensure the following:

- Project has **minimal economic, social, and environmental risk or negative impact** during its lifecycle
- Goods and services are procured with **due consideration for responsible and sustainable consumption and production** practices, and the **national policy**

Purchase of Brand New and Second-Hand Property

General Rule:

Procuring Entity shall ensure that goods to be procured are **brand new**

XPN:

Procurement of second-hand, refurbished, or reconditioned goods in **military, defense, or law enforcement** may be considered if it is most advantageous, subject to DBM guidelines and relevant criteria of Durability, Remaining Useful Life, Sustainability, Maintenance Cost, and Warranty

Annual Procurement Plan (APP)

All procurement should be within the approved budget of the Procuring Entity

Indicative APP	List of <u>possible procurement activities</u> of the Procuring Entity
Approved APP	<u>Approved list</u> of procurement activities with approved budget of the Procuring Entity

Detailed Engineering for Procurement of Infrastructure Projects

General Rule:

No bidding an award of contract for Infrastructure Projects shall be made unless the detailed engineering and designs has been sufficiently carried out and duly approved, and relevant right-of-way as be acquired

XPN:

Infrastructure Projects **under a Design-and-Build Scheme**

STRATEGIC CONSIDERATIONS DURING PLANNING STAGE

1. Market Scoping

A preliminary undertaking in preparing the Project Procurement Management Plan (PPMP), covering the following:

- Cost Estimation
- Project Design and Specifications
 - Must be based on any or a combination of:
 - Relevant Characteristics
 - Performance or Functionality Requirements
 - Product or Service Standards as specified by Appropriate Gov't Agencies or Similar International Bodies
- Technical Selection Criteria
- Delivery and Time
- Storage or Warehousing Requirements
- Related Industry Packages
- Other Relevant Information

General Rule:

Reference to a **Brand Name is Not Allowed**

XPNS: (Procuring Entity shall indicate reasons for availing the exception)

- Technical Compatibility
- Interoperability
- Servicing, Maintenance, or Preservation of Supplier Warranty to keep performance, functionality, and useful life of the equipment

2. Disposal of Property

The Procuring Entity shall consider measures of disposal at the end of the useful life of the property in developing its requirements, such as but not limited to the following:

- Rehabilitation
- Trade-in
- Transfer to Other Gov't Agencies
- Barter
- Donation
- Return to Supplier
- Condemnation or Destruction
- Sale to Gov't Officials/Employees
- Public Auction
- Negotiated Sale
- Recycling and/or Sale of Scrap
- Direct Negotiation

3. Lifecycle Assessment and Life Cycle Cost Analysis

Applied in project planning, eligibility and selection criteria, or contract implementation

Lifecycle Cost - Total cost of ownership over the entire life span of an asset from its acquisition, operation, maintenance, and disposal (not just the acquisition)

4. Subcontracting Arrangements

Rules for Subcontracting

For Locally-Funded and Financed through Official Development Assistance

- Prior **approval by the HoPE**
- Subcontractors must **meet eligibility criteria** (Eligible to bid at the first place)
- Subcontractors are **disclosed during the bidding process**
- Liability for actions, defaults, delays, and negligence shall remain to the General Contractor
- **Shared liability between the General Contractor and Subcontractor** for violated safety or other labor standards
- **Contract performance monitoring** shall mandatorily apply to both the General Contractor and Subcontractors
- Entire project is recorded as **experience by the General Contractor**, but the Subcontractor shall also get **100% credit of the subcontracted portion**
- Subcontractors shall be eligible to concessional windows of GFIs treating receivables from government as loan security

5. Early Procurement Activities

Procurement activities related to goods, infrastructure projects, or consulting services to be rendered **in the following fiscal year**

Rules:

- Made **only upon HoPE's approval** of the Indicative APP
- No award of contract until the appropriate funding is approved and effective
- No award of contract to projects requiring acquisition of right-of-way until an authority or permit to enter from owner, notarized deed of sale or donation to the government, or writ of possession by a competent court is issued, as the case may be

6. Design-and-Build Scheme

Single contractor is **responsible for both the design and construction** of the government building

7. Multi-Year Contracting

Prior to commencement of any procurement activity for multi-year projects, a Procuring Entity shall request the DBM for the issuance of a Multi-Year Contracting Authority (MYCA)

Additional Approvals:

SUCs (if funded by internally generated income)	Prior authority from its Board
GOCCs, GFIs, and SUCs	Prior authority from its Governing Board
LGUs	Authority from the Sanggunian

8. Engagement of a Procurement Agent

May be applied if the Procuring Entity **does not have the capability or proficiency to undertake a particular procurement**, wherein a **Procurement Agent undertakes the functions of the BAC** but does not cover authority to issue and award the contract and transferring of funds except for payment of service fee

Conditions for Engagement of a Procurement Agent

- **Authorized by the HoPE**
- Made on a **Per Procurement Basis**
- Applies only to procurement **undertaken through Competitive Bidding**
(XPN: Procuring Entity lacks personnel to constitute its own BAC, thus other modes of procurement are even allowed)
- Procurement Agent **must be another Government Agency Expert, expressly provided in the Memorandum of Agreement**, which shall be in effect at least 6 months before the end of the validity of the relevant appropriations
- **At least 1 representative** from the Procuring Entity shall be designated as a Member of the TWG
- Must have **a representative** from the Procuring Entity shall be designated as Provisional Member of the BAC of the Procurement Agent

9. Use of a Framework Agreement

In the nature of an **option contract (fixed prices)**, stipulating terms and conditions applied in subsequent procurements with a single or multiple contractor

Serves as a procurement strategy to:

- Expand pool of prospective bidders
- Take advantage of economies of scale
- Minimize administrative burden of separate procurement activities
- Generate time and money savings

10. Pooled Procurement

- **Collaboration or consolidation of requirements by more than one Procuring Entities** in a single joint, bulk, or group procurement to achieve greater value for money and procurement efficiency
- Aggregates demand, improves quality standards by combining technical capacity, and increases availability and secures sustainability of supplies

11. Renewal of Regular and Recurring Services

To facilitate immediate implementation of procurement projects, but **each renewal contract shall not exceed 1 year**

12. Warehousing and Inventory Activities

Procuring Entities may adopt a **general system of warehousing and cloud-based inventory** of procured goods

- Guidelines for warehousing functions shall be developed to ensure auditable systems
- Compliance framework shall also be established
- Adoption of cloud-based inventory shall be done in consultation with the DICT

Electronic Procurement

PHILIPPINE GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM (PHILGEPS)

- Maintains an **integrated system** covering procurement planning until payment
- Makes pertinent information **accessible and transparent** at all procurement stages, **except those involving national security**
- **All Procuring Entities shall utilize the PhilGEPS for the Procurement of CSEs** to take advantage of built-in efficiencies and volume discounts
- **All Procuring Entities shall register with the PhilGEPS** and ensure access to an online network (those with established systems shall integrate with PhilGEPS)

Innovative Features and Solutions of PhilGEPS

- Electronic Bulletin Board
- Registry of Suppliers
- Electronic Catalogue
- Electronic Payment
- Electronic Marketplace
- Electronic Reverse Auction
- Electronic Small Value Procurement
- Virtual Store
- Electronic Bidding
- The electronic and uniform payment system to be used by the Procuring Entity and supplier shall be an **Integrated Financial Management Information System developed by the DBM, COA, and DOF**
- PhilGEPS shall also undertake periodic maintenance and upgrading of all its systems, and shall formulate a business continuity plan

Splitting Government Contracts and Procurement of CSEs

SPLITTING OF GOVERNMENT CONTRACTS

Involves either of the following:

- Dividing or breaking up contracts into smaller quantities and amounts
- Dividing contract implementation into artificial phases or subcontracts to evade certain requirements

Nature of Splitting Government Contracts

General Rule:

PROHIBITED

XPNS:

Procurement per unit, by lot or package is allowed **if subject to:**

- Available budget
- Required quantity
- Product availability
- Delivery sites
- Geographical locations
- Market capacity

PROCUREMENT OF CSEs

General Rule:

CSEs must be procured from the PS-DBM (PhilGEPS)

XPNS:

Instance or Reason	Requirement
Unavailable (Due to Zero Inventory)	Certificate of Non-Availability of Stocks
Insufficient Available Stocks	Current Stock Position Report
Insufficient Technical Specifications	Complete List of Technical Specifications of All CSEs
BAC's Recommendation for Reasons of Efficiency, Practicality, or Economic Viability	○ Written Report by the End-User or Implementing Unit ○ Inform PS-DBM by Filling Out and Submitting an Online Form in PhilGEPS

Modes of Procurement

The Procuring Entity shall adopt any of the following modes of procurement **consistent with the Fit-for-Purpose Procurement Approach** (To address Procuring Entity's specific needs, while promoting flexibility and responsiveness to different conditions and scenarios)

1. Competitive Bidding

Open to participation by any eligible bidder, consisting of the following process:

- Publication and Pre-Bid Conference
- Prospective Bidders Eligibility Screening
- Receipt, Opening, and Evaluation of Bids
- Post-Qualification and Award of Contract

When Available?

Always an available option to the Procuring Entity (In Old GPA/Law, it is the primary mode of procurement)

2. Limited Source Bidding

Involves **direct invitation to bid to a set of pre-selected supplier or consultant** with known experience and proven capability

When Available?

In ANY of the following conditions:

- Procurement of Highly-Specialized Goods and Consulting Services known to be **obtainable only from a limited number of sources**
- Procurement of Highly-Specialized Infrastructure Projects involving and **affecting National Security**
- Procurement of **Major Plant Components** deemed advantageous to limit the bidding to known eligible bidders

3. Competitive Dialogue

Two-stage bidding process, inviting suppliers to a dialogue to **propose solution to address its needs and requirements**

First Stage

- Eligibility requirement and initial technical proposals of interest suppliers are evaluated, followed by the dialogue proper
- **Submit initial technical proposals and eligibility requirements** within the following days from the last day of posting of the Invitation to Bid or Request for Expression of Interest:

Goods	45 Calendar Days
Infrastructure Projects	65 Calendar Days
Consulting Services	75 Calendar Days

- BAC evaluates **using a "pass or fail" criteria (short-listing procedure for consulting services)**, with eligible bidders invited to participate in the dialogue
- BAC conducts a **dialogue** to determine and finalize the technical components and specifications of the project, which may also include the contract terms and conditions
- BAC shall ensure **all participating bidder are treated equally and fairly**, and shall not reveal or disclose any confidential information received during the course of the dialogue to any of the participating bidder without consent

Second Stage

- Final technical and financial proposals are submitted under a competitive bidding procedure
- Within **10 Calendar Days from finalization of technical specifications** under the first stage, shall issue to all bidders that participated in the dialogue such specifications and criteria for qualitative rating if applicable
- Within **20 Calendar Days from issuance of finalized technical specifications**, bidders shall submit their revised technical and financial proposal in 2 separate sealed envelopes
- Contract shall be **awarded to the bidder declared as the most responsive bid** following the applicable bid evaluations and post-qualification procedures

When Available?

In ANY of the following conditions:

- Procurement includes **Innovative Designs or Solutions** involving procurement of complex purchases
- Technical Specifications cannot be sufficiently established by the Procuring Entity
- Contract **requires prior negotiations due to specific circumstances** related to the nature, complexity, legal and financial issues, or risk attached to the procurement

4. Unsolicited Offer with Bid Matching

- Procuring Entity may consider unsolicited offers **from the original offeror** on a negotiated basis for goods and consulting services
- The proposal or offer is determined by the Procuring Entity as necessary and **involves a new concept or technology**

Award of Contract to Original Offeror

In ANY of the following instances:

- No comparative or competitive bids were received** within prescribed periods
- Bids submitted by comparative offerors **failed at bid opening**
- Original offeror **matched or submits lower price proposal** against the comparative or competitive bid

When Available?

- Procurement involves a **New Concept or Technology**, as determined by the HOPE, AND **has invited comparative or competitive bids** in response to a call for offers by way of Invitation to Bid or Request for Expression of Interest

Involves a new concept or technology in ANY of the following:

- Offers substantial improvement over existing solutions
- Incorporates features promoting emerging technology and sustainable solution
- Involves a certified state-of-the-art technology
- Provides significant benefits to procuring entity in terms of **efficiency, cost, or outcome**

5. Direct Contracting

Supplier is required to **submit a price quotation or pro-forma invoice** together with conditions of sale

When Available?

In ANY of the following conditions:

- Goods are of **proprietary nature, obtainable only from the proprietary source** (patents or copyrights prohibits other from manufacturing same item)
- Procurement of critical components from a specific supplier is **a condition precedent to hold a contractor to guarantee its project performance**
- Sold by an **exclusive dealer or manufacturer** not having any sub-dealers selling at lower prices and no suitable substitute can be obtained at more advantageous terms

6. Direct Acquisition (Old - Shopping)

Procuring Entity may procure directly from any known and reputable source, **without the need to conduct a canvass or request for quotations**

- Goods may be procured from any known and reputable source with legal, technical and financial capacity, that issue BIR-compliant invoices or COA-accepted documents

When Available?

In ANY of the following procurement with **ABC ≤ 200,000**:

- Non-CSEs
- CSEs not available in PS-DBM
- Services

7. Repeat Order

Procuring Entity may procure Goods **from the previous winning bidder** subject to post-qualification process, whenever there arises a need to replenish the goods procured

When Available?

If ALL of the conditions are met:

- Unit price is **equal or lower than the original price**
- Availed only **within 6 months** from date of notice to proceed from the original contract
- Repeat order **shall not exceed 25% of the quantity** of each item in the original contract
- Goods procured under the original contract is **quantifiable, divisible**, and consist of **at least 4 units per item**

8. Small Value Procurement

Procuring Entity requests for submits of at least 3 price quotations, with the **receipt of 1 quotation sufficient to proceed** with evaluation of bidders, for the following:

- Goods not available in PS-DBM
- Infrastructure Projects
- Consultation Services

When Available?

If amount involved **DOES NOT EXCEED** the following threshold, subject to GPPB's periodic review

NGAs (including SUCs, GOCCs, GFIs)	2,000,000
1st to 3rd Class Provinces	
1st to 2nd Class Cities	
4th Class Provinces	1,600,000
3rd Class Cities	
1st to 3rd Class Municipalities	400,000
Barangays	100,000

9. Negotiated Procurement

Direct negotiation with a technically, legally, and financially capable supplier for specific circumstances

When Available?

In ANY of the following instances:

a) Two Failed Biddings

b) Emergency Cases

(Imminent danger to life or property during a state of calamity or when time is of the essence)

c) Take-Over of Contracts

(Rescinded or terminated contracts where immediate action is necessary)

d) Adjacent or Contiguous to an Ongoing Infrastructure Project or Consulting Service

Requisites:

- Original contract is the result of competitive bidding
- Similar or related scope of work
- Within the contractor's contracting capacity
- Contractor uses same or lower unit prices as in the original contract less mobilization cost
- Amount involved does not exceed the amount of the ongoing project
- Contractor has no negative slippage (actual costs > budget)
- Negotiations commence before the expiry of the original contract

e) Agency-to-Agency Procurement

(Certified by the servicing agency and validated by the Procuring Entity)

f) Scientific, Scholarly or Artistic Work, Exclusive Technology, and Media Services

- Work of art, commissioned work or services for creative design or a specific artist skill
- Restorative works for conservation of historical and culturally significant structures
- Scientific, academic, scholarly work or research, or legal service
- Highly-specialized life-saving medical equipment and medicines
- Scientific, technical, economic journal, magazine, subscription, or other exclusive statistical publications and references
- Media documentation, advertisement, or announcement through TV, radio, newspaper, internet, and other communication media

g) Highly Technical Consultants

Requisites:

- Highly technical** or **proprietary** work
- Primarily confidential or policy determining
- Trust and confidence** are primary considerations for hiring
- Term must be on a **yearly basis at the most**, renewable to a maximum of being co-terminus with the appointing HoPE

h) Defense Cooperation Agreements and Inventory-Based Items

The Secretary of National Defense may directly negotiate with the following:

- With an agency or instrumentality of another country that the country has entered into a defense cooperation agreement, when the procurement involves **major defense equipment or material and/or defense-related consultancy services** as long as deemed necessary for the interest of the country, the expertise required is not locally available, and what to be procured is included in the approved AFP Modernization Program
- With a supplier in procuring **inventory-based items as to major defense equipment or material** as long as it will address compatibility, interoperability, and sustainability, and the supplier provides a performance security and has satisfactorily implemented a contract of the same item with the DND or any law enforcement agencies
(Such mode is also applicable to law enforcement agencies such as PNP, PDEA, BI, BFP, NBI, BJMP, NAPOLCOM, PCG, PSG, BuCor, and OST)

i) Lease of Real Property and Venue for Official Use

- Publicly-owned real property or venue **from other government agencies are preferred** (Old - No Preference was given)

j) NGO Participation (with Memorandum of Agreement)

k) Community Participation

- Directly purchase agricultural and fishery products from **local farmers and fisherfolks**
- Directly negotiate simple infrastructure projects with **local communities or social groups** or member thereof

l) Procurement from United Nations Agencies, International Organizations, or International Financing Institutions

ANY of the following:

- Small quantities of off-the-shelf goods **exclusively used in education and health**
- Specialized products with **limited number of suppliers**
- Goods and Consulting Services involving **advanced technologies not available locally** as certified by DTI and when most advantageous to the Procuring Entity
- Goods for **critical public health priorities**

m) Direct Retail Purchase of the following that are Not Available in PS-DBM:

- Petroleum Fuel, Oil, and Lubricant Products
 - Electronic Charging Devices
 - Online Subscriptions
- (Old - Included Airplane Tickets)

10. Direct Sales

Procurement of **Non-CSEs** by directly purchasing from a supplier that has satisfactorily delivered Non-CSEs to another government agency under a completed contract

When Available?

If **ALL** of the following conditions are met:

- Procurement contract by original government agency was **awarded through bidding**
- Original procuring government agency has inspected and accepted the Non-CSE, and **issued a certification of satisfactory performance of its obligation**
- Only initiated **once within 6 months** from acceptance of Non-CSEs by the original government agency
- Contract between Procuring Entity and supplier is **within the original amount executed, at the same or lower unit price** offered to the original government agency
- Supplier agreed to the terms of the Procuring Entity and **remains legally, technically, and financially capable** to undertake the contract

11. Direct Procurement for Science, Technology, and Innovation

Procuring Entity may procure certain goods directly from a legally, technically, and financially capable supplier or qualified startup business

When Available?

If the **goods** to be procured are **ANY** of the following:

- Supplies, equipment, and related service to be used actually, exclusively, and directly in the conduct of **research and development project or activities**
- Goods including products of a **commissioned task** by a Procuring Entity that was processed, developed, and manufactured in satisfaction of its needs and requirements, including:
 - Pre-commercial goods and services (not yet in the market)
 - Goods to be manufactured by qualified startup business
- Other analogous goods

Competitive Bidding

Video Recording of All Procurement-Related Conferences

Applicability

Only to procurements under competitive bidding, reaching the following thresholds:

Goods	Above 10 million
Infrastructure Projects	Above 20 million
Consulting Services	Above 5 million

- A video recording for applicable procurements is required to enhance transparency for the commencement of the following conferences:
 - Pre-Procurement Conference
 - Pre-Bid Conference
 - Bid Opening
 - Other BAC Meetings

XPN:

The HoPE can decide whether or not to video record when **National Security is involved**

Storage and Public Availability

Copies of the video recording must be **stored for at least 5 years**, and is available to the public upon request and payment of fee

Livestream

Required to applicable procurement on the Procuring Entity's **website, social media account, or any other form of livestreaming services**, on the following:

- Preliminary Examination
- Opening of Bids to the Public

BIDDING DOCUMENTS, PRE-PROCUREMENT CONFERENCE, AND PUBLICATION OF INVITATION TO BID



Preparation of Bidding Documents

No aspect of the Bidding Documents shall be divulged to any interested prospective bidder prior to their official release

Bidding Documents shall include:

- Approved Budget for the Contracts (ABC)
- Invitation to Bid or Request for Expression of Interest
- Instruction to Bidders
(Includes Criteria for Eligibility and Bid Evaluation with respective weight assigned, the Date, Time, and Place of Pre-Bid Conference, and Submission and Opening of Bids)
- Terms of Reference
- Scope of Work
- Eligibility Requirements
- Plans and Technical Specifications
- Form of Bid, Price Form, and List of Goods or Bill of Quantities
- Form and Amount of Bid Security, Performance Security, and Warranty
- Form of Contract (with General and Special Conditions)
- Any necessary additional documentary requirements

Pre-Procurement Conference

General Rule:

Required for each and every procurement

XPN: Optional for any of the following

- Procurement **within the threshold**

Goods	5,000,000 and below
Infrastructure Projects	10,000,000 and below
Consulting Services	2,000,000 and below

- Procurements involving and **affecting National Security**

Criteria for Contract Award

ANY of the following as resolved by the BAC:

- Lowest Calculated Responsive Bid (LCRB)
- Most Economically Advantageous Responsive Bid (MEARB)
- Most Advantageous Responsive Bid (MARB)
- Highest Rated Responsive Bid (HRRB)

(Old - only LCRB and HRRB are present)

	Applicability	Considerations	Awarded to
LCRB	G/IP	Price only	Lowest Financial Bid
MEARB	G/IP	Price and Quality (Price-Quality Ratio)	Best Overall Score
MARB	G/IP	Quality only	Highest Rated Offer
HRRB	CS	Quality (Quality-Cost Ratio)	Highest Rated Offer

Publication of Invitation to Bid

General Rule:

Publication in the Procuring Entity's Website, Social Media Platforms, or Other Authorized Channels

XPN:

- For justifiable reasons, cannot publish in any of the channels, the Procuring Entity may publish **at least once in a Newspaper of General Nationwide Circulation**
- Publication is optional for procurements **involving and affecting National Security**

Publication as to Different Modes of Procurement

- Competitive Bidding, Competitive Dialogue, and Unsolicited Offer with Bid Matching**

Posted at the following **for 7 Calendar Days**:

- At any **conspicuous place** in the Procuring Entity's premise
- PhilGEPS Website**
- Procuring Entity's Website**
- If applicable, **Website prescribed by the Foreign Gov't or International Financing Institution**

- Limited Source Bidding, Two Failed Biddings, Small Value Procurement, and NGO Participation**

Posted at the following **for 3 Calendar Days**:

- At any **conspicuous place** in the Procuring Entity's premise
- PhilGEPS Website**
- Procuring Entity's Website**

- Other Modes of Procurement**

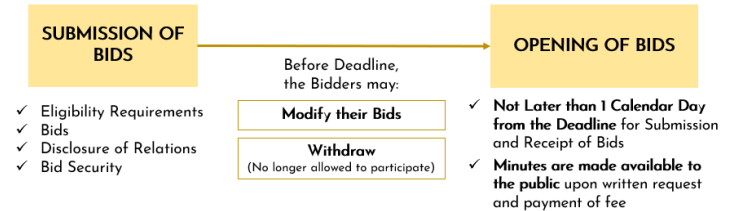
- Not required to comply with publication requirements

PRE-BID CONFERENCE

- Discusses, clarifies, and explains the eligibility requirements and the technical and financial components, including questions and clarifications raised by prospective bidders
- Held **at least 12 calendar days before the deadline for submission and receipt of bids**, but **not earlier than 7 calendar days from posting of Invitation to Bid** in the PhilGEPS

Mandatory	Procurement projects to be <u>bid through competitive selections</u> with ABC of at least 3,000,000 : - Competitive Bidding - Competitive Dialogue - Limited Source Bidding - Unsolicited Offer with Bid Matching
Optional	Procurement projects: - With ABC less than 3,000,000 - Involving and affecting National Security

RECEIPT, OPENING, AND SUBMISSION OF BIDS



- The whole action on procurement activities from opening of bids up to award of contract shall **not exceed 60 calendar days**

Eligibility Requirements

To ensure that the bidder is technically, legally, and financially capable to undertake the project, he shall be required to **submit a Valid and updated PhilGEPS Certificate of Registration and Membership**

Bid Components

- 2 Components: **Technical and Financial Components**
- Submitted simultaneously in separate sealed envelopes
- Received by the BAC
- Deadline of receipt of bid is fixed by the BAC consideration sufficient time to complete the bidding process, for the bidders to study and prepare their bids, and the urgency of the procurement involved
- Bids submitted after deadline shall NEVER be accepted**

Bid Security

Guarantees that the winning bidder shall:

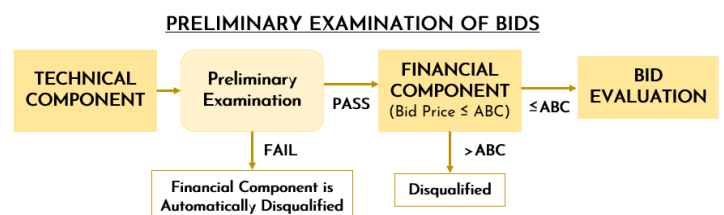
- Enter into contract** within the stipulated time, and
- Furnishes the required **performance security**

Disclosure of Relations

Sworn affidavit by the bidder that he or any officer of their corporation is not related by consanguinity or affinity up to the third civil degree to the following:

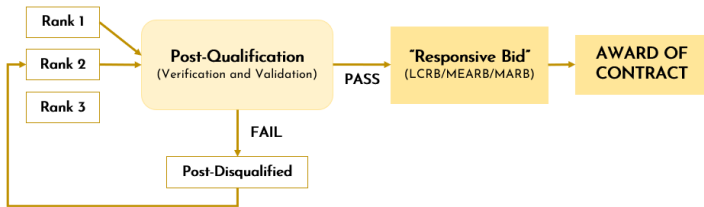
- HoPE
- Procurement Agent, if engaged
- Members of the BAC, TWG, and BAC Secretariat
- Head of Project Management Offices
- End-User or Implementing Unit
- Project Consultants
- The bidder shall also **disclose the ultimate beneficial ownership** of an entity
- Failure to comply with disclosure of relation shall be a ground for **automatic disqualification of the bid**

BID EVALUATION AND POST-QUALIFICATION



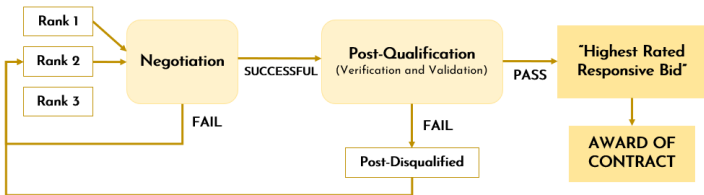
- Preliminary examination shall first be made on the **Technical Component** of the Bids using a "pass or fail" criteria

BID EVALUATION FOR GOODS AND INFRASTRUCTURE PROJECTS



- Bid evaluation process for procurement of goods and infrastructure projects shall be **completed within 7 days from the deadline for receipt of proposals**
- BAC shall specify the quality-price ratio and the criteria for assessing the quality component for MEARB, with the **price proposal to be given a minimum weight of 15-40%**

BID EVALUATION FOR CONSULTING SERVICES



- Bid evaluation process for procurement of consulting service shall be **completed within 3 days from the deadline for receipt of proposals**
- Shall only be evaluated using the Highest Rate Bid criteria

Post-Qualification

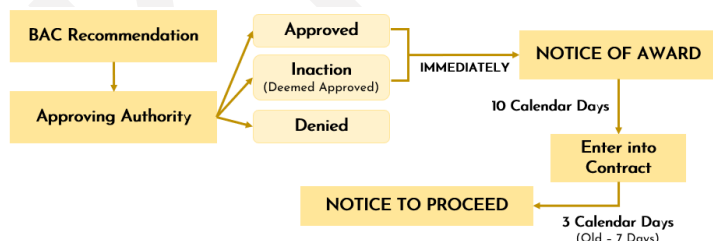
- Done to determine whether the bidder with the LCB/MEAB/MAB/HRB has **passed all the requirements and conditions as specified** in the Bidding Documents
- Shall be **completed in not more than 12 calendar days** from the determination of the LCB/MEAB/MAB/HRB

Failure of Bidding

In ANY of the following instances:

- No bids received
- All bidders are declared ineligible
- No bid qualifies as LCRB/MEARB/MARB/HRRB, or the bidder who qualified refuses without justifiable cause to accept the award of contract
- The contract shall be **re-published or reposted and re-bid**
- After the second failed bidding, the BAC may resort to **Negotiated Procurement**

AWARD AND IMPLEMENTATION OF CONTRACT



Approving Authority

General Rule:

HoPE, within 10 Calendar Days from BAC Recommendation
(Old - 15 Calendar Days)

XPNS:

Higher Authority is Required	Within 15 Calendar Days (Old - 20 Calendar Days)
GOCCs	Within 20 Calendar Days (Old - 30 Calendar Days)
Extension (New)	- For reasons beyond the control of the Procuring Entity or Approving Authority - For other justifiable reasons

Disapproval or Denial

- Must be based only on **valid, reasonable, and justifiable ground**
- Must be expressed **in writing**
- Must furnish a copy to the BAC

Reservation Clause

HoPE reserves the right to reject bids, declare a failure of bidding, or not award the contract in ANY of the following situations

- Prima Facie Evidence of **Collusion**
(Including any act which restricts, suppresses, or nullifies competition)
- BAC **Failed to Follow Prescribed Bidding Procurement**
- For Justifiable and Reasonable Ground where award of the contract **will Not Redound to the Benefit of the Government**
- Project is **no longer necessary**
- Source of **funds has been withheld or reduced** with no fault of the Procuring Entity
- Physical and economic conditions have significantly changed to render the **project no longer economically, financially, or technically feasible**

Performance Security

- Required as a measure of guarantee for the faithful performance and compliance of the winning bidder of its obligations under the contract
- Remains **effective until the final acceptance** by the Procuring Entity
- Part of what the Bid Security guarantees, together with entering into contract

Failure to Enter into Contract and Post Performance Security

In both cases, the BAC shall **disqualify the winning bidder and perform post-qualification for those next in rank** until there is a new winning bidder

Failure to	Forfeiture of Bid Security
Enter into Contract <u>With</u> Justifiable Reasons	Not Forfeited
Enter into Contract <u>Without</u> Justifiable Reasons	Forfeited
Post Required Performance Security	

TERMINATION OF CONTRACT

A. By the Procuring Entity

i. For Breach of Contracts

Goods and Consulting Services	If BOTH are met: - Supplier or consultant <u>fails to deliver goods or perform deliverables within the specified period or any extension granted</u> - Failure amounts to at least 10% of the contract price
Infrastructure Projects	In ANY of the following: - Contractor's negative slippage of 15% or more while the <u>project is on-going</u> - Contractor's negative slippage of 10% or more after the <u>contract time has expired</u> - Contractor <u>abandons the work</u>, demonstrates an <u>intention not to continue</u>, refuses or fails to comply with Procuring Entity's instructions, or <u>fails to proceed expeditiously and without delay</u> despite Procuring Entity's Written Notice - Contractor <u>fails to comply the Notice of Rejection</u> by the Project Engineer <u>without reasonable excuse</u> - Contractor does not actually have the minimum essential equipment listed on the Bid - Contractor does not execute the works in accordance with the contract or <u>persistently neglects to carry out its obligations</u> under the contract - Contractor <u>neglects or refuses to remove materials or perform new work</u> that has been rejected as defective or suitable - Contractor <u>subcontracts</u> without Procuring Entity's approval - Contractor becomes bankrupt or insolvent - Contractor undergoes liquidation, re-organization, winding-up, or dissolution - Contractor becomes <u>subject to the appointment of a liquidator, receiver, administrator, manager, or trustee</u> - Contractor <u>enters into a composition arrangement with its creditors</u> or any analogous act

ii. For Force Majeure

In ANY of the following conditions, upon notice sent to supplier:

- Physical and economic **conditions have significantly changed making the project no longer economically, financially, or technically feasible**
- HoPE determined existence of **conditions that make the project implementation impractical or unnecessary**
(Ex. Fortuitous events, change in laws, and change in government principles)
- Funding for the project has been **withheld or reduced** with no fault of the Procuring Entity
(Exclusive only to Goods and Consulting Services)

iii. For Unlawful Acts

Procuring Entity may terminate the contract in case it is determined prima facie that the **supplier, contractor, or consultant has engaged in unlawful deeds and behaviors relating to contract acquisition and implementation, whether before or during contract implementation**

Examples of Unlawful Acts:

- Corrupt, fraudulent, collusive**, and coercive practices
- Forgery** of documents
- Using **adulterated (mixed with lower quality) materials, means, or methods**, or engaging in production contrary to rules

B. By the Contractor or Consultant

Goods	No Valid Ground to Terminate the Contract
Infrastructure Projects	If the works are <u>completely stopped for at least 60 calendar days continuously with no fault</u>, due to ANY of the following reasons: - Procuring Entity's failure to deliver supplies, materials, right-of-way, or other items obligated to furnish within a reasonable time - Procuring Entity's substantial failure to perform its obligation under the contract, constituting a <u>material breach of the contract</u> - Procuring Entity's prolonged suspension of the work, affecting the substantial part of the infrastructure project - Prosecution of work is disrupted by the adverse peace and order situation as <u>certified by AFP Provincial Commander and approved by the Defense Secretary</u>
Consulting Services	Through a written notice at least 30 days prior to intended termination, if with <u>no fault</u>, ANY of the following conditions exist: - Procuring Entity's <u>material breach</u> of its obligation under the contract, not remedied within 60 calendar days from receipt of consultant's notice of such breach - Procuring Entity's substantial failure to perform its obligation under the contract - Procuring Entity's prolonged suspension of the work, affecting the substantial part of the consulting project In any case, the Procuring Entity shall return to the consultant its performance security and unpaid claims