

**IMPLEMENTING RULES AND REGULATIONS OF  
EXECUTIVE ORDER NO. 40, SERIES OF 2001, CONSOLIDATING PROCUREMENT  
RULES AND PROCEDURES FOR ALL NATIONAL GOVERNMENT AGENCIES,  
GOVERNMENT-OWNED OR –CONTROLLED CORPORATIONS AND GOVERNMENT  
FINANCIAL INSTITUTIONS, AND REQUIRING THE USE OF THE GOVERNMENT  
ELECTRONIC PROCUREMENT SYSTEM**

**GENERAL PROVISIONS**

**Section 1. Scope and Application**

1.1. These Implementing Rules and Regulations (IRR), shall govern and apply to the procurement of: a) civil works; b) goods, supplies, materials, and related services; and c) consulting services by all agencies or subdivisions of the National Government including State Universities and Colleges (SUCs), Government-Owned or – Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Local Government Units (LGUs) with respect to procurements funded by the national government. LGUs are encouraged to adopt this set of rules and procedures also for LGU-funded procurements. These IRR shall generally cover the procurement activities from the pre-procurement conference up to the award of contract.

1.2. For procurement financed wholly or partly from Official Development Assistance (ODA) funds from International Financing Institutions (IFIs), as well as from bilateral and other sources, the corresponding loan/grant agreement governing said funds as negotiated and agreed upon by and between the Government and the concerned IFI shall be observed.

**Section 2. Statement of Policy**

2.1. It is the policy of the Government that procurement of civil works, goods, supplies, materials and related services, and consulting services shall be competitive and transparent, and therefore shall be through public bidding, except as otherwise provided in these IRR. It is also the policy of the Government to adopt a standard and uniform set of rules and regulations governing the procurement of civil works, goods and consulting services for government projects and other related activities that embodies a streamlined procurement process. These IRR are in line with the government's commitment to good governance and with its effort to adhere to the principle of transparency, accountability, equity, efficiency, and economy in the government procurement process.

**Section 3. General Guidelines on Procurement Reforms and Definition of Terms**

3.1. Government procurement of civil works, goods, supplies, materials and related services, and consulting services shall be guided by the following reform principles:

- a) Simplification of pre-qualification through the use of eligibility check, and strengthening of post-qualification;
- b) Use of the Lowest Calculated and Responsive Bid as the criterion of award in the case of procurement of goods, supplies, materials and

related services, and civil works; and the Highest Rated and Responsive Bid for consulting services;

- c) Use of the approved budget for the contract as the ceiling for the bid price and the award of the contract to strengthen fiscal discipline and promote transparency; and
- d) Use of transparent, objective and non-discretionary criteria in undertaking eligibility check, evaluating bids, and determining the lowest calculated and responsive bid or highest rated and responsive bid through post-qualification and the presentation of these criteria in the bidding documents.

3.2. The consulting services for government projects shall as much as possible be financed from the agency budget. Whenever consulting services for government projects are to be financed from foreign sources, the same shall preferably be funded from foreign grants, and the agreements covering such foreign grants shall as much as possible adhere to these IRR. Likewise, for consulting services funded from foreign loans and credits, conditions in the loan agreements with the foreign governments or lending institutions shall be in full conformity with these IRR except as may otherwise be authorized pursuant to Section 4 of Republic Act No. 4860, as amended (R.A. 4860), otherwise known as the "Foreign Borrowings Act."

### 3.3. *Definition of Terms*

- a) **Agency.** Agency refers to any agency, subdivision or department of the National Government, including SUCs, GOCCs and GFIs; and LGUs, where so applicable, procuring goods, supplies, materials and related services, civil works, and/or consulting services. For purposes of, and throughout, these IRR, the term "agency" shall be equivalent to and be used interchangeably with "procuring entity."
- b) **Approved Budget for the Contract.** The Approved Budget for the Contract (ABC) shall be the budget for the contract as approved by the head of the department or agency, in the case of the National Government; the Board of Trustees or Directors in the case of SUC, GOCC and GFI, or the Local Chief Executive in the case of LGU, or their duly designated officials. For purposes of, and throughout, these IRR, the terms "ABC," "Approved Budget for the Contract," and "Approved Budget" shall have the same meaning and shall be used interchangeably.
- c) **BAC.** The Bids and Awards Committee or BAC refers to the body, or its designated organic office, responsible for the agency's procurement activities from pre-procurement conference up to the recommendation of award.
- d) **Bid.** A Bid is a signed offer to undertake a contract submitted by a bidder in consonance with the requirements of the bidding documents. For purposes of, and throughout, these IRR, the term "Bid" shall be equivalent to and be used interchangeably with "Proposal," particularly when referring to the procurement of consulting services. A bid has two

components, namely: (i) the technical proposal; and (ii) the financial proposal.

- e) **Bidder.** Bidder refers to an eligible contractor, supplier or consultant competing for the award of a contract in any government procurement. A contractor, supplier, or consultant is said to be eligible if it meets all the eligibility requirements as specified in the invitation to bid.
- f) **Bidding Documents.** Bidding Documents are the documents issued by the procuring agency as the bases for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the goods, supplies, materials and related services, civil works, and/or consulting services required by the agency.
- g) **Calculated Bid.** Calculated bid is one which has undergone checking for completeness, mathematical accuracy, comparability and absence of major deviations of financial proposals as part of bids.
- h) **Civil Works.** Civil Works include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, irrigation, flood control and drainage, water supply, sanitation and sewerage systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. For purposes of, and throughout, these IRR, the term “civil works” shall be equivalent to and be used interchangeably with “infrastructure projects.”
- i) **Common-Use Supplies.** Common-use supplies are those goods, materials and equipment that are repetitively used in the day-to-day operations of government agencies in the performance of their functions. For the purpose of these IRR, common-use supplies shall be those included in the Price List of the Procurement Service.
- j) **Consulting Services.** Consulting Services are services for infrastructure projects and other types of projects of the government, requiring adequate technical expertise and financial capability in undertaking the following types of services: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; (vi) other technical services or special studies. These services may be in the fields of Engineering, Architecture, Law, Finance, Management, Agriculture and the like. The components or activities included in the above-mentioned services are described in Section 4 of these IRR.
- k) **Eligibility.** Eligibility shall mean authorization or pre-qualification for manufacturers, suppliers and/or distributors, contractors, or consultants to submit bids to compete for the award of a contract in any government procurement.

- l) **Eligibility Check.** Eligibility Check refers to a simplified form of pre-qualification based on non-discretionary pass/fail criteria, as specified in Sections 16 and 17 of these IRR.
- m) **Goods, Supplies, Materials and Related Services.** Goods, Supplies, Materials and Related Services include those which may be needed in the transaction of public businesses, or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction or personal property of any kind, including personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies that may be required by the procuring agency for such services, except consulting services, real estate and infrastructure projects. For purposes of, and throughout, these IRR, the terms “goods, supplies, materials and related services” shall be equivalent to and be used interchangeably with “goods.”
- n) **Head of the Agency.** The Head of the Agency refers to: (i) the head of the agency, for national agencies; (ii) the Board of Trustees or Directors, for SUCs, GOCCs and GFIs; or (iii) the local chief executive, for LGUs. To expedite the procurement process, the head of the agency may delegate specific functions to his/its duly authorized officials.
- o) **INFRACOM.** INFRACOM refers to the Committee on Infrastructure of the National Economic and Development Authority (NEDA) Board, created under Executive Order No. 230, series of 1988.
- p) **Major Deviation.** A Major Deviation is a deviation in a bid from what is stated in the Instructions to Bidders and other Bidding Documents which, if allowed, would not fulfill the purpose for which the bid is requested, or would prevent a fair comparison with bids that comply with the bidding documents.
- q) **PPB.** PPB refers to the Procurement Policy Board created under Executive Order No. 359, series of 1989.
- r) **Procurement.** Procurement refers to the acquisition of: (i) goods, supplies, materials and related services; (ii) consulting services; and/or (iii) the contracting for civil works by an agency. For purposes of these IRR, the term “procurement” also covers the lease of goods, supplies and materials.
- s) **Public Bidding.** Public Bidding refers to a method of procurement which consists of: advertisement; eligibility check of prospective bidders; receipt, opening and abstracting of bids; evaluation of bids; post-qualification; and award of contract; the requirements and mechanics of which are specified in these IRR.

- t) **Rated Bid.** A Rated Bid is one which has undergone evaluation/assessment of the completeness, validity and accuracy of bids.

#### 3.4. *Detailed Engineering for the Procurement of Civil Works*

No bidding and/or award of contract for civil works shall be made unless the detailed engineering investigations, surveys and designs for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the head of the agency concerned or his duly authorized representative, and in accordance with the provisions of Annex "A" of these IRR.

### **Section 4. Procurement Management Plan**

4.1. Each agency shall judiciously prepare, maintain and update an Agency Procurement Management Plan (APMP) for all its procurements, that shall include, for each individual project, a Project Procurement Management Plan (PPMP). The APMP shall bear the approval of the head of the agency or second-ranking official designated by the head of the agency to act in his behalf.

4.2. The PPMP shall include: a) the type of contract to be employed; b) the extent/size of contract scopes/packages; c) the procurement methods to be adopted and indicating if the procurement tasks are to be outsourced as provided in Section 28 of these IRR; d) time schedule for each procurement activity; and e) the budget allocated for each procurement. The APMP shall include provisions for foreseeable emergencies based on historical records.

4.3. The preparation and updating of the PPMPs shall be the responsibility of the respective Project Management Offices (PMOs) or end-user units of the agencies, while the consolidation of these PPMPs into an APMP shall be lodged with the BAC Secretariat of that agency. These units may avail of the services of technical experts to review the individual PPMPs.

4.4. Updating of the individual PPMPs and the consolidated APMP for each agency shall be undertaken every six (6) months or as often as may be required by the head of the agency. Implementation of any project not included in the agency's APMP shall not be allowed. However, procurements that are urgently needed to prevent imminent danger to, or loss of, life or property, may proceed independently of the procurement plan if and when this special need is required as determined by the head of the agency; *Provided*, That the existing procedures for such situations requiring economy, efficiency, transparency and fair competition are followed to the extent possible.

4.5. The preliminary APMP of agencies for the succeeding year shall be submitted to the PPB and INFRACOM by the end of the Third Quarter of the preceding year. The approved APMPs of agencies for the current year shall be submitted to the PPB and INFRACOM within five (5) working days after the obligational ceilings shall have been issued by the Department of Budget and Management (DBM).

### **Section 5. Procurement of Common-use Supplies, Materials and Equipment**

5.1. Agencies shall procure common-use supplies, materials and equipment from the Procurement Service (PS) attached to DBM, in accordance with Letter of Instructions No. 755, Executive Order Nos. 289 series of 1987, 359 series of 1989, and 322 series of 2000, using the Electronic Procurement System (EPS) referred to in Section 37 of E.O. 40 and these IRR. Agencies without internet access may avail of the EPS Public Access Terminals which shall be installed at DBM designated locations in the provinces and in Metro Manila. Small volume purchases by agencies, as defined in Section 39 of these IRR, through the electronic catalogue of non common-use goods, supplies and materials, are allowed without need of public bidding.

## **Section 6. Manuals, Standard Bidding Documents and Training**

6.1. PPB and INFRACOM shall jointly pursue the development of generic procurement manuals and standard bidding documents, and shall establish a continuing training program for developing the capacity of and professionalizing the BACs, BAC Secretariats and Technical Working Groups of the agencies.

6.2. The generic procurement manuals, generic standard bidding documents and standard evaluation documents shall be adopted by agencies according to their specific needs in accordance with the provisions of these IRR.

## **BIDS AND AWARDS COMMITTEE**

### **Section 7. The BAC and its Composition**

#### *7.1. BAC Structure*

Each agency shall establish in its head office a single Bids and Awards Committee (BAC) for the procurement of goods, supplies, materials and related services; civil works; and consulting services. However, to expedite the procurement process for practical intents and purposes, the agency head may create separate BACs where the number and complexity of the items to be procured shall so warrant. The BACs shall be organized either according to: (a) source of funding; (b) geographical location of PMO or end-user units of the agency; or (c) in the case of infrastructure agencies, nature of procurement. Similar committees for decentralized and lower level offices may also be formed when deemed necessary by the head of the agency.

#### *7.2. BAC Composition*

The BAC shall be a five-member team composed of the chairperson and four members designated by the head of the agency. Three of these shall consist of the regular members of the BAC; the other two (2) being provisional members.

1. 1. Regular Members. Regular members of the BAC shall be designated for a fixed term of three (3) years on a staggered basis. To the extent possible, the technical, legal and finance areas of the agency shall each be represented in this fixed-term group, which include the chairperson, who shall be at least a third-ranking official of the agency or unit. In the decentralized units or offices, where the agency may not have a legal officer in its *plantilla* positions or the legal officer is not available,

the administrative officer of the agency concerned may be the voting member who will be responsible for the legal issues of the procurement..

2. 2. Initially, the chairperson shall be appointed for a term of three (3) years, one member for two (2) years, and the other member for one (1) year. Redesignation may be allowed for one term. In case of resignation, retirement, separation, transfer, removal, leave for at least six (6) months or suspension for cause of the incumbent, the replacement shall serve for only the unexpired term.
3. 3. At the option of the head of the agency, one of the regular members may be designated as vice-chairperson to perform the duties of the chairperson in his absence.
4. 4. Provisional Members. The two (2) other members shall be technical members, who shall preferably be from the project end-user or project PMO.
5. 5. Members of BAC of the agency central office shall be at least a fifth ranking, permanent personnel. For bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel of that bureau, regional office, or sub-regional/district office.

## **Section 8. Functions of the BAC**

8.1. The BAC shall determine the eligibility of prospective bidders, receive and open bids, conduct evaluation of bids, undertake post-qualification proceedings, and recommend award of contract. The scope of the BAC activities shall be from the pre-procurement conference up to the issuance of the recommendation of award.

### *8.2. Jury Duty*

To eliminate delay in the procurement process, all members of the BAC shall be on a "jury duty" type of assignment until the Notice of Award is issued by the head of agency. The term "jury duty" shall be understood to mean a state by which the members give utmost priority to BAC assignments over all other duties and responsibilities until the requirements for the said assignments at hand are completed.

### *8.3. Procurement Proficiency*

In addition to integrity, heads of agencies shall consider procurement proficiency as a factor in designating officials to the BAC as well as the head of the Secretariat. In turn, the BAC shall consider the same in their selection of the Technical Working Group (TWG) members.

## **Section 9. Observers**

9.1. To enhance the transparency of the procurement process, the BAC shall select and invite, in addition to the representative of the Commission on Audit, at least two (2) observers from the relevant sectors to sit in and monitor the proceedings to be selected

by the BAC, who shall sit and function as non-voting members of the BAC: *Provided, however,* That they do not have any direct or indirect interest in the contract to be bid, namely:

1. One (1) shall come from: (a) a duly recognized private sector association, chamber or organization in a discipline which is relevant to the contract under procurement, e.g. constructors' associations for civil works contracts such as the Philippine Constructors Association (PCA), National Constructors Association of the Philippines, Inc. (NACAP) or an association duly recognized by the Construction Industry Authority of the Philippines (CIAP); or a specific relevant chamber-member of the Philippine Chamber of Commerce and Industry (PCCI) for goods, supplies, materials or relevant services contract; or (b) from a project-related professional organization accredited or duly recognized by the Professional Regulation Commission or the Supreme Court, such as the Philippine Institute of Civil Engineers (PICE) for civil works and related consulting services procurement, and the Philippine Institute of Certified Public Accountants (PICPA) for other types of contracts; and
2. The other observer shall come from the end-user group or a non-government organization (NGO).

9.2. The head of the BAC Secretariat shall sit as a non-voting member of the BAC.

9.3. For GOCCs, a representative from the department to which it is attached shall also be invited as a non-voting member.

## **Section 10. Checks and Balances**

10.1. To avoid the existence of, or the perception of the existence of conflict of interest, the BAC chairperson and the official who will sign the ensuing contract for the agency shall not be the same person.

## **Section 11. BAC Secretariat**

11.1. The agency shall create a Secretariat, or designate an organic office within the agency to act as Secretariat, to be the main support unit of the BAC. The Secretariat shall have the following functions and responsibilities:

1. Provide administrative support to the BAC;
2. Organize and make all necessary arrangements for the BAC meetings;
3. Attend BAC meetings as Secretary;
4. Prepare Minutes of the BAC meetings;
5. Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;
6. Manage procurement processes for the BAC;
7. Monitor procurement activities and milestones for proper reporting to relevant agencies when required;
8. Consolidate PPMPs from various units of the agency to make them available for review as indicated in Section 4 of these IRR;

9. Make arrangements for the pre-procurement and pre-bid conferences and bid openings; and
10. Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, works and consulting services, and the general public.

11.2 11.2 The head of the Secretariat in central offices shall be at least a fifth ranking official or, if not available, an official of the next lower rank; or shall be at least a third ranking official in bureaus, regional offices and sub-regional/ district offices, or if not available, an official of the next lower rank.

## **Section 12. Technical Working Group**

12.1. For each specific procurement, the BAC may create a Technical Working Group (TWG) from a pool of technical, financial and/or legal experts to assist in the eligibility screening and evaluation of bids. The members of the TWG shall also be on “jury duty” type of assignment.

## **STANDARDIZED PROCEDURES FOR PUBLIC BIDDING**

### **Section 13. Pre-procurement Conference**

13.1. Prior to the advertisement or the issuance of the Invitation to Apply for Eligibility and to Bid for each procurement undertaken through a public bidding, the BAC, through its Secretariat, shall call for a pre-procurement conference. The pre-procurement conference shall be attended by the BAC, the Secretariat, the unit or officials, including consultants hired by the agency who prepared the technical plans, technical specifications, TORs, bidding documents and the draft advertisement, as the case may be, for each procurement, as well as those who separately reviewed these documents prior to final approval, if any. During this conference, the participants, led by the BAC, shall:

1. Ensure that the procurement is in accordance with the project and agency procurement management plans;
2. Determine the readiness of the procurement at hand, including, among other aspects, confirmation of the availability of right-of-way (ROW), the ownership of affected properties, availability of funds, and adherence of technical plans, specifications, and/or Terms of Reference (TOR), and adherence to general government and/or IFI procurement guidelines;
3. 3. Review, modify and agree on the criteria for eligibility screening to ensure their fairness, reasonableness and that they are of the “pass/fail” type and are written in such manner;
4. 4. Review, modify and agree on the criteria for the evaluation of bids/proposals to ensure their fairness, reasonableness and applicability to the procurement at hand;

5. Determine whether the evaluation method to be employed shall be of the type where all minor variations are quantified and expressed in monetary terms as penalties/bonuses to the bid price; and
6. Reiterate, agree on measures to ensure, and emphasize the importance of, confidentiality during the bid evaluation process, as well as the applicable sanctions, if any.

13.2. The holding of a pre-procurement conference may not be required for small procurements, i.e., procurement of goods costing two million pesos (P2,000,000.00) and below; procurement of works costing five million pesos (P5,000,000.00) and below, and procurement of consulting services costing one million pesos (P1,000,000.00) and below.

#### **Section 14. Invitation to Bid**

##### *14.1. Contents of the Invitation to Apply for Eligibility and to Bid*

The Invitation to Apply for Eligibility and to Bid shall provide prospective bidders the following information, among others:

1. The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned agency, as well as its designated contact person;
2. For the procurement of:
  - a) Goods, the name of the contract to be bid and a brief description of the goods to be procured;
  - b) Civil works, the name and location of the contract to be bid, 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; and
  - c) Consulting services, the name of the contract to be bid, a general description of the project and other important or relevant information;
3. The criteria to be used by the agency in the following: (i) eligibility check of prospective bidders; (ii) examination and evaluation of bids; and (iii) postqualification; which shall be on a non-discretionary "pass/fail" basis;
4. The approved budget for the contract to be bid and the source of funding;
5. The period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the bidding documents;

6. The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids; and
7. The contract duration or delivery schedule.

14.2. *Advertising and Posting of the Invitation to Apply for Eligibility and to Bid*

14.2.1. Except as otherwise provided in Sections 14.2.2 and 14.2.3 of these IRR, the Invitation to Apply for Eligibility and to Bid shall be:

- a) Advertised at least twice within a minimum period of two (2) consecutive weeks, with a period of seven (7) calendar days between publications, in at least two (2) newspapers of general nationwide circulation which have been regularly published for at least two (2) years before the date of issue of the advertisement;
- b) Posted continuously in the website of the agency concerned, if available, the website of the agency's service provider for its electronic bidding system (EBS), if any, as provided in Section 38.5.4 of these IRR, and the EPS during the two-week period stated above;
- c) Posted at any conspicuous place reserved for this purpose in the premises of the agency concerned, as certified by the head of the BAC Secretariat of the agency concerned; and
- d) With the following periods between the last day of the period for advertising and/or posting and opening of bids:
  - (i) For goods, a maximum period of thirty (30) calendar days.
  - (ii) For civil works:

<b>Estimated Contract Cost (in pesos)</b>	<b>Maximum Period</b>
Up to twenty five (25) million	30 calendar days
Above twenty five (25) million up to fifty million	45 calendar days
Above fifty (50) million up to one hundred (100) million	60 calendar days
Above one hundred (100) million	90 calendar days

In case of simple or repetitive or standardized jobs where time is of the essence, the head of the agency may reduce the above term of issuance to not less than fifty percent (50%).

- (iii) For consulting services, a maximum period of seventy-five (75) calendar days.

14.2.2. For contracts to be bid with an ABC costing two million pesos (P2,000,000.00) and below for the procurement of goods, and five million pesos (P5,000,000.00) and below for the procurement of civil works, the Invitation to Apply for Eligibility and to Bid shall be posted at least in the website of the agency concerned, if available, the website of the agency's service provider for its electronic bidding system (EBS), if any, as provided in Section 38.5.4 of these IRR, the EPS, and posted at any conspicuous place reserved for this purpose in the premises of the agency concerned, as certified by the head of the BAC Secretariat of the agency concerned, during the same period as above. For projects/contracts for consulting services with an ABC costing five hundred thousand pesos (P500,000.00) and below and/or those whose duration is four (4) months or less, the Invitation to Apply for Eligibility and to Bid shall be posted at least in the website of the agency concerned, if available, the website of the agency's service provider for its electronic bidding system (EBS), if any, as provided in Section 38.5.4 of these IRR, the EPS, and posted at any conspicuous place reserved for this purpose in the premises of the agency concerned, as certified by the head of the BAC Secretariat of the agency concerned, during the same period as above.

14.2.3. For alternative methods of procurement as provided for in Section 35 of these IRR, advertisement in a newspaper as required in this Section may be dispensed with: *Provided, however,* That posting shall be made in the website of the agency concerned, if available, the EPS, and posted at any conspicuous place reserved for this purpose in the premises of the agency concerned, as certified by the head of the BAC Secretariat of the agency concerned, during the same period as above.

### 14.3. *Bidding Documents*

14.3.1. Prospective bidders shall be given ample time to examine the bidding documents and to prepare their respective bids. To provide ample time, the concerned BAC shall promptly issue the bidding documents for the contract to be bid at the time the Invitation to Apply for Eligibility and to Bid is first advertised; in the case where payment to obtain the bidding documents is required, the BAC shall issue the bidding documents upon payment of the corresponding cost thereof to the collecting/disbursing officer of the agency: *Provided, however,* That for the procurement of civil works and consulting services, the bidding documents shall be made available only to eligible bidders.

14.3.2. The bidding documents shall consist of the following:

- a) The terms of reference for the procurement (TOR) including, among others, the Instructions to Bidders and, if applicable, the required form and amount of Bid Security;
- b) Contract Plans and Specifications, if applicable;
- c) Draft Contract Form, including the Terms and Conditions and form and amount of the Performance Security, if applicable;
- d) Bid Form consisting of: (i) the technical proposal form, including the required technical information and other supporting documents; and (ii) the financial proposal form, including Bill of Quantities against which bid prices are to be offered by the bidder, if applicable;

- e) For the procurement of consulting services: (i) information required to be submitted by the consultants in their proposals, such as experience and capability of the consultants and their personnel, proposed methodology and discussion of activities to be performed, work plan and schedule of activities including estimates of man-months and Project Evaluation Review Technique/Critical Path Method (PERT/CPM) diagram or equivalent, personnel to be assigned to the job (manning schedule) with their curriculum vitae and responsibilities in the undertaking and organizational structure, and current work commitments and assignments of key personnel; (ii) supplemental information to the consultants to guide them in preparing their proposals, such as items/information on which primary emphasis shall be placed in the evaluations of proposals, estimated man-months, data requirements and availability, and information on policies related to the job; and (iii) the criteria with its relative weights and the system of rating for short listing and for evaluating consultants; and
- f) Other relevant information.

14.3.3. The TOR shall clearly and adequately define, among others: (a) the Instructions to Bidders; (b) the objectives, scope and expected outputs and/or results of the proposed contract; (c) the expected contract duration, the estimated quantity in the case of procurement of goods, delivery schedule and/or time frame; (d) the obligations, duties and/or functions of the winning bidder; and (e) the minimum requirements of bidders, such as a track record for a minimum period of three (3) years or less in special cases, as may be determined by the BAC. The TOR may be supplemented by additional information, such as summary of data, facilities, and/or services, where applicable, which will be provided by the agency to the prospective bidders. The TOR, as may be amended, shall subsequently form an integral part of the contract.

#### 14.4. *Responsibility of Prospective or Eligible Bidder*

14.4.1. A prospective or eligible bidder shall be responsible for:

- a) Having taken steps to carefully examine all of the bidding documents;
- b) Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
- c) Having made an estimate of the facilities available and needed for the contract to be bid, if any; and
- d) Having complied with his responsibility as provided for under Section 14.5.1.

Failure to observe any of the above responsibilities shall be at the risk of the prospective bidder or eligible bidder concerned. For this purpose, a bidder shall execute a sworn statement attesting to the foregoing responsibilities, to be submitted by the bidder as an annex to its technical proposal.

14.4.2. It shall be the sole responsibility of the prospective bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the contract to be bid, including: (a) the location and the nature of the contract, project or work; (b) climactic conditions; (c) transportation facilities; (c) for the procurement of civil works, nature and condition of the terrain, geological conditions at the site communication facilities, requirements, location and availability of construction aggregates and other materials, labor, water, electric power and access roads; and (d) other factors that may affect the cost, duration and execution or implementation of the contract, project or work.

In the case of procurement of civil works, the bidder, by the act of submitting its bid, shall be deemed to have inspected the site and determined the general characteristics of the contract works and the conditions indicated above. The BAC shall require a certificate of such site inspection from the eligible bidder

14.4.3. The agency shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the agency.

14.4.4. Before submitting their bids, the bidders are deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect the contract in any way. However, in cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations or other acts of Government promulgated after the date of 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.

#### 14.5. *Supplemental/Bid Bulletins*

14.5.1. Requests for clarification(s) on any part of the bidding documents or for an interpretation must be in writing and submitted to the BAC of the agency concerned at least ten (10) calendar days before the deadline set for the submission and receipt of bids. 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 agency, at least seven (7) calendar days before the deadline for the submission and receipt of bids. It shall be the responsibility of all those who have properly secured the bidding documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC.

14.5.2. Supplemental/Bid Bulletins may be issued upon the agency'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. Any modification to the bidding documents shall be identified as an amendment.

14.5.3. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted on the website of the agency concerned, if available, and on the EPS.

#### 14.6. *Letter of Intent for the Procurement of Civil Works and Consulting Services*

14.6.1. For the procurement of civil works and consulting services, the interested party shall submit a written Letter of Intent (LOI), which must be received by the BAC not later

than seven (7) calendar days after the last day of the period for advertising and/or posting provided in Section 14.2 of these IRR.

14.6.2. In the case of procurement of civil works, a contractor that is duly registered and that maintains its registration current and updated in accordance with the provisions of Section 16.1 of these IRR, shall submit its Letter of Intent for the contract to be bid together with its eligibility requirements and/or statements: *Provided, however,* That its registration is proper and relevant for the particular type of contract to be bid: *Provided, further,* That, notwithstanding the provisions of Section 16.7 of these IRR on eligibility requirements, a contractor that is duly registered and that maintains its registration current and updated in an agency's electronic registry that is already existing and that allows electronic submission and/or recording/entry of eligibility requirements simultaneously with registration, may simply submit its LOI for the contract to be bid, as long as its registration is proper and relevant for the particular contract to be bid: *Provided, finally,* That, in the latter case, eligibility of the contractor to participate in the bidding shall still be determined by the BAC through the conduct of an eligibility check, electronically or otherwise.

14.6.3. In the case of procurement of consulting services, for the reason that the eligibility requirements are submitted by a consultant upon registration, as provided for in Sections 17.7 and 17.8 of these IRR, a consultant that is duly registered and that maintains its registration current and updated in an agency's registry, may simply submit its LOI for the contract to be bid: *Provided, however,* That its registration is proper and relevant for the particular contract to be bid: *Provided, further,* That the eligibility of the consultant to participate in the bidding shall still be determined by the BAC through the conduct of an eligibility check.

## **Section 15. Pre-Bid Conference**

15.1. For contracts to be bid with an approved budget of one million pesos (P1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions and specifications stipulated in the bidding documents. For contracts to be bid costing less than one million pesos (P1,000,000.00), pre-bid conferences may be conducted at the discretion of the BAC.

15.2. The pre-bid conference shall be held at least fifteen (15) calendar days before the deadline for the submission and receipt of bids.

15.3. The pre-bid conference shall discuss, among other things, the technical and financial components of the contract to be bid, and, for the procurement of goods, the eligibility requirements. The minutes of the pre-bid conference shall be recorded and made available to all participants at least ten (10) calendar days before the deadline for bid submission.

15.4. Any statement made at the pre-bid conference shall not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment thereto and issued as a Supplemental/Bid Bulletin.

**Section 16. Eligibility Check of Prospective Bidders for the Procurement of: (a) Goods, Supplies, Materials and Related Services; and (b) Civil Works**

*16.1. Registration of Manufacturers, Suppliers, Distributors and Contractors*

16.1.1. To facilitate eligibility checking, the BAC of all agencies shall maintain a registry of suppliers and contractors for non-common goods and/or for civil works, as may be applicable. A supplier or contractor who wishes to participate in a public bidding for non-common goods and/or civil works should be registered in accordance with this section by submitting the following basic requirements to the agency concerned, which should be maintained current and updated at least once a year, or more frequently when needed, by the said supplier or contractor:

- a) Department of Trade and Industry (DTI) business name registration or Securities and Exchange Commission (SEC) registration certificate, whichever may be appropriate under existing laws of the Philippines;
- b) Mayor's permit/municipal license;
- c) Taxpayer's Identification Number;
- d) Statement of the prospective bidder that it is not "blacklisted" or barred from bidding by any government agency, office or corporation, including, in the case of procurement of civil works, non-inclusion in the "blacklist" of contractors issued by the Construction Industry Authority of the Philippines; and
- e) Other appropriate licenses as may be required by the agency concerned.

The BAC shall issue a certification of official registration to suppliers and contractors duly registered in accordance with this Section, but only after the BAC verifies proper submission of all registration requirements of the supplier or contractor concerned.

16.1.2. The prospective bidder or its duly authorized representative shall certify under oath that each of the documents submitted is an original copy or a true and faithful reproduction or copy of the original.

*16.2. Eligibility Criteria*

16.2.1. For the procurement of goods:

1. The following manufacturers, suppliers and/or distributors shall be eligible to participate in the bidding for the supply of goods:
  - a) Duly licensed Filipino citizens/sole proprietorships;
  - b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;

- c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
  - d) Manufacturers, suppliers and/or distributors forming themselves into a joint venture, i.e., a group of two (2) or more manufacturers, suppliers and/or distributors that intend to be jointly and severally responsible or liable for a particular contract, provided that Filipino ownership thereof shall be at least sixty percent (60%); or
  - e) Cooperatives duly registered with the Cooperatives Development Authority (CDA).
2. The value of the prospective bidder's largest single contract, adjusted to current prices, completed within the period specified in the Invitation to Apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid.
3. The prospective bidder's Net Financial Contracting Capacity (NFCC), based on his net working capital (i.e., current assets less current liabilities), must be at least equal to the approved budget for the contract to be bid, calculated as follows:
- NFCC = (Current assets minus current liabilities) (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.
4. As an exception to the above provisions on eligibility, for procurements under the Armed Forces of the Philippines (AFP) Modernization Program, only offers from suppliers who are manufacturers themselves shall be eligible to bid, pursuant to the pertinent provisions of Republic Act No. 7898 (R.A. 7898).

16.2.2. For the procurement of civil works:

1. The following shall be eligible to participate in the bidding for civil works:
- a) Duly licensed Filipino citizens/sole proprietorships;
  - b) 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;

- c) Corporations duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines;
  - d) Contractors forming themselves into a joint venture, i.e., a group of two (2) or more contractors that intend to be jointly and severally responsible or liable for a particular contract, provided that they shall, for purposes of bidding:
    - (i) Comply with Letter of Instruction No. 630 (LOI 630);
    - (ii) Be currently and properly licensed by the Philippine Contractors Accreditation Board (PCAB);
    - (iii) Comply with the provisions of Republic Act No. 4566 (R.A. 4566) and its Implementing Rules and Regulations; and
    - (iv) Filipino ownership of the joint venture concerned shall be at least seventy-five percent (75%): *Provided, however,* That joint ventures in which Filipino ownership is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by an entity meeting the seventy-five percent (75%) Filipino ownership requirement.
  - e) Cooperatives duly registered with the Cooperatives Development Authority (CDA).
2. The value of the prospective bidder's largest single contract, adjusted to current prices, completed within the period specified in the Invitation to Apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid.
  3. The Contractor's Performance Evaluation System (CPES) rating and/or certificate of completion and owner's acceptance of the contract must be satisfactory.
  4. The prospective bidder's Net Financial Contracting Capacity (NFCC), based on his net working capital (i.e., current assets less current liabilities), must be at least equal to the approved budget for the contract to be bid, calculated as follows:

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.

16.2.3. Only an eligible bidder as defined and determined in accordance with these IRR may participate in the bidding and subsequently be awarded the contract being bid out if its bid is found to be responsive in accordance with these IRR.

16.3. 16.3. The eligibility requirements or statements shall be submitted to the BAC in the form prescribed in the Instructions to Bidders, in a sealed eligibility envelope duly marked as such. The eligibility envelopes of prospective bidders shall be opened on the date of the bid opening to determine eligibility of each of the prospective bidders, subject to postqualification.

16.4. In relation to Section 18 on submission of bids, and subject to the provisions of Section 14.6 of these IRR, the BAC shall determine if each prospective bidder is eligible to participate in the bidding by examining the completeness of each prospective bidder's eligibility requirements or statements against a checklist of requirements, using a non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid, and shall be determined as either "eligible" or "ineligible." If a prospective bidder is rated "passed" for all the eligibility requirements, it shall be considered eligible to participate in the bidding, and the BAC shall mark the set of eligibility documents of the prospective bidder concerned as "eligible." If a prospective bidder is rated "failed" in any of the eligibility requirements, it shall be considered ineligible to participate in the bidding, and the BAC shall mark the set of eligibility documents of the prospective bidder concerned as "ineligible." In either case, the markings shall be countersigned by the BAC chairperson or duly designated authority, and the documents shall be submitted to the head of the agency or his duly authorized representative for review and approval.

16.5. The BAC shall inform an eligible bidder that it has been found eligible to participate in the bidding. On the other hand, the BAC shall inform an ineligible bidder that it has been found ineligible to participate in the bidding, and the grounds for its ineligibility. Those found ineligible have seven (7) calendar days upon receipt of notice within which to request for a reconsideration from the BAC: *Provided, however*, That the request for reconsideration shall not be granted if it is established that the finding of ineligibility is due to the fault of the prospective bidder concerned: *Provided, further*, That the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The BAC may request a prospective bidder to clarify its eligibility documents, if it is deemed necessary. The BAC shall not be allowed to receive, hold and/or open the bids of ineligible bidders.

16.6. Notwithstanding the eligibility of a bidder, the agency concerned reserves the right to review the qualifications of a bidder at any stage of the procurement process. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the bidder which will materially downgrade the substance of such requirements, statements or documents so that it fails the preset eligibility criteria, the agency shall consider the said bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract.

### 16.7. Eligibility Check for the Procurement of Goods and Civil Works

The determination of eligibility shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and using the criteria stated in Section 16.2:

1. BAC certification of the official registration of the prospective bidder, referred to in Section 16.1.1 of these IRR.
2. Technical Documents –
  - a) Valid joint venture agreement, in case of a joint venture.
  - b) Letter authorizing the BAC or its duly authorized representative/s to verify any or all of the documents submitted for the eligibility check.
  - c) Statement of the prospective bidder that it is not “blacklisted” or barred from bidding by any government agency, office or corporation, including, in the case of procurement of civil works, non-inclusion in the “blacklist” of contractors issued by the Construction Industry Authority of the Philippines.
  - d) Statement of the prospective bidder of all its completed contracts in the last three (3) calendar years or more. The statement shall state for each contract whether said contract is:
    - d.1. Completed: in the last three (3) calendar years or more, as prescribed by the agency in the Invitation to Apply for Eligibility and to Bid; and
    - d.2. Similar in nature and complexity to the contract to be bid. The term “Similar” shall be defined by the concerned agency in the in the Invitation to Apply for Eligibility and to Bid. The statement shall include, for each contract, the following:
      - d.2.1. For the procurement of goods:
        - (i) the name of the contract;
        - (ii) date of the contract;
        - (iii) kinds of goods sold;
        - (iv) amount of contract;
        - (v) date of delivery;
        - (vi) end user’s acceptance; and
        - (vii) specification whether prospective bidder is a manufacturer, supplier or distributor;

or

- d.2.2. For the procurement of civil works:

- (i) the name of the contract;
- (ii) date of award of the contract;
- (iii) contract duration;
- (iv) owner's name and address;
- (v) nature of work;
- (vi) contractor's role (whether sole contractor, sub-contractor, or partner in a joint venture);
- (vii) total contract value at completion;
- (viii) date of completion; and
- (ix) the statement shall be supported by the CPES rating sheets, and/or certificates of completion and owner's acceptance.

e) In the case of procurement of civil works, the prospective bidder's statement of:

e.1. All his ongoing government and private construction contracts, including contracts awarded but not yet started. This shall include, for each contract, the name of the contract, date of award of contract, owner's name and address, nature of work, contractor's role, total contract value at award, percentages of planned and actual accomplishments, value of outstanding works, and estimated completion time. The statement shall be supported by the notices of award and/or notices to proceed issued by the owners;

e.2. Availability of the prospective bidder's key personnel, such as project managers, project engineers, materials engineers and foremen, that may be used for construction contracts; and

e.3. Availability of equipment that he owns, has under lease, and/or has under purchase agreements, that may be used for construction contracts.

### 3. Financial Documents –

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.

16.8. The prospective bidder or its duly authorized representative shall certify under oath that each of the documents submitted in satisfaction of the eligibility requirements is an original copy or a true and faithful reproduction or copy of the original.

16.9. For special case of procurements where foreign entities may participate, as provided for and subject to these IRRs, the above requirements for eligibility may be substituted by the appropriate equivalent documents issued by the foreign prospective bidder's country, which documents must be duly acknowledged or authenticated by the Philippine Consulate therein.

16.10. The entire process of eligibility check for the procurement of civil works shall not exceed fifteen (15) calendar days.

### **Section 17. Eligibility Check and Short Listing of Prospective Bidders for Consulting Services**

17.1. A natural or juridical person, qualified by appropriate education, training and relevant experience to render any or all of the types and fields of consulting services as defined in these IRR, shall be considered as a "Consultant," subject to the requirements provided in these IRR for eligibility check and postqualification. A consultant may either be:

1. *A Filipino Consultant.* A Filipino consultant may be an individual, sole proprietorship, partnership or a corporation satisfying the definition of a consultant under these IRR and the following requirements:
  - a) Individual –
    - a.1. He must be a citizen of the Philippines; and
    - a.2. When the types and fields of consulting services in which he wishes to engage involve professions regulated by the laws of the Philippines, he must be a registered professional authorized by the appropriate regulatory body to practice those professions or allied professions.
  - b) Sole Proprietorship –
    - b.1. The owner of the sole proprietorship must be a citizen of the Philippines;
    - b.2. The sole proprietorship firm must be registered and authorized by the Bureau of Domestic Trade; and
    - b.3. When the types and fields of consulting services in which the sole proprietorship wishes to engage involve professions regulated by laws of the Philippines, the owner and key staff of the sole proprietorship must be registered professionals authorized by the appropriate regulatory body to practice those professions or allied professions.
  - c) Partnership –
    - c.1. At least sixty (60%) of the partnership's interest must be owned by citizens of the Philippines;
    - c.2. The partnership firm must be registered with and authorized by the SEC to engage in consulting services; and

c.3. When the types and fields of consulting services in which the partnership firm wishes to engage involve professions regulated by laws of the Philippines, all the partners of the partnership firm shall be registered professionals authorized by the appropriate regulatory body to practice those professions or allied professions.

d) Corporation –

d.1. At least sixty percent (60%) of both the subscribed and paid-up capital stock must be owned by citizens of the Philippines;

d.2. The corporation must be registered with and authorized by the SEC to engage in consulting services; and

d.3. When the types and fields of consulting services in which the corporation wishes to engage involve the practice of professions regulated by law, the following conditions shall be observed:

(i) One hundred percent (100%) of both the subscribed and paid-up capital must be owned by registered professionals authorized by the appropriate regulatory body to practice those professions or allied professions; and

(ii) The principal officers of the corporation must be registered professionals authorized by the appropriate regulatory body to practice those professions or allied professions.

With respect to a consulting entity (i.e., sole proprietorship, partnership or corporation) wishing to engage in multi-disciplinary undertakings not all of which involve the practice of professions regulated by the laws of the Philippines, the owner and key staff, partners or principal officers of the consulting entity, as the case may be, may include those from other professions not regulated by law but related to the types of consulting services defined by these IRR: *Provided, however,* That the latter shall not exceed forty percent (40%) of the requirements herein provided for situations when the types and fields of consulting services in which the entity wishes to engage were to involve professions regulated by the laws of the Philippines.

2. *A Foreign Consultant.* A foreign consultant may be an individual, sole proprietorship, partnership or corporation satisfying the definition of a consultant under these IRR, but not meeting the citizenship, ownership, interest and/or registration/authorization requirements for a Filipino consultant under these IRR. To qualify for hiring for consulting services, the foreign consultant must satisfy the following minimum requirements:

a) The foreign consultant must be registered with the SEC and/or any agency authorized by the laws of the Philippines; and

b) When the types and fields of consulting services in which the foreign consultant wishes to engage involve the practice of

regulated professions, the foreign consultant must be authorized by the appropriate Philippine Government professional regulatory body to engage in consulting services involving the practice of those professions and allied professions. The limits of such authority shall be strictly observed.

## *17.2. The Need for Consultants*

17.2.1. The services of consultants may be engaged by any agency for government projects or related activities of such magnitude and/or scope as would require a level of expertise or attention beyond the optimum in-house capability of the agency concerned and consistent with the Government's policy not to compete with the private sector.

17.2.2. The required consulting services shall be categorized into purely local experts or joint foreign and local experts which shall be indicated in the Invitation to Apply for Eligibility and to Bid.

## *17.3. Independence of Consultants*

To ensure the consultant's professional independence, integrity and objectivity, consultants, as well as key staff working for the consulting entity, who may be directly or indirectly associated with non-consulting firms that may have an interest in or bias towards the project concerned, shall be selected only if they agree to limit their role to that of consultants and will disqualify themselves and their affiliates for bidding for products and services of the same government project.

## *17.4. Hiring of Consultants*

17.4.1. Consultants shall be hired on the basis of their proven expertise, experience, capability and integrity. Under certain conditions provided herein, cost may be included as a factor in the selection of consultants.

17.4.2. In order to manifest trust and confidence in and promote the development of Filipino consultancy, Filipino consultants shall be hired whenever the services required for the project are within the expertise and capability of Filipino consultants. However, in the event that the Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, foreign consultants may be hired, provided that, in the interest of effecting technology transfer, foreign consultants shall be required to associate themselves with Filipino consultants.

17.4.3. In the hiring of foreign consultants, all pertinent laws and regulations of the Philippines shall be followed. The requirement for technology transfer shall be emphasized.

## *17.5. Joint Venture*

Joint ventures among Filipino consultants and among Filipino and foreign consultants may be allowed if such results in better quality of consultancy subject to pertinent laws and the relevant provisions of these IRR. The joint venture shall be jointly and severally responsible for the obligations and the civil liabilities arising from the consulting services.

## 17.6. *Organization of Consultants*

17.6.1. The umbrella organization of consultants recognized by the Government shall be composed of the various organizations of consultants that may be engaged by the government under these IRR and shall accredit its members on the types of services and fields of professions where the members are technically and financially qualified to offer their services. The umbrella organization shall prepare and certify a list of fields and expertise in such fields available with the names of the accredited local consultants which shall be updated annually or as often as necessary and disseminate such list to concerned agencies of the Government. It shall likewise police its members for the development of the industry. The government may consult and deal with this umbrella organization on matters relating to the industry. The INFRACOM shall be the appropriate government body that shall recognize the consultants' umbrella organization.

17.6.2. The umbrella organization may submit its files of accredited consultants to the BAC of the agency in accordance with the form prescribed by the BAC which can serve as registration of the consultants under the next succeeding Subsection: *Provided, however,* That each such accredited consultant shall comply with the eligibility requirements provided in these IRR. Such qualification statements, together with the list of accredited consultants prepared in accordance with the immediately preceding section, shall guide the BAC and government negotiators of foreign loans, grants and aids in determining the fields where Filipino consultants are already qualified and capable and where foreign consultants may not be required.

## 17.7. *Registration of Consultants*

17.7.1. The BAC shall maintain a register of consultants, containing information on their capabilities and experience to undertake consulting services for the agency concerned. A consultant who wishes to participate in a public bidding for consulting services shall be registered in accordance with this Section by submitting the following basic requirements to the agency concerned, which shall be maintained current and updated at least once a year, or more frequently when needed, by the said consultant:

1. Valid and current licenses/permits, including:
  - a) Department of Trade and Industry (DTI) business name registration or Securities and Exchange Commission (SEC) registration certificate, whichever may be appropriate under existing laws of the Philippines, if applicable;
  - b) Mayor's permit/municipal license, if applicable; and
  - c) Bureau of Internal Revenue (BIR) tax registration.
2. Valid joint venture agreement, in case of a joint venture.
3. Letter authorizing the head of the agency or his duly authorized representative/s to verify any or all of the documents submitted for the eligibility check.

4. Statement of the consultant that he is not “blacklisted” or barred from bidding by any government agency, office or corporation.
5. Statement of the consultant of all his completed contracts in the last three (3) calendar years or more, and all his ongoing government and private contracts, including contracts awarded but not yet started . The statement shall include, for each contract, the following:
  - a) the name and location of the contract/project;
  - b) date of the contract;
  - c) type of consulting service;
  - d) amount of contract;
  - e) contract duration; and
  - f) certificate of satisfactory completion issued by the client, in the case of a completed contract.
6. The types and number of equipment that the consultant owns, has under lease, and/or has under purchase agreements.
7. The consultant’s audited financial statements, stamped “received” by the BIR or its duly accredited and authorized institutions, for at least the last three (3) calendar years, showing, among others, the consultant’s total and current assets and liabilities.
8. If the consultant is a juridical entity, the consultant’s statement:
  - a) Of the kinds and number of its ownership and key staff, partners or principal officers, as the case may be, as well as their respective curriculum vitae;
  - b) That, when the types and fields of consulting services in which the entity wishes to engage involve professions regulated by the laws of the Philippines, the owner and key staff, partners or principal officers, as the case may be, are registered professionals authorized by the appropriate regulatory body to practice those professions or allied professions, in accordance with the provisions of these IRR; and
  - c) On the prospective bidder’s technical competence, experience and staff capabilities.
9. If the consultant is an individual, his statement, with supporting documents, that:
  - a) He is a citizen of the Philippines or otherwise duly authorized and/or registered with the SEC and/or any agency authorized by law; and
  - b) When the types and fields of consulting services in which he wishes to engage involve professions regulated by the laws of the Philippines, he is a registered professional authorized by the

appropriate regulatory body to practice those professions or allied professions.

17.7.2. The consultant or his duly authorized representative shall certify under oath that each of the documents submitted in satisfaction of the eligibility requirements is an original copy or a true and faithful reproduction or copy of the original.

#### 17.8. *Eligibility Check for Consulting Services*

17.8.1. Subject to the short listing of consultants as provided in these IRR, the determination of eligibility of consultants shall be based on the submission of the above documents to the BAC, utilizing the forms prepared by the BAC

17.8.2. Subject to the short listing of consultants as provided in these IRR, only an eligible consultant as defined and determined in accordance with these IRR may participate in the bidding and subsequently be awarded the contract being bid out if his bid is found to be responsive in accordance with these IRR.

17.8.3. Subject to the short listing of consultants as provided in these IRR, the BAC shall determine if each consultant is eligible to participate in a bidding by examining each consultant's eligibility requirements or statements against a checklist of requirements, using a non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid and the Instructions to Bidders, and shall be determined as either "eligible" or "ineligible." If a consultant is rated "passed" for all the eligibility requirements, he shall be considered eligible to participate in a bidding, and the BAC shall mark the set of eligibility documents of the consultant concerned as "eligible." If a consultant is rated "failed" in any of the eligibility requirements, he shall be considered ineligible to participate in a bidding, and the BAC shall mark the set of eligibility documents of the consultant concerned as "ineligible." In either case, the markings shall be countersigned by the BAC chairperson or duly designated authority, and the documents shall be submitted to the head of the agency or his duly authorized representative for review and approval.

17.8.4. The BAC shall inform an eligible consultant that he has been found eligible, subject to the short listing of consultants as provided in these IRR, and that his registration has been approved. On the other hand, the BAC shall inform an ineligible consultant that he has been found ineligible, and the grounds for his ineligibility. Those found ineligible have seven (7) calendar days upon receipt of notice within which to request for a reconsideration from the BAC: *Provided, however,* That the request for reconsideration shall not be granted if it is established that the finding of ineligibility is due to the fault of the prospective bidder concerned: *Provided, further,* That the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The BAC may request a prospective bidder to clarify its eligibility documents, if it is deemed necessary. The BAC shall not be allowed to receive, hold and/or open the bids of ineligible bidders.

17.8.5. Notwithstanding the eligibility of a consultant and/or inclusion in the short list of consultants, the agency concerned reserves the right to review the qualifications of a consultant before any actual bidding is made. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the consultant which will materially downgrade the substance

of such requirements, statements or documents so that the consultant fails the preset eligibility criteria, the agency shall consider the said consultant as ineligible and shall disqualify him from submitting a bid or from obtaining an award or contract.

#### 17.9. *Types of Consulting Services*

The services to be provided by consultants can be divided into six (6) broad categories as follows:

1. Advisory and Review Services;
2. Pre-Investment or Feasibility Studies;
3. Design;
4. Construction Supervision;
5. Management and Related Services; and
6. Other Technical Services and Special Studies.

A detailed definition and description of these services are provided for in Annex "B" of these IRR.

#### 17.10. *Short Listing of Prospective Bidders*

17.10.1. With respect to a particular contract for consulting services to be bid, the concerned agency shall only consider for short listing those consultants whose past contracts, as stated in the eligibility documents submitted for registration, are similar in nature and complexity to the contract to be bid, based on the Invitation to Apply for Eligibility and to Bid.

17.10.2. The BAC shall draw up the short list of consultants from those who have been determined as eligible and duly registered, and who have submitted their Letter of Intent, both in accordance with the provisions of these IRR. The short list shall consist of three (3) to seven (7) consultants, with five (5) as the preferable number. If there is only one (1) eligible consultant, the agency shall consider the same under the circumstance specified in Section 21 of these IRR.

17.10.3. The BAC shall specify in the Invitation to Apply for Eligibility and to Bid the set of criteria and rating system for short listing of consultants to be used for the particular contract to be bid, which shall consider the following, among others:

- a) Applicable experience of the consultant and associates in case of joint ventures, considering both the overall experiences of the firm and the individual experiences of the principal and key staff including the times when employed by other consultants;
- b) Qualification of personnel who may be assigned to the job vis-à-vis extent and complexity of the undertaking; and
- c) Current workload relative to capacity.

17.10.4. The BAC shall recommend the short list of consultants to the head of the agency for consideration and approval. The entire process of eligibility check and short listing shall not exceed 30 calendar days.

## **Section 18. Submission and Receipt of Bids**

18.1. Eligible bidders shall submit their bids (i) in the prescribed Bid Form, including its annexes, as specified in the bidding documents, (ii) on the specified deadline, and (iii) in two (2) separate sealed bid envelopes, the first containing the technical component of the bid, and the second containing the financial component of the bid, with the name of the contract to be bid and the name of the bidder in capital letters, addressed to the BAC of the agency concerned. The bidder shall mark the two envelopes: "Do not open before (date and time of opening of bids)."

18.2. The first envelope shall contain the following technical information/documents, at the least:

A. For the procurement of goods:

1. The Bid Security as to form, amount and validity period;
2. Authority of the signatory;
3. Production/delivery schedule;
4. Person-power requirements;
5. After-sales service/parts;
6. Technical specifications;
7. Commitment from the supplier's bank to extend to it a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the agency in the Instructions to Bidders, which shall be at least equal to the operating cash flow requirement of the contract to be bid;
8. Certificate from the bidder under oath of its compliance with existing labor laws and standards, in the case of procurement of services; and
9. Other documents/materials as stated in the Instructions to Bidders.

B. For the procurement of civil works:

1. Bid Security as to form, amount and validity period;
2. Authority of the signing official;
3. Construction schedule and S-curve;
4. Person-power schedule;
5. Construction methods;
6. Organizational chart for the contract to be bid
7. List of contractor's personnel (viz., Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the contract to be bid, with their complete qualification and experience data;
8. List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, supported by duly executed contracts therefore, and intended for use in the contract to be bid;
9. Equipment utilization schedule;
10. Certificate of site inspection;
11. Certification that the detailed estimates, cash flow by quarter, and payments schedule are in the second envelope;
12. Commitment from the contractor's bank to extend to it a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount

not lower than that set by the agency in the Instructions to Bidders, which shall be at least equal to the operating cash flow requirement of the contract to be bid (i.e., the estimated average operating expenses for two (2) months of the contract to be bid, or ten percent (10%) of the approved budget for the contract to be bid, whichever is less);

13. Construction safety and health program of the contractor; and
14. Certificate from the bidder under oath of its compliance with existing labor laws and standards; and
15. Documents to comply with other non-discretionary criteria and requirements as stated in the Instructions to Bidders.

C. For the procurement of consulting services, the information and/or documents to be provided by bidder shall be specified in the bidding documents.

18.3. The second envelope shall contain the following financial information/documents, at the least:

A. For the procurement of goods:

1. Bid prices in the Bill of Quantities in the prescribed Bid Form; and
2. The recurring and the maintenance costs, if applicable.

B. For the procurement of civil works:

1. Bid prices in 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 in coming up with the bid; and
3. Cash flow by the quarter and payments schedule.

C. For the procurement of consulting services, the information and/or documents to be provided by bidder shall be specified in the bidding documents.

18.4. The BAC shall declare the bidding a failure and conduct a re-bidding with advertisement and/or posting, as provided for in Section 14.2 of these IRR, after a re-evaluation of the terms, conditions and specifications of the first bidding, when: (a) no prospective bidder submits a Letter of Intent or no bids are received; (b) when all prospective bidders are declared ineligible; or (c) when all bids fail to comply with all the bid requirements or fail postqualification. The BAC shall modify the terms, conditions and specifications in the first bidding documents, when necessary, to address errors in agency cost estimates or specifications. However, the approved budget for the contract shall be maintained as the ceiling for the bid prices. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the agency concerned may enter into a negotiated procurement, as provided for in Section 35 of these IRR.

## **Section 19. Bid Security**

19.1. Each bid for the procurement of goods and civil works shall be accompanied by a Bid Security, payable to the agency concerned as a guarantee that the successful bidder shall, within fifteen (15) calendar days, or less as indicated in the Instructions to Bidders, from receipt of the Notice of Award, enter into contract with the agency and furnish the

performance security provided for in Section 31 of these IRR. Failure to enclose the required Bid Security in the form and amount prescribed herein shall automatically disqualify the bid concerned.

19.2. The Bid Security shall be in an amount equivalent to a percentage of the approved budget for the contract to be bid, as advertised by the concerned agency, in the form of cash, certified check, cashier's check manager's check, bank draft/guarantee confirmed by a reputable local bank (in the case of a foreign bidder, bonded by a foreign bank), irrevocable letter of credit issued by a reputable commercial bank, surety bond callable upon demand issued by a surety or insurance company accredited by the Insurance Commission, or any combination thereof, as may be required by the head of the agency concerned, in accordance with the following schedule:

<b>Form of Security</b>	<b>Minimum Amount in % of Approved Budget for the Contract to be Bid</b>
1. Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit	One percent (1%)
2. Bank guarantee	One and a half percent (1 ½%)
3. Surety bond	Two and a half percent (2 ½%)

19.3. The required minimum bid security, based on the above schedule, shall be stated in Philippine Pesos in the bidding documents. Bids and Bid Securities shall be valid for a reasonable period as determined by the head of the agency concerned, and shall be indicated in the Instructions to Bidders, but in no case shall exceed one hundred (120) calendar days from the date of the opening of bids.

19.4. No Bid Securities shall be returned to the bidders after the opening of bids, except to those that failed to comply with any of the requirements to be submitted in the first bid envelope of the bid, as provided in these IRR. Other than this exception, Bid Securities shall be returned only after the lowest calculated and responsive bidder 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 Instructions to Bidders.

## **Section 20. Modification and Withdrawal of Bids**

20.1. A bidder may modify his bid, provided that this is done at least five (5) calendar days before the deadline for the submission and receipt of bids. Where 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 to its original bid and marked as "modification." Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened.

20.2. A bidder may withdraw its bid before the deadline for the receipt of bids. Withdrawal of bids after the applicable deadline shall be subject to appropriate sanctions as prescribed in these IRR. 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.

## **Section 21. Single Calculated and Responsive Bid**

21.1. A Single Calculated and Responsive Bid shall be considered under any of the following circumstances:

- a) If after advertisement, only one prospective bidder submits a Letter of Intent and/or applies for eligibility check, in accordance with the provisions of these IRR, and it meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements.
- b) If after advertisement, more than one prospective bidder submits a Letter of Intent and/or applies for eligibility check, in accordance with the provisions of these IRR, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements.
- c) c) If after the eligibility check, more than one bidder meets the eligibility requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements.

21.2. In the case of consulting services, a single rated responsive bid shall be considered under the same circumstances as above.

## **Section 22. Bid Opening and Examination**

22.1. The BAC shall open the bids at the place, date and time specified in the Invitation to Apply for Eligibility and to Bid. The bidders or their duly authorized representatives may attend the opening of bids. All members of the BAC or their duly authorized representatives who are present during bid opening, shall initial every page of the original copies of all bids received and opened.

22.2. The BAC shall open the first bid envelopes of eligible bidders in public to determine each bidder's compliance with the documents required to be submitted for the first component of the bid, as prescribed in these IRR. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present in the first bid envelope, using a non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid and the Instructions to Bidders. In case one or more of the above required documents in the first envelope of a particular bid is missing, the BAC shall rate the bid concerned as "failed" and immediately return to the bidder concerned its second bid envelope unopened. Otherwise, the BAC shall rate the said first bid envelope as "passed."

22.3. The BAC shall immediately open the second bid envelopes of the remaining eligible bidders whose first bid envelopes were rated "passed." In case one or more of the requirements in the second envelope of a particular bid is missing and/or if the submitted total bid price exceeds the approved budget for the contract, the BAC shall rate the bid concerned as "failed." Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.

22.4. For the procurement of goods where, due to the nature of the requirements of the project, the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically unequal bids is likely to occur, a two (2)-stage bidding procedure may be employed. In these cases, the agency concerned shall prepare the bidding documents, including the technical specification in the form of performance criteria only. Under this procedure, prospective bidders shall be requested at the first stage to submit their respective Letter of Intent, eligibility requirements if needed, and initial technical proposals only (no price tenders). The concerned BAC shall then evaluate the technical merits of the proposals received from eligible bidders vis-à-vis the required performance standards. A meeting/discussion shall then be held by the BAC with those eligible bidders whose technical tenders meet the minimum required standards stipulated in the bidding documents for purposes of drawing up the final revised technical specifications/requirements of the contract. Once the final revised technical specifications are completed and duly approved by the concerned BAC, copies of the same shall be issued to all the bidders identified in the first stage who shall then be required to submit their revised technical tenders, including their price proposals in two (2) separate sealed envelopes in accordance with these IRR, at a specified deadline, after which time no bids shall be received. The concerned BAC shall then proceed in accordance with the procedure prescribed in these IRR.

22.5. For the procurement of consulting services, the detailed implementation of the procedure specified in this Section shall be as provided in Section 24 of these IRR.

### **Section 23. Bid Evaluation**

23.1. For the procurement of goods and civil works, the purpose of bid evaluation is to determine the Lowest Calculated Bid. This bid, which may not necessarily be the lowest submitted price, shall be subject to postqualification in accordance with Section 27 of these IRR to determine its responsiveness to the eligibility and bid requirements. Once the Lowest Calculated Bid is determined and postqualified, the contract shall then be awarded to the bidder with the Lowest Calculated and Responsive Bid.

23.2. For the procurement of goods and civil works, the Lowest Calculated Bid shall be determined in two steps:

- a) The detailed evaluation of the bids, to establish the correct calculated prices of the bids; and
- b) The ranking of the total bid prices as so calculated from the lowest, otherwise known as the "Lowest Calculated Bid," to the highest.

23.3. After the bids have been submitted to the BAC and during the evaluation period, bidders that have submitted their bids are prohibited from making any kind of communication with any BAC member, including its staff and personnel, as well as its Secretariat and TWG, regarding matters connected to their bids until the issuance of the Notice of Award, unless otherwise allowed in these IRR. Likewise, members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making any kind of communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award, unless otherwise allowed in these IRR. The entire evaluation process shall be completed in not more than fifteen (15) days for

the procurement of goods and civil works from the deadline for receipt of proposals. The bid with the lowest rank shall be identified as the Lowest Calculated Bid.

#### 23.4. *Detailed Evaluation of Bids for the Procurement of Goods and Civil Works*

23.4.1. To determine the Lowest Calculated Bid for the procurement of goods and civil works, after the preliminary examination of bids, the BAC shall immediately conduct a detailed evaluation of all bids rated "passed," using a non-discretionary criteria, as stated in the Invitation to Apply for Eligibility and to Bid and the Instructions to Bidders, which shall include a consideration of the following:

- a) The bid must be complete. Unless the Instructions to Bidders specifically allow partial bids, bids not addressing or providing all of the required items in the bidding documents shall be considered non-responsive and, thus, automatically disqualified.
- b) The Bid Security must conform to the requirements of the Instructions to Bidders, as to type, amount, form and wording, and validity period.
- c) Identification of minor/major deviations and terms and conditions as described in the Instructions to Bidders.
- d) Corrections for minor deviations, such as computational errors, omissions and discounts, in accordance with the bidding documents to enable proper comparison of all eligible bids. Any adjustment to correct minor deviations shall be calculated in monetary terms to determine the calculated prices. For the procurement of goods, the BAC of the concerned agency may employ any of the specific price equalization procedures provided under Annex "C" that it deems appropriate for the requirement of a particular contract and shall be so indicated in the bidding documents. The use of any such procedure shall be subject to the prior approval of the head of the agency concerned.

23.4.2. 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 Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the approved budget for the contract shall not be considered.

23.5. After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids. All voting and non-voting members of the BAC or their duly authorized representatives 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. The Abstract of Bids shall contain the following:

- 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 bids arranged from lowest to highest, the amount of Bid Security and the name of the issuing entity

## **Section 24. Bid Evaluation of Short listed Bidders for Consulting Services**

24.1. For the procurement of consulting services, the purpose of bid evaluation is to determine the Highest Rated Bid. This bid shall be subject to postqualification in accordance with Section 27 of these IRR to determine its responsiveness to the eligibility and bid requirements. Once the Highest Rated Bid is determined and postqualified the contract shall then be awarded to the bidder with the Highest Rated and Responsive Bid.

24.2. For the procurement of consulting services, the Highest Rated Bid shall be determined in two steps:

- a) The detailed evaluation of the bids of the short listed bidders using numerical ratings based on either the quality-based selection procedure or the quality-cost based evaluation procedure; and
- b) The ranking of the bidders based on the numerical ratings from the highest, otherwise known as the "Highest Rated Bid," to the lowest.

### *24.3. Detailed Evaluation Procedure for the Procurement of Consulting Services*

24.3.1. Notwithstanding the provisions of Section 22 of these IRR, as a general policy, the head of the agency shall have the option as to the evaluation procedure to be adopted for consultants, which shall either be quality-based or quality-cost based. The consultant selection procedure adopted shall be stated in the Invitation to Apply for Eligibility and to Bid and the TOR.

24.3.2. For the evaluation of proposals, numerical ratings shall be used. In order to eliminate subjectivity in evaluating the technical proposals, the highest and lowest scores of a consultant for each criterion shall not be considered in determining the average scores of the consultants.

24.3.3. After the bids have been submitted to the BAC and during the evaluation period, bidders that have submitted their bids are prohibited from making any kind of communication with any BAC member, including its staff and personnel, as well as its Secretariat and TWG, regarding matters connected to their bids until the approval by the head of the agency of the ranking of short-listed bidders. Likewise, members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making any kind of communication with any bidder regarding the evaluation of their bids until the approval by the head of the agency of the ranking of short-listed bidders. The entire evaluation process, including the submission of the results thereof to the head of the agency for approval, shall be completed in not more than twenty-one (21) calendar days after the deadline for receipt of proposals. The proposal with the highest rank shall be identified as the Highest Rated Bid.

24.3.4. The technical proposals of consultants shall be evaluated based on the following criteria:

- a) Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;

- b) Experience and capability of the consultant which include records of previous engagement and quality of performance in similar and in other projects; relationship with previous and current clients; and, overall work commitments, geographical distribution of current/impending projects and attention to be given by the consultant. The experience of the consultant shall consider both the overall experiences of the firm and the individual experiences of the principal and key staff including the times when employed by other consultants; and
- c) Plan of approach and methodology with emphasis on the substance of the proposal as to the plan of approach and interpretation of project problems and solutions.

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

24.3.5. The head of the agency shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC. In case of foreign-assisted projects, the results of the evaluation together with the criteria used shall be submitted to the International Financial Institution (IFI) as required or agreed upon within five (5) calendar days after approval of the same by the head of the agency. Short-listed consultants shall likewise be furnished and other interested parties shall be given access to the results of the evaluation after the approval of the resolution of the award.

24.3.6. NEDA, the umbrella organization of consultants, and all participating short-listed consultants shall be furnished the results (ranking and total scores only) of the evaluation after the approval by the head of the agency of the ranking. Said results shall also be posted in the EPS and the website of the agency, whenever available, for a period of not less than two (2) weeks.

#### *24.4. Quality-Based Evaluation Procedure*

24.4.1. For the quality-based evaluation procedure, a two-stage procedure shall be adopted whereby each consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes, and the evaluation of consultants shall be made based only on the technical proposals without consideration of the estimated cost or financial terms of the services. The BAC shall rank the consultants in descending order based on the numerical ratings of their technical proposals subject to Section 24.3.2 of these IRR and identify the Highest Rated Bid.

24.4.2. After approval by the head of the agency and/or after concurrence of the IFI concerned, in the case of foreign-assisted projects, of the Highest Rated Bid, the BAC shall within seven (7) calendar days notify and invite the consultant with the Highest Rated Bid for negotiation. The financial proposal of the consultant with the Highest Rated Bid shall then be opened by the BAC in the presence of the consultant concerned

for the purpose of conducting negotiations with the said consultant. In the letter of notification, the BAC shall inform the consultant of the issues in the technical proposal the BAC may wish to clarify during negotiations. When the negotiation with the first in rank consultant fails, the financial proposal of the second in rank consultant shall be opened for negotiations, and so on; provided that the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the approved budget for the contract as stated in the Invitation to Apply for Eligibility and to Bid.

24.4.3. Basically, negotiations shall cover the following:

- a) Discussion and clarification of the TOR and Scope of Services;
- b) Discussion and finalization of the methodology and work program proposed by the consultant;
- c) Consideration of the personnel to be assigned to the job, taking note of over-qualified personnel to be commensurate with the compensation of personnel with the appropriate qualifications, number of man-months and schedule of activities (manning schedule);
- d) Discussion on the services, facilities and data, if any, to be provided by agency concerned;
- e) Discussion on the financial proposal submitted by the consultant; and
- f) Provisions of the contract.

24.4.4. Except for meritorious reasons, negotiations with any one consultant shall be completed within fifteen (15) calendar days.

24.4.5. The sealed financial proposals of the unsuccessful consultants shall be returned by the BAC unopened if contract negotiations with the consultant with the Highest Rated Bid are completed successfully.

#### 24.5. *Quality-Cost Based Evaluation Procedure*

For the quality-cost based selection procedure, each consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes, and the technical proposal together with the financial proposal shall be considered in the evaluation of consultants. The technical proposals shall be evaluated first and only the financial proposals of the consultants who meet the minimum technical rating shall be opened. The financial and technical proposals shall be given corresponding weights with the financial proposal given a weight of twenty five percent (25%) up to a maximum of fifty percent (50%). This shall be indicated in the Invitation to Apply for Eligibility and to Bid and the TOR. The exact weight shall be approved by the head of the agency upon the recommendation of the BAC. The weight of the technical criteria shall be adjusted accordingly such that their total weight in percent together with the weight given to the financial proposal shall add to one hundred percent (100%). The BAC shall rank the consultants in descending order based on the combined numerical ratings of their technical and financial proposals and identify the Highest Rated Bid:

*Provided, however,* That subsequent negotiations in accordance with Section 24.4.3 of these IRR shall still be undertaken with the first in rank consultant, except for item (e) thereof. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the approved budget for the contract shall not be considered.

24.6. There should be no replacement of key personnel before the awarding of contract, except for justifiable reason, such as, among others, delay in the selection process due to the fault of the Government. The agency shall immediately consider negotiation with the next ranked consultant if unjustifiable replacement of personnel by the first ranked firm is made. Once the contract has been awarded, no replacement shall be allowed until after fifty percent (50%) of the personnel's man-months have been served, except for justifiable reasons. Violators will be fined an amount equal to the refund of the replaced personnel's basic rate, which should at least fifty percent (50%) of the total basic rate for the duration of the engagement.

### **Section 25. Ceiling for Bid Price**

The approved budget for the contract under bidding shall be the upper limit or ceiling for acceptable bids. All bids, as evaluated and calculated in accordance with these IRR, which are higher than the approved budget for the contract under bidding, shall automatically be disqualified. There shall be no lower limit or floor on the amount of the award.

### **Section 26. Major Deviation**

The BAC shall automatically disqualify a bid that contains a major deviation. Examples of major deviations are the following:

1. Failing to respond to the contract plans and specifications, by offering a different design or work item;
2. Stipulating a price adjustment;
3. Subcontracting beyond allowable limits; and
4. Taking exception to critical provisions or setting conditions to the bidders, such as applicable laws, taxes and duties, and dispute resolution procedures.

### **Section 27. Postqualification**

27.1. Within seven (7) calendar days from the determination of Lowest Calculated Bid or the Highest Rated Bid, as the case may be, the BAC shall conduct and accomplish a postqualification of the bidder with the Lowest Calculated Bid/Highest Rated Bid, to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions for eligibility, the bidding of the contract, as specified in the bidding documents, in which case the said bidder's bid shall be considered and declared as the "Lowest Calculated and Responsive Bid" for the procurement of goods and civil works, or the "Highest Rated and Responsive Bid" for the procurement of consulting services.

27.2. The postqualification shall verify, validate and ascertain all statements made and documents submitted by the bidder with the Lowest Calculated Bid/Highest Rated Bid, using non-discretionary criteria, as stated in the Invitation to Apply for Eligibility and to Bid and the Instructions to Bidders. These criteria shall consider, but shall not be limited to the following:

- a) Legal Requirements. To verify and validate licenses and agreements submitted by the bidder.
- b) Technical Requirements. To determine compliance of the goods, civil works or consulting services offered with the requirements of the contract and bidding documents, including, where applicable: (i) verification and validation of the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, for the procurement of civil works and consulting services; (ii) 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 (if any of these 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, and if the BAC verifies any of these deficiencies to be due to the contractor's fault or negligence, the agency shall disqualify the contractor from the award), for the procurement of civil works; (iii) verification and/or inspection and testing of the goods/product, after-sales and/or maintenance capabilities, in applicable cases, for the procurement of goods; and (iv) ascertainment of the sufficiency of the Bid Security as to type, amount, form and wording, and validity period.
- c) Financial Requirements. To verify and validate 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 in the Instructions to Bidders, to ensure that the bidder can sustain the operating cash flow of the transaction. For the procurement of civil works, this shall cover as well, the bidder's stated net worth and liquid assets, net working capital, the value of all outstanding or unfinished works under ongoing contracts including awarded contracts yet to be started, and the bidder's NFCC.

27.3. If the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid passes all the criteria for postqualification, it shall declare the said bidder as the bidder with the Lowest Calculated and Responsive Bid or Highest Rated and Responsive Bid, as the case may be, and the head of the agency concerned shall award the contract to the said bidder.

27.4. If, however, the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid fails the criteria for postqualification, it shall immediately notify the said bidder in writing of its postdisqualification and the grounds for it. The postdisqualified bidder shall have seven (7) 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.

27.5. Immediately after the BAC has notified the first bidder of its postdisqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same postqualification process on the bidder with the second Lowest Calculated Bid/Highest Rated Bid. If the second bidder passes the postqualification criteria, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be postqualified as the bidder with the Lowest Calculated and Responsive Bid or Highest Rated and Responsive Bid, as the case may be, and the head of the agency concerned shall award the contract to it.

27.6. If the second bidder, however, fails the postqualification criteria, the procedure for postqualification shall be repeated for the bidder with the next Lowest Calculated Bid/Highest Rated Bid, and so on until the Lowest Calculated and Responsive Bid or Highest Rated and Responsive Bid, as the case may be, is determined for award.

27.7. If no bidder passes postqualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Sections 14.2 and 18.4 of these IRR. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the agency concerned may enter into a negotiated procurement, as provided for in Section 35 of these IRR.

## **Section 28. Procurement Outsourcing**

In order to hasten project implementation, agencies which may not have the proficiency or capability to undertake a particular procurement, as determined by the head of the agency concerned, may request other agencies to undertake such procurement for them, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function.

## **Section 29. Reservation Clause**

The agency reserves the right to reject any and all bids, or declare a failure of bidding, or not award the contract, if there is evidence of collusion between relevant public officers or employees of the agency or the BAC and any of the bidders, or among the bidders, or between bidders and third parties, including any act which restricts, suppresses or nullifies competition, or if the BAC is found to have failed to follow the prescribed bidding procedures. The agency also reserves the right to waive any required formality in the bids received, provided that such waiver does not refer to a major deviation in a bid or any requirement provided in these IRR pertaining to the substance of a bid.

## **AWARD OF CONTRACT**

### **Section 30. Award of Contract and Notice to Proceed**

30.1. Award of contract shall be made to the bidder with the Lowest Calculated and Responsive Bid or the Highest Rated and Responsive Bid, as the case may be, at its

submitted bid price or its calculated bid price, whichever is lower. In the case of quality-based procurement of consulting services, the award shall be based on the negotiated price or the submitted price, whichever is lower. In the case of Single Calculated/Rated and Responsive Bid, as provided for in Section 21 of these IRR, the Single Calculated /Rated and Responsive Bid shall be awarded the contract.

### 30.2. *Contract Award*

30.2.1. The decision whether or not to award the contract shall be made, and the corresponding Notice of Award issued, by the head of the agency or his duly authorized representative, within ten (10) calendar days from the date the BAC finally determines and declares the Lowest Calculated and Responsive Bid or Highest Rated and Responsive Bid, as the case may be. In the case of GOCCs and GFIs, the period provided herein shall be thirty (30) calendar days.

30.2.2. For foreign-assisted projects, the decision to award the contract by the head of the agency or his duly authorized representative shall be transmitted to the IFI concerned for concurrence, as may be required, within seven (7) calendar days from the date the decision to award the contract is made. The Notice of Award shall then be issued by the head of the agency or his duly authorized representative within seven (7) calendar days from the date of concurrence of the IFI concerned.

30.2.3. Contract award shall be made within the bid validity period. Should it become necessary to extend the validity of the bids and, if applicable, the bid securities, the agency concerned shall request in writing all those who submitted bids for such extension before the expiration date therefore. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security.

30.2.4. The following documents shall form part of the contract:

- a) Contract Agreement;
- b) Conditions of Contract;
- c) Drawings/Plans, if applicable;
- d) Specifications, if applicable;
- e) Invitation to Apply for Eligibility and to Bid;
- f) TOR;
- g) Addenda;
- h) Bid form including all the documents/statements contained in the winning bidder's two bidding envelopes, as annexes;
- i) Eligibility requirements, documents and/or statements;
- i) Performance Security, if applicable;
- k) Credit Line issued by an authorized bank in accordance with the provisions of these IRR, if applicable;
- l) Notice of Award of Contract and Contractor's "Conforme" thereto; and
- m) Other contract documents that may be required by existing laws and/or the agency concerned.

30.2.5. To facilitate the approval of the contract, the following supporting documents shall be submitted:

- a) Duly approved program of work or delivery schedule, and Cost Estimates;

- b) Certificate of availability of funds;
- c) Abstract of Bids;
- d) Resolution of the BAC or duly designated procurement office recommending Award;
- e) Approval of award by appropriate government approving authority;
- f) Concurrence of IFI, in case of foreign-assisted contracts; and
- g) Other pertinent documents that may be required by existing laws and/or the agency concerned.

**30.3. Contract Signing**

The winning bidder or its duly authorized representative and the head of the agency shall sign the contract within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.

**30.4. Approval of Contract**

30.4.1. The contract shall be approved in accordance with existing laws, rules and regulations, as soon as possible, but not later than fifteen (15) calendar days from the date the winning bidder or its duly authorized representative shall have signed the contract with the agency concerned and submitted all documentary requirements to perfect the contract.

30.4.2. In accordance with Section 3 of Executive Order No. 164, series of 1987 (E.O. 164), NEDA shall be furnished by the agency concerned with copies of all consultancy contracts involving the amount of one million pesos (P1,000,000.00) or more, complete with attachments, including the documents leading to the award of the contract in accordance with these IRR, for monitoring purposes.

**30.5. Notice to Proceed**

The concerned agency shall then issue the Notice to Proceed to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority. The effectivity date of the Notice to Proceed shall be specified by the agency concerned, and all notices called for by the terms of the approved contract shall be effective only from such date.

**Section 31. Performance Security**

31.1. Except for the procurement of consulting services, to guarantee the faithful performance by the winning bidder of its obligations under the contract, it shall post a Performance Security upon the signing of the contract, in the form of cash, certified check, cashier's manager's check, bank draft/guarantee confirmed by a reputable local bank (in the case of foreign winning bidder, bonded by a foreign bank), irrevocable letter of credit issued by a reputable commercial bank, surety bond callable upon demand issued by a surety or insurance company duly accredited by the Insurance Commission, or a combination thereof, as may be required by the head of the agency concerned, in accordance with the following schedule:

Form of Security	Minimum Amount in % of Total Contract Price
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1. Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit	Five percent (5%)
2. Bank guarantee	Ten percent (10%)
3. Surety bond	Thirty percent (30%)

31.2. The Performance Security shall be posted in favor of the agency concerned, and shall guarantee the payment of the amount of the security as penalty in the event it is established that the winning bidder is in default in any of its obligations under the contract.

31.3. In the execution of the Performance Security, the following conditions shall be complied with:

- a) It shall be executed in the form prescribed by the agency concerned in the Instructions to Bidders;
- b) It shall at least be co-terminus with the final completion of the contract; and
- c) For the procurement of civil works, 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."

31.4. Subject to the conditions of the contract, the Performance Security may be released by the agency concerned after the issuance of the Certificate of Acceptance of the goods, in the case of procurement of goods, provided that there are no claims filed against the contract awardee or the surety company; or, in the case of procurement of civil works, 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.

31.5. 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 adjustments in costs or unit prices, and/or amendments to order or change orders, extra work orders and supplemental agreements, as the case may be. The winning bidder shall cause the extension of the validity of the Performance Security to cover approved contract time extensions.

31.6. In case of a reduction in the contract value, or, in the case of procurement of civil works, for partially completed works under the contract which are utile and accepted by the Government, and the use of which in the judgment of the implementing agency will not affect the structural integrity of the entire project, the said agency shall allow a proportional reduction in the original Performance Security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original Performance Security.

**Section 32. Failure to Enter into Contract and Post Performance Security**

32.1. If the bidder with the Lowest Calculated and Responsive Bid or Highest Rated and Responsive Bid, as the case may be, or the bidder with the Single Calculated/Rated and Responsive Bid, fails, refuses or is unable to make good its bid by entering into a contract with the agency or, in the case of procurement of goods and civil works, post the required Performance Security within the period stipulated in the bidding documents, the bid security shall be forfeited where so applicable, and the appropriate sanctions provided in these IRR and existing laws shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder.

32.2. In the case of failure, refusal or inability of the bidder with the Single Calculated/Rated and Responsive Bid to enter into contract and post the required Performance Security, as the case may be, as provided in this Section, the BAC shall disqualify the said bidder, and shall declare the bidding a failure and conduct a re-bidding without re-advertisement, in which case, a direct notification shall be extended to all bidders either by mail, by hand, or electronically. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the agency concerned may enter into a negotiated procurement.

32.3. In the case of the failure, refusal or inability of the bidder with the Lowest Calculated and Responsive Bid or Highest Rated and Responsive Bid, as the case may be, to enter into contract and post the required Performance Security, as the case may be, as provided in this Section, the BAC shall disqualify the said bidder, and shall initiate and complete the postqualification process on the bidder with the second Lowest Calculated Bid/Highest Rated Bid. This procedure shall be repeated until the Lowest Calculated and Responsive Bid or Highest Rated and Responsive Bid, as the case may be, is determined for award. However, if no bidder passes postqualification, the BAC shall declare the bidding a failure and conduct a re-bidding without re-advertisement, in which case, a direct notification shall be extended to all bidders either by mail, by hand, or electronically. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the agency concerned may enter into a negotiated procurement.

32.4. For the procurement of goods, to assure that manufacturing defects will be corrected by the contract awardee for a fixed time after delivery, a warranty shall be required of the winning bidder, the obligations for which shall be covered by either retention moneys in the amount equal to ten percent (10%) of every progress payment, or a special bank guarantee equivalent to ten percent (10%) of the total contract price. Such amounts shall only be released after the warranty period provided that the goods supplied are free from defects and all the conditions imposed under the contract are fully met.

32.5. For supply contracts which include installation and commissioning services in addition to the supply of goods, the period and the required obligation of the warranty shall cover the same.

### **Section 33. Price Adjustment**

33.1. For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price adjustments during contract implementation, except under extraordinary circumstances and upon prior approval of the PPB. With respect to price adjustments for civil works and consulting

services contracts moreover, it shall be understood that the Joint PPB-INFRACOM shall be the approving authority.

33.2. For purposes of these IRR, “extraordinary circumstances” shall refer to events that may be determined by NEDA in accordance with the Civil Code of the Philippines, and upon the recommendation of the agency.

#### **Section 34. Period for Action on Procurement Activities**

The procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the agency concerned. The estimated periods for action on specific procurement activities are provided for in Annex “D” of these IRR.

### **ALTERNATIVE METHODS OF PROCUREMENT**

#### **Section 35. Alternative Methods**

##### *35.1. Alternative Methods of Procurement for Goods*

In the interest of economy and efficiency, the agency concerned may adopt the following alternative methods of procurement after the Head of Agency concerned or his duly authorized representative has approved the use of the same, upon recommendation of the BAC, as indicated in the bidding documents.

35.1.1. *Limited Source Bidding* (a.k.a., selective bidding) is a procedure that involves direct invitation to bid by the concerned Agency from a set of pre-selected suppliers with known experience and proven capability on the requirements of the particular contract. The BAC of the concerned Agency shall directly send to the pre-selected bidders the invitation to bid, which shall already indicate the relevant information required to enable the bidders to prepare their bids as prescribed under the pertinent provisions of these IRR. Limited source bidding may be employed by concerned agencies under any of the following conditions:

- a) Procurement of highly specialized types of goods where only a few suppliers are available who could maintain a competitive position, such that resorting to the public bidding method will not likely result in any additional suppliers participating in the bidding;
- b) Procurement of relatively small additions to an existing fleet of equipment where a few suppliers are well established and who provide satisfactory after-sales services: *Provided, however,* That the addition shall not exceed ten percent (10%) of the existing fleet;
- c) Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole; and
- d) Procurement of goods involving relatively small amounts, i.e., amounts involving P1,000,000 or less, such that the cost and time of publicly

advertising the bidding is not justifiable; provided, that, splitting of contracts shall not be resorted to simply to meet the maximum amount and avoid public bidding. "Splitting of contracts" happens when two (2) or more contracts for similar goods are made in favor of one dealer or supplier within one (1) month of each other and analogous cases.

35.1.2. *Direct Contracting* or single source procurement. This procedure does not require elaborate bidding documents. The selected supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned agencies under any of the following conditions:

- a) Procurement of items of proprietary nature which can be obtained only from the proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- b) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.
- c) When the procurement of critical plant components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or
- d) For purposes of maintaining standards, such as a purchase involving a small addition to an already existing fleet of equipment; and
- e) In emergencies where procurement must be immediately accomplished regardless of cost. Emergencies shall be defined as those situations where there is imminent danger to life and/or property as determined by the head of agency concerned. Emergency procurements shall not exceed a monthly amount of four percent (4%) of the annual agency expenditure program for supplies and materials out of the appropriations allotted for maintenance and other operating expenses of the agency concerned, except as may be authorized by the President upon the joint recommendation of the DBM and the COA.

35.1.3. *Repeat Order*. Whenever there is a need to replenish goods procured under a contract previously awarded through public bidding, the agency may directly procure the goods from the previous winning bidder. Repeat orders may be resorted to by agencies only in cases where the supplier who was selected in the previous bidding is clearly superior to the other bids not only in terms of the price quoted but also in terms of equipment reliability, availability of spare parts, after-sales service and delivery period, among others. Repeat orders shall likewise be subject to the following conditions:

- a) Contract prices of the repeat order must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the government after price verification;
- b) The repeat order will not result in splitting of requisitions or purchase orders;

- c) c) The repeat order may be availed of only within six (6) months from the date of the original purchase; and
- c) The repeat order shall not exceed the quantity in the original contract.

35.1.4. *Shopping* is a method of procurement whereby the purchaser simply requests for the submission of price quotations for the goods to be procured directly from suppliers of known qualifications. This method of procurement shall be employed only in the following cases, and to ensure competitive prices determined after verification of the prevailing market prices, the BAC concerned shall obtain quotations from at least three (3) suppliers, provided, that, the prohibition against splitting of contracts in paragraph (d) of Section 35.1.1 shall be equally applicable to this alternative method of procurement:

- a) Procurement of readily available off-the-shelf goods or standard specifications goods that are small in value, i.e., amounts involving P1,000,000 or less;
- b) Procurement of ordinary/regular equipment involving an amount not to exceed P1,000,000: *Provided*, That said amount shall be subject to a periodic review by the PPB. For this purpose, the PPB shall be authorized to increase or decrease the said amount through amendment of these IRR in order to reflect changes in economic conditions.

35.1.5. *Negotiated Procurement for Goods* may be employed by agencies only in the following cases:

- a) Where there has been failure of public bidding for the second time as provided under the relevant provisions of these IRR;
- b) Where the existing contract has been terminated in accordance with the pertinent provisions of these IRR and existing laws, rules and regulations;
- c) Whenever the goods are to be used in connection with a project or activity which cannot be delayed without causing detriment to public service; and
- d) Whenever the purchase is to be made from another agency of the Government.

35.2. *Negotiated Procurement for Civil Works* – Negotiated contract may be entered into only where any of the following conditions exists and the implementing agency is not capable of undertaking the project by administration:

- a) a) In times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property or to restore vital public services, infrastructure and utilities such as collapsed bridges, cut road sections, breached dikes, unroofed buildings and other severely damaged vital facilities;

- b) b) Where there has been failure of public bidding for the second time as provided under the relevant provisions of these IRR;
- c) c) Where the subject project is adjacent or contiguous to an ongoing project and it could be economically prosecuted by the same contractor provided that subject project has similar or related scope of works and is within the contracting capacity of the contractor, in which case, direct negotiation may be undertaken with the said contractor at the same unit prices adjusted to price levels prevailing at the time of negotiation using the parametric formulae prescribed in the Implementing Rules and Regulations of Presidential Decree No. 1594 on Contract Implementation without the five percent (5%) deduction and contract conditions, less mobilization cost, provided that said contractor has no negative slippage and has demonstrated a satisfactory performance; and
- d) d) For contracts terminated in accordance with the provisions of Presidential Decree No. 1870 (Authorizing the Government's Take Over by Administration of Delayed Infrastructure Projects or Awarding of the Contract to Other Qualified Contractors) or similar laws.
- e) e) Bona fide contractors whose eligibility documents are on file with the Construction Industry Authority of the Philippines (CIAP), the Department of Public Works and Highways (DPWH) Contractors' Registry or with the agency concerned and who have been classified under the type of project where the subject contract falls are eligible to be invited for negotiation. Other contractors not previously deemed eligible may also apply for eligibility.
- f) f) 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 quotation and other information called for in the format. The contractors shall submit, simultaneously with their quotation, the bid security as stipulated above.
- g) g) Negotiation may be made with the complying bidders in ascending order starting from the lowest calculated bidder.

For case d), contract may be negotiated with the second lowest calculated bidder for the project under consideration at the bidder's original bid price escalated to the date of contract negotiation using the parametric formulae mentioned in case c) reckoned from the date of the bidding. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the heads of agencies concerned within the respective limits of approving authority.

**35.3. *Negotiated Procurement for Consulting Services*** – Negotiated procurement for consulting services as may be differentiated from the usual open competitive selection procedure may be conducted only when any of the following conditions exists and the implementing agency is not capable of undertaking the project by administration:

- a) a) In times of emergencies or when time is of the essence, as certified by the head of agency upon the recommendation of the BAC;
- b) b) Where there has been failure of public bidding for the second time as provided under the relevant provisions of these IRR; and
- c) c) Take-over of consultancy contracts which have been rescinded or terminated partly or wholly, by giving the right of first refusal to consultants which participated in the original competitive selection in order of ranking.

35.4. *Provision Common to Negotiated Procurement of Goods, Civil Works and Consulting Services* – The suppliers, contractors or consultants with whom an agency negotiates shall be subject to the provisions of these IRR that seek to ensure that said suppliers, contractors or consultants can deliver or perform their obligations under the negotiated contract.

## **PROCUREMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY PROJECTS**

### **Section 36. Information and Communications Technology Projects**

36.1. This Section covers the procurement of information and communications technology (ICT) projects, which, for purposes of clarity, includes the procurement of ICT resources. All agencies shall implement ICT acquisition activities in accordance with the rules and procedures set forth in these IRR. This Section also covers the lease of ICT equipment.

36.2. “Information and Communications Technology” (ICT) refers to the totality of means employed to systematically generate, send, receive, store or otherwise process electronic data messages or electronic documents, encompassing the use of computer technology and telecommunications as well as any information and communication technology that deals with the integrated use of modern applications of computers, networks and of telecommunications in the provision of information and value-added services.

36.3. Procurement of ICT projects and resources shall be governed either by the rules for the procurement of (i) goods, supplies, materials and related services; (ii) civil works; or (iii) consulting services, depending upon the following:

1. The procurement of ICT equipment only, in particular, hardware and/or software, inclusive of data communications, networking equipment and such other peripherals and auxiliary equipment necessary to put an information and communications system, as this term is defined in Section 3 (d) of Republic Act No. 8792 (R.A. 8792), otherwise known as the “Electronic Commerce Act,” into operational mode, shall be considered as procurement of goods, supplies, materials and related services.

2. The procurement of ICT projects involving the establishment of physical networks only shall be considered as procurement of civil works.
3. The procurement of ICT manpower resources only, including Information Technology (IT) personnel, as well as consultancy/technical services related to the planning, development, implementation and maintenance of information systems, software and/or training, shall be considered as procurement of consulting services.
4. In the case of the procurement of ICT projects or resources involving at least two (2) of the foregoing, the same shall be considered as either one for: (a) goods, supplies, materials and related services; (b) civil works; or (c) consulting services, depending on whichever component has the higher or highest cost.

36.4. The Information Technology and E-Commerce Council (ITECC), created under Executive Order No. 264, series of 2000, as amended (E.O. 264), and the National Computer Center (NCC), created under Presidential Decree No. 1480, issued on June 11, 1978, may propose the adoption of additional policies and standards for the procurement of ICT projects and resources to the PPB and the INFRACOM.

36.5. The BAC shall be responsible for the ICT procurement of each agency, subject to the authority of each agency to establish separate BACs where the number and complexity of the items to be procured so warrant. For this purpose, all agencies shall ensure that at least one member of the BAC or the TWG, if so created, shall be an IT professional: *Provided, however*, That this shall be in consonance with the provision of these IRR on BAC composition.

36.6. The lease of common ICT equipment (personal computers, printers, scanners, including copiers) may be resorted to in order to save on the annual budget of the agency and take advantage of advances in information technology. However, the lease-rental of said equipment shall be subject to public bidding. As a guide, the prevailing assumption of lease rental contracts is a useful life for ICT equipment of at least three (3) years.

36.7. Agencies may seek the assistance of NCC in the preparation of their Information Systems Plan (ISP), which shall form part of the APMP prescribed in Section 4 of these IRR. For this purpose, ITECC shall take measures to ensure that each agency's ISP shall be in line with the Government Information Systems Plan (GISP), mandated under E.O. 264, series of 2000, as amended.

## **THE GOVERNMENT E-PROCUREMENT SYSTEM**

### **Section 37. The Electronic Procurement System**

37.1. The Government shall establish an Electronic Procurement System (EPS) to enhance transparency, accountability, equity, efficiency and economy in government procurement.

37.2. The PS under the supervision of the PPB shall establish, manage, operate and maintain the EPS, which shall serve as a single and centralized electronic portal for the

procurement of (a) goods, supplies, materials and related services; (b) civil works; and (c) consulting services. The PS shall assist agencies to ensure their on-line connectivity and help in training agency personnel responsible for the operation of the EPS from agency terminals.

### **Section 38. Use of the EPS**

38.1. All agencies are mandated to fully use the EPS in accordance with the policies, rules, regulations and procedures adopted by the PPB and embodied in these IRR. In this connection, all agencies shall register with the EPS and shall undertake measures to ensure their access to an on-line network to facilitate the open, speedy and efficient on-line transmission, conveyance and use of electronic data messages or electronic documents.

38.2. The EPS shall be the primary source of information on government procurement of (a) goods, supplies, materials and related services; (b) civil works; and (c) consulting services.

38.3. The rules and regulations governing the manual method of procurement shall apply whenever the rules in this Section are silent.

#### **38.4. Pre-bidding Conferences and Notices**

38.4.1. Pre-bidding conferences shall be conducted in accordance with Section 15 of these IRR: *Provided, however,* That the requirement for face-to-face bidding conference may be replaced once videoconferencing or similar technology becomes the norm in business transactions in the country. Agencies that have, and whose suppliers also have, videoconferencing capabilities may conduct their pre-bidding conferences electronically.

38.4.2. Requests for clarification from bidders may be sent electronically to the BAC. To be binding on bidders, clarifications and amendments to the Invitation to Apply for Eligibility and to Bid and to the bidding documents shall be in the form of Supplemental/Bid Bulletins and posted in the electronic bulletin board of the EPS.

38.4.3. The Supplemental/Bid Bulletins mentioned in the immediately preceding Subsection as well as all notices to be made by the BAC to the bidders or prospective bidders shall be sent electronically to the e-mail address indicated in the bidders' registration and shall be posted in the EPS bulletin Board.

#### **38.5. Registration, Eligibility Requirements and Submission of Bids**

38.5.1. As soon as the electronic registry of suppliers, contractors and consultants of the EPS is fully operational, all agencies shall be required to use it as the registries provided for in Sections 16.1 and 17.7 of these IRR, as the case may be. For this purpose, each agency shall enter into the EPS electronic registry all suppliers, contractors and/or consultants already registered with it, as well as all those that may subsequently apply for registration with it. Moreover, all agencies already maintaining an electronic registry shall integrate the same with that of the EPS. A supplier, contractor or consultant duly registered with the EPS through one agency, may submit its LOI and/or eligibility requirements, as the case may be, for a particular contract to be bid by the same agency

or another agency, provided that the said supplier, contractor or consultant maintains its registration current and updated in accordance with the provisions of these IRR, and its registration is proper and relevant for the particular type of contract to be bid.

38.5.2. LOIs and eligibility requirements may be sent electronically to the agency concerned through the EPS: *Provided, however,* That the EPS shall allow manual submission of LOIs and eligibility requirements. The EPS shall generate and send an acknowledgement of all LOIs and eligibility requirements received by it.

38.5.3. Registered bidders determined to be eligible may submit their bids at any time before the closing date specified in the bidding documents. The EPS shall bar all incoming bids after such date.

38.5.4. The EPS shall have a feature that allows the electronic submission of LOIs, eligibility requirements and bids. With respect to the electronic submission of bids for non-common use items, civil works and consulting services, agencies may hire service providers to undertake their electronic bidding activities: *Provided, however,* That only service providers meeting the following minimum requirements may operate an electronic bidding system (EBS) for agencies:

- a) Comply with the provisions of these IRR;
- b) Allow linkage to the EPS, particularly with regard to the posting of all bid opportunities to be conducted through the EBS;
- c) Allow parallel manual submission of bids to the procuring agency;
- d) Ensure that the BAC shall have complete control of the bidding process, and that the BAC's sole authority to open bids is strictly observed;
- e) Its system must be virus-resilient, and must provide sufficient security, employing at least both firewall and encryption devices;
- f) Must provide for the use of electronic signatures and other current electronic authentication devices;
- g) Must have sufficient redundant back-up facilities; and
- h) Must have provisions for linkage to the agency Financial Management Information System (FMIS), Logistics Management Systems, and other internal information systems that may interact with the procurement process.

The PPB shall determine and certify compliance with the above requirements. However, the PPB may delegate this task to technically capable units/agencies of the government.

38.5.5. Upon receipt of a bid, the EPS shall generate and send a message to the bidder acknowledging such receipt.

### 38.6. *Opening of Bids*

38.6.1. The BAC shall have the sole authority to open the bids.

38.6.2. Only the financial proposals of bidders whose technical proposals meet the minimum technical requirements shall be opened or decrypted.

38.7. An update of all procurement contracts, regardless of whether procurement is done electronically or manually, shall be posted in the EPS bulletin board. The update shall include, but shall not be limited to, the status of procurement contracts, including the names of contract awardees.

38.8. Without prejudice to criminal prosecution under the applicable provisions of R.A. 8792, Republic Act No. 3019 (R.A. 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act," and other penal laws, agency officials and employees who commit any of the following acts shall be deemed to have committed grave misconduct and shall be penalized in accordance with the applicable Civil Service rules and regulations:

1. Opening or decryption, by whatever means, of bids submitted through the EPS ahead of the appointed time for the opening or decryption of such bids;
2. Causing the unauthorized disclosure of any information or document submitted through the EPS; or
3. Hacking into or cracking the EPS, or aiding another person to hack into or crack the same.

38.9. When any of the foregoing acts is done by the administrator(s) or employee(s) of a service provider hired by an agency, or in collusion with a private party who is a participant in the bidding process, the said administrator(s), employee(s) or private party shall be imposed the corresponding administrative penalties under these IRR.

### **Section 39. Features of the EPS**

39.1. The EPS includes the following features:

#### **39.1.1. The Electronic Bulletin Board**

- a) The EPS shall have a centralized electronic bulletin board for posting procurement opportunities, notices, awards and reasons for award. All agencies are required to post all procurement opportunities, results of bidding and related information in the EPS bulletin board.
- b) Posting in the electronic bulletin board of the Invitation to Apply for Eligibility and to Bid shall be considered advertisement for purposes of the newspaper publication requirement embodied in Section 14 of these IRR: *Provided, however,* That a procurement contract with an amount above two million pesos (P 2,000,000) for goods; five million pesos (P5,000,000) for civil works; and five hundred thousand (P500,000) for consulting services shall still comply with the newspaper publication requirement in accordance with Section 14.2.2 above.

### 39.1.2. Registry of Suppliers, Contractors and Consultants

- a) The EPS shall have a centralized electronic registry of all authorized suppliers, contractors and consultants.
- b) Registration shall entail the submission of the requirements provided for under Sections 16.1 and 17.7 of these IRR, as the case may be, to the agency. Registration shall be effective for one year and may be renewed, provided that the supplier, contractor or consultant concerned maintains its registration current and updated at least once a year, or more frequently when needed.
- c) Suppliers, contractors and consultants applying for registration must also indicate their account number with an authorized government depository bank (AGDB) to facilitate payment as well as the posting of bid and performance security, when applicable.
- d) The EPS shall deny registration to or exclude from the registry any party that is found to have willfully misrepresented any of the information provided in the application for registration or who has been “blacklisted” by any agency from participating in any of its procurement opportunities.
- e) A supplier, contractor or consultant applying for registration shall be required to provide an e-mail address to which all communications from the BAC shall be sent. The e-mail address provided shall be considered as such applicant’s information system for purposes of reckoning the date of sending or receipt of electronic messages or documents.
- f) Registered suppliers, contractors and consultants shall secure a digital certificate from the appropriate certification authority to be able to participate in the procurement activities of the EPS.
- g) Registration with the EPS is not tantamount to a finding of eligibility, nor is it a guaranty that a supplier, contractor or consultant may participate in a public bidding without first being determined to be eligible for that particular public bidding.

### 39.1.3. The Electronic Catalogue

- a) Agencies shall procure common-use supplies, materials and equipment from the PS Catalogue in the EPS. To be able to use the EPS, agencies shall be required to register and designate the officials or personnel authorized to transact with and operate the EPS from such agencies’ terminals.
- b) Agencies without internet access may avail of the EPS Public Access Terminals which shall be installed at DBM designated locations in the provinces and in Metro Manila: *Provided, however,* That they shall comply with Section 38 of these IRR.

- c) Small volume purchases of goods, supplies, materials and equipment not commonly used through the Suppliers' Catalogue are allowed without need of public bidding. For the purpose of this provision, "small volume purchases" shall be construed as those involving five hundred thousand pesos (P 500,000.00) or less for goods, supplies and materials and one million pesos (P 1,000,000.00) or less for equipment.
- d) The Electronic Catalogue may also feature non-common use items that may be procured directly and without public bidding by agencies from suppliers: *Provided, however,* That for an item to be carried in the Electronic Catalogue for this purpose, the supplier thereof must have been determined as the Lowest Calculated and Responsive Bidder in a previous bidding conducted by PS or by an agency for PS: *Provided, further,* That such item will be featured in the Electronic Catalogue for a maximum period of six (6) months unless another supplier offers a price lower by at least five percent (5%) and such supplier is determined by the agency that conducted the previous bidding to meet the eligibility and bidding requirements for the item, in which case the item from the latter supplier will be that featured in the Electronic Catalogue for the remainder of the six (6)-month period: *Provided, finally,* That no challenge of a featured item shall be entertained with only two (2) months remaining of the six (6)-month period.

#### 39.1.4. Additional Features

The EPS shall also feature a Virtual Store, Electronic Payment, Electronic Bid Submission, and such other features as may be developed in the future.

### **Section 40. Security, Integrity and Confidentiality**

40.1. The EPS shall incorporate the following features, which shall be periodically upgraded to keep abreast with developments in technology:

40.1.1. *Confidentiality* – The EPS shall ensure the privacy of parties transacting with it. For this purpose, no electronic message or document sent through the system shall be divulged to third parties unless such electronic message or document was sent after the sender was informed that the same will be made publicly available. The EPS shall protect the intellectual property rights over documents, including technical designs, submitted in response to Invitations to Apply for Eligibility and to Bid.

40.1.2. *Integrity* – The EPS shall ensure that nobody, including the system administrators and chairperson and members of the BAC, shall be able to alter the contents of bids submitted through the system or read the same ahead of the stipulated time for the decryption or opening of bids. For this purpose, bids submitted through the EPS shall be sealed through electronic keys. The authenticity of messages and documents submitted through the EPS shall also be ensured by the use of electronic signatures.

40.1.3. *Security* – The EPS shall be protected from unauthorized access or interference through the incorporation of security features such as, but not limited to, firewalls. Periodic tests shall be conducted to ensure that the system cannot be breached.

40.1.4. *Audit Trail* – The EPS shall include a feature that provides for an audit trail for on-line transactions, and allows the COA to verify the security and integrity of the system at any time.

40.1.5. *Performance Tracking* – The performance of suppliers, contractors and consultants shall be tracked to monitor compliance with delivery schedules and other performance indicators. Similarly, the performance of procuring agencies shall be tracked to monitor the settlement of their obligations to suppliers, contractors and consultants.

#### **Section 41. Observers**

The EPS shall allow observers, duly authorized by the BAC, to monitor the procurement proceedings on-line: *Provided, however,* That such observers do not have any direct or indirect interest in the contract to be bid.

### **PROCUREMENT MONITORING**

#### **Section 42. Procurement Monitoring**

42.1. The head of the BAC Secretariat shall have the responsibility for monitoring the performance on the standards set forth by E.O. 40 and these IRR.

42.2. The procurement monitoring report prepared by the Secretariat shall cover all procurement activities, ongoing and completed for projects or contracts costing fifty million pesos (P50,000,000.00) and above for goods and civil works and five million pesos (P5,000,000.00) and above for consulting services, which report shall be consistent with the milestones provisions of Administrative Order No. 129, series of 1994, as amended herein. The report shall cover major activities from the holding of pre-procurement conference to the issuance of notice of award and the approval of contract, including the standard and actual time durations for each major procurement activity. It shall be submitted within ten (10) working days after the end of each quarter.

42.3. The report shall be approved and submitted by the heads of the procuring agencies on a quarterly basis to the NEDA Board that shall create a Procurement Monitoring Task Force (PMTF) composed of members of the INFRACOM and the PPB to assess the performance of agencies in procurement, including impacts on the implementation of the national development plan, and recommend specific interventions to improve performance.

42.4. *Help Desk.*

To provide advice and assistance to any agency undertaking procurement, procurement assistance units or “Help Desks” shall be created by the PMTF.

### **INCENTIVES AND SANCTIONS**

#### **Section 43. Incentives and Sanctions**

43.1. *Incentives and Sanctions.* In consultation with agencies and the Civil Service Commission, the PPB and INFRACOM shall, immediately after the issuance of these IRR, establish:

- a) An equitable indemnification package for officials/staff providing services in the BAC, Secretariat and the Technical Working Group, which may be in the form of free legal assistance, liability insurance, and other forms of indemnification and protection; and
- b) A set of sanctions for violations of E.O. 40 and these IRR committed by officials/staff providing services in the BAC, Secretariat and the TWG, without prejudice to the provisions of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," and the Civil Service Law, among others.

#### **Section 44. Administrative Penalties for Bidders and Prospective Bidders**

44.1. The head of the agency shall impose on bidders or prospective bidders, the administrative penalties of suspension from participating in any public bidding of the agency for one (1) year for the first offense and two (2) years for the second offense, as well as disqualification from further participating in the public bidding currently being undertaken by the agency concerned, where applicable, for the following acts or violations, without prejudice to the imposition of criminal and civil sanctions as provided by laws, rules and regulation:

1. Submission of eligibility requirements containing false information or falsified documents;
2. Submission of bids that contain false information or falsified documents or the concealment of such information in the bids;
3. Allowing the use of one's name or using the name of another for purposes of public bidding;
4. Withdrawal of a bid or refusal to accept an award or enter into a contract with the Government without just cause after it shall have been determined to have submitted the Lowest Calculated and Responsive Bid or the Highest Rated and Responsive Bid;
5. Refusal or failure to post the required performance security within the prescribed time;
6. Termination of the contract due to the default of the bidder;
7. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor; and
8. All other acts that tend to defeat the purpose of the public bidding.

44.2. In addition to the above administrative penalties, the Bid Security or the Performance Security of the bidder concerned, where applicable, shall also be forfeited in favor of the Government. The authority to impose the above-mentioned administrative penalties may be delegated by the head of the agency to the BAC.

44.3. For consultancy contracts, if the misrepresentation is discovered during the effectivity of the consultancy contract, the agency shall have the right to cancel the contract after thirty (30) calendar days from the date a written notice to this effect is given to the consultant. In the event of such cancellation of the contract, the amounts to be paid to the consultant shall be adjusted equitably to the work accomplished and such sum of money received by the consultant in excess of the amount corresponding to the work done shall be refunded by the latter to the agency within ten (10) calendar days after the cancellation of the contract.

44.4. The right of recourse of the department/agency/office/corporation/local government unit as herein above provided shall be without prejudice to the liability that the Consultant may incur under the pertinent provisions of the Revised Penal Code.

## **FINAL PROVISIONS**

### **Section 45. Local Government Units**

45.1. All procurement of LGUs funded by the national government shall be governed by the provisions of these IRR. LGUs are encouraged to apply the rules and procedures provided in these IRR for procurement funded from local government funds.

### **Section 46. Appeals**

46.1. Decisions of the BAC in all stages of procurement may be appealed in writing by the bidders to the head of the agency concerned. The appeal must be filed within seven (7) calendar days from the date the BAC has reached a decision and issued a Resolution. The head of agency, whose decision shall be final, shall decide on the appeal within seven (7) (15) calendar days from receipt thereof. The appeal shall be resolved strictly on the basis of the records of the BAC. The appeal shall not delay the bidding process but it must first be resolved before any award is made.

46.2. Appeals shall be made by filing a position paper containing the following information: name of bidder, office address, name of project/contract, implementing agency, a brief statement of fact, and the issue to be resolved. A non-refundable protest fee shall accompany the filing of the appeal in an amount equivalent to P50,000 for contracts with an approved budget of ten million pesos (P10 million) and below, and one hundred thousand pesos (P100,000) for contracts with an approved budget exceeding ten million pesos (P10 million).

46.3. The INFRACOM and the PPB shall be furnished a copy of the appeal and the decision for information purposes only.

### **Section 47. Amendment**

These IRR may be amended jointly by the PPB and INFRACOM as the need arises.

**Section 48. Separability**

If any provision in these IRR, or application of such provision to any circumstance, is held invalid, the remainder of these IRR shall not be affected thereby.

**Section 49. Effectivity**

These IRR shall take effect fifteen days after its publication in the Official Gazette or in a newspaper of general circulation.

DONE in the City of Manila, this 8<sup>th</sup> day of February in the year of our Lord, Two Thousand and Two.

SIGNED :

SIGNED :

**DANTE B. CANLAS**

*Director-General, NEDA*

Chair, Committee on Infrastructure  
Board

**EMILIA T. BONCODIN**

*Secretary, DBM*

Chair, Procurement Policy

## **ANNEX “A”**

### **DETAILED ENGINEERING FOR THE PROCUREMENT OF CIVIL WORKS**

1. Detailed engineering shall proceed only on the basis of the feasibility or preliminary engineering study made 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, shall 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 shall be supported by detailed justifications, including their effects on the cost, and (if necessary) the economic justification.

2. A schedule of detailed engineering activities shall include the following:

- a) Survey
- b) Site Investigation
- c) Soils and Foundation Investigation
- d) Construction Materials Investigation
- e) Preparation of Design plans
- f) Preparation of Technical Specifications
- g) Preparation of Quantity and Cost Estimates
- h) Preparation of Program of Work
- i) Preparation of Proposed Construction Schedule (and estimated Cash Flow for projects with Schedule over Six (6) Months)
- j) Preparation of Site or Right-of-Way Plans including Schedule of Acquisition
- k) Preparation of Utility Relocation Plan
- l) Preparation and Submission of Design Report
- m) Environmental Impact Statement for critical project as defined by the Department of Environment and Natural Resources (DENR)
- n) Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered
- o) Preparation of Bid/Tender Documents

3. Work under detailed engineering shall include, but not necessarily be limited to, the following:

- a) 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.
- b) 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.

- c) Contract Plans – The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the agency concerned, incorporating at least the following:
  - (i) Site development plan
  - (ii) Plans and profile sheet
  - (iii) Typical sections and details
  - (iv) Drainage details where applicable
  - (v) Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed
  - (vi) Other details which may be required by the head of the agency
- d) Quantities – All construction quantities shall be computed to a reasonable accuracy of plus or minus fifteen percent (15%).
- e) Special Provisions – Specifications shall be prepared for specific terms 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 agency concerned.
- f) Unit Prices – These shall be prepared for each contract using costs based on reasonable approved current prices, divided into local and foreign exchange costs, as the case may be.
- g) Budget for the contract – the budget for the contract to be bid shall be prepared by official(s) duly designated by the head of the agency concerned or by his duly authorized official. It shall be approved by the head of the agency or his duly designated official.

The budget for the contract to be bid shall show the local and foreign currency requirements, as the case may be.

The budget for the contract to be bid shall specify for each major work item, such as earthwork, roadwork, and massive concreting, the components for equipment rentals, fuel, labor, materials and overhead.

- j) Bidding Documents as provided for in these IRR.
- k) Program of Work – Before prosecuting any project, the necessary program of work shall be prepared and submitted for approval. In no case shall construction funds be remitted to field offices or construction work on a project be started before the program of work is approved, in accordance with existing laws.

No program of work for any project shall be approved without detailed engineering.

The program of work shall 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 shall 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 which case continuity of construction up to the completion of a usable portion must be assured.

- l) In the preparation of the bidding documents, the agency shall make an estimate of the actual number of working days required to complete the project through PERT/CPM analysis of the project activities and corrected for holidays and weekends. Likewise, the agency shall make an estimate of the number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site, which shall be indicated in the tender documents, and incorporate the same in the corrected actual number of working days determined above, and shall be 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 Instructions to Bidders 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.
4. The above rules shall apply to the implementation of infrastructure projects under normal or ordinary conditions. However, under severe emergency or extraordinary cases involving major calamities and disasters 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 to enable quick response to said cases, while maintaining the safety and integrity of the structure, as prescribed by the head of the agency concerned.

## ANNEX “B”

### TYPES OF CONSULTING SERVICES

1. Advisory and Review Services. These services include advice on particular projects or problems. These will include advice on and review of, among others, planning, design and other professional services, as well as management, production, inspection, testing and quality control. They also include such services as appearances before commissions, boards or other judicial bodies to give evidence or otherwise submit professional opinions.

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

- a) To establish investment priorities and sector policies - Studies for this objective include, among others, basic resource inventories, such as, river basin surveys, transport sector surveys, and studies of alternative development patterns and of sectors on a regional or nationwide scale.
- b) To determine the basic features and the feasibility of individual projects - Studies for this objective include, among others, the functional design, project site selection, architectural and space programming and physical layout of specific projects, preliminary design and cost estimates, and the economic and financial analyses required for project evaluation.
- c) To define and propose changes in governmental policies, operations and institutions necessary for the successful implementation or functioning of investment projects - Studies for this objective include, among others, analysis of project related organizations, administrative problems, planning machinery, regulatory and marketing policies, accounting, and management systems, manpower resources and training requirements.

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

- a) Pre-Design Phase – establishes the general size and scope of the project and its location on the site. The services include but are not limited to reconnaissance, topographical and other engineering and land surveys, soils investigations, preparation of preliminary architectural/engineering designs, layouts, outline specifications, preliminary cost estimates and specific recommendations prior to actual design;
- b) Basic Design Phase – includes the preparation of detailed plans, designs, working drawings, specifications, detailed cost estimates and tender documents required for invitations of bids for construction works and equipment; and
- c) Support Services During Construction – includes assistance and advice in securing bids, tabulation and analysis of bid results, and making recommendations on the award of construction contracts, and in

preparing formal contract documents; preparation of supplementary drawings required to suit actual field conditions; checking detailed construction and as-built drawings, shop and erection drawings submitted by contractors; making periodic visits to check on the general progress of work and quality of materials and workmanship; observing performance tests and start-up and making report thereon; and making a final inspection and reporting of completed project.

4. Construction Supervision. These include the following:

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

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

5. Management and Related Services. These may include the following:

- a) Sector policy and regional development studies;
- b) Planning, feasibility, market, economic, financial, technical, operations and sociological studies;
- c) Project management;
- d) Production management, inventory control, and productivity improvement;
- e) Marketing management and systems;
- f) Information systems, computer processing, systems and procedures;
- g) Institutional strengthening, organization development, manpower requirements, training and technology transfer;
- h) General management consultancy; and
- i) Other related services.

6. Other Technical Services or Special Studies. The Technical Services may include the following:

- a) Institution building, including organization and management studies and putting the recommendations of such studies into effect;
- b) Design and execution of training programs at different levels;
- c) Provision of staff to carry out certain functions and to train their replacements; and
- d) Tasks relating to economic and financial studies such as those of tariff structures.

The Special Studies may include the following and other studies not covered under any of the services and studies described above:

- a) a) Soils investigation;
- b) b) Studies, tests and process determination performed to establish design criteria for water facilities;
- c) Detailed mill, shop, and/or laboratory inspection of materials and equipment;
- d) Land surveys, establishment of boundaries and monuments, and related office computations and drafting;
- e) Parcellary surveys;
- f) Engineering surveys (for design and construction) and photogrammetry;
- g) Assistance in litigation arising from the development or construction of projects and in hearings before various approving and regulatory agencies;
- h) Investigation involving detailed consideration of the operation, maintenance, and overhead expenses; and the preparation of rate schedules; earning and expense statements, feasibility studies, appraisals, evaluations, and material audits or inventories required for certification of force account construction performed by the agencies;
- i) Preparation of environmental statements and assistance to the agencies in public hearings;
- j) Preparation of operating instructions and manuals for facilities and training of personnel and assistance in initial operation of facilities;
- k) Designs to meet unique and/or above normal requirements brought about by severe earthquakes, tornadoes, or blasts, or satisfy unique or abnormal tolerances, safety requirements, etc.;

- l) Site and physical planning;
- m) Environmental and other aspects of planning;
- n) Housing;
- o) Interior design;
- p) Restoration;
- q) Landscaping; and
- r) Construction management.

## ANNEX “C”

### PRICE EQUALIZATION PROCEDURES

1. Lowest Price Analysis. In procuring simple equipment, tools, supplies, and raw or semi-finished raw materials, as well as ordinary/regular office supplies and equipment, or where there is a strong possibility that offers will be for identical or comparable materials, evaluation of the bids on the basis of the price alone may be appropriate. In these cases, foreign bids shall be evaluated on the basis of the cost, insurance and freight (CIF) port of entry prices while domestic or local bids shall be evaluated on the basis of the ex-factory price. For local bidders offering wholly imported goods, the bids shall be evaluated on the basis of the off-the-shelf price which shall include custom duties paid on the imported goods by the firm.

2. Price Plus Other Factors Analysis. In the procurement of durable goods such as engines, pumps, vehicles, highway equipment and other similar equipment, it is more appropriate to evaluate each bid on the basis of the price quoted and other relevant factors that are intrinsic to the purpose for which the goods are intended. The probable costs of these factors shall, where possible and appropriate, be quantified in monetary terms to facilitate comparison. The major considerations and general outline to be considered under this procedure may include the following, among others:

- a. Extra features, option, accessories, etc. Where a bidder failed to provide a quotation for a particular item called for in the bidding document, but where such omission is not serious enough to warrant rejection of the bid, then the price of that omitted item based on available catalogue prices or the average of the responsive bids corresponding to that particular item shall be added to the bidder's total bid for purposes of comparison. Such addition shall however be made only on items specifically called for under the bidding documents. An addition shall be made to a bid for the sole purpose of making it comparable to another bid who has offered an extra item not included in the specifications.
- b. Cost of inland transportation and insurance. When the comparison of bids is to be made on the basis of the delivered cost, expenses for inland transportation and other expenditures incidental to the handling, transportation and delivery of goods to the project site shall be considered in the evaluation.
- c. Delivery schedules. As much as possible, procurement shall be initiated early enough so that delivery schedules normally prevailing in the market are acceptable and no premium has to be given for early deliveries. However, in cases where the required goods are urgently needed, the Government may opt to provide a non-discretionary premium for early deliveries. In such cases, the premium shall be explicitly stated in the Instructions to Bidders and the evaluation methodology used to arrive at the monetary equivalent to be discounted from the submitted bid price shall likewise be disclosed. The monetary discount shall be based on the

proportionate benefit to be earned by the Government as a result of such early delivery.

- d. Cost of spare parts. In certain procurements, the cost of the initial and subsequent spare parts may be very important if they add up to a substantial part of the maintenance cost. In such cases, the cost of spare parts should be considered in the evaluation.
3. Life Cycle Cost Analysis. Evaluation of bids through this procedure involves the assessment of the initial cost of the acquisition plus the follow-on cost (costs for maintenance and operation) of ownership. This method is most suitable in the procurement of major industrial plants or equipment where the follow-on costs are quite substantial so much so that a difference in the initial quoted price between competing bidders can easily be outweighed by the difference in the follow-on costs. For purposes of bid comparison, follow-on costs shall be discounted to their present values at a discount rate to be prescribed in the bidding documents. Likewise, the bidding documents shall clearly outline the methodology for the quantification of the follow-on costs and also the precise information required to be submitted by the bidders.
  4. Other evaluation procedures using transparent, upfront and non-discretionary criteria as approved by the head of the agency which can be used to calculate price equalization to compare bids.