



Procurement and other relevant laws

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Outline of Presentation

- **Basic Information**
- **Key Players in Government Procurement Planning**
- **Specifications & ABC**
- **Public Bidding – An Overview**
- **Selected Alternative Modes of Procurement**
- **WETI**
- **Penal Sanctions**
- **Anti-Graft & Corrupt Practices Act and the Code of Conduct for Government Officials**

Takeaway

- Working knowledge and understanding of background of public bidding;
- Working knowledge of 4 key alternative modes and of 1 specialized procurement (WETI);
- Knowledge of key provisions of the Anti Graft and Corrupt Practices Act, and the Code of Conduct

Enactment of RA 9184

- Government Procurement Reform Act - 10 January 2003
- Implementing Rules and Regulations (IRR) - 08 October 2003
- Revised Implementing Rules and Regulations (RIRR) - 02 September 2009 / Revised again in 2016
- Revised Simplified Standard Bidding Documents – September 16, 2020

There are only 3 Classifications (kinds) of Procurements

- Goods & General Services
- Infrastructure or works
- Consulting Services

Four Key Budget Classifications

- MOOE – Maintenance and Other Operating Expenses
- PS – Personnel Services
- CO – Capital Outlays
- FE – Financial Expenses

NBC No. 583 Jan 4 2021

- 3.6 With the approved extension of R.A. Nos. 11465 and 11494, the following end-period validity of appropriations shall be observed:
- 3.6.1 **June 30, 2021** – for release, obligation and disbursement of items appropriated under R.A. No. 11494 (the Bayanihan to Recover as One Act or Bayanihan II), as extended pursuant to R.A. No. 11519.
 - 3.6.2 **December 31, 2021** – for release, obligation and disbursement of appropriation items i.e., PS, MOOE and CO, under R.A. No. 11465 (FY 2020 GAA), as extended pursuant to R.A. No. 11520.
- 3.7 **After the end of validity period**, all unreleased appropriations or unexpended or undisbursed funds shall revert to the unappropriated surplus of the General Fund, in accordance with **Section 28, Chapter 4, Book VI of E.O. No. 292¹** and shall not be available for expenditure except by subsequent legislative enactment.

Key Features of GPRA

- Covers procurement of all government agencies
- The general method (modality) is the use Public/Competitive Bidding
- Alternative Methods of Procurement is allowed in highly exceptional cases
- Use of the Approved Budget for the Contract (ABC) as ceiling for the bid price
- Use of transparent, objective, and non-discretionary criteria (Pass/fail)
- Posting in PHILGEPS
- Removed Pre-qualification
- Removed 3 bidder requirement except for Shopping
- Inclusion of Penal and Civil Liabilities

Government Procurement Policy Board (GPPB)



- Big Procuring Entities – defense, education, health, public works, transportation and communications
- Oversight agencies – budget, planning, finance, trade, science and technology, interior and local government, energy
- Private Sector Representative
- Resource Persons (audit, anti-corruption agencies)



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	Title	Amount (PHP)
1	1 lot	2,639,141.00
2	11IF047-Expansion of the	2,880,034.33
3	12IF098-Bamangay Road, Mansahaon, Matag-ob	1,338,465.00
4	13IF001F-Expansion of PS	564,295.00
5	PARTS AND REPAIR OF VEHICLE	90,280.00
6	PARTS AND REPAIR OF VEHICLE	55,000.00
7	PARTS AND REPAIR OF VEHICLE	93,900.00
8	Cluster 8 Repair & Rehabilitation	9,942,590.70
9	Cluster 7 Repair & Rehabilitation	9,896,459.78
10	Cluster 6 Repair & Rehabilitation	9,644,081.72
11	Cluster 5 Repair & Rehabilitation	9,861,903.78
12	Cluster 4 Repair & Rehabilitation	9,745,569.91
13	Cluster 3 Repair & Rehabilitation	10,025,077.90
14	Cluster 2 Repair & Rehabilitation	9,681,883.70
15	Cluster 1 Repair & Rehabilitation	9,272,868.80
16	12Lg-0067-Expansion San Isidro (Health Facilities)	1,996,090.50
17	12IF085-Palompon Tourism Wharf and Stilt Cottage	4,901,136.00
18	Medical Supplies	1,473.50
19	Medical Supplies	1,470.00
20	Medical Supplies	1,000.00

The PhilGEPS (Philippine Government Electronic Procurement System) is the single, centralized electronic portal that shall serve as the primary and definitive source of information on government procurement. (Section 8 R.A. 9184)

BENEFITS

-  Provide merchants easy access to government tenders 24/7
-  Provide electronic documents for download
-  Provide merchants automatic notification of bid opportunities and supplemental bid bulletins
-  Facility to upload eligibility documents resulting to savings on reproduction
-  Able to do market research on government procurement

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	Category	No. of Opportunities
1	Industrial Machinery and Equipment	82
2	Industrial pumps and compressors	28
3	Industrial Safety Equipment	2
4	Information Technology	393
5	Information Technology Parts & Accessories & Perip	186
6	Internet Services	24
7	Investigative Equipment	1
8	IT Broadcasting and Telecommunications	11

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Category:IT Broadcasting and Telecommunications

11 opportunities found

	Publish	Closing	Title
1	22/06/2019	12/07/2019 02:00 PM	FURNISHING AND DELIVERY WITH INSTALLATION OF CCTV FOR LGU DUPAX DEL SUR, IT Broadcasting and Telecommunications, MUNICIPALITY OF DUPAX DEL SUR, NUEVA VIZCAYA
2	21/06/2019	24/06/2019 09:00 AM	CCTV for Accounting Office, IT Broadcasting and Telecommunications, CITY OF CADIZ, NEGROS OCCIDENTAL
3	21/06/2019	24/06/2019 09:00 AM	Installation cos of CCTV at the Accounting Office, IT Broadcasting and Telecommunications, CITY OF CADIZ, NEGROS OCCIDENTAL
4	21/06/2019	26/06/2019 09:30 AM	Procurement of Aircon and Various Materials (Use for Radio Room), IT Broadcasting and Telecommunications, MUNICIPALITY OF STA.CRUZ, DAVAO DEL SUR
5	20/06/2019	27/06/2019 04:00 PM	RENTAL OF FULL LIGHTING COMPLEMENT, IT Broadcasting and Telecommunications, PRESIDENTIAL BROADCAST STAFF ,RTVM
6	19/06/2019	26/06/2019 05:00 PM	RFQ No. 1906-325 Proc. of Goods (IT Equipment), IT Broadcasting and Telecommunications, CITY OF TAGBILARAN, BOHOL
7	19/06/2019	26/06/2019 01:30 PM	TELECOMMUNICATION LINE/SERVICE, IT Broadcasting and Telecommunications, DEVELOPMENT BANK OF THE PHILIPPINES - RMC-CENTRAL VISAYAS
8	18/06/2019	25/06/2019 03:00 PM	For use in Oath-taking & Installation of New Set of Officers, Surigao City, IT Broadcasting and Telecommunications, CITY OF SURIGAO, SURIGAO DEL NORTE
9	14/06/2019	25/06/2019 09:00 AM	Procurement of Led Studio light dimmable bi-color video panel light, IT Broadcasting and Telecommunications, PROVINCE OF AGUSAN DEL SUR
10	07/06/2019	25/06/2019 12:00 PM	AMP SVP NO: 19-06-0666 Branded Ultrashort-Throw , Interactive Finger- Touch Projector, IT Broadcasting and Telecommunications, UNIVERSITY OF THE PHILIPPINES - DITIMAN

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Bid Notice Abstract

Invitation to Bid (ITB)

Reference Number 6247625
Procuring Entity UNIVERSITY OF THE PHILIPPINES - DILIMAN
Title PUBLIC BIDDING NO.: PB 19-092A One (1) Lot Satellite Design and Related Softwares
Area of Delivery

 [Printable Version](#)

Solicitation Number:	PB 19-092A	Status	Active
Trade Agreement:	Implementing Rules and Regulations	Associated Components	Order
Procurement Mode:	Public Bidding	Bid Supplements	0
Classification:	Goods	Document Request List	8
Category:	Telecommunications Provider	Date Published	13/06/2019
Approved Budget for the Contract:	PHP 1,600,000.00	Last Updated / Time	13/06/2019 12:00 AM
Delivery Period:	0 Day/s	Closing Date / Time	04/07/2019 1:00 AM

Key Documents

- 2016 IRR.
- 6th ed. Philippine Bidding Documents for Goods and Infra.
- The Manuals for Procurement.
- National Budget Circular issued by the DBM.
- GAA, particularly the General Provisions.

A colorful illustration of a meeting. Several people are seated around a long table, looking at documents. The style is a soft, painterly sketch. The text 'KEY PLAYERS IN THE PROCUREMENT PLANNING' is overlaid in the lower-left quadrant.

**KEY PLAYERS IN THE PROCUREMENT
PLANNING**

Key Players in public procurement planning

End-User

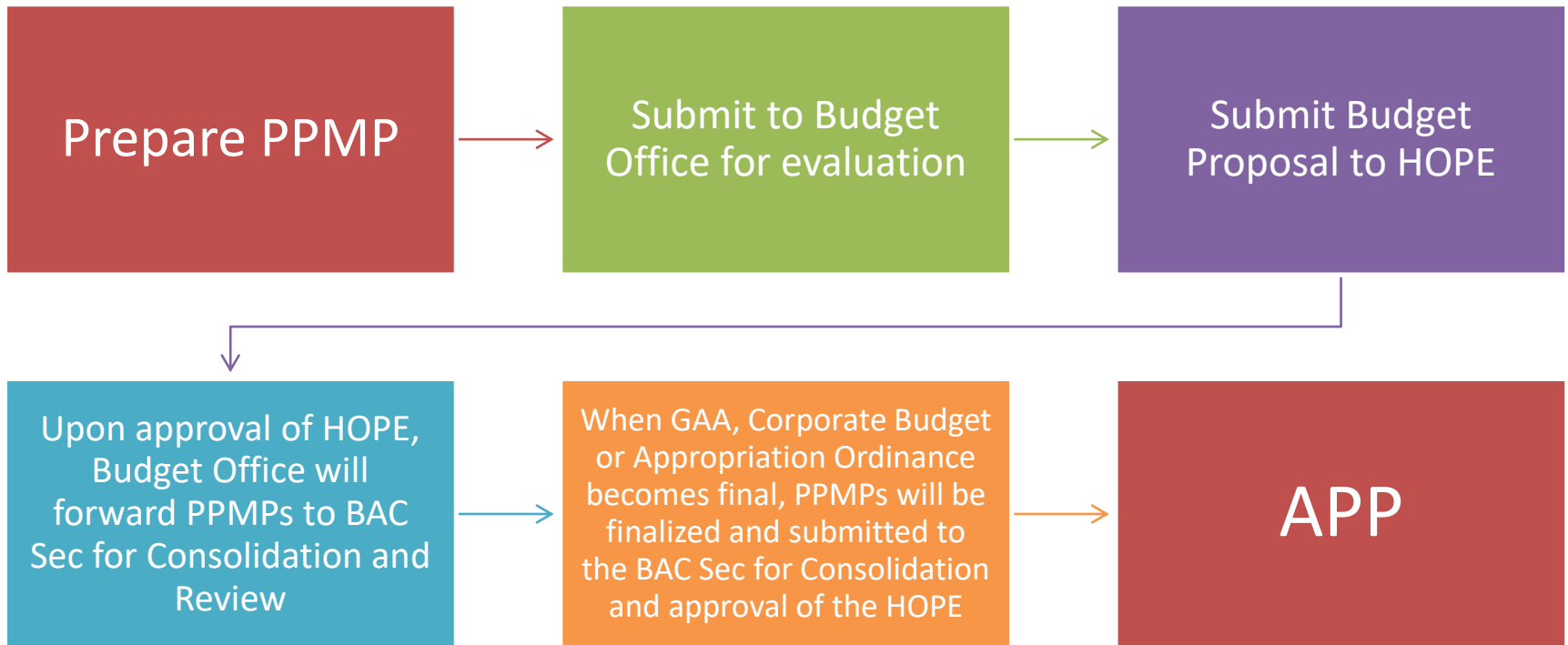
Budget Office

Technical
Working Group

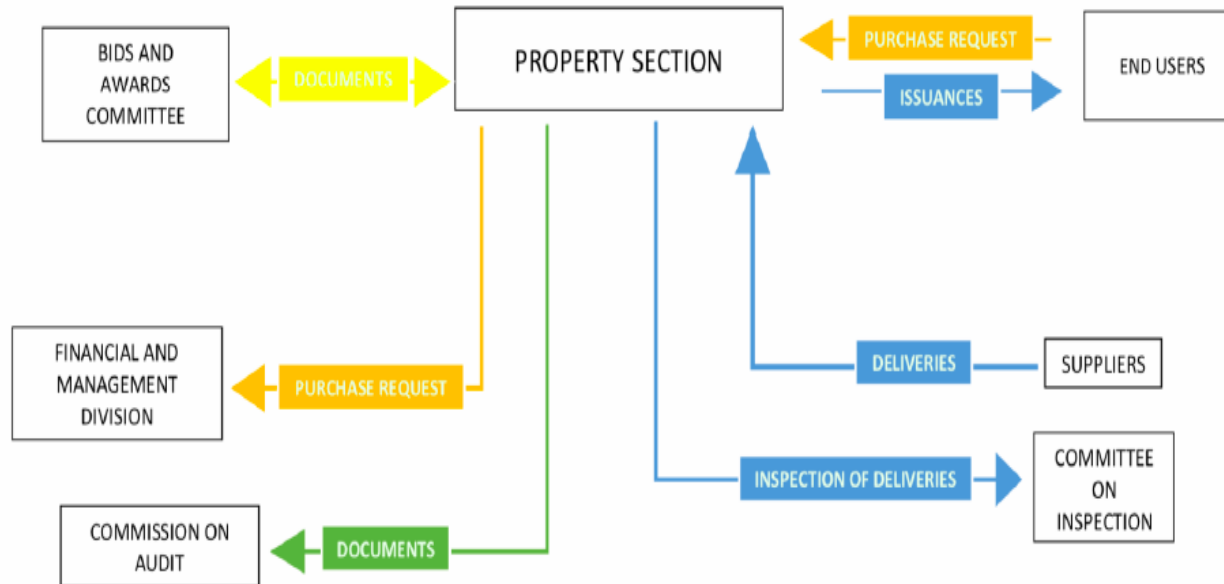
Bids and Awards
Committee (BAC)
and Secretariat

Approving
Authority / HOPE

Preparation of APP



FLOW CHART



LEGEND:

- Purchase Request originated from the End Users (All Division) for documentation and forwarded to FMD for funding
- Documents of awarded supplies, materials and equipments for delivery and forwarded the same to BAC
- Inspection and acceptance of deliveries from the suppliers, storing and issuances to the end users
- Documents of all incoming deliveries, inventories and other pertinent records required to be submitted to COA

Prepared by:

Certified by:

Annual Procurement Plan (APP)

- Refers to the entirety of the procurement activities that will be undertaken by the procuring entity within the calendar year using the prescribed format required by the GPPB.
- No procurement shall be undertaken unless in accordance with APP.

PROJECT PROCUREMENT MANAGEMENT PLAN (PPMP)

END-USER/UNIT: **xxx Division**

Charged to GAA

Projects, Programs and Activities (PAPs)

CODE	GENERAL DESCRIPTION	QUANTITY/ SIZE	ESTIMATED BUDGET	Mode of Procurement	SCHEDULE/MILESTONE OF ACTIVITIES												
					Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	

TOTAL BUDGET:

NOTE: Technical Specifications for each Item/Project being proposed shall be submitted as part of the PPMP



Prepared By:

Submitted By:

End-user
xxx

(name)
Head, (name of end-user unit)



INDICATIVE ANNUAL PROCUREMENT PLAN (APP) FOR CY 2019

CODE (PP)	PROJECT/ PROCUREMENT NAME/ DESCRIPTION	PHO/ ENDUSER	MODE OF PROCUREMENT	SCHEDULE FOR EACH PROCUREMENT ACTIVITY				SOURCE OF CONTRACT SIGNING	Estimated Budget (PHP)			REMARKS (Brief Description of Project)	
				Ad/Post of IB/B/E	Sub/ Open of Bids	Notice of Award	Contract Signing		Total	MODE	CO		
				TOTAL ANNUAL PHYSICAL EXAMINATION							2,416,000.00		2,416,000.00
ANNUAL PHYSICAL EXAMINATION													
1	ANNUAL PHYSICAL EXAMINATION	HUMAN RESOURCES DIVISION	COMPETITIVE BIDDING	MAY	MAY	JUNE	JUNE	JUNE	JUNE	GA P	2,416,000.00	2,416,000.00	
CIVIL WORKS													
2	CANOPY ROADWAY	GENERAL SERVICES DIVISION	WP30-SMALL VALUE PROCUREMENT	JUNE	JUNE	JUNE	JUNE	JUNE	JUNE	GA P	100,000.00	100,000.00	
3	ELECTRICITY	GENERAL SERVICES DIVISION	COMPETITIVE BIDDING	APRIL	APRIL	MAY	MAY	MAY	MAY	GA P	2,000,000.00	2,000,000.00	
4	RENOVATION OF MALE & FEMALE REST ROOM AT BRP/ R	GENERAL SERVICES DIVISION	WP30-SMALL VALUE PROCUREMENT	SEPTEMBER	SEPTEMBER	SEPTEMBER	SEPTEMBER	SEPTEMBER	SEPTEMBER	GA P	400,000.00	400,000.00	
EQUIPMENT													
TOTAL CIVIL WORKS 2,500,000.00													
5	AROUNDING UNITS	LEGAL/CEBU SATELLITE OFFICE	COMPETITIVE BIDDING	SEPTEMBER	SEPTEMBER	OCTOBER	OCTOBER	OCTOBER	OCTOBER	GA P	80,000.00	80,000.00	
6	APPLIANCES	WAROCS/CS	WP30-SMALL VALUE PROCUREMENT	MAY	MAY	JUNE	JUNE	JUNE	JUNE	GA P	93,826.95	93,826.95	
7	AUDIO VISUAL EQUIPMENT	WAROCS/CS	WP30-SMALL VALUE PROCUREMENT	MAY	MAY	JUNE	JUNE	JUNE	JUNE	GA P	68,327.93	68,327.93	
8	COMMUNICATION EQUIPMENT	WAROCS/CS	WP30-SMALL VALUE PROCUREMENT	MAY	MAY	JUNE	JUNE	JUNE	JUNE	GA P	316,527.84	146,827.84	170,000.00
9	IT EQUIPMENT (COMPUTER/STOPS)	WAROCS/CS	WP30-AGENCY/TO-AGENCY PROCUREMENT	FEBRUARY	FEBRUARY	MARCH	MARCH	MARCH	MARCH	GA P	2,245,000.00	2,245,000.00	
10	IT EQUIPMENT (COMPUTER/MONITOR)	WAROCS/CS	WP30-AGENCY/TO-AGENCY PROCUREMENT	FEBRUARY	FEBRUARY	MARCH	MARCH	MARCH	MARCH	GA P	1,077,000.00	1,077,000.00	
11	IT EQUIPMENT (SERVERS & WORKSTATION)	WAROCS/CS	COMPETITIVE BIDDING	MAY	MAY	JUNE	JUNE	JUNE	JUNE	GA P	2,385,000.00	2,385,000.00	
12	IT PARTS & ACCESSORIES (EXTERNAL HARD DRIVE, MOUSE, ETC)	WAROCS/CS	WP30-SMALL VALUE PROCUREMENT	MARCH	MARCH	APRIL	APRIL	APRIL	APRIL	GA P	524,489.60	524,489.60	
13	IT PERIPHERALS (PRINTERS/SCANNERS)	WAROCS/CS	COMPETITIVE BIDDING	FEBRUARY	FEBRUARY	MARCH	MARCH	MARCH	MARCH	GA P	250,000.00	250,000.00	

Early Procurement Activity

- Government agencies can commence procurement activity if:
 - There is Indicative APP signed by HoPE
 - NEP is submitted to Congress

Why is it important to finish on time?

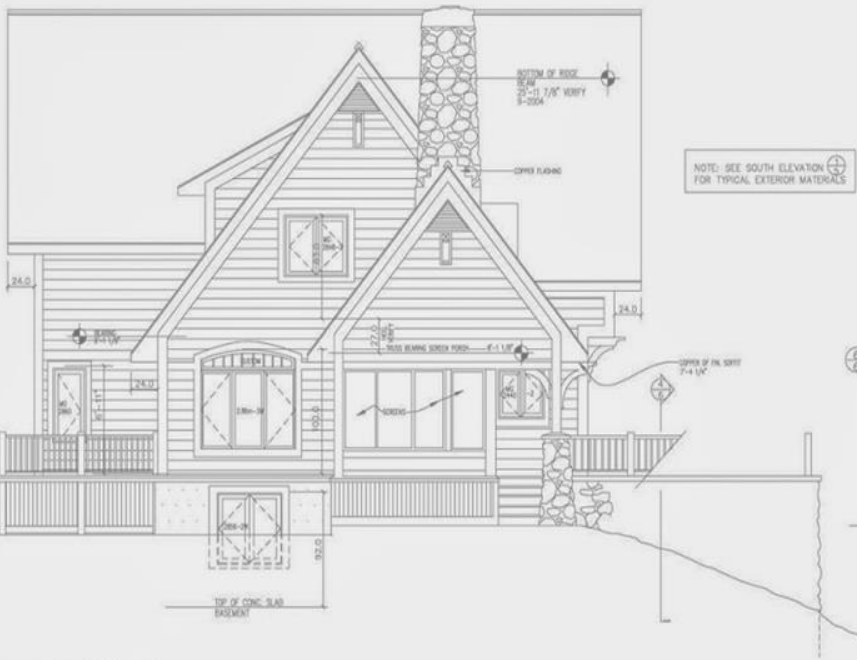
- **Jacomille v. Abaya, (G.R. No. 212381 April 22, 2015)**

“failure to comply with the mandatory periods set forth in Section 37 is an irregularity which renders the procurement process null and void.”

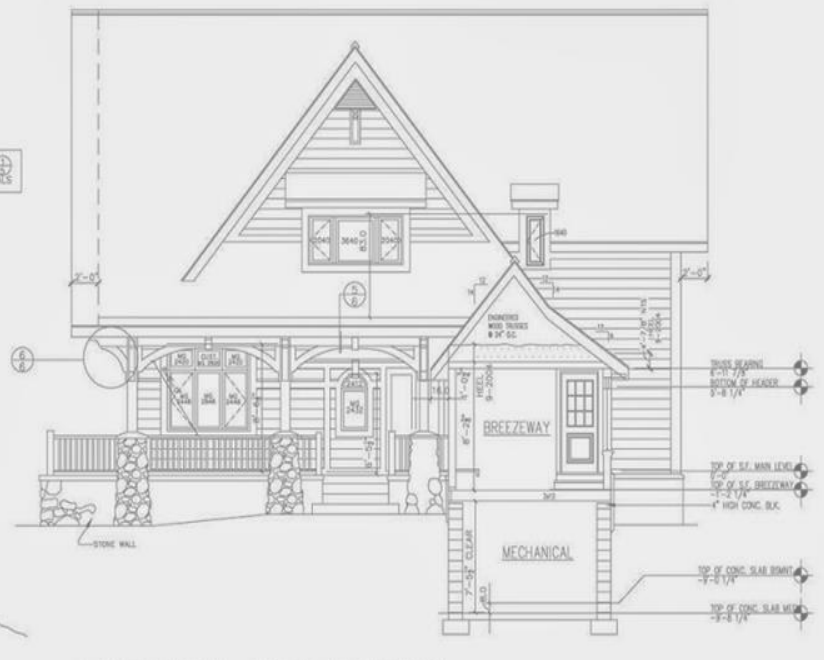
Cannot change contract after bidding:

- **Agan, Jr. v. Philippine International Air Terminals Co., Inc., (PIATCO) G.R. Nos. 155001, 155547 and 155661, January 21, 2004, 420 SCRA 575, 597,** Supreme Court declared as null and void, for being contrary to public policy, the Concession Agreement entered into by the government with PIATCO, because it contained provisions that substantially departed from the Draft Concession Agreement included in the bid documents. The Court considered the subject contracts a mockery of the bidding process, because they were substantially amended after their award to the successful bidder on terms more beneficial to PIATCO and prejudicial to public interest.

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1 WEST ELEVATION
SCALE: 1/4" = 1'-0"

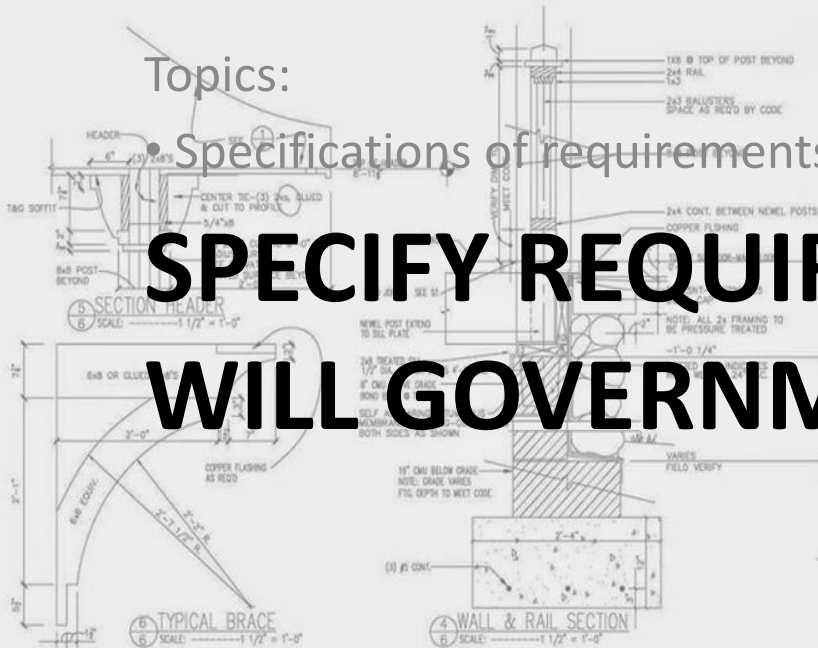


2 EAST ELEVATION - SECTION AT BREEZEWAY
SCALE: 1/4" = 1'-0"

Topics:

• Specifications of requirements

SPECIFY REQUIREMENTS - WHAT WILL GOVERNMENT BUY



3 GARAGE ELEVATION
SCALE: 1/2" = 1'-0"

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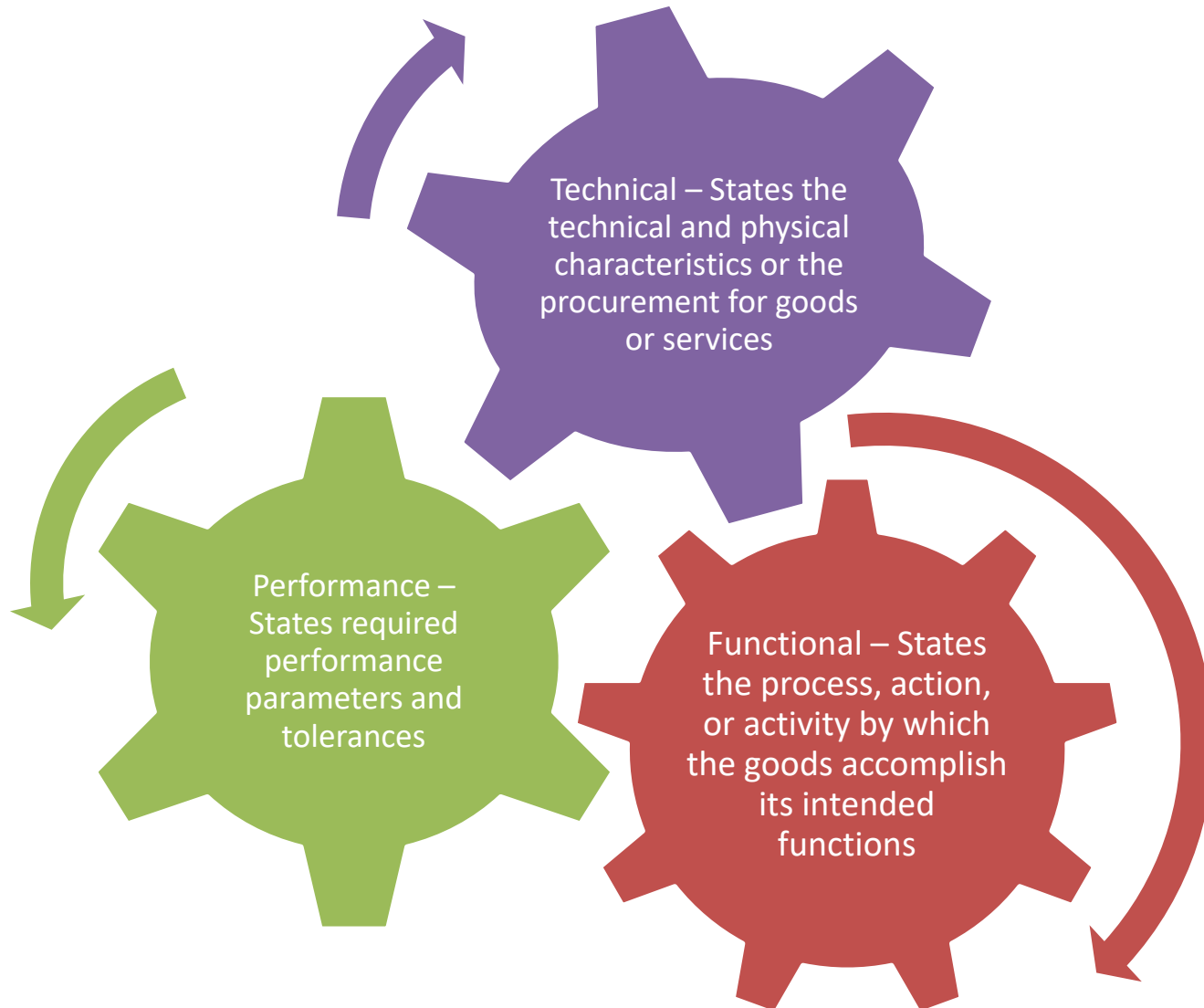
Prohibition on the reference to brand names

Section 18 of RA 9184 and its IRR

- Applicable only to procurement of goods
- Specifications should be based on relevant characteristics and performance requirements
 - 2.5 turbo diesel
 - 7 seater
 - 2WD
 - Service Centers in all Provinces
- Prohibition includes reference to country of origin pursuant to Sec. 43.1.1 of the IRR of RA 9184. (NPM 22-2013)
- **EXCEPT:** for items or parts that are compatible with the existing fleet or equipment of the same make and brand, and to maintain the performance, functionality and useful life of the equipment. (a)



Types of Specifications



How to craft specifications under RA 9184

- The term “**technical specifications**” refers to the physical description of the goods or services. i.e. length, width, capacity. The technical specifications must include the testing parameters for goods, when such testing is required in the contract.
- “**Functional description**” is the description of the functions for which the Goods are to be utilized. For example, a ballpen is expected to write 1.5 km of straight, continuous lines.
- “**Performance description**” refers to the manner that the Goods are required to perform the functions expected of them. For example, a ballpen that writes at 1.5km should do so continuously and smoothly, without skipping, and with the color of the ink being consistent.
- “**Environmental interface**” refers to the environment in which the required functions are performed at the desired level. For example, a ballpen should write continuously for 1.5km on pad paper or bond paper, but not necessarily on wood or on a white board.

Technical Approach

	ITEM	SPECIFICATION	QTY	UNIT	MAXIMUM COST PER UNIT
3	8-port Switch	<ul style="list-style-type: none">• Managed Switch with port bandwidth limiting capability• Eight (8) 10/100/1000 Ethernet Port• PoE Passive Out• PoE power rating compatible with the proposed Access Point• VLAN Capable• Capable of SNMP v2c or higher	26	Units	PHP 14,999.00
	ITEM	SPECIFICATION	QTY	UNIT	MAXIMUM COST PER UNIT
4	IP Radio	<ul style="list-style-type: none">• Point to Multipoint Topology• Throughput speed of at least 450 Mbps• Capable of reaching at least 25 km range• At least (1) 10/100/1000 Ethernet Port	4	Units	PHP 14,900.00

Performance & Functional Approach

1.1. NETWORK ARCHITECTURE AND TOPOLOGY	<u>COMPLY</u>	<u>COMPLY</u>
<p>Capable of automatic synchronous replication of data (Data Redundancy) between main and mirror datacenter facilities.</p> <p>Submit the following documentary requirements:</p> <ul style="list-style-type: none">• System and Network Configuration between active data centers including diagram of connectivity and proposal or subscription from internet service provider/s on the network technology to be used.		
<p>Implements sets of Virtual Local Area Networks (VLANs) that are segregated into public facing (External Zone) networks, private (Internal Zone) networks, and networks only accessible by networks in the external and internal Demilitarized Zone (DMZ).</p> <p>The definition and implementation of VLANs should be guided by industry best practices for defense-in-depth security.</p> <p>Submit the following documentary requirements:</p> <ul style="list-style-type: none">• System and Network Configuration showing the proposed VLANs and its implementation throughout the network;		


Last word on:

- Quality
- Tailor Fitting
- Delivery Schedules


**ABC – HOW MUCH IS
GOVERNMENT WILLING TO PAY**

Determining the ABC

Cost Components which may be considered:



- Cost or Market price of the product or service itself




- Freight, insurance, taxes, and other incidental expenses (for goods only)




- Cost of money, to account for government agencies usually buying on credit terms



- Inflationary factor (for goods only)



- Quantities, considering that buying in bulk usually means lower unit prices




- Supply of spare parts and/or maintenance services, if part of the contract package (for goods only)

Determining the ABC

Cost Components which may be considered (cont.):



- Cost for securing all types and forms of securities other than cash



- Currency valuation adjustment for contracts with foreign component



- Acquisition cost



- Operation cost



- Replacement/ Repair cost



- Disposal cost

Multi-Year (NBC 583 Jan 4, 2021)

- 7.0 For purposes of agencies' entering into multi-year contracts, the issuance of a Multi-Year Contractual Authority (MYCA) or an equivalent authority may be required or prescribed by the DBM. A MYCA is an authority issued by the DBM to agencies, covering the full contract cost, for the procurement of multi-year projects (MYPs). This shall be used as the basis in the certification of availability of funds (CAF) required prior to contract execution.
- 7.1 MYCAs may be required for single-year projects which do not cover a calendar year but, by design, necessitates implementation covering two fiscal years.
- 7.2 In the case of recurring projects, such as, but not limited to, janitorial and security services, supply of drinking water, telecommunications requirements, rental of office and equipment, and lease-purchase agreements, the following options are available for government agencies (**Section 30**, GPs of FY 2021 GAA):
- 7.2.1 Secure a MYCA or an equivalent authority; or
 - 7.2.2 Renew the ongoing contract to not more than one year, subject to a favorable assessment or evaluation of contractor's performance, but in no case shall the total contract renewal exceed two years.
-

BIDDING PROCEDURES

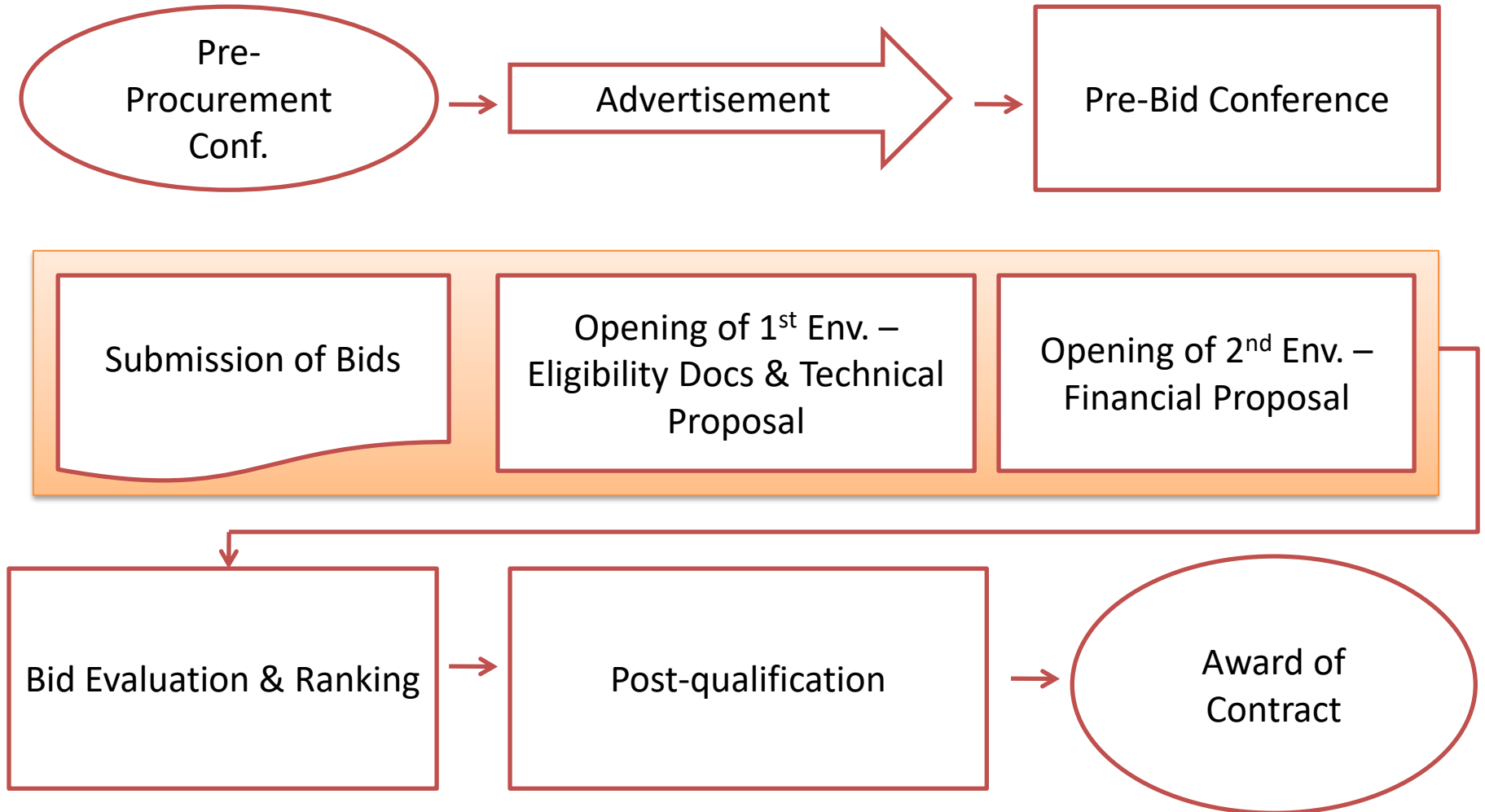
COMPETITIVE BIDDING

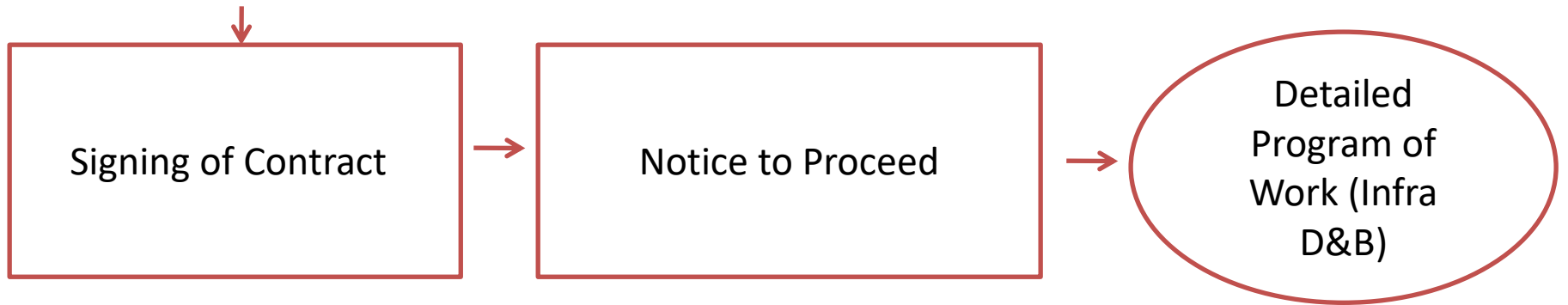
WHAT IS COMPETITIVE BIDDING?

It is a method of procurement which is open to participation by any interested party and which consists of the following processes; eligibility screening of prospective bidders, evaluation of bids, post-qualification, and award of contract. (Sec. 5(e) of RA 9184 and its IRR)

- Municipal Order requiring an **accreditation process** for Bidders as a condition precedent for their participation in procurement activities of the local government unit runs counter RA 9184 (NPM 80-2014)
- The practice of pre-qualification has been abandoned in RA 9184 and its IRR. **The results of a pre-qualification have no legal force and effect, bearing or weight, and cannot pre-empt the findings of the BAC during the preliminary examination of bids conducted during the opening of bids.** Hence, a bidder may still be declared ineligible during the opening of bids despite a finding of qualification during the purported pre-qualification exercise. (NPM 54-2013)

STANDARDIZED BIDDING PROCEDURE FOR GOODS AND INFRA



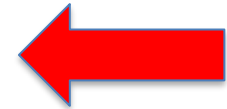


1. The Philippine Charity Sweepstakes Office (PCSO), through its 2021 Corporate Operating Budget (COB) intends to apply the sum of **SIX BILLION ONE HUNDRED FIFTY MILLION PHILIPPINE PESOS (PhP 6,150,000,000.00)** inclusive of all applicable taxes, levies, duties, charges and fees, being the aggregate multi-year Approved Budget for the Contract (ABC) for the Five (5) Years Lease of the customized Philippine Charity Sweepstakes Office Lottery System under SBAC Contract No. 2021-01, also known as the "2021 PLS PROJECT" (*herein after referred to as "Project"*), with the following schedule of payments:

Multi-Year fixed schedule of lease payments (In Philippine Pesos)	
Year 1	1,230,000,000.00
Year 2	1,230,000,000.00
Year 3	1,230,000,000.00
Year 4	1,230,000,000.00
Year 5	1,230,000,000.00
Aggregate Multi-Year ABC	PhP 6,150,000,000.00

BIDS RECEIVED IN EXCESS OF THE ABC SHALL BE AUTOMATICALLY REJECTED AT BID OPENING.

2. The PCSO now invites bids for the above Procurement Project. Delivery of the Goods is required within fourteen (14) months upon issuance of Notice to Proceed (NTP). Bidders should have completed, within a period of ten (10) years from the date of submission and receipt of bids (*i.e., from March 28, 2011 to March 28, 2021*), a contract similar to the Project. The description of an eligible bidder is contained in the Bidding Documents, particularly, in Section II (Instructions to Bidders).
3. Bidding will be conducted through open competitive bidding procedures using a non-discretionary "pass/fail" criterion as specified in the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.
4. **Bidding is restricted to Filipino citizens/sole proprietorships, partnerships, or organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations of a country the laws or regulations of which grant similar rights or privileges to filipino citizens, pursuant to Republic Act No. 5183.**
5. Prospective Bidders may obtain further information from PCSO's Special Bids and Awards Committee (SBAC) and inspect the bidding documents at the address given below during regular office hours (8:00am to 5:00pm).



Goods – Invitation to Bid

11.5. The procuring entity (PCSO) has determined the Project as complex and mixed procurement (i.e., with ICT and non-ICT lottery specific components with multiple milestones) of goods, and auxiliary lottery specific infrastructure and consulting services that are integrated in order to have a working, on-line or "ALL-IN" (lock, stock and barrel) and customized lottery system with fixed rental rates in the next five (years) such that, this Project is a multi-year (5 years) lease contract:

- i. *A multi-year obligational authority (MYOA) under DBM Circular Letter No. 2015-7 [Updated Guidelines for Issuance of Multi-Year Obligational Authority (MYOA)] dated June 3, 2015 is not required in that, the funds for this Project's rentals shall be sourced from internally generated revenues or annual Corporate Operating Budget (COB) of the PCSO, without need of budgetary support from the National Government (NG) or the General Appropriations Act (GAA);*
- ii. *The Head of the Procuring Entity (PCSO Board of Directors) has approved and issued the multi-year obligational authority (MYOA) for the Project such that, rentals for Year 1 of the lease contract is included, earmarked and available under the 2021 Corporate Operating Budget and Annual Procurement Plan (APP) of the procuring entity as a multi-year lease contract;*
- iii. *Rentals for Year 2 until Year 5 of the leased lottery system shall be guaranteed and included in PCSO's annual Corporate Operating Budget (COB) until the Project's completion or accomplishment of all milestones described under Section VI. Schedule of Requirements, subject to Section V. Special Conditions of the Contract and applicable government accounting and auditing laws, rules and regulations; provided, That annual lease rentals shall be divided equally per year, and paid equally*

Design & Build

- 1. PE must have Preliminary Design and Construction studies approved by HOPE
 - Project Description
 - Conceptual Design
 - Performance Specifications and Parameters
 - Preliminary Survey and Mapping
 - Preliminary Investigations
 - Utility Locations
 - ABC
 - Proposed Design and Construction Schedule
 - Minimum requirements for a Construction Safety and Health Program
 - Bidding Documents

First Envelope (Technical Proposal)

- Contains the standard requirements under Section 25.2(b) PLUS
- Preliminary Conceptual Design
- Design Construction methods
- List of key Personal with Qualification and experience data
- Value Engineering analysis of design and construction method

Second Envelope (Financial Proposal)

- Contains the standard requirements under Section 25.3 PLUS
- Lump Sum Bid price including DETAILED engineering cost
- Detailed estimates including unit prices of construction materials, labor rates, rental rates
- Cash flow by quarter and payment schedule

D&B Two Step Evaluation

- First Step (review of preliminary designs and track record):
 - Adherence of preliminary design plans to required performance specifications and parameters and degree of detail
 - Concept of approach and methodology (clarity, feasibility, innovativeness, comprehensiveness)
 - Quality of personal (general qualifications, competence, education, training)
 - OPTIONAL (for complex or unique undertakings) Oral Presentation

-
- Second Step (Opening of Financial proposal) evaluate the following:
 - Lump Sum Bid price including DETAILED engineering cost
 - Detailed estimates including unit prices of construction materials, labor rates, rental rates
 - Cash flow by quarter and payment schedule

INVITATION TO BID
DESIGN, BUILD, AND ESTABLISHMENT OF THE
NATIONAL FIBER BACKBONE – PHASE 1

1. The Bases Conversion and Development Authority (BCDA), through the Funds of the Department of Information and Communications Technology (DICT) under the General Appropriations Act which were downloaded to BCDA, intends to apply the sum of **One Billion, Two Hundred Fifty Million 00/100 Pesos (Php1,250,000,000.00)**, inclusive of all applicable taxes and fees, being the Approved Budget for the Contract (ABC), for the **Design, Build and Establishment of the National Fiber Backbone Phase 1**.

Bids received in excess of the ABC shall be automatically rejected at the opening of the financial proposals.

2. BCDA now invites bids for the **Design, Build and Establishment of the National Fiber Backbone Phase 1**. Completion of the Works is required in **Two Hundred (200) calendar days**. Prospective bidders must have completed similar projects with contract amount of not less than fifty percent (50%) of the ABC.
3. Bidding will be conducted through open competitive bidding procedures using the non-discretionary pass/fail criterion as specified in the Implementing Rules and Regulations (IRR) of Republic Act 9184 (RA 9184), otherwise known as the "Government Procurement Reform Act".

Bidding is restricted to Filipino citizens/sole proprietorships; and partnerships, corporations, organizations, consortia or joint ventures with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines.

4. Prospective bidders must have at least a license category "**AAA**" and a license classification "**Large B**" from the Philippine Contractors Accreditation Board (PCAB) for **General Engineering, General Building, Electrical Works or Communication Facilities**.

5. Interested bidders may obtain further information from the BCDA Website (<http://www.bcda.gov.ph/bids>) and inspect the Bidding Documents at the address given below from **17 February 2021 to 12 March 2021** during office hours **between 8:00 AM and 5:00 PM and on 15 March 2021 between 8:00AM to 12:00NN**.

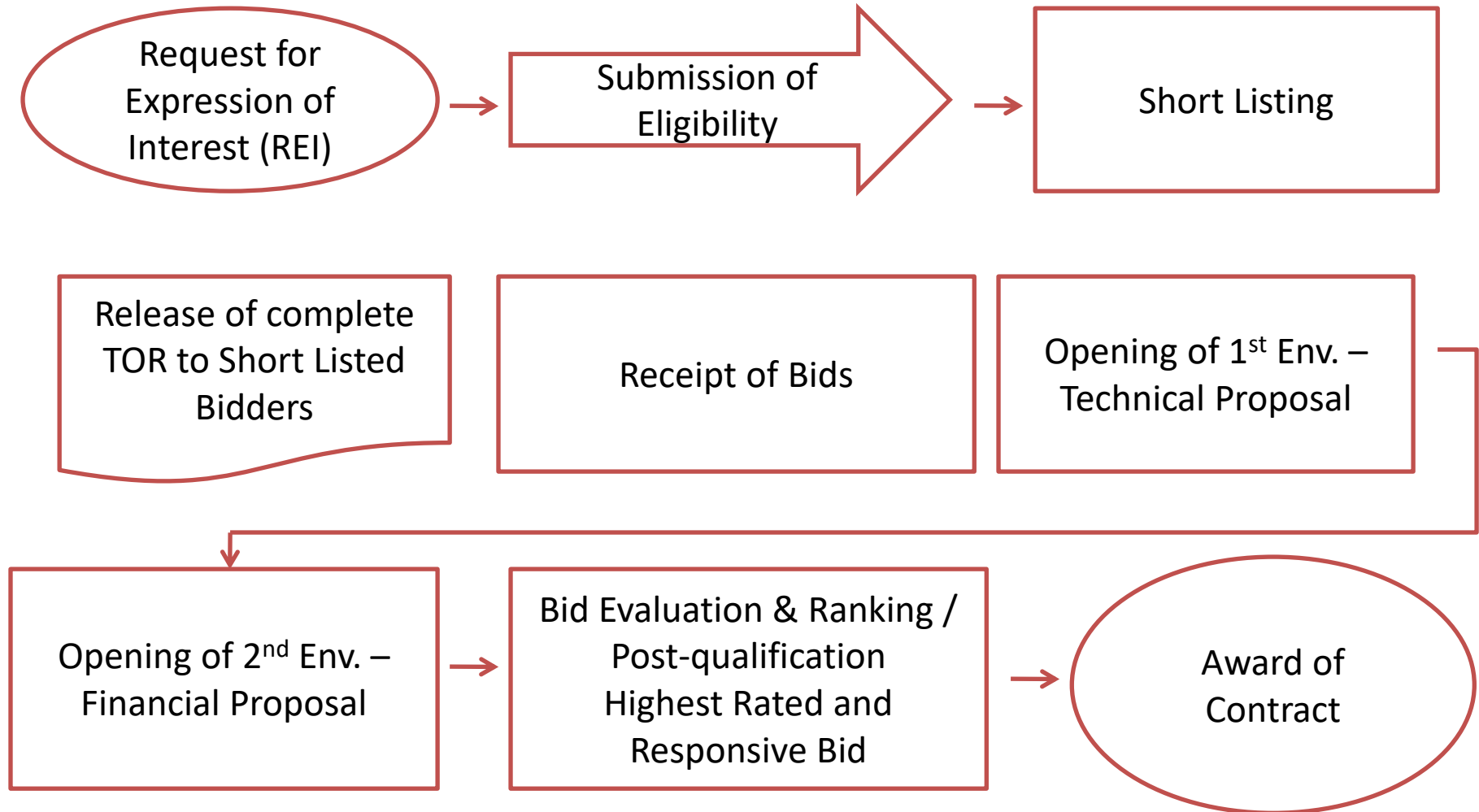
6. A complete set of Bidding Documents may be purchased by interested Bidders from the address below and upon payment of a nonrefundable fee in the amount of **PhP75,000.00**.

It may also be downloaded from the website of BCDA (bcda.gov.ph) and the Philippine Government Electronic Procurement System (PhilGEPS).

Sample evaluation criteria

CRITERIA	WEIGHT	ELIGIBILITY DOCUMENTS	RATING SYSTEM	
Applicable Experience	35%	SEC or DTI Registration or equivalent as certified by the embassy of the country where the principal office of the bidder is located	100%	5 to 9 years in business or more
			80%	3 to 4 years in business
			60%	1 to 2 years in business
			20%	less than 1 year in business
Qualification of Personnel	40%	Single Largest Completed Contract Similar to the Project in terms of Size and Complexity	100%	Completed contract as Main contractor
			80%	Completed contract as Partner contractor
			60%	Completed contract as Subcontractor
Current Workload	25%	NFCC will be determined by the procuring entity based on their Audited Financial Statements and Statement of All Ongoing Government and Private Contracts.	100%	NFCC is more than 100% of the ABC
			80%	NFCC is 50% to 100% of the ABC
			60%	NFCC is 25% to 49% of the ABC
			40%	NFCC is 1% to 24% of the ABC
TOTAL	100%			

STANDARDIZED BIDDING PROCEDURE FOR CONSULTING SERVICES



Government Integrated Financial Management
Information System (GIFMIS)

Request for Expression of Interest

*Selection of System Integrator for Supply,
Implementation and Maintenance of
Government Integrated Financial
Management Information System (GIFMIS)
for National Government*

July 2013

Department of Budget and Management
General Solano St., San Miguel, Manila

Consulting – First Stage - REI

3. The BAC shall draw up the short list of consultants from those who have submitted eligibility documents and have been determined as eligible in accordance with the provisions of Republic Act 9184 (RA 9184), otherwise known as the “Government Procurement Reform Act”, and its Implementing Rules and Regulations (IRR). The short list shall consist of five (5) prospective bidders who will be entitled to submit bids. The criteria and rating system for short listing are:

- | | | |
|-------|---|-----|
| (i) | Applicable Experience of the Firm | 50% |
| (ii) | Qualification of personnel who may be assigned to the job vis-à-vis extent and complexity of the undertaking; | 30% |
| (iii) | Current workload relative to capacity | 20% |

“Applicable Experience” pertains to experience of the consultant and members in case of joint ventures, considering the overall experiences of the firm;

“Qualification of personnel” pertains to the personnel who may be assigned to the job vis-à-vis extent and complexity of the undertaking;

“Job Capacity” means the absorptive capacity of the Applicant to do additional works other than those currently undertaken.

The “Rating” multiplied by their respective “Weights” gives the weighted “Scores”. These are added to determine the total points for the Applicant. The Applicants shall then be ranked according to their “Total Points” and the top seven (7) shall be considered as the “short list” and qualify them to bid for the contemplated contract. Should less than the required number apply for eligibility and short listing, pass the eligibility check, and/or pass the minimum score required in the short listing, the BAC shall consider the same. Further, Applicants must collect a minimum weighted score of “SEVENTY (70) POINTS” to qualify for short listing.

4. Bidding will be conducted through open competitive bidding procedures using non-discretionary “pass/fail” criterion as specified in the IRR of RA 9184. Bidding is open to all interested bidders, whether local or foreign, subject to the conditions for eligibility provided in the IRR of RA 9184.

PROCUREMENT OF CONSULTING SERVICES

- Two Step Process
 - Part I (Request for Expression of Interest)
 - Eligibility Requirements
 - Part II (Notice of Eligibility and Short Listing)
 - Technical Requirements
 - Financial Requirements
- Quality – Based (two stage process)
 - Possible negotiation on financial component
- Quality – Cost (single stage process)
 - Quality (15% – 40%)
 - No negotiation on financial component

TYPES OF CONSULTING SERVICES

- Advisory & review
- Pre-investment or Feasibility Studies
- Design
- Construction Supervision
- Management & related services
- Other Technical Services or Special Studies
 - Institution building, design of training programs

Pre-Procurement Conference

1. Confirm Scope of Work, ABC, Duration of Contract
2. Check PPMP / APP
3. Readiness of stakeholders
4. Completeness of Bidding Documents, ROW, Designs
5. Confirm Eligibility, Evaluation criteria
6. Bidding Schedules

ADVERTISEMENT/POSTING OF THE INVITATION TO BID

Importance:

- Signals the start of the bidding process.
- Signals the availability of the bidding documents to the prospective bidders. (if not mentioned in the Invitation to Bid)
(Sec. 17.3 IRR)

PRE-BID CONFERENCE

- Forum where the PE's representative & the bidders discuss the different aspects of the project
- Mandatory – ABC 1M or more
- Held at least 12 to 30 CD before deadline for bid submission
- Affords bidders the opportunity to raise concerns or clarifications (Section 22).

NOTE: Questions or clarifications pertaining to the matters that may be discussed during the pre-bid conference must be raised at least ten (10) CD before the deadline set for the submission and receipt of bids. NPM 49-2013

SUBMISSION AND RECEIPT OF BIDS

- Two-Envelope System
 - 1st Envelope – Eligibility Requirement and Technical Component
 - 2nd Envelope – Financial Component
- Submitted to the BAC on the date, time, and place specified in the Invitation to Bid. Bid submitted after the deadline should not be accepted.

OPENING AND EVALUATION OF 1st ENVELOPE

1. Pass / Fail

1. 15% Domestic Preference Rule can only be availed by a Domestic Bidder offering goods, supplies and materials that are substantially produced and manufactured in the Philippines. Bidder has to secure a Domestic Preference Certificate from the DTI pursuant to DTI AO No. 19-01 and 19-10.

DETAILED EVALUATION OF BIDS

- **No Contact Rule** – prohibition on communication w/ bidders from bid evaluation until award of contract.
- The “no contact” rule applies only to those whose bids are being evaluated by the BAC after passing the preliminary examination.
- No communication should be made by bidders until a decision to award a contract is made by the BAC.
- Bidders who waived their right to utilize the protest mechanism or those whose request for reconsideration and/or protest were subsequently denied are not covered by the prohibition under Sec. 32.1 of RA 9184 IRR (NPM 07-2013)
- the no-contact rule does not prohibit a bidders whose bids are under evaluation from inquiring into the status of the procurement activity, and allows the Bids and Awards Committee (BAC) to answer/reply to a correspondence sent by the bidder inquiring on the status of a particular procurement. NPM 17-2011.

POST-QUALIFICATION

- To determine whether bidder with LCB complies with and is responsive to all requirements and conditions of eligibility and the bidding of the contract – to be declared the Lowest Calculated and Responsive Bid (LCRB)
- A non-discretionary pass/fail criterion shall be used to “verify, validate and ascertain” all statements and documents (licenses, certificates, etc.)
- To be accomplished not more than 12CD from determination of LCB. (Exceptional cases not to exceed 45CD/30CD consulting). (*a*)

AWARD OF CONTRACT

- Contract shall be awarded to the bidder with the Lowest Calculated and Responsive Bid (LCRB) at its submitted price or total calculated bid price, whichever is lower
- Notice of Award (NOA) is issued by the HOPE
- NGAs and LGUs – 7CD
- GOCCs and GFIs – 15CD

NOTICE TO PROCEED (NTP)

- Issued to the successful bidder together with the copy of the approved contract within 3CD from date of approval

PROCUREMENT PERIODS

	Minimum	Maximum
Goods	26 cd	136 cd
Infra	26 cd	156 cd
Consulting	36 cd	180 cd

FAILURE OF BIDDING

GROUNDS:

1. No bids received
2. Bids received but no one was eligible
3. All bids failed to post qualify
4. Someone post qualified but refused w/o justifiable cause to accept the award.

SELECTED ALTERNATIVE MODES OF PROCUREMENT

ALTERNATIVE MODES

RULE: Procuring Entities shall adopt public bidding as the general mode of procurement

EXCEPTION: Alternative methods shall be resorted only:

1. In highly exceptional case
2. To promote economy and efficiency
3. Justified by conditions specified in IRR
4. GPPB approval as require under EO 423, S. 2005 (as amended) *suspended*

Kinds of AMP

- **Direct Contracting**
- Negotiated Procurement
 - a) **Emergency**
 - b) Take-over of contracts
 - c) Adjacent or contiguous
 - d) Scientific Scholarly or Artistic Work (2016)
 - e) Highly Technical Consultants
 - f) **Small value procurement**
 - g) Lease or Real Property and Venue
- **Shopping**
- Limited Source Bidding
- Repeat Order
- Negotiated Procurement
 - Two failed bidding
 - Agency to Agency

AMP	Applies	Mayors Permit	CV / Consulting	Philgeps No. (no adv and Posting)	PCAB	NFCC	Income Tar Return	Omnibus
SVP	ALL	y	y	y	y		y	y
HTC	CONSULT	BIR	y	y				
Lease of property / venue		y		y			y Govt agenceis as lessor	
Shopping (52.1 (b))	GOODS	y		Y But with Posting ABC< 50K				
Shopping (52.1 (a))	GOODS	y		y			y ABC < 500K	

DIRECT CONTRACTING

Single Source procurement that does not require elaborate Bidding Documents. The 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.

APPLICABILITY:

- Goods

CONDITIONS:

- Items of proprietary nature from proprietary source,
- Critical components from a specific supplier to hold a contractor to guarantee its project performance, or
- Items sold by an exclusive manufacturer or dealer
 - No other suppliers selling it at lower prices
 - No suitable substitute can be obtained at more advantageous terms to the Government

Query:

- Even though 3M Passport Reader is proprietary in nature and can be obtained from the proprietary source, there may be other Passport Readers in the market, which are likewise proprietary in nature that can be obtained. NPM 41-2013

SHOPPING

Methods where the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications

APPLICABILITY [52.1(A) and (B)]:

- Goods

CONDITIONS [Shopping under Sec. 52.1(A) :

1. There is an unforeseen contingency requiring immediate purchase; and
2. Amount does not exceed the threshold

CONDITIONS [Shopping under Sec. 52.1(B) :

1. Procurement of ordinary or regular office supplies and equipment not available in PS-DBM; and
2. Amount does not exceed the threshold
3. obtain at least three (3) quotations (NPM 019-2014)

Small Value Procurement

APPLICABILITY

- All types of Procurement

CONDITIONS:

1. Procurement does NOT fall under Shopping; and
2. Amount does not exceed the threshold

Small Value Procurement

THRESHOLD (Annex H)

- NGAs, GOCCs, GFIs, SUCs – Php 1,000,000
- LGUs -

Classification	Maximum Amount (in Philippine Pesos)		
	Province	City	Municipality
1 st Class	1,000,000	1,000,000	200,000
2 nd Class	1,000,000	1,000,000	200,000
3 rd Class	1,000,000	800,000	200,000
4 th Class	800,000	600,000	100,000
5 th Class	600,000	400,000	100,000
6 th Class	400,000	200,000	100,000

In case of Barangays, the maximum amount is Php 50,000

What is “Ordinary or Regular Office Supply”

Definition of Ordinary or Regular Office Supplies: May all kinds of office supplies and equipment, such as chairs, tables, computer/information technology accessories be considered ordinary or regular office supplies which can be purchase through shopping. (NPM – 023-2010)

"Ordinary or regular office supplies" is defined under Section 52.1 of the IRR as supplies, commodities, or materials, which, depending on the procuring entity's mandate and nature of operations, **are necessary in the transaction of its official business and consumed in the day-to-day operations of the procuring entity.**

Section 2 of RA 9261 prescribes the general mandate of Southern Leyte State University: It is to primarily provide advance education, higher technological professional instruction and training in trade, fisheries, agriculture, forestry, science, education, commerce, engineering and related courses. It shall also undertake research and extension services, and provide progressive leadership in these areas of specialization.

From the foregoing, it is our considered opinion that chairs, tables, and computers may be considered ordinary or regular office equipment of Southern Leyte State University. Being an educational institution, we believe that these equipment are necessary in the transaction of its official businesses and used in its day-to-day operations.

Learning Point: Anything that can be classified as for day-to-day operations, even if not “consumed” , i.e. chairs, Tables, Computers can be procured by Shopping.

Shopping for Software Maintenance Subscription: May shopping be resorted to for the annual subscription for software maintenance of SUSE Linux Enterprise Server (SUSE) and other similar Products. (NPM 043-2009)

[P]er GPPB Resolution No. 012-2006, "ordinary or regular office supplies" shall be understood to include those supplies, commodities or materials which, depending on the procuring entity's mandate and nature of operations, **are necessary in the transaction of its official businesses; and consumed in the day-to-day operations of said procuring entity.** However, office supplies shall not include services such as repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services.

Thus, we are of the opinion that should you BAC make a determination that all the conditions prescribed [in Sec. 52(b)] are present, then your agency may validly resort to Shopping 52(b) of IRR-A for the procurement of the services of SUSE.

Learning Point: Software, such as a Software Maintenance Subscription is a Good, and can be deemed Regular Office Supply.

Shopping is the appropriate mode of procurement for acquisition of laptops. (NPM No. 109-2016)

For guidance, Section 52.2 of the 2016 revised IRR provides that the phrase **"ordinary or regular office supplies" includes those supplies, commodities, or materials which are necessary in the transaction of official business and consumed in the day-to-day operations.** An examination of the mandate of the Department of Science and Technology under Executive Order No. 128 alongside the definition of the phrase "ordinary or regular office equipment" shows that laptop computers may be considered as such as they are necessary in the transaction of DOST's official businesses, as well as in its day-to-day operations. Hence, in the event that the laptop computers needed by the DOST are not available from the Procurement Service, and the amount for which does not exceed the prescribed threshold, the same may be procured through Shopping under Section 52.1(b). As such, the procurement of which shall follow the procedures prescribed in Section 52.1(b) and Annex "H" of the 2016 revised IRR.

Learning Point: "Consumed" = "used".

“Delegation of Functions”

Delegation of Authority by the Bids and Awards Committee: May the Bids and Awards Committee (BAC) for the Halls of Justice of the Office of the Court Administrator validly delegate its authority to a unit within the Supreme Court to handle Shopping and Small Value Procurement, specifically, on matters involving the Halls of Justice nationwide. (NPM 034-2012)

[T]he BAC for the Halls of Justice may validly delegate its authority to a unit within the Supreme Court to handle shopping and small value procurement specifically on matters involving the Halls of Justice. Please be reminded however, that the delegation of the conduct of shopping and small value procurement may only be allowed provided that the BAC has rendered a decision to resort thereto. Furthermore, only those powers specifically delegated by the BAC may be exercised by the delegated unit.

[T]he powers delegated by the BAC do not include the power to award the procurement contract as this is vested with the Head of the Procuring Entity (HOPE).

Learning Point: It is not always the HoPE or BAC that would sign RFQs and POs.

Would Small Value Procurement with the amount of below Php500, 000.00 require endorsement of the BAC for the HOPE's approval. (NPM 074-2014)

The Guidelines for Shopping and Small Value Procurement (Guidelines) does **not** state that any endorsement of the BAC is needed for award of contract to the lowest quotation (for goods or infrastructure projects) or after successful negotiations, the highest rated offer (for consulting services).

However, Section 12 of Republic Act (RA) No. 9184 vested to the BAC, as one of its functions, the power to recommend award of contracts to the Head of the Procuring Entity (HOPE) or his duly authorized representative.

Thus, regardless of the amount of Approved Budget for the Contract (ABC) in Small Value Procurement, subject to applicable limitations, the BAC's endorsement to the HOPE for award of contract is necessary.

Required number of Quotations

May the Procuring Entity (PE) proceed with the opening of the sealed quotations received in a procurement through Shopping, despite the fact that only two (2) quotations were sent. (NPM 167-2012)

Shopping, as an alternative method of procurement, requires that after posting of the RFQ, at least three (3) quotations are obtained by the PE concerned. Hence, after the issuance of the RFQ, the PE must obtain at least three (3) quotations before it may commence the opening and examination of the proposals.

x x x. In the event that less than three (3) quotations are obtained, the deadline for submission may be extended in order to secure the required number of price quotations.

Use of Petty Cash

May Shopping be resorted to in the acquisition of goods and services to be paid out of "petty cash". (NPM 013-2009)

Shopping as an alternative method of procurement may be availed of only in such instances specified under section 52 of R.A. 9184 and its IRR-A.

Furthermore, may we advise you, that Section 7.1 of the IRR-A requires all procurement to be in accordance with the APP, and all procuring entities are not allowed to procure anything unless it is included in the APP. The requirement extends to those immediate purchases of readily available off-the-shelf goods and to contingencies. These purchases include those charged against cash advances, or the so-called "over-the-counter" purchases.

Learning Point: Petty Cash purchases are still covered by RA 9184.

Two-Year Contract for Shopping and Small Value Procurement: May MWSS enter into a two-year contract adopting the Guidelines for Shopping and Small Value Procurement (Guidelines). (NPM No. 140-2015)

MWSS may enter into a two-year contract for its lease of heavy duty copying machines adopting the Guidelines. However, MWSS should still comply with the applicable requirements in resorting to alternative modalities of procurement and in entering into multi-year contracts as required by the Department of Budget and Management.

Learning Point: A 2 year PO (Shopping/SVP) needs a MYCA.

NEGOTIATED PROCUREMENT – Emergency Cases

APPLICABILITY

- All types of Procurement

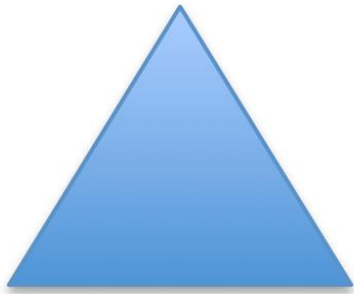
CONDITIONS:

- In case of imminent danger to life or property during state of calamity;
- When time is of the essence arising from natural or man-made calamities;
- Other causes where immediate action is necessary
 - To prevent damage to or loss of life or property
 - To restore vital public services, infrastructure facilities and other public utilities

-
- The instances or situations where the foregoing conditions may be applied include the provision of immediate response and initial recovery steps to avoid loss of life, injury, disease and other negative effects on human, physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and environmental degradation.
 - (GPPB Resolution No. 03-2020, March 9, 2020)

Revised Process for Emergency Procurement

1. End-user unit or any other appropriate bureau, committee, support or procuring unit to recommend to the Head of the Procuring Entity (HoPE) any revision of the Annual Procurement Plan (APP) to cover the Procurement Project that will be resorting to Negotiated Procurement (Emergency Cases) subject to the validation by the appropriate office in the PE that there are funds in the budget to cover for the same. **Thus, the Bids and Awards Committee (BAC) need not be the one to recommend the revision of the APP;**
2. Approving the APP, the HoPE effectively confirms the existence and veracity of the ground(s) relied upon in resorting to Negotiated Procurement (Emergency Cases). **Thereby dispensing with the previous written confirmation requirement from the HoPE prior to approval of contract;**
3. Similarly, the HoPE may now authorize the End-user unit or any other appropriate bureau, committee, support or procuring unit to directly negotiate with a legally, technically, and financially capable supplier, contractor, or consultant. **Hence, the BAC need not be the one to negotiate or procure;**
4. Allow the HoPE to delegate the awarding of contract to any official of the PE, except to those where there exists conflict of interest such as the BAC Chairperson, members or person authorized to negotiate the bidding.



WHICH SHAPE DO YOU ASSOCIATE YOURSELF WITH?



SPECIALIZED PROCUREMENTS - WETI



RESOLUTION NO. 41-2017

APPROVING THE AMENDMENTS TO THE GUIDELINES ON PROCUREMENT OF WATER, ELECTRICITY, TELECOMMUNICATIONS AND INTERNET SERVICE PROVIDERS

WHEREAS, Section 63.1(b) of Republic Act (R.A.) No. 9184 and its 2016 revised Implementing Rules and Regulations (IRR) authorize the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, the IRR;

WHEREAS, the GPPB issued GPPB Resolution No. 019-2006, dated 6 December 2006, approving and adopting the *Guidelines on the Procurement of Water, Electricity, Telecommunications and Internet Service Providers* (Guidelines for brevity);

WHEREAS, for the procurement of telecommunications, Section 3.2.1.3 of the Guidelines provides that: “[I]f results of said assessment or cost-benefit analysis continue to favor the existing service provider, then the procuring entity may simply renew its services. If it does not, then the procuring entity should bid said services in accordance with Subsection 3.2.2 of these guidelines”;

Section 3.3.1.2

- “At the end of each year, however, the procuring entity must assess the quality of service provided by its ISP. For instance, it must compare the cost charged by said ISP and the range of services it offers as against other service providers in the area. It may also consider new technologies that may prove less costly ***or those that are more advantageous to the government in terms of use, capacity and services offered, e.g. bandwidth, speed, platform, additional services, such as, but not limited to cloud computing, cloud storage, etc.***”

- **Section 3.3.1.3**

“If the results of said assessment or cost-benefit analysis, ***conducted by the end- user, continue to favor*** the existing ISP, then the ***Head of the Procuring Entity*** may ***simply renew*** its services. If it does not, then the procuring entity should bid said services in accordance with subsection 3.3.2 of these guidelines. ***For efficiency and economy, during the effectivity of the contract, or upon its renewal, the PE may consider the expansion or reduction of the services provided by the existing service provider subject to the need of the PE and the best way by which such need may be addressed and satisfied, subject to existing budgeting, accounting and auditing rules.***”

Procurement of Internet Service Provider (ISP) and whether the BAC may opt to procure anew a contract for Internet Services through public bidding instead of renewing their existing contract. (NPM No. 139-2015)

Section 3.3.1 of the Guidelines on Procurement of Water, Electricity, Telecommunications, and Internet Service Providers (Guidelines) provides guidance for the procurement of ISP by government agencies with the existing ISPs, thereby allowing the renewal of the services of the existing ISP upon favorable result of the assessment or cost-benefit analysis conducted by the agency. It can then be gleamed from the Guidelines that it recognizes the fact that changing ISPs entails interruption of internet access and thereby allowing renewal of the procurement contract.

Process of renewal

3.3.1.3 If the results of said assessment or cost-benefit analysis continue to favor the existing ISP, then the procuring entity may simply renew its services. If it does not, then the procuring entity should bid said services in accordance with subsection 3.3.2 of these guidelines. (underscore provided)

WHEREAS, the cost-benefit analysis prepared by the Management Information Systems Division (MISD) shows that PLDT's proposed charges are lower compared to other ISPs, which also submitted their proposals;

WHEREAS, in a Memorandum dated 18 November 2019, Mr. Joey J. Angostora, Chief-MISD, averred that maintaining PLDT as the Department's internet service provider is more economical since it offered a lower cost from their current rate and significantly lower compared to other ISPs;

NOW THEREFORE, for and in consideration of the foregoing premises, the Department of Justice – Bids and Awards Committee **RESOLVES**, as it hereby resolve, to **RECOMMEND** the renewal of the contract of PLDT, Inc. for the internet services for the DOJ main (100 mbps leased line) for the period 22 March 2020 to 21 March 2021, in the amount of Seven Hundred Thirty-Nine Thousand Eight Hundred Eighty-Five Pesos and 44/100 (P739,885.44), following the procedures prescribed in R.A. No. 9184 and its 2016 Revised Implementing Rules and Regulations.



**PENAL, CIVIL AND ADMINISTRATIVE
PROVISIONS**

APPLICABLE PENALTY

- Imprisonment for not less than 6 years and 1 day but not more than 15 years
- Penalty of temporary or perpetual disqualification from public office (Public Official)
- Permanent disqualification from transacting business with the government (Private Individual)

OFFENSES COMMITTED BY PRIVATE INDIVIDUALS

Section 65(b) of RA 9184

Agreement and submission to submit bids with pre-arranged lowest bid

Malicious submission of different bids through two or more persons

Agreement to secure undue advantage

Employment of scheme disadvantageous to the public

CIVIL LIABILITY

Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under the Act and this IRR or RA 3019 shall carry with it civil liability, which may either consist of:

- Restitution for the damage done; or
- Forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both, at the discretion of the courts.

A blurred background image showing a person in a grey suit running on a wooden floor. The person is captured in motion, with their arms and legs extended, suggesting a sense of urgency or haste. The image is out of focus, emphasizing movement and action.

PROTEST MECHANISM

PROTESTS ON DECISIONS OF THE BAC

Decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration

Filing of Request for Reconsideration

Three (3) Calendar days upon receipt of written notice of upon verbal notification

BAC Resolution

Within seven (7) calendar days from receipt of MR

IF MR is DENIED, decision of the BAC may be protested in writing (verified Position Paper & payment of Protest Fee) to the HOPE

REQUISITES FOR THE FILING OF A VALID PROTEST

1. Must be in writing (Verified Position Paper)

2. Addressed to the HOPE

3. Filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration; and

4. Accompanied by the Payment of non-refundable protest fee within the reglementary period and Certificates of Non Forum Shopping

RESORT TO REGULAR COURTS

- Court Action may be resorted to only after the protest shall have been resolved with finality. (Doctrine of Exhaustion of Administrative Remedies)
- Non-compliance with this statutory requirement, under Sec. 58 of RA 9184, constitute a ground for the dismissal of the action for lack of jurisdiction.
- Court should dismiss case if exhaustion of administrative remedies was not complied with. **DIMSON (MANILA), INC. and PHESCO, INC., vs. LOCAL WATER UTILITIES ADMINISTRATION, G.R. No. 168656 September 22, 2010; DBM-PS vs. Kolonwel, G.R. No. 175608, June 8, 2007 ; PHIL PHARMAWEALTH, INC. vs. PHILIPPINE CHILDREN'S MEDICAL CENTER BIDS AND AWARDS COMMITTEE, G.R. No. 167806 , June 26, 2006.**

PROTEST FEES

ABC RANGE	PROTEST FEE
50 Million pesos and below	0.75% of the ABC
More than 50 million to 100 Million pesos	Php 500,000.00
More than 100 million to 500 Million pesos	0.5% of the ABC
More than 500 million to 1 billion pesos	Php 2,500,000.00
More than 1 billion to 2 billion pesos	0.25% of the ABC
More than 2 billion to 5 billion pesos	Php 5,000,000.00
More than 5 billion pesos	0.1% of the ABC



Anti-Graft and Corrupt Practices

Act

RA No 3019

(August 17, 1960)

Coverage

- "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches. (Sec 2.a)
- "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph. (Sec 2.b)

- "Receiving any gift" ***includes*** the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, ***even*** on the occasion of a family celebration or national festivity like Christmas, ***if*** the value of the gift is under the circumstances ***manifestly excessive***. (Sec 2.c)
- **Section 14. Exception.** Unsolicited gifts or presents of **small or insignificant value** offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act.

“manifestly excessive”

- See Senate Proceedings in regard to R.A. 3019:
- It is impossible to lay down a hard and fast rule on what value or amount will be construed as manifestly excessive. Thus the judiciary will be guided by the precedents established in bribery cases on amounts that are considered of such insignificant and small value so that they may be considered as ordinary token of gratitude and friendship. 3 Senate Record 248 (1960).
- **What is excessive or manifestly excessive is relative.** The circumstances of person and of social position have to be taken into account in determining whether the gift is actually excessive and also the fact of whether it might influence action one way or another on the part of a public official. There is no definite amount. 3 Senate Record 258-259 (1960).

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- **Section 3.** *Corrupt practices of public officers.* . . . the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
 - (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

- ***FELICITAS P. ONG, vs. THE PEOPLE OF THE PHILIPPINES, G.R. No. 176546 September 25, 2009.***
- Procurement of Dump Trucks, done through negotiated procurement and not public bidding. Violation of Sec. 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. – Giving undue benefit to third party.
- The Supreme Court stated that the Sandiganbayan correctly ruled that by procuring the subject truck through a negotiated purchase without public bidding, petitioner failed to comply with the above stated procedure. **Indeed, as the local chief executive, petitioner is not only expected to know the proper procedure in the procurement of supplies, she is also duty bound to follow the same** and her failure to discharge this duty constitutes gross and inexcusable negligence.
- Hence, had petitioner observed the proper procurement procedure, the municipality of Angadanan could have acquired a dump truck at a much lower price of not more than P500,000.00. Without doubt, petitioner's negligence caused undue injury to the government while at the same time gave unwarranted benefits to Josephine Ching.

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- (f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.
 - (g) Entering on behalf of the Government, into any contract or transaction, manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

Case

JOEY P. MARQUEZ, vs. THE SANDIGANBAYAN-FOURTH DIVISION and PEOPLE OF THE PHILIPPINES,
G.R. Nos. 182020-24, September 2, 2009 .

- Walis Tingting bought at Php 25 when going rate was Php 11.
- Violation of Section 3(g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.
- Findings of COA Audit Team: The audit team made a report which contained the following findings:
 - 1. The purchase of walis tingting was undertaken without public bidding;
 - 2. The purchase of walis tingting was divided into several purchase orders and requests to evade the requirement of public bidding and instead avail of personal canvass as a mode of procurement;
 - 3. The purchase of walis tingting through personal canvass was attended with irregularities; and
 - 4. There was glaring overpricing in the purchase transactions.
- We are not unmindful of the fact that petitioners failed to conduct the requisite public bidding for the questioned procurements. However, the lack of public bidding alone does not automatically equate to a manifest and gross disadvantage to the government. As we had occasion to declare in **Nava v. Sandiganbayan**, the absence of a public bidding may mean that the government was not able to secure the lowest bargain in its favor and may open the door to graft and corruption. However, this does not satisfy the third element of the offense charged, because the law requires that the disadvantage must be manifest and gross. After all, penal laws are strictly construed against the government.

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- (h) Directly or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.
 - (i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Penalties

Any public officer or private person committing any of the unlawful acts or omissions of this Act shall be punished with:

- imprisonment for not less than six years and one month nor more than fifteen years
- perpetual disqualification from public office
- confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income

**Code of Conduct For
Public Officials
RA No 6713
(February 20, 1989)**

Coverage & Definitions (cont.)

- "Gift" refers to a thing or a right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof. It shall not include an unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee.
- "Receiving any gift" includes the act of accepting directly or indirectly, a gift from a person other than a member of his family or relative as defined in this Act, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is neither nominal nor insignificant, or the gift is given in anticipation of, or in exchange for, a favor.
- Covers both simple loan and commodatum as well as guarantees, financing arrangements or accommodations intended to ensure its approval.

Coverage & Definitions (cont.)

- Family of Public Official = spouses and unmarried children of public officials or employees under eighteen (18) years of age
- "Relatives" refers to any and all persons related to a public official or employee within the fourth civil degree of consanguinity or affinity, including bilas, inso and balae."
- "Conflict of interest" arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.

Coverage & Definitions (cont.)

- "Divestment" is the transfer of title or disposal of interest in property by voluntarily, completely and actually depriving or dispossessing oneself of his right or title to it in favor of a person or persons other than his spouse and relatives.

Duties of Public Officials

In the performance of their duties, all public officials and employees are under obligation to:

- Act promptly on letters and requests within 15 days
- Submit annual performance reports within 45 days from the end of the year
 - IRR Section 7. All heads or other responsible officers of departments, offices or agencies of the government and of government-owned or controlled corporations shall, within forty five (45) working days from the end of the year, render a full and complete report of performance and accomplishments, as prescribed by existing laws and regulations.
- Process documents and papers expeditiously - not more than 3 signatories
 - IRR Section 5. Except as otherwise provided by law or regulation, and as far as practicable, any written action or decision must contain not more than three (3) initials or signatures)
- Make documents accessible to the public (*Freedom of Information, Open Data*)

Prohibited Transactions

Public officials and employees during their incumbency shall not:

- Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.
- Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office
- Engage in the private practice of their profession unless authorized by law, provided, that such practice will not conflict with their official functions
- Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office
- **(EO 282 SECTION 36. Inhibition Against Purchase of Property at Tax Sale.—**No officer or employee of the government shall purchase directly or indirectly any property sold by the government for the non-payment of any tax, fee or other public charge. Any such purchase by an officer or employee shall be void.)

Statement of Assets, Liabilities & Net Worth

Mandated under the Constitution and Administrative Code

- a true detailed and sworn statement of **assets** and **liabilities**, including a statement of the **amounts and sources of his income**, the **amounts of his personal and family expenses** and **the amount of income taxes paid** for the next preceding calendar year:
- provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.
- For more info visit: csc.gov.ph FAQ

Why a SALN?

- The requirement of SALN submission is aimed at curtailing and minimizing the opportunities for official corruption, as well as at maintaining a standard of honesty in the public service. With such disclosure, the public would, to a reasonable extent, be able to monitor the affluence of public officials, and, in such manner, provides a check and balance mechanism to verify their undisclosed properties and/or sources of income. (**ANGELITO R. MARQUEZ, EDUARDO R. MARQUEZ, CRISTINA M. OCAMPO et a. vs. JUDGE VENANCIO M. OVEJERA, A.M. No. P-11-2903 February 5, 2014**)

Statements & Disclosures

All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their:

- Statement of Assets, Liabilities and Net Worth (SALN)
- Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households

Statements & Disclosures (cont.)

The documents must be filed:

- within thirty (30) days after assumption of office
- on or before April 30, of every year thereafter (*under 3019 it is April 15*)
- within thirty (30) days after separation from the service

Statements & Disclosures: Authority to obtain records

Must also execute, within 30 days from the date of their assumption of office, authority in favor of the Ombudsman to obtain from all **appropriate government agencies (excludes banks)**, including the BIR such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

ASSETS, LIABILITIES AND NETWORTH

(Including those of the spouse and unmarried children below eighteen (18) years of age living in declarant's household)

1. ASSETS

a. Real Properties*

DESCRIPTION <small>(e.g. lot, house and lot, condominium and improvements)</small>	KIND <small>(e.g. residential, commercial, industrial, agricultural and mixed use)</small>	EXACT LOCATION	ASSESSED VALUE	CURRENT FAIR MARKET VALUE	ACQUISITION		ACQUISITION COST
			<small>(As found in the Tax Declaration of Real Property)</small>		YEAR	MODE	
House and Lot (mort.)	Residential	1 Rizal St., Sampaloc. Manila	P800,000.00	P1,500,000.00	2003	Sale with mortgage	P5,000,000.00
Building <small>(1/3 co-owned)</small>	Commercial	1 Quezon Ave., Tandang Sora, Cavite	P1,200,000.00	P2,000,000.00	2000	Deed of Sale	P1,500,000.00
Farm lot	Agricultural	Brgy. Kaligayahan, Cavite	P900,000.00	P1,200,000.00	2010	Inherited	0
Lot	Mixed use	Santa Fe Subd., Brgy. Ana, Quezon City	P600,000.00	P800,000.00	2008	Deed of Sale	P1,300,000.00

Subtotal: P7,800,000.00

b. Personal Properties*

DESCRIPTION	YEAR ACQUIRED	ACQUISITION COST/AMOUNT
Condominium Unit (contract to sell)	2015	P500,000.00
Furniture	2000-present	P150,000.00
Appliances	2000-present	P200,000.00
Shares of stock	2013	P50,000.00

Subtotal : P3,250,000.00**TOTAL ASSETS (a+b): P11,050,000.00**

* Additional sheet/s may be used, if necessary.

2. LIABILITIES*

NATURE	NAME OF CREDITORS	OUTSTANDING BALANCE
Personal debt	Eddie dela Cruz	P800,000.00
Housing Loan	Pag-IBIG	P2,500,000.00
Contract to Sell	DMCI	P1,000,000.00
GSIS Multipurpose loan	GSIS	P60,000.00

TOTAL LIABILITIES: P4,360,000.00

NET WORTH : Total Assets less Total Liabilities = P6,690,000.00

* Additional sheet/s may be used, if necessary.

BUSINESS INTERESTS AND FINANCIAL CONNECTIONS

(of Declarant / Declarant's spouse/ Unmarried Children Below Eighteen (18) years of Age Living in Declarant's Household)

I/We do not have any business interest or financial connection.

NAME OF ENTITY/BUSINESS ENTERPRISE	BUSINESS ADDRESS	NATURE OF BUSINESS INTEREST &/OR FINANCIAL CONNECTION	DATE OF ACQUISITION OF INTEREST OR CONNECTION
Sea Travel and Tours	Agapito St., Sampaloc, Manila	Owner	2015

- The failure to file a truthful SALN puts in doubts the integrity of the officer and would normally amount to dishonesty.
- Mere misdeclaration in the SALN does not automatically amount to such an offense.
- Dishonesty requires malicious intent to conceal the truth or to make false statements; otherwise, the government employee may only liable for negligence, not for dishonesty.
- **(FLOR GUPILAN-AGUILAR and HONORE R. HERNANDEZ, vs. OFFICE OF THE OMBUDSMAN, represented by HON. SIMEON V. MARCELO; and PNP-CIDG, represented by DIR. EDUARDO MATILLANO, G.R. No. 197307, February 26, 2014)**

Divestment

- **Section 9. *Divestment.*** - A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.
- The same rule shall apply where the public official or employee is a partner in a partnership.
- The requirement of divestment shall not apply to those who serve the Government in an honorary capacity nor to laborers and casual or temporary workers.

Case Question:

- A court interpreter had a stall at the public market.
- An administrative complaint was filed against her on:
 - 1) why she did not report said business interest in her sworn statement of Assets, Liabilities and Net Worth, Disclosure of Business Interests and Financial Connections, and Identification of Relatives in the Government Service for the years 1991, 1992, 1993, and 1994;
 - 2) why she has not divested herself of her interest in said business within sixty (60) days from her assumption into (*sic*) office; xxx

Question: Do you think she should have divested? What do you think happened for failure to report said business interest in her SALN?

Sanctions & Penalties

Any violation shall be punished with

- a fine not exceeding the equivalent of 6 months' salary or suspension not exceeding 1 year
- removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency

Sanctions & Penalties (cont.)

Violations of Sections 7, 8 or 9 of this Act shall be punishable with:

- imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000)
- both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office

Any proven violation shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

Maraming Salamat Po!

Atty. Jose Tomas Syquia, LL.M, FICD
Institute of Corporate Directors

May 2021

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