

# Monitoring Public Procurement in the Philippines

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25 January 2012, 9:00am to 4:00pm



## Transparency and Accountability Network

- Coalition of 26 multisectoral organizations concerned primarily in anti-corruption and good governance in the country;
- Established in November 2000 due to heightened concern over the lack of transparency and accountability in governance, which ultimately led to People Power II;
- TAN envisions a Philippines characterized by transparent, accountable, efficient and effective public institutions and an informed, empowered and involved citizenry intolerant of corruption;
- TAN's core programs include legislative advocacies, citizens' oversight, procurement, and campaign and electoral reform

## TAN' s Procurement Monitoring

- Jan 2003: Passage of RA 9184 - Government Procurement Reform Act; provided for NGO observers to the procurement process
- Received a number of trainings from Procurement Watch in 2003;
- Conducts trainings on public procurement monitoring for non-government organizations from 2004 to present;
- Observed procurement activities of Development Bank of the Philippines, Department of National Defense, Sugar Regulatory Commission, Department of Public Works and Highways, Civil Service Commission, LGUs (Pitogo, Santol, Alilem through PCF Assessment), Comelec, etc.

## TAN' s Procurement Monitoring Tool

- Based on Government Procurement Reform Act (RA 9184) and other related GPPB issuances;
- Covers monitoring of competitive bidding, alternative modes of procurement, observers' report;
- Provides guide on determining red flags;
- Utilizes documents such as Annual Procurement Plan or Procurement List (including Supplemental Procurement), Items to Bid, Bid Results on Civil Works, and Goods and Services, Abstract of Bids as Calculated, etc.

## What is PROCUREMENT?

- “Acquisition: Complete process of obtaining goods and services from preparation and processing of a requisition through to receipt and approval of the invoice for payment.” ([www.businessdictionary.com](http://www.businessdictionary.com))
- Governing law in the Philippines is the GOVERNMENT PROCUREMENT REFORM ACT (Republic Act 9184). It was signed into law in January 3, 2003
- Other relevant regulations: GPPB Resolution No. 018-2006 dated December 6, 2006 Guidelines for the implementation of infrastructure projects **by administration**

## Competitive Bidding and Alternative Methods of Procurement

Government Procurement Reform Act (R.A. 9184)

## COVERAGE (GPRA)

- All government bodies
- Domestically funded and foreign funded projects unless otherwise stated; Exemption should be explained in writing

## Governing Principles of the GPRA

- Transparency
  - Competitiveness\*
  - Streamlined processes
  - System of accountability
  - **PUBLIC MONITORING**
- Sec. 13. In all stages of procurement, the BAC is required to invite **OBSERVERS**

1. From a duly recognized private group in a sector or discipline relevant to the procurement at hand
2. Non-government organization

**\*Competitive Bidding is the default method of procurement except for specific circumstances (set forth in the conditions defined by the law) that allow for Alternative Methods of Procurement**

## Three Types of Procurement

- **GOODS** and General Services

Items, supplies, materials and equipment

- Consultancy

(General Services)

- Infrastructure

Non-personal and contractual services such as repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security and other related or similar services Does not require technical and professional expertise

### Why is this important to know?



Because the processes are streamlined according to type of procurement

### Other things to note:

- Name of project
- Project description
- Approved Budget of the Contract
- Contract duration



Also provided in the procurement advertisements

## Three Types of Procurement

- Goods and General Services

Construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of **roads and bridges, railways, airports, seaports, communication facilities**

- Consultancy

- **INFRASTRUCTURE**

Civil works components of information technology projects

Irrigation

Flood Control and Drainage

## Procurement Observers

- At least 3 days notice

- Professional organizations

### GOODS

- A specific relevant chamber member of the Philippine Chamber of Commerce and Industry

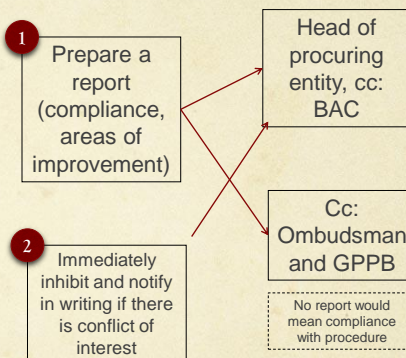
### INFRASTRUCTURE

- Philippine Constructors Association
- National Constructors Association of the Philippines
- Philippine Institute of Civil Engineers

- Non-government organizations

- No conflict of interest
- SEC/CDA-registered
- Knowledge, experience or expertise in procurement or subject matter of contract to be bid

### Responsibilities



## Procurement Observers



### YOU'VE GOT ACCESS TO:

1. Minutes of Bids and Awards Committee meetings
2. Abstract of Bids
3. Post-qualification Summary Report
4. Annual Procurement Plan and Project Procurement Management Plan
5. Opened proposals

## Standard Procurement Process

1. Pre-procurement Conference
2. Advertisement
3. Pre-bid conference
4. Submission and opening of bids
5. Eligibility Screening
6. Bid Evaluation
7. Post-qualification
8. Award



## Pre-procurement Conference

- Meeting attended by the BAC, TWG, End-user representative
- Mandatory for GOODS projects > P2M; INFRASTRUCTURE >P5M
- Purpose: Determine readiness of procurement at hand



What to do:

1. Is this in accordance with the APP? - NO  
PROCUREMENT SHALL BE UNDERTAKEN UNLESS  
IT IS IN ACCORDANCE WITH THE APPROVED APP  
OF THE PROCURING ENTITY
2. Confirm project details - name, ABC, contract  
duration)
3. Check on availability of funds (Certificate of availability  
of funds)
4. Are the bidding documents ready?
5. Review criteria for eligibility screening, evaluation, and  
post-qualification (fairness, reasonableness, and  
applicability)
6. Review procurement schedule - deadlines and  
timeframes

### **Red Flags:**

#### **GOODS**

•Verify that technical specifications of good to be procured do not favor a specific supplier resulting in "tailor-fitting"

•Prohibition of Reference to Brand Names

#### **INFRASTRUCTURE**

•Is detailed engineering completed?

•Is the right-of-way acquired

# Pre-bid Conference



- **Purpose:** To clarify and/or explain any of the requirements, terms, conditions about the procurement
- **When to hold?**
  - Projects with ABC > P1M, BAC must convene at least 1 pre-bid conference
  - BAC may hold a pre-bid conference upon written request of a prospective bidder/s
  - At least 12 CD before deadline of submission and receipt of bids OR 30 CD for complex contracts or when international participation will be more advantageous to the GOP
- **Who can attend?**
  - Prospective bidders but they will not be required to attend; Only those interested
  - At the option of the procuring entity, only those who have purchased bid documents
- **What happens?**
  - Changes may be introduced in the bid documents but shall be specified in writing in a supplemental bid bulletin made available to all prospective bidders
  - Supplemental bid bulletins shall be posted at PhilGEPS, agency website
  - Minutes to be made available to participants 3CD after conference

## What to do:

1. Make sure that any changes to bid documents are properly reflected in supplemental bid bulletins
2. Evaluate if changes resulted in favoring a specific bidder
  - Did this result in withdrawals of bids? Who were affected by the changes? (those who modified/withdrew their bids)

- Requests for clarification should be in writing and submitted at least 10CD
- BAC to respond in writing in a Supplemental Bid Bulletin at least 7 CD
- Supplemental Bid Bulletin may be issued on own initiative of BAC to clarify or modify bid bulletin



# What are these Bid Submissions?



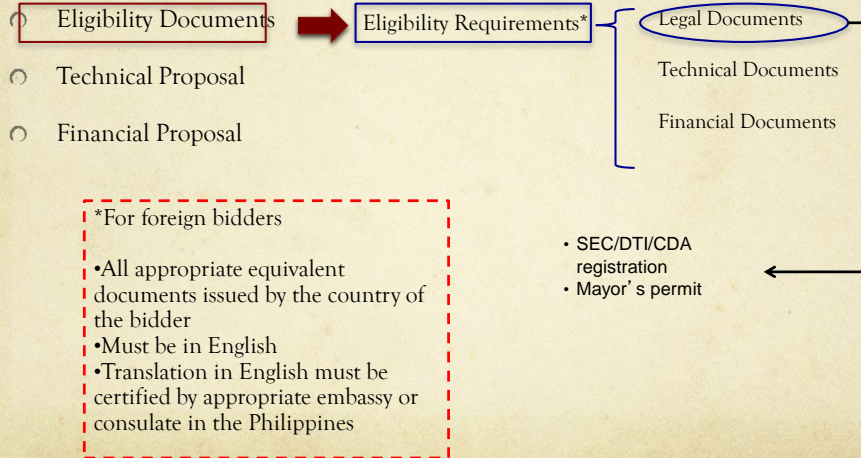
- Failure to enter into a JVA in the event of contract award is ground for forfeiture of bid security
- Each partner of JVA shall submit LEGAL ELIGIBILITY DOCUMENTS
- Submission by any one member of the JVA of the TECHNICAL AND FINANCIAL ELIGIBILITY DOCUMENTS would constitute compliance

## IN CASE OF A JOINT VENTURE:

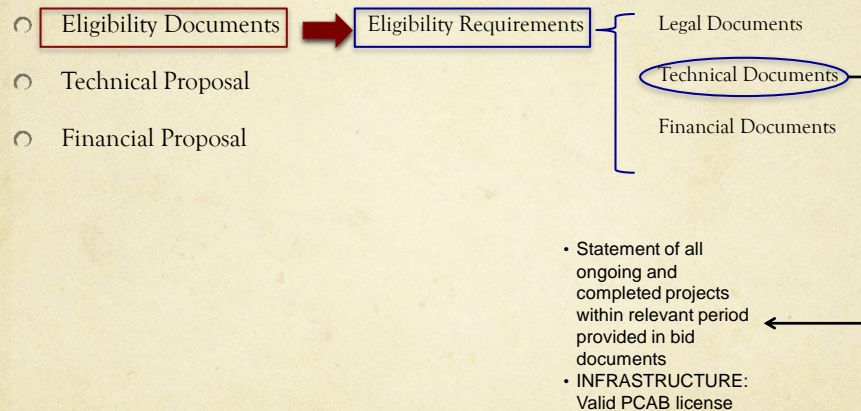
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Joint Venture Agreement OR  
 If JVA is not existing yet, duly notarized statements from all potential partners that they will enter into a JVA and will abide by the agreement if the bid is successful (condition for award of contract)

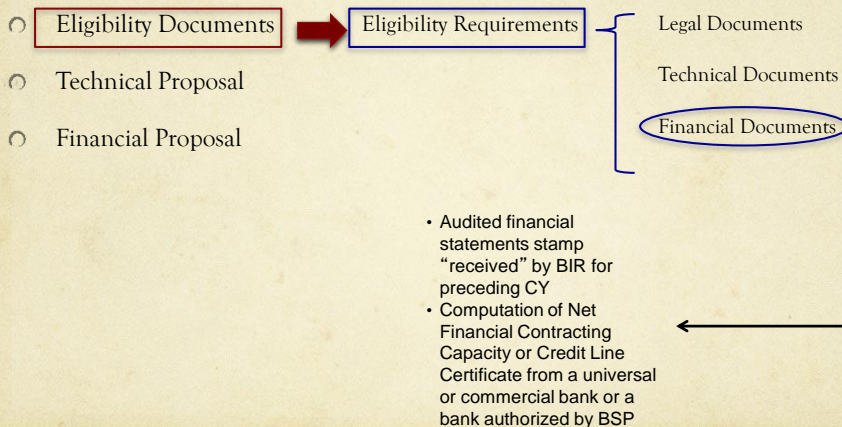
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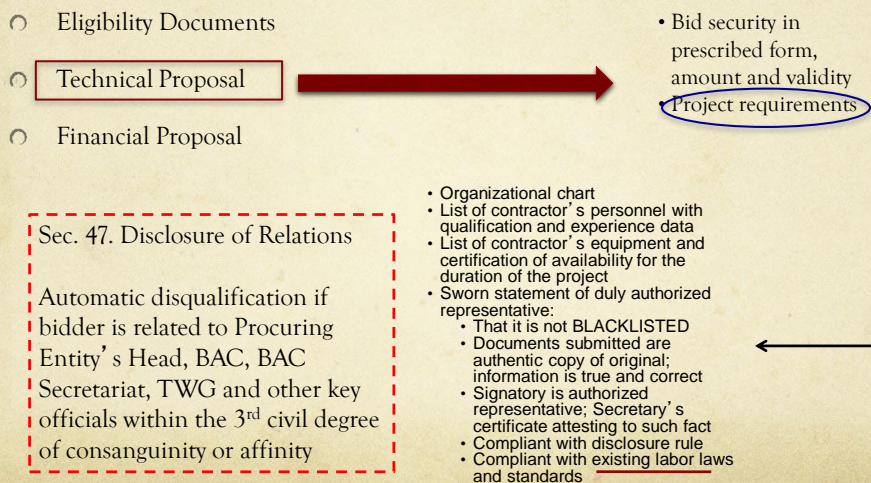
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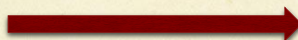


## What are these Bid Submissions?



## What are these Bid Submissions?

- Eligibility Documents
- Technical Proposal
- Financial Proposal



- Bid prices in bill of quantities in the prescribed bid form
- The recurring and the maintenance costs, if applicable

## Submission and Receipt of Bids

Two envelope system

Maximum period (from last day of posting to submission/receipt of bids) is 45 CD (GOODS)

FOR INFRASTRUCTURE:

$ABC \leq P50M = 50CD$ ,  $ABC > P50M = 65 CD$

### Opening of Bids

Eligibility Screening

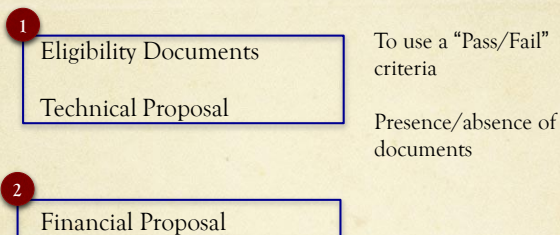
Pass/fail Test (technical submission)

**Modifications/  
Withdrawal of Bids**



- Same day opening of two envelopes (use of pass/fail criteria = preliminary examination of bids)
- Minutes of bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials
- Modification = Send another sealed bid marked "Modification"; Cannot retrieve original bid
- Withdrawal = Should be done in writing and before deadline of submission and receipt of bids

## Two Envelope System



## Who are eligible to bid? (GOODS)

- Duly-licensed Filipino citizens/ sole proprietorships
- Partnership, cooperation, cooperative, joint venture which is at least 60% Filipino-owned
- Foreign bidders may be allowed when provided for by a treaty, international or executive agreement
  - National of a country offering reciprocity rights to Filipinos
  - Goods not available from local supplier
  - To prevent situations that defeat competition or restrain trade



- Must have completed 1 **SIMILAR** contract within the period specified in the ITB with value (adjusted to current prices) of at least 50% of ABC; Expendable supplies - 25% of ABC

If at the outset after conducting market research, such requirement will result in (a) failure of bidding, (b) or monopoly, the requirement may be relaxed as follows:

- Must have completed at least 2 similar contracts with aggregate contract amount of at least 50% of ABC; or 25% of ABC for expendable supplies
- Largest of the 2 contracts is = 25% of ABC; or 12.5% of ABC for expendable supplies

- NFCC >= ABC or Credit Line Certificate = 10% of ABC

Articles normally consumed within 1 year or value is substantially decreased after 1 year  
Examples: medicine, stationery, fuel, and spare parts

### NON-EXPENDABLE SUPPLIES

Not consumed in use  
Serviceable life more than 1 year  
Examples: furniture, fixtures, transport, and other equipment

## Who are eligible to bid? (INFRASTRUCTURE)

1. Duly-licensed Filipino citizens/ sole proprietorships
2. Partnership, cooperation, cooperative, joint venture which is at least 75% Filipino-owned
  - For JV with less than 75% Filipino shares, the STRUCTURES TO BE BUILT require application of techniques and/or technologies which are not adequately possessed by person/entity meeting the 75% Filipino ownership requirement
  - Filipino ownership should not be less than 25% (as specified in JVA)
3. Foreign bidders may be allowed when provided for by a treaty, international or executive agreement



Similar = Same major categories of work

4. With PCAB license
5. CPES rating and/or certificate of completion and owner's acceptance must be satisfactory
6. Within 10yrs from date of submission, must have at least 1 **SIMILAR** contract with value (adjusted to current prices) at least 50% of ABC
  - For small A, small B contractors with no similar contract, cost of contract to be bid is not more than 50% of allowable range of contract cost (ARCC) of their registration prescribed by PCAB
  - For foreign-funded procurement, GOP and foreign government/ entity may agree on a different track record requirement
7. NFCC >= ABC or Credit Line Certificate = 10% of ABC

Registration Particular

Category	Allowable Range of Contract Cost (in Million Pesos)
Small A	Up to 0.5
Small B	Up to 3
Medium A	Up to 15
Medium B	Up to 30
Large A	Up to 50
Large B	Less than or above 50

## Submission and Receipt of Bids

Two envelope system

Maximum period (from last day of posting to submission/receipt of bids) is 45 CD (GOODS)

FOR INFRASTRUCTURE:

ABC <= P50M = 50CD, ABC > P50M = 65 CD



### Opening of Bids

- Eligibility Screening
- Pass/fail Test (technical submission)
- Modifications/ Withdrawal of Bids

- Same day opening of two envelopes (use of pass/fail criteria = preliminary examination of bids)
- Minutes of bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials
- Modification = Send another sealed bid marked "Modification"; Cannot retrieve original bid
- Withdrawal = Should be done in writing and before deadline of submission and receipt of bids

## Bid Evaluation

- To determine the Lowest Calculated Bid (LCB) ... to be reflected in Abstract of Bids
- Bids should be complete (no blank spaces)
- Bids should be correctly calculated
- All bids should include taxes
- BAC, BAC Secretariat, TWG cannot communicate with bidders until notice of award; All communications must be done in writing
- Should be completed within 5CD (Goods); (Infrastructure) within 5CD (ABC ≤ P50M) or 7CD (ABC > P50M)
- BAC to notify bidder with LCB

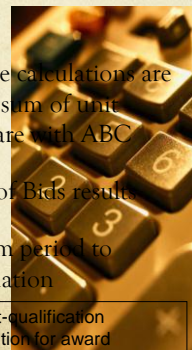
In case of discrepancies...

1. Words shall prevail over figures
2. Unit price to prevail over total price
3. Unit price of bill of quantities over unit price of detailed estimate

What to do:

1. Make sure that the calculations are correct (total and sum of unit prices) and compare with ABC
2. Note of Abstract of Bids results
3. Note of maximum period to conduct bid evaluation

Submissions for Post-qualification  
Submissions as condition for award



## Post-qualification

- To verify, validate, ascertain all documents and submissions
- Within 3 days upon notification, the bidder with LCB should submit:
  - Tax clearance
  - ITR
  - PhilGEPS registration
  - Other licenses and permits required by law and the bid documents
- BAC to submit recommendation to head of procuring entity
  - Head to decide within 5CD (Goods and Infra ≤ P50M); within 7CD (Infra > P50M)

Lowest Calculated and Responsive Bid (LCRB)

What to do:

1. Evaluate the procedure adopted for post-qualification;
2. If there are post-disqualified bidders, note of grounds for post-disqualification; Those who seek reconsideration, get a copy of the request and reasons;
3. If BAC recommendation is disapproved by the Head, get copy of written explanation

If Head approves BAC recommendation, Head should issue the Notice of Award immediately

## Award of Contract

- Subject to the following conditions:
  - Submission of Valid JVA (within 10CD from receipt of notice from BAC re LCB)
  - Infra: Valid PCAB license for foreign bidders (within 30CD from receipt of notice from BAC re LCB)
  - Performance Security (within 10CD from notice of award)
  - Signing of Contract
  - Approval of higher authority if required
- BAC to post notice of award in PhilGEPS, agency website within 3CD of issuance

### Notice to Proceed

- To be issued within 3CD (Goods and Infra >P50M) from date of approval of contract and within 2CD for Infra with ABC ≤P50M
- Contract effectivity not later than 7CD from NTP
- To be posted in PhilGEPS, agency website within 15CD from date of issuance



## Failure of Bidding\*

1. No bids received
2. All bidders are declared ineligible
3. All bidders are disqualified or post-disqualified
4. Winning bidder refuses to accept the award without justifiable cause and no award is made

**BAC to review cause of failure; BAC shall revise terms, conditions, specifications and if necessary even ABC subject to required approvals and conduct rebidding, readvertisement**

\*Upon 2<sup>nd</sup> failure of bidding, the BAC may proceed to Negotiated Procurement

# Alternative Method of Procurement

Negotiated Procurement

## Limited Source Bidding

- Direct invitation to bid by procuring entity from list of pre-selected suppliers with known experience and proven capability on the requirements of the particular contract

### CONDITIONS

- Highly specialized types of goods (Ex: sophisticated defense equipment, complex air navigation system)
- 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
- Pre-selected suppliers shall be those appearing in a list maintained by the relevant government authority that has expertise in the type of procurement concerned; The list shall be updated periodically and submitted to the GPPB
- Pre-selection to be based on capability and resources of bidders to perform the contract taking into account their experience and past performance on similar contracts, capabilities with respect to personnel equipment or manufacturing facilities, and financial position
- No need to advertise

## Direct Contracting

- Supplier is asked to submit a price quotation or a pro-forma invoice together with conditions for sale. The offer may be accepted immediately or after some negotiations

### CONDITIONS

- Goods of proprietary nature obtained only from a proprietary source (i.e. when patents, trade secrets, and copyrights prohibit others to manufacture the same)
- 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 provisions of its contract
- Those sold by an exclusive dealer/ 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

## Repeat Order

- Procurement of goods from a previous winning bidder whenever there is need to replenish goods under a contract previously awarded through competitive bidding

### CONDITIONS

- Unit prices of the repeat order must be the same or lower than in the original contract, provided that such prices are still the most advantageous to the government after price verification
- Repeat order does not result in splitting of contracts, requisitions, or purchase orders
- Shall be availed only within 6 months from contract effectivity date stated in NTP of original contract
- Quantity shall not exceed 25% of quantity of each item in original contract

## Shopping

- Procuring entity simply requests for submission of price quotations for readily available off-the-shelf good or ordinary/ regular equipment from suppliers of known qualifications

### CONDITIONS

- Unforeseen contingency requiring immediate purchase, provided that the amount will not exceed:
  - All municipalities and barangays P50,000
  - City: 1<sup>st</sup> to 3<sup>rd</sup> class P100,000; 4<sup>th</sup> class P60,000; 5<sup>th</sup> to 6<sup>th</sup> class P50,000
  - Province: 1<sup>st</sup> to 3<sup>rd</sup> class P100,000; 4<sup>th</sup> class P80,000; 5<sup>th</sup> class P60,000; 6<sup>th</sup> class P50,000


## Shopping

- Ordinary or regular office supplies and equipment not available in the Procurement Service with amount not exceeding:
  - All barangays P50,000
  - Municipality: 1<sup>st</sup> to 3<sup>rd</sup> class P100,000; 4<sup>th</sup> to 6<sup>th</sup> class P50,000
  - City: 1<sup>st</sup> & 2<sup>nd</sup> class P500,000; 3<sup>rd</sup> class P400,000; 4<sup>th</sup> class P300,000; 5<sup>th</sup> class P200,000; 6<sup>th</sup> class P100,000
  - Province: 1<sup>st</sup> to 3<sup>rd</sup> class P500,000; 4<sup>th</sup> class P400,000; 5<sup>th</sup> class P300,000; 6<sup>th</sup> class P200,000
  - “Ordinary and regular office supplies” - supplies, commodities, materials which depending on 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. Does not include services such as repair and maintenance of equipment and furniture, trucking, hauling, janitorial, security, and other analogous services
- At least 3 price quotations from bona fide suppliers
- Thresholds are subject to period review by the GPPB

## Negotiated Procurement

- Two failed biddings
- Emergency Cases
- Take-over of contracts
- Agency-to-Agency
- Procurement Agent
- Small Value Procurement
- United Nations Agencies
- Adjacent or Contiguous

## Negotiated Procurement

- Two failed biddings 
  - Emergency Cases
  - Take-over of contracts
  - Agency-to-Agency
  - Procurement Agent
  - Small Value Procurement
  - United Nations Agencies
  - Adjacent or Contiguous
- Procedure:
1. ABC cannot be increased by more than 20% of the original ABC
  2. BAC to invite a sufficient number of contractors to ensure effective competition
    - Licensed with CIAP whose eligibility documents are on file with DPWH/ procuring entity
    - Those who have been classified under the type of contract where subject contract falls under
    - Other contractors deemed ineligible may still apply for eligibility
  3. Procuring entity should maintain a registry of contractors as basis for drawing up a shortlist
  4. Requirements re negotiation should be communicated on an equal basis
  5. Following completion of negotiations, contractors to submit **BEST AND FINAL OFFER**
  6. Selected contractors should meet technical specifications and bid <-ABC
  7. In all stages of negotiation, **OBSERVERS** shall be invited

## Negotiated Procurement

- Two failed biddings
- Emergency Cases
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In case of imminent danger to life or property during a state of calamity or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property or to restore vital public services, infrastructure facilities and other public utilities

## Negotiated Procurement

- Two failed biddings
- Emergency Cases
- Take-over of contracts
- Agency-to-Agency
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- United Nations Agencies
- Adjacent or Contiguous


Contracts rescinded or terminated for just cause

Immediate action is necessary to prevent damage and loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities


### Procedure:

1. Contract may be renegotiated with 2<sup>nd</sup> LCB, 3<sup>rd</sup> LCB
2. If negotiation above fails, short list of at least 3 eligible bidders shall be invited to submit bids; Negotiation to start with LCB


## Negotiated Procurement

- Two failed biddings
- Emergency Cases
- Take-over of contracts
- Agency-to-Agency  Procurement from another government agency, such as PS-DBM
- Procurement Agent
- Small Value Procurement
- United Nations Agencies
- Adjacent or Contiguous

## Negotiated Procurement

- Two failed biddings
- Emergency Cases
- Take-over of contracts
- Agency-to-Agency
- Procurement Agent  To hasten project implementation, the procuring entity may request other government agencies to undertake procurement for them, or recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function.
- Small Value Procurement
- United Nations Agencies
- Adjacent or Contiguous

## Negotiated Procurement

- Two failed biddings
- Emergency Cases
- Take-over of contracts
- Agency-to-Agency
- Procurement Agent
- **Small Value Procurement** 
- United Nations Agencies
- Adjacent or Contiguous

The procurement does not fall under shopping and the does not exceed thresholds:

○All barangays P50,000


○Municipality: 1<sup>st</sup> to 3<sup>rd</sup> class P100,000; 4<sup>th</sup> to 6<sup>th</sup> class P50,000

○City: 1<sup>st</sup> & 2<sup>nd</sup> class P500,000; 3<sup>rd</sup> class P400,000; 4<sup>th</sup> class P300,000; 5<sup>th</sup> class P200,000; 6<sup>th</sup> class P100,000

○Province: 1<sup>st</sup> to 3<sup>rd</sup> class P500,000; 4<sup>th</sup> class P400,000; 5<sup>th</sup> class P300,000; 6<sup>th</sup> class P200,000

Procuring entity to draw up a list of at least 3 suppliers of known qualifications which will be invited to submit proposals


## Negotiated Procurement

- Two failed biddings
- Emergency Cases
- Take-over of contracts
- Agency-to-Agency
- Procurement Agent
- Small Value Procurement
- **United Nations Agencies** 
- Adjacent or Contiguous

Small quantities of off-the-shelf goods, primarily in the fields of education and health

Specialized products where the number of suppliers is limited, such as vaccines or drugs

## Negotiated Procurement

- Two failed biddings
- Emergency Cases Provided that the original contract was the result of competitive bidding
- Take-over of contracts Similar or related scopes of work
- Agency-to-Agency Within the contracting capacity of contractor
- Procurement Agent Uses same prices or lower unit prices in the original contract less mobilization cost
- Small Value Procurement Total contract amount  $\leq$  total contract amount of ongoing project
- United Nations Agencies No negative slippage
- Adjacent or Contiguous  Negotiations should commence before expiry of original contract

## Other General Rules

- Posting requirements may be dispensed with
- Invitation to be posted in PhilGEPS, agency's website, conspicuous place for 7CD
- Notice of award to be posted in PhilGEPS, agency's website, conspicuous place
- Except for Limited Source Bidding, submission of bid securities may be dispensed with
- Performance and warranty security requirements apply except for Shopping, Negotiated Procurement (emergency cases, small value procurement, UN agencies)

## Warranty Security for Goods

- (Minimum) 3 months warranty for Expendable Supplies; (Minimum) 1 year warranty for Non-expendable supplies
- To assure manufacturing defects to be corrected by the supplier after acceptance by the procuring entity of delivered supplies
- Covered by retention money (10% of every progress payment) or bank guarantee (10% of total contract price)

## Warranty Security for Infrastructure

- Warranty reduced to 1 year from final acceptance
- Contractor to assume full responsibility for contract work from construction to final acceptance except those caused by FORCE MAJEURE
- Contractor to undertake repair works at own expense within 90CD from time order is issued by head of procuring entity
  - Failure to act → Contractor shall suffer perpetual disqualification and shall reimburse expenses of work undertaken by government

# Observation Report

- Project Information
  - Project Name
  - Approved Budget of the Contract
  - Implementing Agency
  - Status of project (as of writing; details)
- Procurement Stage Observed
  - Findings
  - Recommendations
- How has this project contributed to peace and social cohesion?

Thank you!

Vincent T. Lazatin  
Transparency and Accountability Network  
25 January 2012