

# **LATEST UPDATES ON THE REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT (RA) NO. 9184**

# What are not considered Procurement?

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Varying interpretations on what are covered by RA 9184</p>	<p>Enumerated activities that are <b><u>not</u></b> considered as procurement undertakings under RA 9184 and its IRR:</p> <ol style="list-style-type: none"> <li>1. Direct financial or material assistance to beneficiaries</li> <li>2. Participation to scholarships, trainings, continuing education etc.</li> <li>3. Lease of gov't property for private use</li> <li>4. Job order workers</li> <li>5. Joint Venture Agreements between Private Entities and GOCCs or LGUs</li> <li>6. Disposal of property and assets (Sec. 4.5)</li> </ol>	<p>Clarification on the applicability of RA 9184 and its IRR</p>

**Can a 6<sup>th</sup> ranking official of the PE be designated as a BAC member?**

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Lack of members to constitute BAC</p>	<p><b>Allows designation of an officer of the next lower rank, in case of unavailability of 5th ranking permanent official (except for BAC Chairperson) (Sec. 11.2.2)</b></p> <p>In case of procurement outsourcing, a representative from the Procuring Entity may be designated as a provisional member</p> <p>The Chairperson and Vice-chairperson shall be designated by the local chief executive (Sec. 11.2.2, 11.2.3(a), 11.2.3(b)(iii))</p>	<p>Increases the pool from which HOPE select its BAC members</p>

# Can you have an *adhoc* BAC Secretariat?

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Lack of full-time BAC Sec members to support the BAC in every procurement activity	Allows designation of an officer of the next lower rank, in case of unavailability of 5th ranking permanent official  <b>In case of ad hoc BAC Secretariat, the HOPE shall assign full-time support staff in its BAC Secretariat (Sec. 14.2)</b>	Fast-track procurement

**How often should the BAC undergo procurement training?**



# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Lack of training of HOPE, BAC, Secretariat and TWG	<p>The HoPE shall ensure that the BAC, its Secretariat and TWG members, including other relevant procurement personnel are sent to <b>attend capacity development program.</b></p> <p><b>Within six (6) months upon designation,</b> the BAC, its Secretariat and TWG members should have satisfactorily completed such <b>training or program conducted, authorized or accredited by the GPPB through its Technical Support Office.</b></p>	Procurement Professionalization

# Can you refund Bidding Documents fee?

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Poor specifications	a. Bid documents shall reflect the <b>necessary</b> specifications required to meet the needs of the PE  b. For mixed procurement, PE shall specify <b>all relevant requirements for each procurement type</b> (Sec. 17.2)	Quality of Goods for the lowest prices
Non-Refundable Fee For bid docs	Provide instances when <b>bid doc fees may be refunded</b> to the bidder, <i>i.e.</i> <b>declaration of failure of bidding under Section 41 (Sec. 17.5)</b>	Fairness in procurement

**Can you identify a brand name in procurement for Infrastructure and Consulting Services?**

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Difficulty in preparing technical specifications</p> <p>Reference to Brand Names</p>	<p>Prohibition on brand names likewise apply to the <b>goods component of Infrastructure Projects and Consulting Services.</b> (Sec. 18)</p> <p>However, PEs may indicate brand names for items or parts that are <b>compatible with the existing fleet or equipment of the same make and brand</b> and will maintain the performance, functionality and useful life of the equipment.</p>	<p>Ensure compatibility, interoperability, performance, functionality and useful life of the equipment.</p>

**Do you need to post Bid Notices in newspaper of general circulation?**

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Poor Quality of Works	Requirement on <b>detailed engineering</b> is emphasized. (Sec. 17.6)	Quality of Goods for the lowest prices
Newspaper advertisement	a. Increase thresholds for advertisement requirement b. <b>2 years sunset clause on advertisement requirement</b> (Sec. 21.2.1)	Reduce government cost for newspaper advertisements
Low participation of bidders in pre-bid	a. Allow conduct of pre-bid via <b>video-conferencing, webcasting</b> b. Allow <b>all prospective bidders</b> (even those who did not buy bid docs) to raise queries (Sec. 22)	Clarifies procurement requirements; Reduce disqualification; Increase competition

# Is Platinum membership mandatory?



# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Disqualification of Bidders/ Failure of Biddings due to documentary requirements</p> <p>Low turn-out of bidders</p>	<p>a. Mandatory registration under Platinum Membership (Sec. 8.5.2, 25.2)</p> <p><b><i>Per GPPB Circular No. 07-2017 which took effect on 3 September 2017, the mandatory requirement under Sec. 8.5.2 on the submission of PhilGEPS Certificate of Registration and Membership under Platinum category for Competitive Bidding, Limited Source Bidding and Two-Failed Bidding has been deferred until revoked by the GPPB.</i></b></p>	<p>Easier eligibility check</p> <p>Reduce disqualification of bidders/ failure of biddings Increase competition</p>

# When can BAC accept a recently expired mayor's permit?

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Disqualification of Bidders/ Failure of Biddings due to documentary requirements</p> <p>Low turn-out of bidders</p>	<p>b. Mayor's permit:</p> <ul style="list-style-type: none"> <li>- Allows submission of <b>recently expired</b> mayor's permit with <b>official receipt of application for renewal of permit</b></li> <li>- Allows <b>equivalent document for economic zones</b> (Sec. 23.1(a)(ii), 24.1(a)(ii))</li> </ul> <p>c. For <b>goods</b> procurement, submission of a <b>Credit Line</b>, as an alternative to NFCC (Sec. 23.1(a)(viii))</p>	<p>Easier eligibility check</p> <p>Reduce disqualification of bidders/ failure of biddings</p> <p>Increase competition</p>

# Is there an alternative to NFCC?

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Disqualification of Bidders/ Failure of Biddings due to documentary requirements</p> <p>Low turn-out of bidders</p>	<p>b. Mayor's permit:</p> <ul style="list-style-type: none"> <li>- Allows submission of <b>recently expired</b> mayor's permit with <b>official receipt of application for renewal of permit</b></li> <li>- Allows <b>equivalent document for economic zones</b> (Sec. 23.1(a)(ii), 24.1(a)(ii))</li> </ul> <p>c. For <b>goods</b> procurement, submission of a <b>Credit Line</b>, as an alternative to NFCC (Sec. 23.1(a)(viii))</p>	<p>Easier eligibility check</p> <p>Reduce disqualification of bidders/ failure of biddings</p> <p>Increase competition</p>

**Can an individual consultant be allowed to submit an alternate to a mayor's permit?**

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Disqualification of Bidders/Failure of Biddings due to documentary requirements</p> <p>Low turn-out of bidders</p>	<p>d. For goods and infrastructure projects, fixing the <b>NFCC's K factor at 15</b>, regardless of contract duration (Sec. 23.4.1.4, 23.4.2.7)</p> <p>e. <b>For individual consultants not registered as sole proprietors, they can submit BIR Certificate of Registration instead of DTI and Mayor's Permit (Sec. 24.1(a)(ii))</b></p> <p>f. In consulting services, submission of foreign bidders' SEC Certificate of Registration and/or PRC permit is <b>moved from eligibility to contract award (Sec. 37.1.4(a)(iv))</b></p>	<p>Easier eligibility check</p> <p>Reduce disqualification of bidders/failure of biddings</p> <p>Increase competition</p>

**Can the BAC accept an unsealed bid envelope ?**



# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Strict rules on marking/ sealing of bids	Bid envelopes that are <b>not properly sealed and marked</b> , as required in the bidding documents, <b>shall be accepted</b> , provided that the bidder or its duly authorized representative shall <b>acknowledge such condition of the bid as submitted</b> . The BAC shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid, or for its premature opening (Sec. 25.9)	Reduce disqualification of bidders

# Who should be notified of the award of contract?

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Bid Rigging/ Simulation of bids;</p>	<p>a. BAC Secretariat shall <b>notify in writing all bidders whose bids it has received</b> through its PhilGEPS-registered physical address or official e-mail address (Sec. 25.7)</p> <p>b. The BAC shall <b>notify all other bidders, in writing, of its recommendation to HOPE of award of contract</b> to LCRB/HRRB within 3 calendar days. (Sec. 37.1.1)</p>	<p>Ensure transparency and accurate representation of the bid submission</p>

# Is there an exemption from Philgeps registration?

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Procurement by Foreign Service Posts	<p>a. <b>Exempts foreign bidders from the mandatory PhilGEPS Certificate of Registration (Sec. 25.2)</b></p> <p>b. <b>Winning bidder shall be required to register (Registration Number only) prior to contract signing. (Section 37.1.4(a)(ii))</b></p>	Encourage participation of foreign bidders in the procurement by FSPs
Bid and Performance Securities	<p>a. Allows the bidder to choose their preferred form of bid security (Sec. 27.2)</p> <p>b. Clarifies the required amount for Bid Security and Performance Security (Secs. 27.2 and 39.2)</p>	Avoid undue disqualification of bidders who posted more than the required amount.

**Can the PE require a type of bid security?**

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Procurement by Foreign Service Posts	<ul style="list-style-type: none"> <li>a. Exempts foreign bidders from the mandatory PhilGEPS Certificate of Registration (Sec. 25.2)</li> <li>b. Winning bidder shall be required to register (Registration Number only) prior to contract signing. (Section 37.1.4(a)(ii))</li> </ul>	Encourage participation of foreign bidders in the procurement by FSPs
Bid and Performance Securities	<ul style="list-style-type: none"> <li>a. <b>Allows the bidder to choose their preferred form of bid security (Sec. 27.2)</b></li> <li>b. Clarifies the required amount for Bid Security and Performance Security (Secs. 27.2 and 39.2)</li> </ul>	Avoid undue disqualification of bidders who posted more than the required amount.

# How much is the retention money under RA 9184?



# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Retention Money	<p><b>For Goods, retention money is reduced from fixed 10% to at least 1% (Sec. 62)</b></p> <p><b>For Infrastructure Projects, retention money is retained at 10%</b></p>	Reduce transaction cost results to lower bid prices
Termination of contract/ Liquidated damages	Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the Procuring Entity <b>may</b> rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances. (Sec. 68)	PE has the discretion w/n to terminate the contract, especially when the Project is near completion

**Should the PE rescind a contract once the amount of liquidated damages reach 10%?**

# 2016 REVISED IRR OF RA 9184

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Retention Money	<p>For Goods, retention money is reduced from fixed 10% to at least 1% (Sec. 62)</p> <p>For Infrastructure Projects, retention money is retained at 10%</p>	Reduce transaction cost results to lower bid prices
Termination of contract/ Liquidated damages	<p><b>Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances. (Sec. 68)</b></p>	PE has the discretion w/n to terminate the contract, especially when the Project is near completion

# Is Procurement Agent a method of procurement?

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Procurement Agent	<p>Removed Procurement Agent as an alternative modality. However, PE may still outsource their procurement activities by:</p> <ul style="list-style-type: none"> <li>a) <i>Requesting other GoP agencies to undertake such procurement for them</i></li> <li>b) <i>Engaging private procurement agents in accordance with GPPB Guidelines</i></li> <li>c) <i>Recruiting or engaging consultants to assist them directly and/or train their staff (Sec. 7.3.3)</i></li> </ul>	Clarified that Procurement Agent is not a method of procurement.

**Do you undertake public bidding for engaging the services of an artist?**

# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
<p>Difficulty in procuring the following:</p> <ul style="list-style-type: none"> <li>-Media services;</li> <li>-Scientific, academic references, works</li> <li>- life-saving equipment</li> <li>-Legal services</li> <li>-Artistic works</li> <li>- Infra projects with exclusive technology</li> </ul>	<p>New Alternative Modality:</p> <p><i>Section 53.6 Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services.</i></p>	<p>Efficiency in procurement considering that only 1 supplier/contractor could provide the needs of the PE</p>

# Can the BAC conduct business on a Saturday?



# 2016 REVISED IRR OF RA 9184

Issue/s	Revision	Impact
Delay in procurement process due to declaration of holidays	<p>Specific procurement activities may be held on a Saturday, Sunday, nonworking day or holiday: provided, that the BAC, secretariat and TWG members shall be available on such date, and the appropriate supplemental/bid bulletin is issued and posted pursuant to the posting requirements embodied in section 22.5.3 of this IRR.</p> <p><b><i>(GPPB Resolution No. 21-2017)</i></b></p>	Fastrack procurement activities

**How many quotations should the PE receive for alternative modes of procurement?**

# ANNEX “H” OF THE 2016 REVISED IRR

Issue/s	Revision
The number of quotation that the BAC has to obtain, in order to proceed with the negotiation	<ul style="list-style-type: none"><li data-bbox="490 401 1825 515">a. <b>Shopping 52.1(a) and Emergency Procurement</b>— send at least 1 RFQ</li><li data-bbox="490 644 1825 758">b. <b>Shopping 52.1(b)</b> – send at least 3 RFQs, receive at least 3 quotations</li><li data-bbox="490 886 1825 1072">c. <b>Two Failed Biddings, Small Value Procurement, Lease of Real Property/Venue</b> - send at least 3 RFQs, receive at least 1 quotation will suffice</li></ul>

**Is there a limit on the amount of A to A procurement?**

# ANNEX “H” OF THE 2016 REVISED IRR

Issue/s	Revision
25% threshold requirement for Agency to Agency procurement	<b>25% threshold requirement is removed, provided that the servicing agency has the mandate and absorptive capacity to undertake the project</b>
Procurement of Public-owned real property/venue for public use	Negotiated Procurement under Section 53.10 on lease of real property and venue for public-use cover both publicly-owned and privately-owned.
Thresholds for SH & SVP	Doubled the thresholds for all PEs, except for Barangays (maintained at P50,000)

**Can you expand the services of an existing provider under the WETI rules?**

# 2016 REVISED IRR OF RA 9184

## Revised Guidelines on Procurement of WETI Service Providers

### *(Resolution No. 41-2017)*

- 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
- Resort to competitive bidding, **or any of the applicable alternative methods of procurement** in case there is more than one service contractor operating within the area

# Can the PE adopt a milestone based progress billings?



# 2016 REVISED IRR OF RA 9184

## Revised Guidelines on Contract Implementation for Infrastructure Projects

*(Resolution No. 07-2018)*

- ***Progress Payment*** – PE may require in the Bidding Documents that statement of work accomplished or progress billing and the corresponding request for progress payment may only be submitted upon actual completion of the infrastructure project or a specific portion, segment, milestone or phase thereof.

# What is green public procurement?

# GREEN PUBLIC PROCUREMENT

- **GPPB Resolution 21-2016**, dated 23 September 2016 approves the green specifications for the first tranche of Common-Use Supplies and Equipment.
  - Toilet Paper
  - Record Books
  - Multicopy paper
  - Plastic Trash Bag
  - Plastic Chairs
  - Spray
  - LEDs
  - Toilet Cleaner
  - Detergent Powder
  - Liquid Hand Soap
  - Disinfectant Hand

# What is a Framework Agreement?

# BACKGROUND

- **GPPB Resolution No. 12-2017**, dated 10 April 2017, which took effect on 23 November 2017, provides the Guidelines on the Use of Framework Agreement
- Pilot tested by the Department of Budget and Management – Procurement Service (DBM-PS), Department of Education (DepEd), Department of Health (DOH) and Department of National Defense (DND)
- The GPPB has recently approved the use of Framework Agreement by all agencies

# GUIDELINES ON FRAMEWORK AGREEMENT

## Definition of Framework Agreement

- It is in the nature of an 'option contract' between the PE and the bidder(s) granting the procuring entity the option to either place an order for any of the goods and services identified in the Framework Agreement List or not a buy at all within a minimum period of one year to a maximum of three years.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Instances for Entering Into Framework Agreement

- For necessary and desirable goods that are **repeatedly required by the procuring entity**, but by their nature, use, or characteristic, the quantity and/or exact time of need cannot be accurately pre-determined; and
- In case of expendable or non-expendable goods, it is inadvisable for the procuring entity to carry the same in stock or commit to purchase a certain quantity within a given period.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Scope and Coverage

- All departments, bureaus, offices, and agencies of the national government, including SUCs, GOCCs, GFIs and LGUs.
- Expendable or non-expendable goods that are repeatedly required by the procuring entity in the regular course of business.
- Services, such as, hotel accommodation, air travel, including simple and non-complex services, such as, but not limited to, janitorial, security, catering, maintenance and repair services.



# GUIDELINES ON FRAMEWORK AGREEMENT

## General Conditions *(Cont)*

- The HoPE determines that adopting a Framework Agreement will be more advantageous for the procuring entity having considered the following:
  - End-User Unit's certification
  - Cost-Benefit Analysis
  - Framework Agreement List prepared in the most practical, efficient, and economical manner that will encourage participation and competition among interested market operators in the relevant industry

# GUIDELINES ON FRAMEWORK AGREEMENT

## General Conditions *(Cont)*

- Procurement shall be conducted following the procedures for **Competitive Bidding** provided in RA 9184 and its IRR, subject to Section 6 of the proposed Guidelines.
- Prices shall be **fixed price per unit or item or identified service.**

# GUIDELINES ON FRAMEWORK AGREEMENT

## General Conditions (*Cont*)

- It shall contain:
  - a) Framework Agreement List;
  - b) terms and conditions of Call-Offs; and
  - c) methods for delivering the goods or performing the services.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Competitive Bidding

- The **Invitation to Bid** shall indicate that the procurement will be subject to a Framework Agreement arrangement pursuant to these Guidelines, and shall state whether the Framework Agreement is subject to **Mini-Competition or Outright Determination of the LCRB.**

# GUIDELINES ON FRAMEWORK AGREEMENT

## Competitive Bidding

- The procedures and requirements for **Competitive Bidding provided in RA 9184 and its IRR** shall apply but the determination of the LCRB will vary:
  - Outright Determination of LCRB; or
  - Determination of LCRB after Mini-Competition.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Competitive Bidding

### Outright Determination of LCRB

- For a duration of one (1) year
- Upon determination of the bidder with the LCRB, the HoPE shall award the option contract (Framework Agreement), in the form of a **Notice to Execute Framework Agreement**, to the bidder with the LCRB. This notwithstanding, actual purchase of the procuring entity shall only be made **upon issuance of Call-Off**.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Competitive Bidding

### *Determination of LCRB After Mini Competition*

- for a duration of two (2) to three (3) years
- The BAC shall initially determine compliance of bidders with the technical and financial aspects of the project, and recommend the execution of Framework Agreement to all complying bidders.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Competitive Bidding

### *Determination of LCRB After Mini Competition (Cont)*

- The HoPE shall then issue to all complying bidders a **Notice to Execute a Framework Agreement**.
- The determination of the LCRB shall not be performed by the BAC until a **Mini-Competition** is conducted among the complying bidders to determine the bidder with the LCRB.



# GUIDELINES ON FRAMEWORK AGREEMENT

## Framework Agreement

- Within ten (10) calendar days from receipt by the participating bidder(s) of the Notification to Execute a Framework Agreement with the Procuring Entity, the bidder shall **formally enter into a Framework Agreement** with the PE for an amount of **One Peso** to be paid by the PE as a consideration for the option granted to the PE to procure the items in the Framework Agreement List when the need arises.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Framework Agreement

- Executed within ten (10) calendar days from receipt by the participating bidder(s) of the Notification to Execute a Framework Agreement.
- Submission of a **Performance Securing Declaration** to guarantee the faithful performance by the supplier/service provider of its obligations.
- Payment of an amount of **One Peso** by the procuring entity as a consideration for the option granted to the procuring entity.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Framework Agreement

- Shall not state or imply any agreement by the procuring entity to place future contracts or make orders with the supplier/service provider.
- No modification of the Framework Agreement during its lifetime shall be allowed.
- Valid only for the period stated in the Bidding Documents which, in no case shall exceed three (3) years from the time the Framework Agreement was executed.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Call-Off

- Upon the determination of the need to procure the items or services, the PE will issue a **Call-Off**, immediately if single-year Framework Agreement, or after the conduct of Mini-Competition if multi-year Framework Agreement, in favor of the suppliers/service providers to obligate the latter to deliver or perform according to the terms and conditions stated in the Framework Agreement.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Call-Off

- No limit in the number of Call-Offs that may be executed. However:
  - Subsequent Call-Offs shall **not exceed the maximum quantity** in the Framework Agreement List;
  - The **fixed contract prices** rule shall be observed;
  - All executed Call-Offs shall **not exceed the total contract price** specified in the Framework Agreement.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Call-Offs and Participation in Other Bidding Activities

- The **aggregate** of the Call-Offs for a particular item or similar items **satisfactorily completed** by the supplier/service provider shall be considered as **one (1) completed contract** with the cumulative amount as the total contract amount.
- Only those **undelivered items in the Call-Offs executed by the PE** shall be included in the **Statement of All Ongoing Government and Private Contracts** for purposes of participating in other bidding activities.

# GUIDELINES ON FRAMEWORK AGREEMENT

## Implementation

- After receipt of the Call-Off from the PE, the supplier shall deliver/perform the items within the period specified in the Framework Agreement, unless a different time is provided in the Call-Off; in which case, the period stated in the latter shall prevail.
- All other rules governing contract implementation under RA 9184, its IRR, and relevant procurement policies shall be applicable such as the **rules on extension of time, payment of liquidated damages and warranty, among others.**

# GUIDELINES ON FRAMEWORK AGREEMENT

## Termination

- Without prejudice to the provisions of applicable laws, rules, and guidelines, the Framework Agreement shall automatically terminate under the following conditions:
  - When the **total maximum quantity** specified in the Framework Agreement **has been exhausted**;  
or
  - When the **specified duration** of the Framework Agreement **has expired**.



# GUIDELINES ON FRAMEWORK AGREEMENT

## Repeat Order

- Allowed after PE has exhausted maximum quantity for the same item or after the Framework Agreement has expired:
  - Subject to conditions under **Section 51**.
  - Repeat Order shall be availed of only within 6 months from the date of the last of final Call-Off for a specific item or from the expiration of the Framework Agreement.

# THANK YOU

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